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11
 12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA

14	IN RE: PACKAGED SEAFOOD)	Case No.: 15-MD-2670 DMS (MSB)
15	PRODUCTS ANTITRUST)	
16	LITIGATION)	END PAYER PLAINTIFFS'
17	_____)	NOTICE OF MOTION AND
18)	MOTION FOR PRELIMINARY
19	This Document Relates To:)	APPROVAL OF CLASS ACTION
20	End Payer Plaintiff Class Track)	SETTLEMENTS
21)	DATE: August 23, 2024
22)	TIME: 1:30 p.m.
23)	JUDGE: Hon. Dana M. Sabraw
24)	COURT: 13A (13 th Floor)
25	_____)	

1 **NOTICE OF MOTION**

2 **PLEASE TAKE NOTICE** that, on August 23, 2024 at 1:30 p.m., pursuant to
3 Federal Rule of Civil Procedure 23, the End Payer Plaintiffs (“EPPs”) hereby move
4 to preliminarily approve the proposed settlements between the EPPs and Defendants
5 StarKist Co. (“StarKist”) and Dongwon Co., Ltd (“DWI”) (the “StarKist Settlement
6 Agreement”) and between EPPs and Defendants Lion Capital LLP, Lion Capital
7 (Americas), Inc. and Big Catch Cayman LP (collectively the “Lion Companies” and
8 the “LC Settlement”).

9 Federal Rule of Civil Procedure 23(e) governs preliminary approval of class
10 action settlements. If the parties can show that the Court “will likely be able to: (i)
11 approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of the
12 judgment on the proposal,” Fed. R. Civ. P. 23(e)(1)(B), then the Court should grant
13 preliminary approval and order that notice be provided to the class. Here, the proposed
14 Settlement Agreements meet the requirements of Rule 23(e)(2), and the proposed
15 Settlement Class satisfies Rules 23(a) and 23(b)(3).

16 This Court previously certified a multistate Cartwright Act class (“Cartwright
17 Class”) and multiple individual State Law Classes for 32 States, Districts, and
18 Territories (“State Classes”). The Cartwright Class consists of 31 State Classes. *See*
19 ECF 1931 at 46 (Order re: Class Certification (“Class Cert. Order”) (certifying
20 Cartwright Class with 32 states) (July 30, 2019)); ECF 2925 at 10:10-17 (excising the
21 South Carolina claimants from the Cartwright Class). The appellate courts upheld
22 Class Certification. *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*,
23 31 F.4th 651, 684-685 (9th Cir. 2022), cert. denied sub nom. *StarKist Co. v. Olean*
24 *Wholesale Grocery Coop., Inc., et al.*, 143 S. Ct. 424 (2022).

25 As the Court has already determined that the proposed Classes satisfies Rule 23
26 (a) and Rule (b)(3), the proposed Settlement Class (consisting of the same Cartwright
27
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1 and State Law Classes), less any opt-outs previously so ordered by Court¹, satisfies
2 Rule 23(a) and Rule 23(b)(3).

3 Accordingly, the Court should grant preliminary approval and order that notice
4 of the Settlement Agreements be provided to the Settlement Class.

5 Specifically, the EPPs respectfully request that the Court:

6 (1) Find that the StarKist and LC Settlement Agreements have been
7 negotiated at arm's-length;

8 (2) Preliminarily approve both Settlement Agreements as fair, reasonable,
9 and adequate, and in the best interests of the Settlement Class;

10 (3) Approve again the EPPs' proposed Settlement Class Notice provider
11 (JND), proposed Settlement Class Notice and Distribution Plan;

12 (4) Set a deadline (the "Objection Deadline") for persons to object to the
13 Settlement Class;

14 (5) Set a claims deadline for class members to submit claim by; and

15 (6) Scheduling a Fairness and Final Approval Hearing.

16 The Court previously granted the EPPs' Motion for Preliminary Approval of
17 Partial Class Action Settlement (ECF No. 2734) and finally approved this partial
18 settlement with Chicken of the Sea ("COSI"). See ECF No. 2871, 2872. The remaining
19 \$15 million COSI settlement will be distributed as part of the Distribution Plan in the
20 pending settlements.

21 The EPPs understand that StarKist, DWI, and the Lion Companies do not
22 oppose this Motion.

23 This motion is supported by and based upon the concurrently filed Declaration
24 of Betsy C. Manifold, Declaration of Gina Intrepido-Bowden, the attached settlement
25 agreements and other exhibits.

26 Dated: August 13, 2024

By: s/ Betsy C. Manifold
BETSY C. MANIFOLD

27 _____
28 ¹ See ECF Nos. 3115, 3120.

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10 [Additional counsel appear on signature page]

11 UNITED STATES DISTRICT COURT
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13 SOUTHERN DISTRICT OF CALIFORNIA

14 IN RE: PACKAGED SEAFOOD) Case No.: 15-MD-2670 DMS (MSB)
15 PRODUCTS ANTITRUST)
LITIGATION) **END PAYER PLAINTIFFS’**
16) **MEMORANDUM OF POINTS**
17) **AND AUTHORITIES IN SUPPORT**
18) **OF THEIR MOTION FOR**
19) **PRELIMINARY APPROVAL OF**
20) **CLASS ACTION SETTLEMENTS**

20 This Document Relates to:)
21 End Payer Plaintiffs Class Track) DATE: August 23, 2024
22) TIME: 1:30 p.m.
23) JUDGE: Hon. Dana M. Sabraw
24) COURT: 13A (13th Floor)
25)
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27)
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1 **I. INTRODUCTION**

2 After nine years of hard-fought litigation, with the trial set to start on July 16,
3 2024, the End Payer Plaintiffs (“EPPs” or “Consumers”) present for the Court’s
4 preliminary approval two substantial settlements with the Settling Defendants¹ with a
5 combined cash value of \$136 million. The nine long years of litigation included: a
6 hotly disputed class certification process; extensive discovery with millions of
7 documents and over 200 depositions; and multiple summary judgment motions. An
8 earlier Partial Settlement with Defendant Chicken of the Sea and its parent, Thai
9 Union Group, (“the COSI Settlement”) adds another \$16.2 million, for Total
10 Settlement Benefits of \$152.2 million.²

11 The StarKist and Lion Companies Settlement Agreements were vigorously and
12 extensively negotiated at arm’s-length by counsel experienced in antitrust class
13 actions. Class Counsel were ready and willing to try this antitrust litigation to verdict.
14 It was only through the extraordinary efforts of United States Magistrate Judge
15 Michael S. Berg, who oversaw multiple heated mediation sessions between the
16

17 ¹ The Settling Defendants are StarKist Co. and its parent Dongwon Industries Co.,
18 Ltd. (“DWI” and, collectively, “StarKist”) and various “Lion Companies” (Lion
19 Capital LLP, Lion Capital (Americas), Inc. and Big Catch Cayman LP) (collectively,
20 “Lion Companies” or “LC”).

21 ² On July 15, 2022, the Court finally approved the Partial (COSI) Settlement. ECF
22 No. 2871. Under the COSI Settlement Agreement, the Maximum Settlement Amount
23 was \$20 million. ECF No. 2552-3 at 8. Under Paragraphs 11(b) and 18, up to \$5
24 million could be used to cover the reasonable costs of the Settlement Notice and
25 administration of the \$15 million Settlement Fund. Since the reasonable costs of
26 Settlement Notice were less than \$5 million, the difference was refunded to the COSI
27 Defendants. *Id.* at 14 and 15. The Court also approved an Expense Award of
28 \$4,155,027.67 to reimburse 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. Declaration of Betsy C. Manifold (“Manifold Decl.”), ¶ 2.
The total benefit provided by the COSI Settlement is \$16.2 million.

1 settling parties in April, May, June, and July 2024, that these settlements were
2 achieved – literally on the steps of the courthouse and the eve of trial. Collectively,
3 the Total Settlement Benefits of \$152.2 million represent approximately 68% of
4 single damages as calculated by the EPPs’ expert. This is an excellent outcome for
5 the previously certified Consumer Classes.³ EPPs submit that the Settlement
6 Agreements are fair, adequate and reasonable.

7 EPPs respectfully request that the Court grant preliminary approval and enter
8 an order finding that the StarKist and Lion Companies Settlement Agreements have
9 been negotiated at arm’s-length, and that both Settlement Agreements are fair,
10 reasonable, and adequate and in the best interests of the Consumer Classes. As the
11 Court’s Class Order (ECF No. 1931) has already determined that the Consumer
12 Classes satisfy Rules 23(a) and 23(b)(3), the proposed Settlement Class (consisting
13 of the same Cartwright and State Law Consumer Classes, less any opt-outs previously
14 so ordered by the Court), also satisfies Rules 23(a) and 23(b)(3) for settlement
15 purposes. The EPPs ask the Court to: (i) approve again the EPPs’ proposed Class
16 Notice provider (JND) and approve the Settlement Class Notice and Distribution
17 Plan; (ii) set a deadline (the “Objection Deadline”) for persons to object; (iii) set a
18 deadline for persons to make claims (“Claims Deadline”) from the Settlements; and
19 (iv) schedule a Fairness Hearing.

20 **II. PLAINTIFFS’ CLAIMS AND PROCEDURAL HISTORY OF THE** 21 **LITIGATION**

22 **A. History of the Litigation**

23
24 ³ This Court previously certified a multistate Cartwright Act class (“Cartwright
25 Class”) and multiple individual State Law Classes for 32 States, Districts, and
26 Territories (“State Classes”) (collectively referred to as “Consumer Classes”). The
27 Cartwright Class consists of 31 State Classes. *See* July 30, 2019 Order re: Class
28 Certification (ECF No. 1931) (“Class Cert. Order”) at 46 (certifying Cartwright Class
with 32 states); ECF No. 2925 at 10:10-17 (excising the South Carolina claimants
from the Cartwright Class). The Settlement Class is defined as the Consumer Class,
less the opt-outs so ordered by the Court. *See* ECF No. 1931 and 3120.

1 The general background and history of this litigation is well-documented and
2 extensively discussed in prior orders. ECF Nos. 2454, 2654. The relevant highlights
3 for the purpose of preliminary approval are as follows.

4 On August 24, 2015, the EPPs filed a class action complaint alleging an
5 antitrust conspiracy by the three domestic tuna brands and their parent companies,
6 StarKist Co. (“StarKist”), Bumble Bee, and Chicken of the Sea (“COSI”), to fix and
7 maintain packaged tuna prices above competitive levels in violation of state laws.
8 After nine years of hotly contested litigation, it is undisputed that all three Defendants
9 participated in a conspiracy in violation of state and federal laws. Defendants Bumble
10 Bee and StarKist pled guilty to a criminal conspiracy to violate federal antitrust laws
11 under the Sherman Act, 15 U.S.C. § 1, on August 4, 2017, and November 14, 2018,
12 respectively. *See* ECF No. 2654 (discussing guilty pleas, convictions, and admissions
13 of Defendants). COSI entered into a leniency agreement with the Department of
14 Justice (“DOJ”) Antitrust Division and agreed to cooperate and testify concerning its
15 participation in the “cartel.” Executives of StarKist and Bumble Bee pled guilty to
16 participating in the conspiracy in 2017, and Bumble Bee’s Chief Executive Officer
17 was tried and convicted by jury on December 3, 2019, for his role in the conspiracy.
18 *Id.*

19 The Court granted summary judgment against StarKist on liability, finding that
20 StarKist engaged in the price-fixing conspiracy from at least as early as November
21 2011, and continuing through at least as late as December 2013, but expressly
22 permitting Plaintiffs to present evidence and argue for a broader conspiracy. ECF No.
23 2654 at 27. The Court also found that “the conspiracy had an actual effect on the
24 market,” leaving the Consumers to prove their damages at trial. *Id.* Only three
25 disputed issues remain to be tried at trial: (i) the extent of the conspiracy; (ii)
26 Plaintiffs’ damages, and (iii) whether Defendants DWI and the Lion Companies are
27 liable along with Defendant StarKist.

28 **B. The “Icebreaker” COSI Settlement**

1 Incorporated by reference is the detailed history provided in the EPPs’ Motion
2 for Final Approval (ECF No. 2552-1 at 7-14). The key terms and conditions of the
3 COSI Settlement as to any Fee and Expense Award sought by the EPPs and Class
4 Counsel remain unchanged. *Jt. Stip.*, ¶ 8, citing ECF No. 2552-3 at 18-19. However,
5 the EPPs and Class Counsel elected unilaterally not to seek reimbursement of
6 attorneys’ fees solely from the COSI Defendants or the COSI Settlement Fund.
7 Instead, the EPPs moved only for reimbursement of their litigation expenses as of that
8 date, which the Court awarded in the amount of \$4,155,027.67 from the Distribution
9 Fund. ECF Nos. 2871, 2872. *See also* n.2, *infra*. At that time, Class Counsel reserved
10 their rights to seek reimbursement of attorneys’ fees from any monies recovered from
11 the Non-Settling Defendants, and to include in the bases for any such fees request the
12 benefits obtained in the COSI Settlement. *Id.* Class Counsel now respectfully request
13 that any attorneys’ fees award be based on the Total Settlement Benefits of \$152.2
14 million.

15 **C. Arm’s-Length Negotiations of Settlement Agreements**

16 EPPs have been engaged in informal settlement discussions with the Settling
17 Defendants since mid-2019. *Manifold Decl.*, ¶¶ 17, 18, 22 (including Bumble Bee).

18 **1. Formal Settlement Discussions with StarKist**

19 Unable to make progress through this informal process, in 2020, the parties
20 engaged retired United States Magistrate Judge Elizabeth LaPorte of JAMS as a
21 mediator, but reached no resolution. *Id.* at ¶ 19. After the partial summary
22 adjudication, the EPPs and StarKist participated in settlement conferences with
23 Magistrate Berg on October 4, 2023. *Manifold Decl.*, ¶ 20. No resolution was reached.

24 As the July 16, 2024 trial date approached, the EPPs and StarKist renewed
25 settlement efforts. The parties participated in a settlement conference with Magistrate
26 Berg on April 25, 2024, and again on May 22 and May 23, 2024. *Manifold Decl.*,
27 ¶ 21. While these sessions did not result in settlement, the parties agreed to meet again
28 on June 3, 2024. *Id.* With the oversight and active participation of Magistrate Berg,

1 the EPPs and StarKist reached a settlement in principle at the end of that June 3, 2024
2 conference, in which the parties agreed to resolve the EPP claims in exchange for
3 \$130 million in cash. *Id.* In follow-on discussions mediated by Magistrate Berg over
4 the next two months, the EPPs and StarKist negotiated core settlement issues,
5 including an 18-month settlement payment schedule beginning with the date of
6 preliminary approval. *Id.*

7 **2. Formal Settlement Discussions with the LC Defendants**

8 On August 7, 2023, the EPPs and the Direct Purchaser Plaintiffs (“DPPs”)
9 attended a joint settlement conference with LC before Magistrate Berg. *Id.* at ¶ 23.
10 That session did not result in settlement. *Id.* At Lion Companies request, the EPPs and
11 DPPs attended a joint settlement conference with LC in a private mediation session
12 overseen by retired United States District Judge Daniel Weinstein of JAMS in San
13 Francisco, California on June 7, 2024. *Id.* That session also did not result in
14 settlement; however, the parties agreed to a further settlement conference before
15 Magistrate Berg. Manifold Decl., ¶ 23.

16 On June 17, 2024, with trial imminent, the EPPs and DPPs met with LC (and
17 their insurers and principals) in a day-long settlement conference before Magistrate
18 Berg that culminated in the parties reaching a settlement in principle. *Id.*, ¶ 24. During
19 the session, LC and its founders’ financial conditions were fully evaluated by
20 Settlement Class Counsel, as well as by Magistrate Berg. *Id.* The nine-hour mediation
21 session concluded with an agreement that the Lion Companies would pay \$6 million
22 to the EPP Consumer Classes to resolve the claims against them. *Id.*

23 **III. SETTLEMENT TERMS**

24 The \$136 million fund created by the StarKist and LC Settlement Agreements,
25 along with the \$16.2 million in benefits from the COSI Settlement, will be used to
26 make payments to the Settlement Class Members and to pay costs of notice, claims
27 administration and distribution, attorneys’ fees, expenses, costs, and service awards
28

1 so ordered by the Court.⁴ See StarKist Settlement Agreement (“SA”) at ¶¶ 1.2, 14.1;
2 Lion Companies SA at ¶¶ 1.22, 10.9, 10.10, 11.1. Defendants Starkist and LC have
3 agreed that \$1 million and up to \$200,000, respectively, from their initial deposits of
4 funds into the Settlement Fund, which shall occur within 30 days following entry by
5 the Court of the Preliminary Approval Order, shall be used to pay for notice costs.
6 Defendants’ remaining deposits into the Settlement Fund will be as provided by their
7 respective Settlement Agreements, as discussed *infra*. See StarKist S.A. at ¶ 5.3; Lion
8 Companies S.A. at ¶ 1.22. The Proposed Settlement Notice and Distribution Plan is
9 described in detail in Section IV, *infra*.

10 **A. The End Payer Plaintiff Settlement Class Is the Same as the**
11 **Certified Consumer Classes**

12 Under the StarKist and LC Settlement Agreements, the Settlement Class is the
13 same as the Consumer Classes certified by the Court:

14 All persons and entities who reside in one of the States described in
15 paragraphs 113(b) to 113(gg) of the Fourth Consolidated Amended
16 Complaint, specifically Arizona, Arkansas, California, the District of
17 Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine, Massachusetts,
18 Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New
19 Hampshire, New Mexico, New York, North Carolina, North Dakota,
20 Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah,
21 Vermont, Virginia, West Virginia, and Wisconsin, who indirectly
22 purchased Packaged Tuna in cans or pouches smaller than forty ounces
23 for end consumption and not for resale, produced by any Defendant or
24 any current or former subsidiary or affiliate thereof, or any co-
25 conspirator during the period from June 1, 2011 to July 1, 2015.

26 See ECF No. 1931; StarKist SA, ¶ 1.8; Lion Companies SA, ¶ 3; see also ECF No.
27 2871 (Order approving the COSI Settlement).⁵ The only difference is that the
28 Settlement Class excludes the opt-outs so ordered by the Court and includes the three

26 ⁴ Capitalized terms are defined within the StarKist and Lion Settlement Agreements.

27 ⁵ Excluded from the Class are all governmental entities, Defendants’ parent,
28 subsidiary or affiliate thereof, their officers, directors, employees, and immediate
families, as well as any federal judges or their staffs. *Id.*

1 individual Illinois Plaintiffs. *See* ECF Nos. 3120, 2871. The Settlement Class Counsel
2 and Settlement Class Representatives are also the same as Class Counsel and Class
3 Representatives previously appointed by the Court in the Class Order. ECF No. 1931;
4 StarKist SA, ¶ 1.26; Lion Companies SA, ¶ 3. As the Court previously found that the
5 Consumer Classes meet the requirements of Rule 23(a) (numerosity, common
6 questions, typicality and adequacy) and that the requirements of Rule 23(b)(3)
7 (common issues predominate as to antitrust violation, impact and damages, and a class
8 action is superior to other methods of adjudication), the same Settlement Class meets
9 these requirements. ECF No. 1931 at 46-58; *see also* ECF No. 2871 at 6.

10 **B. Key Terms in the Settlement Agreements**

11 **1. The StarKist Settlement Agreement**

12 **Payment Schedule.** The StarKist Settlement Agreement provides that StarKist
13 will pay \$130 million in cash on the following schedule: within 30 days after
14 preliminary approval - \$32,000,000.00; prior to the Fairness Hearing also referred to
15 as the “Final Approval Hearing” in StarKist SA, ¶1.24 - \$18,000,000.00; within 180
16 days after Preliminary Approval - \$15,000,000.00; within 240 days after Preliminary
17 Approval - \$12,000,000.00; within 300 days after Preliminary Approval -
18 \$11,000,000.00; within 360 days after Preliminary Approval - \$11,000,000.00; within
19 420 days after Preliminary Approval - \$11,000,000.00; within 480 days after
20 Preliminary Approval - \$10,000,000.00; and within 500 days after Preliminary
21 Approval - \$10,000,000.00. *See* StarKist SA, ¶ 1.24. Up to \$1,000,000 from the first
22 \$32 million cash payment “shall be used for settlement notice and administration of
23 claims.” StarKist SA, ¶¶ 1.24, 5.3.

24 **Released Claims.** The Released Claims are those “arising out of, resulting
25 from, or in any way related to EPPs’ purchases of Packaged Tuna, including any
26 conduct concerning the pricing, selling, discounting, marketing, manufacturing,
27 distribution, or promotion, of Packaged Tuna, during the period from June 1, 2011 to
28 July 31, 2015.” *Id.* at ¶ 1.21 The Released Claims also include all claims that could

1 have been brought based in whole or in part on the facts, occurrences, transactions, or
2 other matters that were alleged in the Complaint. *Id.* The StarKist Settlement
3 Agreement also contains a waiver of California Civil Code § 1542. *Id.* at ¶ 8.2.

4 **Attorneys’ Fees and Expenses.** As to Settlement Class Counsel’s Attorneys’
5 Fee and Expenses, “the allowance or disallowance by the Court” of any application
6 is not part of the Settlement Agreement and will “be considered by the Court
7 separately” as part its consideration of fairness, reasonableness and adequacy of the
8 settlement. StarKist SA, ¶ 14.1. Any order relating to the application for fees and
9 expenses “shall not operate to terminate or cancel” the Settlement Agreement or
10 “delay the finality of the Judgment.” *Id.*

11 **2. The LC Settlement Agreement**

12 **Payment Schedule.** The Lion Companies have agreed to pay the EPPs \$6
13 million in cash. Lion Companies SA, ¶ 1.22. The Lion Companies will deposit \$3
14 million in the Escrow Account thirty within (30) days after Preliminary Approval and
15 the final \$3 million within forty-five (45) days of Final Approval. *Id.* Up to \$200,000
16 of the first \$3 million cash payment “shall be used for [settlement] notice and
17 administration of claims.” Lion Companies SA, ¶ 1.22.

18 **Released Claims** The Released Claims must arise out of, result from or relate
19 to “any conduct concerning the pricing, selling, discounting, manufacturing,
20 distribution, promotion, or marketing of Packaged Tuna Products during the period
21 from June 1, 2011 to July 31, 2015 that could have been brought based in whole or in
22 part on the facts, occurrences, transactions, or other matters that were alleged in the
23 Complaint.” Lion Companies SA, ¶ 1.19.

24 **Attorneys’ Fees and Expenses** As to Settlement Counsel’s Attorneys’ Fee and
25 Expenses, the LC Settlement Agreement is substantially similar to the StarKist
26 Settlement Agreement. “[T]he allowance or disallowance by the Court” of any fee or
27 expense application is not part of the Settlement Agreement and should be considered
28 separately by the Court. Lion Companies S.A., ¶ 14.1. Any order relating to the

1 application for fees and expenses “shall not operate to terminate or cancel” the
2 settlement or “delay the finality of the Judgment.” *Id.*

3 **C. Request for Attorneys’ Fees and Expense Award**

4 EPPs will separately seek an award of attorneys’ fees not to exceed one-third
5 of the Total Settlement Fund (\$152.2 million), net of any Fees, Expenses, Costs or
6 Service Awards so ordered by the Court. As to timing, Settlement Class Counsel
7 request that payment of any Attorneys’ Fees Award follow the same payment
8 schedule and portion of the settlement paid as set forth in the StarKist Settlement
9 Agreement. StarKist SA, ¶ 1.24; *see also* § II.B, *supra*. Counsel request that the first
10 payment of any Attorneys’ Fees Award so ordered by the Court be paid five (5) days
11 following the Court’s Order. *See* StarKist SA, ¶ 14.1 (permitting payment five days
12 after award).

13 The requested Expense Award breaks down as follow: (i) reimbursement of
14 plaintiffs’ counsel’s reasonable costs and litigation expenses incurred since May 2021
15 in the amount of \$1,618,489.24; and (ii) a request that \$206,379.11 of that amount be
16 distributed to COSI as a reimbursement for administration costs that will be common
17 to both the proposed settlements and the COSI Settlement. Manifold Decl., ¶ 43; *see*
18 *also* n.2, *supra*. This request by COSI is in accordance with the terms of the COSI
19 Settlement Agreement. *Id.* The total requested Expense Award is \$1,618,489.24. As
20 to timing, Settlement Class Counsel request that any Expense Award so ordered by
21 the Court be paid five (5) days following the Court’s Order. *See* StarKist SA, ¶ 14.1
22 (permitting payment five days after award subject to any undertaking required by the
23 Court in the event of an appeal); Lion Companies SA, ¶ 14.1 (same).

24 These requested awards, if so ordered by the Court, will be paid out of the Total
25 Settlement Fund. The Settlement Class Notice (Long Form) (discussed, *infra* at §
26 IV.C.) will advise Settlement Class Members of these requests, their amounts, and the
27 timing for payment. ***Additionally, Class Counsel will publish on the Settlement***
28 ***Website and submit full briefing supporting their request for attorneys’ fees and***

1 *expenses a minimum of twenty-one (21) days before the Objection Deadline.* The
2 timing provides time for Settlement Class Members to consider this briefing before
3 the deadline. Settlement Class Counsel will not receive any payment unless the Court
4 grants the fee request.

5 Proposed Attorneys' Fees in the amount of one-third (33 1/3%) of the Total
6 Settlement Fund (after netting out costs) is within the range of reasonableness. *In re*
7 *Capacitors Antitrust Litig.*, No. 3:14-cv-03264-JD, 2023 WL 2396782 (N.D. Cal.
8 Mar. 6, 2023), supports the reasonableness of this request, given the late stage at
9 which settlement was reached and the substantial recovery to the Settlement Class
10 that was achieved. In the *Capacitors* matter, the proposed \$66,000,000 in attorneys'
11 fees amounted to 40% of the Settlement Fund created by that round of settlements,
12 and a cumulative 31.01% of the total settlements reached for the benefit of the class.
13 The one-third requested here is well within the range of reasonable fees awards,
14 especially in light of the complexity of antitrust cases and the degree of work and skill
15 required to obtain highly beneficial results for the Settlement Class. *See, e.g., In re*
16 *Lenovo Adware Litig.*, No. 15-md-02624-HSG, 2019 WL 1791420, at *7-9 (N.D. Cal.
17 Apr. 24, 2019) (30% of \$8,300,000 recovery); *In re Lithium Ion Batteries Antitrust*
18 *Litig.*, No. 13-md-02420-YGR, 2018 WL 3064391, at *1 (N.D. Cal. May 16, 2018)
19 (30% of \$139,000,000 recovery); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M
20 07-1827 SI, 2013 WL 149692, at *2 (N.D. Cal. Jan. 14, 2013) (30% of \$68,000,000
21 recovery); *Meijer, Inc. v. Abbott Lab 'ys*, No. C-07-05985 CW, 2011 WL 13392313,
22 at *2 (N.D. Cal. Aug. 11, 2011) (33 1/3% of \$52,000,000 recovery).⁶

23 _____
24 ⁶ *See also, e.g., In re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2015
25 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015) (30% of \$147,800,000 recovery); *In*
26 *re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1366 (S.D. Fla. 2011)
27 (30% of \$410,000,000 recovery); *In re Linerboard Antitrust Litig.*, No. MDL 1261,
28 2004 WL 1221350, at *19 (E.D. Pa. June 2, 2004) (30% of \$202,572,489 recovery);
In re Ikon Off. Sols., Inc. Sec. Litig., 194 F.R.D. 166, 170 (E.D. Pa. 2000) (30% of net
\$116,000,000 recovery); *In re Broiler Chicken Antitrust Litig.*, No.16 C 8637, 2024
WL 3292794, at *3 (N.D. Ill. July 3, 2024) (\$51,660,000.00, which was 30% of the
(continued...)

1 **D. Service Award to Named Plaintiffs**

2 The individual Plaintiffs have played a vital role in this litigation, including
3 providing answers to interrogatories, appearing for deposition, providing declarations
4 re: class standing, and preparing to appear at trial this July. Manifold Decl., ¶ 25.
5 Each of them has been personally involved throughout this nine-year litigation, and
6 they all support the proposed Settlements. *Id.* EPPs will separately petition the Court
7 to award the individual EPPs service awards in amounts that reflect their contributions
8 to the case. *Id.* at ¶ 26. The total amount requested for service awards is \$294,000
9 which is insignificant (0.19%) in light of the substantial Total Settlement Fund
10 (\$152.2 million). The Service Award tiers break down as follows: \$3,000 (Tier 1);
11 \$6,000 (Tier 2); and \$9,000 (Tier 3). *Id.* at ¶ 26 (detailed breakdown of tier
12 calculation). All of the EPPs who participated in discovery and provided class
13 standing declarations will receive a service award of \$3,000 (Tier 1). *Id.* For the EPPs
14 who sat for deposition as part of the class certification process, the EPPs will seek a
15 higher award of \$6,000 (Tier 2). *Id.* at ¶ 27. For the EPPs who were deposed more
16 than once (EPP Drew Gorman), acted as the plaintiff representative in the Bumble
17 Bee bankruptcy proceeding, or were prepared to appear at trial in July, the EPPs will
18 seek an award of \$9,000 in recognition of the more significant time, effort and
19 expense devoted to this litigation. *Id.* Finally, three individual plaintiffs from Illinois
20 participated in discovery; to compensate them for their services, the EPPs will request
21 a service award of \$1,000 each for a total of \$3,000. *Id.* at ¶ 28.

22 “Empirical evidence shows that incentive awards are now paid in most class
23 suits and average between **\$10,000 to \$15,000** per class representative.” 5 Newberg
24 and Rubenstein on Class Actions, Incentive awards—Generally, § 17:1 (6th ed.).
25 Courts generally look at what services the class representatives have rendered
26 (discovery, depositions, preparation for appearance at trial) and what percentage of
27 the fund requested service awards will constitute (0.19% in this case). The baseline
28 _____
settlement fund after deducting the expenses and incentive awards).

1 test is reasonableness. Service awards are “intended to compensate class
2 representatives for work undertaken on behalf of a class” and “are fairly typical in
3 class action cases.” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th
4 Cir. 2015) (internal quotation marks and citation omitted). *See also In re Apple Inc.*
5 *Device Performance Litig.*, 50 F.4th 769, 786 (9th Cir. 2022) (reciting the *Stanton*
6 factors and ultimately finding that “[s]o long as they are reasonable, [service awards]
7 can be awarded”). The requested awards are in line with service awards awarded in
8 other class actions. *See Birch v. Off. Depot, Inc.*, No. 06 CV 1690 DMS (WMC), 2007
9 WL 9776717, at *2 (S.D. Cal. Sept. 28, 2007) (awarding two named plaintiffs service
10 awards of **\$15,000** and **\$10,000** respectively).⁷

11 EPPs’ request for Service Awards is reasonable, consistent with other service
12 awards in this district, and easily falls within the range of possible approval.

13 **E. Agreements Required to Be Identified Under Fed. R. Civ. P. 23(e)(3)**

14 All the terms of the proposed settlements are contained within the respective
15 Settlement Agreements attached as Exhibits 1 and 2 to the Manifold Declaration.
16 Plaintiffs have not entered into any additional agreements with any of the Settling
17 Defendants in connection with the proposed settlements.

18 **IV. PROPOSED NOTICE AND CLAIMS DISTRIBUTION PROCESS**

19
20 ⁷ *See also In re BofI Holding, Inc. Sec. Litig.*, No. 315CV02324GPCKSC, 2022 WL
21 9497235, at *8 (S.D. Cal. Oct. 14, 2022) (granting **\$15,000** service award after 6 years
22 of litigation where plaintiff “expended ‘significant time and effort on the litigation
23 and face[d] the risk of retaliation [and] other personal risks....’” and the service award
24 was .1% of the total \$14,100,000 recovery.”) and *Winters v. Two Towns Ciderhouse,*
25 *Inc.*, No. 20-CV-00468-BAS-BGS, 2021 WL 1889734, at *3 (S.D. Cal. May 11,
26 2021) (grant of incentive awards of **\$7,500** for a named plaintiff who “was the first
27 plaintiff in the case, assisted with drafting pleadings, helped with informal discovery,
28 sent the cans of product he had retained to the lab for testing, and attended the
mediation that resulted in this settlement,” and **\$5,000** for a plaintiff who “regularly
discussed the case with his lawyers, assisted in informal discovery, helped in drafting
the Second Amended Complaint and stayed in touch with his attorneys during
settlement discussions.”)

1 Notice will be given to the Settlement Class via email, posting on the
2 Settlement Website, and by digital publication.

3 **A. An Experienced and Well-Respected Claims Administrator**

4 The EPPs again retained an experienced and well-respected claims
5 administrator, JND Legal Administration, LLC (“JND”), and prepared a
6 comprehensive and robust settlement notice plan to notify the Settlement Class. The
7 Court previously approved JND as Claims Administrator for the COSI Settlement and
8 to disseminate the Class Notice. ECF Nos. 2734 and 2781. Their prior experience in
9 this case promotes greater efficiency.

10 EPPs also retained JND to handle the settlement claims process and
11 administration. JND is a nationally recognized claims administration firm that has
12 successfully handled claims processing for complex class actions, including
13 settlements requiring extensive media campaigns to large consumer classes. *See* ECF
14 No. 2552-6 (reciting JND’s class action claims administration experience).

15 **B. The Proposed Notice Plan Will Reach 70% of the Settlement Class**

16 JND will provide direct notice to Class Members who filed claims in the COSI
17 Settlement, combined with a four-week media campaign that is estimated to reach
18 over 70% of likely Settlement Class Members. Declaration of Gina Intrepido-Bowden
19 (“Intrepido-Bowden Decl.”), ¶ 8. The media campaign includes an extensive digital
20 effort, publication in *People* magazine, direct notice, an interactive case website, and
21 a 24-hour toll-free number. *Id.*, ¶¶ 14-23. The FJC’s Judges’ Class Action Notice and
22 Claims Process Checklist and Plain Language Guide (“FJC Checklist”) considers a
23 Notice Plan with a high reach (above 70%) effective. *Id.*,
24 ¶ 7. This is a remarkable reach considering the following challenges: the Settlement
25 Class consists of over 100 million consumers who purchased mostly 5 ounce cans of
26 tuna; the earliest of the purchases took place nearly 10 years ago, from June 1, 2011
27 through July 1, 2015; records of purchases from retailers have long become stale, if
28 they exist at all; most consumers do not have records of grocery purchases from that

1 long ago; and some Class Members have moved, aged or passed away. Manifold Decl.
2 ¶ 34.

3 **C. The Proposed Form of Notice Is Appropriate**

4 Rule 23(e)(1)(B) requires the Court to “direct notice in a reasonable manner to
5 all class members who would be bound by a proposed settlement...” regardless of
6 whether the class was certified under Rule 23(b)(3). Manual for Complex Litigation,
7 § 21.312 (4th ed. 2023). The best practicable notice is that which is “reasonably
8 calculated, under all circumstances, to apprise interested parties of the pendency of
9 the action and afford them an opportunity to present their objections.” *Mullan v. Cent.*
10 *Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The notice must contain specific
11 information in plain, easily understood language, including the nature of the action
12 and the rights of the class members. Fed. R. Civ. P. 23(c)(2)(B)((i)-(vii).

13 The proposed form of the settlement notice complies with Fed. R. Civ. P. 23(c).
14 *See* Intrepido-Bowden Decl., Ex. G (Settlement Class Notice (Long Form)).
15 Consistent with Rule 23(c)(2)(B), the proposed notice describes “(i) the nature of the
16 action; (ii) the definition of the [Settlement] Class certified; (iii) the class claims,
17 issues, or defenses; (iv) [a directive] that a Settlement Class Member may enter an
18 appearance through an attorney if the member so desires; and (v) the binding effect
19 of judgment on members [of the Settlement Class] under Rule 23(c)(3).” Fed. R. Civ.
20 P. 23(c)(2)(B); Intrepido-Bowden Decl., Ex. G. The Settlement Class was given two
21 prior opportunities to request exclusion: at the Class Certification stage, and as part
22 of the COSI Settlement. *See* ECF Nos. 2871, 3120.

23 The Settlement Notice also provides the terms of any proposed award of
24 attorneys’ fees, costs, expenses, and service awards and timing, and provides an
25 opportunity for Settlement Class Members to object to either the Settlements or the
26 proposed fees, expenses, and service awards. Intrepido-Bowden Decl., Ex. G at ¶¶ 1-
27 2, 7-8. ***Class Counsel will publish on the Settlement Website and submit full briefing***
28 ***supporting their request for attorney fees’ and expenses and service awards a***

1 *minimum of twenty-one (21) days before the Objection Deadline.* This will allow
2 Settlement Class Members time to consider the motion before the objection deadline.

3 **D. The Proposed Distribution Plan**

4 Each Authorized Claimant in the Settlement Class “shall receive a *pro rata*
5 share of the Distribution Funds as described in the Settlement Class Notice.”⁸ *Id.* ¶
6 29, Ex. G, ¶ 7. Payments to Authorized Claimants will not be immediately distributed
7 but held until all settlement amounts have been paid by the Settling Defendants as
8 required by the Settlement Agreements. *See also* Intrepido-Bowden Decl., ¶ 41. It is
9 not efficient to make multiple distributions, with the costs of claims administration, it
10 is more efficient to delay distribution until all settlement funds are received.⁹ *Id.*

11 Once the Court grants final approval of the StarKist and LC Settlements, all
12 appeals are exhausted, and all monies are collected under the Settlement Agreements,
13 JND will distribute payments as specified on the claimant’s Claim Form. *See*
14 Intrepido-Bowden Decl. ¶ 32, Ex. H (Claim Form). JND will send payments to the
15 address (check) or email (electronic payment such as via PayPal) provided by the
16 claimant on the Claim Form. *Id.* As noted on the Claim Form (and Settlement Class
17 Notices), if the total final payment of a particular claim is less than \$5.00, no
18 distribution will be made to the Authorized Claimant. *Id.* ¶ 33, Ex. H, Ex. G, ¶ 8
19 (“**What can I get from the StarKist and LC Settlements?**”). It is typical to provide
20 for such a *de minimis* claim threshold so that the costs of administration are not out
21 of proportion to the size of the payments. *Id.*

22 **E. The Claims Process: Access to Online Submission of Claim Forms**

23
24
25 ⁸ “Distribution Funds” refers to the Total Settlement Benefits (\$152.2 million), less
26 notice and administration costs, and any attorneys’ fees, cost and litigation expenses
and Service Awards awarded by the Court.

27 ⁹ Settlement Class Members are expected to receive approximately \$24.50 for every
28 200 cans purchased (approximate number of cans if you purchased packaged tuna
weekly) Intrepido-Bowden Decl., Ex. G, ¶ 8.

1 The digital ads will include an embedded link and the print ad a QR code, both
2 of which allow Settlement Class Members to receive more information about the
3 StarKist and LC Settlements as well as complete and file an online Claim Form.
4 Intrepido-Bowden Decl., ¶¶ 16, 24, Ex. H (Claim Form). The same claims process
5 was approved by the Court in the COSI Settlement. ECF No. 2781. The Settlement
6 Notice documents also provide a toll-free number to contact JND with any questions.
7 *Id.* at Ex. H. According to Ms. Intrepido-Bowden, Vice President at JND Legal
8 Administration and a judicially recognized legal notice expert, claimants “generally
9 favor online claims forms” because the process is user-friendly and convenient. *Id.*,
10 ¶¶ 1-2, 25-26. Online claim processing is faster, easier, more efficient, and results in
11 fewer deficiencies. *Id.* at ¶25. If a Settlement Class Member is either unable or
12 unwilling to file a claim on-line, she may request a printed claim form and either
13 return it to JND via United States Mail (post-marked before the Claims Cut-off Date)
14 or create a pdf of the completed Claim Form and e-mail it to JND (before the Claims
15 Cut-off Date). *Id.*, ¶ 27-28.

16 Next, JND will review, determine the validity of, process and hold on to all
17 Claim Forms submitted by claimants. *Id.*, ¶ 31. JND will flag any issues (such as
18 failure to sign a paper or pdf Claim Form) and follow up with the claimant as
19 necessary. *Id.* JND will also review the Claim Forms to ensure submission by a single
20 claim per claimant. *Id.* (avoiding doctored documentation and multiple payments to a
21 single recipient).

22 **F. Objection Rights**

23 Class Members may object to the settlement by filing an appropriate and timely
24 written statement of the grounds for objection. Intrepido-Bowden Decl., ¶ 39, Ex. G
25 at ¶ 12-13. They may also appear at the Fairness Hearing. *Id.* at ¶ 39, Ex. G at 16-18.
26 Attorneys for objectors must submit an appropriate and timely written statement of
27 representation and the grounds for objection. *Id.* at ¶ 39.

28 **G. No Further Exclusion or Opt-Out**

1 Due process only requires that class members be given a single opportunity to
2 opt out of a class. *Low v. Trump Univ., LLC*, 881 F.3d 1111, 1121 (9th Cir. 2018). A
3 member who has failed to exclude herself at the class certification stage is not entitled
4 to exercise that option at the settlement stage. *Id.*, citing *Officers for Just. v. Civ. Serv.*
5 *Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 635 (9th Cir. 1982). Here,
6 Settlement Class Members were given two prior opportunities to request exclusion.
7 See ECF Nos. 3120 (Order re: Class Notice Opt Out Report); 2871 (Order re: COSI
8 Settlement). Two opportunities satisfies class members' due process rights.

9 **V. ARGUMENT**

10 The Court's approval is required for any settlement of a class action. *Carlin v.*
11 *DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1008 (E.D. Cal. 2019) (citing Fed. R. Civ.
12 P. 23(e)). There are multiple steps to the approval process. *Id.* First, the Court must
13 determine whether the settlement warrants preliminary approval. *Id.* Preliminary
14 approval is appropriate if the Court determines that it is likely to (i) certify the
15 settlement class and (ii) grant final approval to the settlement. Fed. R. Civ. P.
16 23(e)(1)(B). Since the Court previously certified the Consumer Classes, which are
17 now the Settlement Class in the proposed settlements, minus prior opt-outs,
18 certification of the Settlement Class is appropriate for all of the reasons set forth in
19 the Class Order. See ECF No. 1931, upheld on appeal in *Olean Wholesale Grocery*
20 *Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 684-685 (9th Cir.), cert. denied
21 sub nom. *StarKist Co. v. Olean Wholesale Grocery Coop., Inc., et al.*, 143 S. Ct. 424
22 (2022). If the Court grants preliminary approval, then it must order that settlement
23 notice be given to the prospective class members. *Carlin*, 380 F. Supp. 3d at 1008.
24 Once notice is complete, the Court must hold a fairness hearing to determine whether
25 final approval is warranted.

26 **A. The Court is Likely to Approve the Settlement**

27 The Court must consider whether it is likely to approve the settlements at the
28 fairness hearing. Fed. R. Civ. P. 23(e)(1)(B)(i). In making this assessment, the Court

1 need not conduct a full-fledged inquiry into whether it would grant final approval to
2 the Settlement. Instead, the Court need only consider whether the proposed Settlement
3 is “possibly fair, reasonable, and adequate.” *See In re Prudential Sec. Inc. Ltd. P’ships*
4 *Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995); *see also In re Volkswagen “Clean*
5 *Diesel” Mktg., Sales Pracs., & Prod. Liab. Litig.*, 895 F.3d 597, 610 (9th Cir. 2018)
6 (“*VW Clean Diesel Mktg. Litig.*”) (“A proposed settlement that is ‘fair, adequate and
7 free from collusion’ will pass judicial muster.”). A court should grant preliminary
8 approval of a settlement if it determines that “the proposed settlement is within the
9 range of possible approval.” *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 C
10 5 2898, 2011 WL 3290302, at *6 (N.D. Ill. July 26, 2011); Fed. R. Civ. P. 6
11 23(e)(1)(B).

12 The Ninth Circuit has identified the following factors, commonly referred to as
13 the *Churchill Village* factors, in assessing whether a class settlement is fair:

- 14 (1) the strength of the plaintiff’s case;
- 15 (2) the risk, expense, complexity, and likely duration of further litigation;
- 16 (3) the risk of maintaining class action status throughout the trial;
- 17 (4) the amount offered in settlement;
- 18 (5) the extent of discovery completed and the stage of the proceedings;
- 19 (6) the experience and views of counsel;
- 20 (7) the presence of a governmental participant; and
- 21 (8) the reaction of the class members to the proposed settlement.

22 *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (“*In re*
23 *Bluetooth*”) (quoting *Churchill Vill., L.L.C. v. Gen. Elec., Co.*, 361 F.3d 566, 575 (9th
24 Cir. 2004)); *Chen v. Chase Bank USA, N.A.*, No. 19-cv-01082, 2020 WL 3432644, at
25 *4 (N.D. Cal. June 23, 2020). Rule 23(e)(2) also requires courts to consider whether:
26 (1) class representatives and counsel have adequately represented the class; (2) the
27 proposal was negotiated at arm’s-length; (3) the settlement provides adequate relief
28 for the class; and (4) the proposal “treats class members equitably relative to each

1 other.” These factors are not exclusive. This Court may consider any combination of
2 factors that it deems appropriate to assess the fairness of the settlement. *Bellinghausen*
3 *v. Tractor Supply Co.*, 306 F.R.D. 245, 254 (N.D. Cal. 2015) (discussing *Churchill*
4 *Village* factors); *Chen*, 2020 WL 3432644, at *4 (noting that “different factors may
5 predominate in different factual contexts”). The totality of the factors show that these
6 Settlements are well within the range of possible approval.

7 **1. The *Churchill Village* Factors Favor Preliminary Approval**

8 Under the first *Churchill Village* factor, this Court considers the strength of
9 plaintiffs’ case. *See* Fed. R. Civ. P. 23(e)(2)(C). This includes the difficulty of
10 prevailing at trial, “prevailing on appeal, as well as the difficulty of satisfying any
11 judgment in favor of the class.” *Carlin*, 380 F. Supp. 3d at 1009. In considering this
12 factor, the Court need not reach “any ultimate conclusion about” the case, “for it is
13 the very uncertainty of outcome” and avoiding more litigation “that induce consensual
14 settlements.” *Bravo v. Gale Triangle, Inc.*, No. CV 16-03347 BRO (GJSx), 2017 WL
15 708766, at *9 (C.D. Cal. Feb. 16, 2017). As discussed in Section II. A. above, the case
16 against the Settling Defendants regarding liability is strong. EPPs must, however,
17 balance the strength of their case against the second *Churchill* factor: the risk,
18 expense, complexity and delay of further litigation such as the risks of an adverse
19 verdict at trial and further appeal. Fed. R. Civ. P. 23(e)(2)(C)(i). “In most situations,
20 unless the settlement is clearly inadequate, its acceptance and approval are preferable
21 to lengthy and expensive trial with uncertain results as to specific damages.” *Bravo*,
22 2017 WL 708766, at *9 (internal quotations and citation omitted).

23 Notwithstanding the guilty pleas, criminal convictions and partial summary
24 judgment, Consumers still needed to prove their damages at trial. EPPs also needed
25 to prove the extent of the conspiracy and whether DWI and LC were liable along with
26 StarKist. Proving liability and class-wide damages for the entire Class Period would
27 inevitably result in a lengthy and costly ‘battle of the experts’ at trial. Even if
28 successful at trial, with potential treble damages of over \$600 million, the Settling

1 Defendants may not have been able to sustain a verdict of that size. Bumble Bee had
2 already declared bankruptcy, leaving a shell from which no recovery could be
3 achieved. All of these facts weigh in favor of preliminary approval.

4 The third factor, the risk of maintaining class certification through trial, also
5 weighs in favor of preliminary approval. *In re Bluetooth*, 654 F.3d at 946; *Belling-*
6 *hausen*, 306 F.R.D. at 255 (citing risk of maintaining certification “if the litigation
7 were to proceed”); *Chen*, 2020 WL 3432644, at *4 (same). Class certification was
8 hotly contested. The Class Order was appealed to Ninth Circuit, it was reviewed *en*
9 *banc*, and an appeal to the Supreme Court was made. The risk of further appeal after
10 trial weighs in favor of approval.

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

23 These proposed settlements compare favorably with other antitrust and class
24 action settlements that have received preliminary approval. In *Rodriguez v. W. Publ’g*
25 *Corp.*, 563 F. 3d 948 (9th Cir. 2009), the Court of Appeals upheld approval of an
26 antitrust settlement that was only 30% of the calculated single damages as fair,
27 reasonable, and adequate. *Id.* at 955, 957, 964. *See also In re Lithium Ion Batteries*

28 _____
¹⁰ *See* Expert Merit Report of David Sunding dated Feb. 15, 2019, p. 17, Table 2.

1 *Antitrust Litig.*, No. 4:13-md-02420-YGR (DMR), 2017 WL 1086331, at 4* (N.D.
2 Cal. Mar. 20, 2017) (Overruling objections, the Court agreed that “the settlement
3 represents 11.2% of the single damages attributable to Sony sales” and that the
4 possibility of the settlement being higher does not mean it was not fair and
5 reasonable.); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 14-CV-2058 JST,
6 2017 WL 565003, at *4, *6 (N.D. Cal. Feb. 13, 2017) (granting preliminary approval
7 of settlement representing 24% of single damages, and previously finding 20% of
8 single damages to be a good recovery in other cases.)

9 The fifth and sixth *Churchill Village* factors also support preliminary approval.
10 This litigation began over nine years ago and was settled on the eve of trial. Because
11 of the procedural posture of this case, EPPs were in the best position to evaluate the
12 value of the Settlements. *See Bravo*, 2017 WL 708766 at *11 (finding that extensive
13 discovery shows that counsel fully understand case’s factual and legal issues).
14 Furthermore, EPPs are represented by Settlement Class Counsel with substantial
15 experience in litigating and evaluating antitrust class actions. Manifold Decl., ¶ 3.
16 Counsel is ready and able to try this case to verdict but believe this to be an excellent
17 settlement under the circumstances and support its approval. *Id.* Their views and
18 experience also weigh in favor of approval.

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

1 until the Fairness Hearing.

2 **2. The Rule 23(e) Factors Support Preliminary Approval**

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

8 First, after nine years of hard-fought litigation with the active participation of
9 the Class Representatives throughout, they and Counsel have adequately represented
10 the Settlement Class. *See also* ECF No. 1931 (Class Order).

11 Second, considering whether the Settlement resulted from arm's-length
12 negotiations, courts often find it useful to look at issues including "an agreement by
13 the defendant not to contest class counsel's attorney's fees" or "an agreement to allow
14 unawarded attorneys' fees to revert to the defendants." *In re Volkswagen "Clean
15 Diesel" Mktg. Litig.*, 895 F.3d at 611 & n.19 (citing *In re Bluetooth*, 654 F.3d at 947);
16 *Procedural Guidance for Class Action Settlements*, §1(h). Here, the fees are within
17 the range requested for similar cases and there is no reversion or "clear sailing"
18 agreement with the Settling Defendants. *See* StarKist SA, ¶ 14.1, ¶ 14.2, ¶ 14.3.
19 Therefore, these concerns are moot. The extensive settlement negotiations supervised
20 by Magistrate Berg on the eve of trial and the terms of the Settlement Agreements
21 make clear that the proposed settlements are not the result of collusion. Manifold
22 Decl., ¶¶ 3-8, 17-24.

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

1 Civ. P. 23(e)(2)(C)(i). The effectiveness of distributing relief to the Settlement Class
2 Members is discussed in Section D below. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). The
3 Settlement Notices and Settlement Website will provide substantial detail as to the
4 terms of the requested attorneys’ fees, costs, expenses and service awards, including
5 the timing of payment. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii); Intrepido-Bowden Decl.,
6 Exs. A-G (various forms of settlement notice), and § III. C. and IV. C., *supra*. All
7 short form settlement notices provide links to access these terms in further detail. *Id.*
8 Next, all agreements made “in connection with” the settlement proposal have been
9 identified. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv) and (3); *See* § III. F., *supra*.

10 Finally, the Settlement Agreements treat class members equitably, providing
11 *pro rata* distribution of the Settlement Fund after deduction of any Court-ordered
12 awards. Therefore, the StarKist and LC Settlement Agreements satisfy Rule 23(e).

13 **B. EPPs’ Settlement Class Notice Provides the Opportunity to Object,**
14 **and Class Members Had Two Prior Opportunities for Exclusion.**

15 The Court must also assess whether the notice and claims program is reasonable
16 so Class Members can object to the Settlement. *See* Fed. R. Civ. P. 23(e)(4)-(5). The
17 Court previously certified this class action under Rule 23(b)(3) and notice was
18 provided, a partial settlement was reached with COSI and second opportunity to opt
19 out was provided, and therefore the EPPs have not elected to afford individual Class
20 Members a new opportunity to request exclusion if they did not do so previously. *See*
21 Intrepido-Bowden Decl., Ex G at ¶ 11 (Settlement Notice); § III. F., *supra*.

22 The Settlement Notice also explains the objection process to Settlement Class
23 Members and informs them that they may appear at the Fairness Hearing or retain
24 counsel to represent their interests. Intrepido-Bowden Decl., Ex G at ¶¶ 12-17. Class
25 members may appear at the Fairness Hearing or submit a timely and appropriate
26 written statement through counsel. *Id.* at ¶¶ 16-18. JND’s notice plan is robust with a
27 70% reach and satisfies due process. Intrepido-Bowden Decl., ¶ 38. The notice,
28 objection and previous opt out procedures are also sufficient to satisfy Rule 23.

C. The Costs of Administration

1 Given its depth of reach, and the need to reach tens of millions of Settlement
2 Class Members, the Proposed Settlement Notice Plan is not inexpensive. Manifold
3 Decl., ¶ 39. JND estimates that the Proposed Settlement Notice Plan will cost
4 approximately \$750,000 to \$1.2 million. Manifold Decl., ¶ 40. As part of the
5 preliminary approval order, the EPPs will request permission to pay up to \$1.2 million
6 in reasonable invoices submitted by the Claims Administrator for the media campaign
7 in the Proposed Settlement Notice Plan prior to final approval. *Id.* ¶ 39.

8 JND is also well placed to distribute the settlement funds to the Class when
9 directed to do so by the Court. EPPs seek to delay distribution until all the monies are
10 collected as specified in the Settlement Agreements. Distributing all the Settlement
11 Funds together will reduce the need for multiple rounds of payment and therefore the
12 administrative cost per Class Member, resulting in larger payments to each Class
13 Member. Depending on the number of claims received, a preliminary estimate of the
14 costs of processing claims, running fraud analysis and dispersing the Distribution
15 Funds is between \$1.3 and \$5 million. Manifold Decl., ¶ 41.

16 **D. EPPs' Claims Process Is Efficient and Reasonable**

17 The Court must also assess the effectiveness of the proposed method of
18 distributing relief to the class including the method of processing class member claims
19 to determine if the relief is adequate. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). JND has
20 extensive experience in processing claims, especially for millions of claimants. JND
21 also has the capacity to distribute monies efficiently to millions of Authorized
22 Claimants once the Court grants final approval, the judgement is final and all appeals
23 exhausted, and the Court orders distribution. As discussed in detail above, JND
24 described its proposed methodologies for claims processing and distribution of funds.
25 *See* Intrepido-Bowden Decl., ¶¶ 24-40 and § IV.D.-E., *supra*. The proposed claims
26 processing methodologies are convenient for and generally favored by Settlement
27 Class Members (simple online claim submission), which provides faster claim
28 processing with fewer deficiencies. *Id.* ¶ 32. Distribution of relief is equally efficient

1 and based on the claimant’s preferred method of payment (PayPal or check). *Id.* The
2 effectiveness of JND’s claim processing methodologies favor preliminary approval.

3 The Class Notices also inform Settlement Class Members that no cash
4 distribution will be made if a claim is under \$5.00. Intrepido-Bowden Decl., ¶ 33. It
5 is typical to provide for a *de minimis* threshold so that the costs of administration are
6 not out of proportion to the size of the claim payment. *Id.* A claims threshold provides
7 an incentive for Settlement Class members to cash small checks. *Id.* In JND’s
8 experience, it is not usual to see even higher *de minimis* thresholds. *Id.*

9 Courts routinely approve *de minimis* thresholds for claims processing and
10 distribution and consider threshold payments to be “accepted as a feature of class
11 action distributions.” *In re Dynamic Random Access Memory (DRAM) Antitrust*
12 *Litig.*, No. C 06-4333 PJH, 2013 WL 12333442, *81 (N.D. Cal. Jan. 8, 2013).

13 **E. The Court Should Order Notice and Schedule the Fairness Hearing**

14 Because preliminary approval is in order, the Court should order that notice be
15 given and schedule a Fairness Hearing. EPPs ask the Court to adopt and set the
16 deadlines set forth in the Appendix attached directly to this Memorandum.

17

18 Dated: August 13, 2024

By: /s/ Bets C. Manifold
BETSY C. MANIFOLD

19

20

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Class Counsel for the End Payer Plaintiffs

4876-6193-0964v2

In Re: Packaged Seafood Products Antitrust Litigation, Case No. 15-MD-2670 DMS (MSB)

Proposed Notice and Final Approval Deadlines

Date	Deadline/Event	Timing
Friday August 23, 2024	Preliminary Approval Hearing	Preliminary Approval Granted (“Preliminary Approval Order”)*
Friday, Sept. 13, 2024	Deadline to begin disseminating Settlement Class Notice	21 days after entry of Preliminary Approval Order
Friday, Oct. 4, 2024	Deadline for EPPs to file Motion for Attorneys’ Fees and Costs	7 days prior to deadline for completion of disseminating Settlement Class Notice; and 21 days prior to Objection Deadline
Friday, Oct. 11, 2024	Deadline to complete dissemination of Settlement Class Notice	49 days after entry of Preliminary Approval Order
Friday, Oct. 18, 2024	Deadline for filing affidavit attesting that Settlement Class Notice was disseminated as ordered	56 days after entry of Preliminary Approval Order
Friday, Oct. 25, 2024	Deadline for Settlement Class Members to object to the Settlement (“Objection Deadline”)	14 days after deadline to complete dissemination of Settlement Class Notice
Friday, Nov. 8, 2024	Deadline for EPPs to file a motion for final approval.	14 days before Objection Deadline
Tuesday, Nov. 12, 2024	Deadline for Settlement Class Members to submit claims	60 days after Settlement Class Notice dissemination begins
Friday, Dec. 6, 2024	Fairness Hearing	105 days after entry of Preliminary Approval Order

Appendix

*Assumes Preliminary Approval on August 23, 2024 hearing date for purposes of calculation.

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Proposed Settlement Class Counsel for the End Payer Plaintiffs

[Additional counsel appear on signature page]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PACKAGED SEAFOOD
PRODUCTS ANTITRUST
LITIGATION

Case No.: 15-MD-2670 DMS (MSB)

**DECLARATION OF BETSY C.
MANIFOLD IN SUPPORT OF END
PAYER PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL
OF CLASS ACTION
SETTLEMENTS**

This Document Relates to:

End Payer Plaintiffs Class Track

DATE: August 23, 2024
TIME: 1:30pm
JUDGE: Hon. Dana M. Sabraw
COURT: 13A (13th floor)

1 I, Betsy C. Manifold, declare as follows:

2 1. I am an attorney duly licensed to practice before all the courts of the State
3 of California. I am a member of the law firm Wolf Haldenstein Adler Freeman & Herz
4 LLP (“Wolf Haldenstein”), Class Counsel for End Payer Plaintiffs (“EPPs” or
5 “Consumers”). I submit this declaration in support of End Payer Plaintiffs’ Motion for
6 Preliminary Approval of Class Action Settlements. I have personal knowledge of the
7 matters stated herein and, if called upon, I could and would competently testify
8 thereto.

9 **OVERVIEW**

10 2. After nine years of hard-fought litigation, with the trial set to start on July
11 16, 2024, the EPPs present for the Court’s preliminary approval two substantial
12 settlements with a combined cash value of \$136 million. The Settling Defendants are
13 StarKist Co. and its parent Dongwon Industries Co., Ltd. (“DWI”) (collectively
14 “StarKist”) and Lion Capital LLP, Lion Capital (Americas), Inc., and Big Catch
15 Cayman LP) (collectively “LC” or the “Lion Companies”). An earlier Partial
16 Settlement with Defendant Chicken of the Sea and its parent Thai Union Group (“the
17 COSI Settlement”) adds another \$16.2 million for total settlement benefits of \$152.2
18 million.

19 3. The StarKist and Lion Companies Settlement Agreements were
20 extensively negotiated at arms’-length by counsel experienced in antitrust class
21 actions. Class Counsel were ready and willing to try this antitrust litigation to verdict.
22 It was only due to the extraordinary efforts of United States Magistrate Judge Michael
23 S. Berg, who oversaw multiple heated mediation sessions between the settling parties
24 in April, May, June, and July 2024, that these settlements were achieved – literally on
25 the steps of the Courthouse. The total settlement benefits of \$152.2 million represent
26 over 68% of single damages as calculated by the EPPs’ expert, Professor David
27
28

1 Sunding. This is an excellent outcome for the previously certified Consumer Classes.
2 See ¶¶ 11, 12 (defining “Consumer Classes”).

3 4. The nine year trajectory of this litigation includes a hotly disputed class
4 certification process, extensive discovery with millions of documents and over 200
5 depositions, ending with multiple summary judgment motions and trial preparations.
6 Trial preparation was substantially complete. It is the view of experienced Settlement
7 Class Counsel that the Settlement Agreements are fair, adequate and reasonable, are
8 in the best interests of the Consumer Classes and warrant preliminary approval.

9 **COSI SETTLEMENT**

10 5. Incorporated by reference is the detailed History of the Litigation in the
11 EPPs’ Motion for Final Approval (ECF No. 2552-1 at 7-14) which describes the
12 context and terms of the earlier partial COSI Settlement. The key terms and conditions
13 of the COSI Settlement as to any Fee and Expense Award sought by the EPPs and
14 Class Counsel remain unchanged. *Jt. Stip., ¶8, citing ECF 2552-3 at 18 and 19.*
15 ***However, the EPPs and Class Counsel elected unilaterally not to seek***
16 ***reimbursement of attorney fees solely from the COSI Defendants or the COSI***
17 ***Settlement Fund.*** Instead, EPPs moved for reimbursement of their reasonable and
18 necessary litigation costs and expenses to date. Settlement Class Counsel reserved its
19 rights to seek reimbursement of attorney fees from any monies recovered from the
20 Non-Settling Defendants whether by order, judgment, settlement or trial and to base
21 any such request for fees on the total Settlement amount. *Id.* Combining COSI,
22 StarKist, and Lion Companies Settlements creates a Total Settlement Fund of \$152.2
23 million. Settlement Class Counsel now respectfully requests that any Attorney Fee
24 Award be based on the Total Settlement Fund.
25

26 6. On July 15, 2022, the Court finally approved the Partial (COSI)
27 Settlement. ECF No. 2871. Under the COSI Settlement Agreement, the Maximum
28 Settlement Amount was \$20 million. ECF No. 2552-3 at 8. Under Paragraphs 11(b)

1 and 18, up to \$5 million could be used to cover the reasonable costs of the Settlement
2 Notice and administration (“Administrative Costs Fund”) of the \$15 million
3 Settlement Fund. Under the COSI Settlement Agreement, since the reasonable costs
4 of Settlement Notice and administration were less than \$5 million, the difference is
5 now credited back to the COSI Defendants. *Id.* at 14 and 15. The Court also approved
6 an Expense Award for Class Counsel in the amount of \$4,155,027.67 for
7 reimbursement of specific, reasonable, and necessary out of pocket litigation costs
8 incurred as of May 2021.” ECF No. 2872 at 4:17-19.

9 7. In accordance with the COSI Settlement, EPPs further request that
10 \$206,379.11 be distributed to COSI out of the Total Settlement Fund as a
11 reimbursement for 2024 administrative costs paid out of the \$5 million Administrative
12 Costs Fund that will be costs common to all of the settlements. As part of the COSI
13 Settlement, the parties agreed that COSI would pay for the notice and administration
14 of its own settlements, but if subsequent settlements or judgments were achieved, the
15 costs of notice and administration would be borne by the later settling parties. *See* ECF
16 No. No.2552-3 at 14 and 15 (COSI Agreement) at ¶18(b)(ii) (“If, subsequent to the
17 date of this Agreement, a settlement is made with any other Defendant in the Action,
18 or an amount for the Classes collected is from any judgment, the Plaintiffs shall apply
19 to the Court, after consultation with the COSI Defendants’ Counsel, for an award
20 allocation for notice and administration from the amounts available from the
21 subsequent settlement or judgments. Class Counsel, in consultation with the COSI
22 Defendants’ Counsel, will use reasonable best efforts to achieve an allocation
23 sufficient to cover the entirety of the \$5,000,000.00 paid by COSI into the Settlement
24 Fund for Class and Settlement Notice. Any amounts approved by the Court for these
25 purposes from such subsequent settlement or judgment in the Action shall be credited
26 against and/or reduce the amount paid by COSI into the Settlement Fund for Class and
27 Settlement Notice, dollar for dollar.”).

1 8. The \$206,379.11 reimbursement request reflects the amount that EPPs
2 have spent on claims and administration between April 2024 and July 2024. COSI
3 contends that this request understates the amount to which it is entitled, which COSI
4 believes is any expenditures that benefitted later settlements, such as setting up a
5 website, developing a plan, and creating accurate contact information for claimants
6 and would be greater than the amount requested. The amount requested is relatively
7 modest compared to the nearly \$1.4 million in notice and administration costs already
8 covered by the COSI Settlement. COSI acknowledges that some expenditures- such
9 as notice unique to its settlement—do not overlap and COSI has not requested
10 reimbursement of these amounts. However, the requested reimbursement would most
11 directly benefit the proposed settlements, since they were made shortly before the
12 settlements were reached, and as a matter of expediency EPPs believe that this is a fair
13 benchmark for COSI’s reimbursement request. EPPs believe that this request is
14 reasonable under the terms of the COSI Settlement.
15

16 **SUMMARY OF THE LITIGATION**

17 9. The general background and history of this litigation is well-documented
18 and extensively discussed in prior orders. ECF 2454, 2654. The relevant history
19 highlights for the purpose of preliminary approval are as follows.

20 10. On August 24, 2015, the End Payer Plaintiffs (“EPPs” or “Consumers”)
21 filed a class action complaint alleging an antitrust conspiracy by the three domestic
22 tuna brands and their parent companies, StarKist Co., (“StarKist”), Bumble Bee, and
23 Chicken of the Sea (“COSI”), to fix and maintain packaged tuna prices above
24 competitive levels in violation of state laws.
25

26 **Guilty Pleas**

27 11. Defendants Bumble Bee and StarKist pled guilty to a criminal conspiracy
28 to violate federal antitrust laws under the Sherman Act, 15 U.S.C. § 1, on August 4,

1 2017, and November 14, 2018 respectively. *See* ECF 2654 (Order Granting Partial
2 Summary Judgment Against StarKist) (discussing guilty pleas, convictions, and
3 admissions of Defendants). COSI entered into a leniency agreement with the
4 Department of Justice (“DOJ”) Antitrust Division and agreed to cooperate and testify
5 concerning its participation in the “cartel.”

6 12. Several executives of Defendant StarKist and Bumble Bee pleaded guilty
7 to participating in the conspiracy in 2017, and Bumble Bee’s Chief Executive Officer
8 was tried and convicted by jury on December 3, 2019, for his role in the conspiracy.
9

10 **Certification of Consumer Law Classes**

11 13. On July 30, 2019, this Court certified a multistate Cartwright Act class
12 (“Cartwright Class”) and multiple individual State Law Classes for 32 States,
13 Districts, and Territories (“State Classes”). The Cartwright Class consists of 31 State
14 Classes. *See* July 30, 2019 Order re: Class Certification (ECF 1931) (“Class Order”)
15 at 46 (certifying Cartwright Class with 32 states); ECF 2925 at 10:10-17 (excising the
16 South Carolina claimants from the Cartwright Class). I refer to the Cartwright Class
17 and the State Classes as the “Consumer Classes.” Under the StarKist and Lion
18 Companies Settlement Agreements, the Settlement Class is defined as the Consumer
19 Classes, less any opt-outs so ordered by the Court after the COSI Settlement and Class
20 Notice. *See* ECF 3120, which incorporates the list of persons of Exhibit F of ECF No.
21 3115.

22 14. Defendants appealed the Class Order. *See Clean Wholesale Grocery*
23 *Cooperative v. Bumble Bee Foods LLC*, 31 F. 4th 651, (9th C. R. 2022) (en banc),
24 ECF Nos. 2839 and 2840. On April 8, 2022, the Ninth Circuit Court of Appeals (en
25 banc) affirmed the Class Order. On August 8, 2022, Defendants petitioned to the U.S.
26 Supreme Court for a writ of certiorari, which was denied on November 14, 2022.
27

28 **Partial Summary Judgement**

15. The Court granted summary judgment against StarKist on liability,

1 finding that StarKist engaged in the price-fixing conspiracy from at least as early as
2 November 2011 and continuing through at least as late as December 2013, but
3 expressly permitting Plaintiffs to present evidence and argue for a broader conspiracy.
4 ECF 2654 at 27. The Court also found that “the conspiracy had an actual effect on the
5 market,” leaving Plaintiffs to prove their damages at trial. *Id.*

6 **July 2024 Trial**

7 16. In the opinion of trial counsel, only three disputed issues remain to be
8 tried: (i) the extent of the conspiracy; (ii) Plaintiffs’ damages, and (iii) whether
9 Defendant DWI and the Lion Companies Defendants are liable along with Defendant
10 StarKist.

11 **SETTLEMENT NEGOTIATIONS CONDUCTED AT ARMS’-LENGTH**

12 17. EPPs have been engaged in settlement discussions with the Settling
13 Defendants since mid-2019. By that time, class certification briefing had been
14 completed; written and deposition testimony had largely concluded; and the parties
15 had begun preparation of merits expert reports and related trial-related materials.
16 Accordingly, as of mid-2019, EPPs had in hand pertinent class-wide commerce data
17 and substantial discovery to aid them in formulating an informed settlement position
18 as to each Settling Defendant.

19 **Settlement Discussions with StarKist**

20 21. The EPPs and StarKist first began discussing potential settlement
21 resolutions in April 2019. This was after EPPs’ class certification motion was fully
22 briefed, argued, and submitted for judicial decision. Accordingly, early settlement
23 discussions with StarKist focused largely on the partes’ respective positions as to the
24 commerce at issue (as framed by the discovery and evaluated by the parties’ economist
25 experts) and potential settlement value considering that commerce and the parties’
26 expert opinions regarding same. The EPPs and StarKist continued these party-to-party
27 discussions through the summer of 2019, and into October and November of that year.
28

1 19. Unable to make progress through this informal process, the parties
2 proposed a mediation process using a settlement neutral in early 2020, and ultimately
3 engaged retired United States Magistrate Judge Elizabeth LaPorte of JAMS as a
4 mediator. Magistrate LaPorte held a Zoom mediation with the parties, their
5 representatives, and counsel on April 8, 2020. Despite a full-day session, the parties
6 did not reach a settlement resolution.

7 20. The parties renewed their litigation efforts and trial preparations. After
8 *Daubert* motions and the parties' respective motions summary judgment and summary
9 adjudication had been decided, the EPPs and StarKist participated in a settlement
10 conference with Magistrate Berg, on October 4, 2023. Neither session resulted in
11 settlement.

12 21. As the July 16, 2024 trial date approached, the EPPs and StarKist made
13 renewed efforts at settlement. The parties participated in a settlement conference with
14 Magistrate Berg on April 25, 2024, and again on May 22 and May 23, 2024. While
15 these sessions did not result in settlement, the parties agreed to meet again on June 3,
16 2024. With the oversight and active participation of Magistrate Berg, the EPPs and
17 StarKist reached a settlement in principle at the end of that June 3, 2024 conference,
18 in which the parties agreed to resolve the EPP claims in exchange for \$130,000,000
19 in cash. In follow on discussions mediated by Magistrate Berg over the next month,
20 the EPPs and StarKist continuously negotiated and discussed other settlement matters,
21 including a settlement payment schedule. Ultimately, in the course of these
22 discussions, the parties agreed that StarKist will make payments to the EPP Class over
23 an 18-month period beginning with the date of preliminary approval of the settlement
24 and resolved other core settlement issues.

25
26 **Settlement discussions with the Lion Companies**

27 22. The EPPs and the Lion Companies Defendants also first began discussing
28 settlement in mid-2019. The EPPs first met with Lion Companies and Defendant

1 Bumble Bee to discuss settlement in a face-to-face meeting on June 6, 2019.
2 Additional in person settlement meetings between the EPPs on the one hand, and the
3 Lion Companies and Bumble Bee on the other, were held in mid-September and mid-
4 October 2019, just as Bumble Bee was considering filing for bankruptcy. These
5 meetings did not result in settlement.

6 23. On August 7, 2024, the EPPs and the DPPs attended a joint settlement
7 conference with the Lion Companies before Magistrate Berg. That session also did
8 not result in settlement. At the Lion Companies' request, the EPPs and Direct
9 Purchaser Plaintiffs ("DPPs") attended a joint settlement conference with the Lion
10 Companies in a private mediation session overseen by retired United States District
11 Judge Daniel Weinstein of JAMS in San Francisco, California, on June 7, 2023. That
12 session also did not result in settlement; however, the parties agreed to further their
13 discussions in a settlement conference before Magistrate Berg.

14 24. On June 17, 2024, the EPPs and DPPs met with the Lion Companies (and
15 their insurers and principals) in a day-long settlement conference before Magistrate
16 Berg that culminated in the parties reaching a settlement in principle. During the
17 session, Lion Companies' and its founders' financial conditions were fully evaluated
18 by the EPP's Class Counsel and DPP's Class Counsel, as well as by Magistrate Berg.
19 The nine-hour mediation session concluded with an agreement that the Lion
20 Companies pay \$6 million to the DPP Class and \$6 million to the Consumer Class to
21 resolve the claims against them.
22

23 **SERVICE AWARDS ARE WARRENTED HERE**

24 25. The individual EPPs played a vital role in this litigation, including
25 providing answers to interrogatories, appearing for deposition, providing declarations
26 re: class standing, and preparing to appear at trial this July. Each of them has been
27 personally involved throughout this nine-year litigation, and they all support the
28 proposed Settlements.

1 26. These individual plaintiffs remained devoted to their duties as Class
 2 Representatives and available to participate in this case for over nine years. This
 3 devotion to duty warrants specific service awards in amounts that reflect their specific
 4 contributions to the case. The total service awards requested will be \$294,000 which
 5 is insignificant (0.19%) in light of the substantial total settlement amount (\$152.2
 6 million). The Service Award tiers for the Class Representatives break down as
 7 follows: \$3,000 (Tier 1); \$6,000 (Tier 2); and \$9,000 (Tier 3). As the chart below
 8 reflects, there are 45 Tier 1 EPPs with an award of \$3,000 each resulting in a total of
 9 \$135,000. There are 14 Tier 2 EPPs with an award of \$6,000 each resulting in a total
 10 of \$84,000. There are 8 Tier 3 EPPs with an award of \$9,000 each, totaling \$72,000.

	Tier 1	Tier 2	Tier 3
# of Plaintiffs	45	14	8
Individual Award	\$3,000	\$6,000	\$9,000
Total Award	\$135,000	\$84,000	\$72,000
List of Plaintiffs in Each Tier	Adams, Louise Alidad, Nay Bartling, Jessica Blumstein, Barbara Buenning, Barbara Caldwell, Scott Canterbury, Jade Christensen, Casey Cooper, Jody Daniels, Sundé Depperschmidt, Brian Dravid, Vivek Etten, Rob Felix Garcia, Ana Gabriela Frick, John Garner, Kathleen Gipson, Stephanie Grant, Tina Hughes, Tya Jackson, Amy Jacobus, Marissa Johnson, Danielle	Bowman, Melissa Buff, Michael Durand (f/k/a Gore), Kathy Eason (f/k/a Craig), Kim Emery, Gloria Gutierrez, Edgardo Lown, Carla Musgrave, Rick Norris, Corey Pels, John Skaff, Rob Stearns, Greg Vander Laan, Bonnie Wiese, Julie	Birnbaum, Gay Childs, Laura Gorman, Andrew Hall, Lisa Hudson, Mary Nelson, Jennifer Olson, Barbara Twitchell, Elizabeth

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	Tier 1	Tier 2	Tier 3
	Johnston, Zenda Juetten, Michael Kratky, Steven Lingnofski, Kathy McMahan, Katherine Mey, Diana Milliner, Liza Montoya, Laura Peck, Kirsten Perron, Elizabeth Peters, Valerie Peychal, John Rickman, Audra Rodriguez, Erica San Agustin, Joelyna A Sartori, Amber Simoens, Rebecca Lee Stiller, Nancy Todd, Christopher Trent, John Warren, Nigel Willoughby III, Thomas E. Zwirlein, Dan		

27. The total amount for all three tiers is \$291,000. All of the Class Representatives who participated in discovery and provided multiple class standing declarations will receive a service award of \$3,000 (Tier 1). For the Class Representatives who sat for deposition as part of the class certification process, the EPPs request a higher award of \$6,000 (Tier 2). For the Class Representatives who were deposed more than once (EPP Drew Gorman), acted as the plaintiff representation in the Bumble Bee bankruptcy proceeding, or were prepared to appear at trial in July, the EPPs will seek an award of \$9,000 in recognition of the more significant time, effort and expense devoted to this litigation.

28. Claims were also filed on behalf of three individual Illinois plaintiffs Sally Bredberg, Elizabeth Davis-Berg, and Amy Joseph (the “Illinois Plaintiffs”). The Illinois Plaintiffs participated in discovery and were available throughout the litigation

1 and remained available in the event that class claims might be permitted under Illinois
2 law. To date, Illinois does not permit class recovery for antitrust claims under state
3 law, so any recovery is individual. To compensate them for their services, the EPPs
4 recommend a service award of \$1,000 each for a total of \$3,000. With the addition of
5 the Illinois Plaintiffs' Service Awards, the total request is \$294,000.

6 29. EPPs' request for Service Awards is reasonable based on the individual
7 plaintiffs' and Class Representatives' service from discovery through class
8 certification to trial prep. The request is consistent with other service awards in this
9 district, and easily falls within the range of possible approval.

10 **AGREEMENTS REQUIRED TO BE IDENTIFIED (FED. R. CIV. P. 23(e)(3))**

11 30. All the terms of the proposed Settlement Agreements are contained
12 within the respective Settlement Agreements attached as Exhibits 1 (StarKist
13 Settlement Agreement) and Exhibit 2 (the Lion Companies Settlement Agreement).

14 **PROPOSED NOTICE AND CLAIMS DISTRIBUTION PROCESS**

15 31. The Proposed Settlement Notice Plan is robust and will be given to the
16 Settlement Class Members via email, posting on the Settlement Website and by digital
17 and print publication. *See* the Declaration of Gina Intrepido-Bowden filed currently
18 with the Motion ("Intrepido-Bowden Decl.").

19 **An Experienced and Well-Respected Claims Administrator**

20 32. Because the Proposed Settlement Notice is a substantial undertaking and
21 settlement monies will ultimately be distributed to millions of consumers, it is critical
22 to retain an experienced and well-respected claims administrator like JND Legal
23 Administration, LLC ("JND"). JND prepared a comprehensive and robust settlement
24 notice plan to alert the Settlement Class. The Court previously approved JND as the
25 Claims Administrator for the COSI Settlement Notice Plan and to provide Class
26 Notice. *See* ECF Nos 2734 and 2781. Settlement Class Counsel was satisfied with the
27 previous robust Notice Plans executed by JND. Their prior experience in this case
28

1 provides greater efficiency in terms of cost and time. JND will also be available
2 telephonically to answer any questions posed by the Court. If requested by the Court,
3 JND is also available to appear in person.

4 33. EPPs also retained JND to handle the settlement claim process and
5 administration. JND is a nationally recognized claim administration firm that has
6 successfully handled processing millions of claims for large consumer classes in
7 complex class actions. *See* ECF No. 2552-6 (reciting JND’s background and class
8 action claims administration experience).

9 **Proposed Notice Plan Will Reach 70% of the Settlement Class Members**

10 34. JND will provide direct notice to Settlement Class Members who filed
11 claims in the COSI Settlement combined with a four-week media campaign.
12 According to JND, the media campaign includes an extensive digital effort,
13 publication in *People* magazine, direct notice, an interactive case website and a 24-
14 hour toll -free number which is estimated to reach over 70% of the likely Settlement
15 Class Members. Intrepido-Bowden Decl., ¶¶14-23. This is a remarkable reach
16 considering the following challenges: the Settlement Class consists of over 100
17 million consumers who purchased mostly 5 ounce cans of Tuna; the earliest of the
18 purchases took place over 10 years ago, from June 1, 2011 through July 1, 2015;
19 records of purchases from retailers have long become stale, if they exist at all, and
20 most consumers do not have records of grocery purchases that long ago; and some
21 Class Members have moved or aged or passed away.

22 **Proposed Distribution Plan**

23 35. Each Authorized Claimant in the Total Settlement Class shall receive a
24 pro rata share of the Distribution Funds as described in the Settlement Class Notice.
25 Distribution Funds refers to the Total Settlement Fund (\$152.2 million), less notice
26 and administration costs, and any attorneys’ fees, cost and litigation expense and
27 Service Awards awarded by the Court. Payments to Authorized Claimants will not be
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1 immediately distributed but held until all of the following occur: final approval of
2 proposed settlements by the Court; entry of judgment; all settlement amounts have
3 been paid by the Settling Defendants as required by the Settlement Agreements; and,
4 finally, all appeals are exhausted.

5 36. Distribution cannot begin until more than eighteen months after
6 preliminary approval is granted based on the StarKist payment schedule. The proposed
7 Settlement Class Notice asks the Settlement Class Members to “please be patient.”
8 With the costs of claims administration, it is more efficient to delay distribution until
9 all of the steps described above are completed. A partial distribution is cost prohibitive
10 in this case.

11 37. However, once the Court grants final approval of the StarKist and Lion
12 Companies Settlements, a final judgement is entered, all monies are collected under
13 the Settlement Agreements, and all appeals are exhausted, JND will distribute
14 payments as specified on the claimant’s Claim Form. *See*, Ex. H (Claim Form). When
15 mailing or e-mailing a payment (such as a check or PayPal), JND will send the
16 distribution to the address or email provided by the claimant on the Claim Form. *Id.*
17 As noted in the Claim Form (and Settlement Class Notices), if the total final payment
18 of a particular claim is less than \$5.00, no distribution will be made to the Authorized
19 Claimant. *See* Ex. H, ¶ 8 (“**What can I get from the StarKist and Lion Companies**
20 **Settlements?**”). It is typical to provide for such a *de minimis* claim threshold so that
21 the costs of administration are not out of proportion to the size of the claim payment.
22 If the proposed settlements are finally approved, the Settlement Class Members are
23 expected to receive approximately \$24.50 for every 200 cans purchased (approximate
24 number of cans if you purchased packaged tuna weekly during the Settlement Class
25 Period).
26

27 **Claims Process: Access To Online Filing For Claim Forms**

28 38. The digital ads will include an embedded link and the print ad a QR code,

1 both of which allow Settlement Class Members to receive more information about the
2 StarKist and Lion Companies Settlements as well as complete and file an on-line
3 Claim Form. *See* Ex. H (Claim Form). The same Claim Process was approved by the
4 Court in the COSI Settlement. *See* ECF No. 2781. The Settlement Notice documents
5 also provide a toll-free number to contact JND with any questions. *Id.* If a Settlement
6 Class Member is either unable or unwilling to file a claim on-line, she may request a
7 printed claim form and either return it via United States Mail (post-marked before the
8 Claims Cut-off date) or create a pdf of the completed Claim Form and e-mail it (before
9 the Claims Cut-off Date) to JND.

10 **INTERIM DISTRIBUTION OF MONIES TO CLAIMS ADMINISTRATOR**

11 39. The costs of a robust Settlement Class Notice Plan to a large Consumer
12 Class are not insignificant. As part of the preliminary approval order, the EPPs have
13 requested an immediate payout of \$1.2 million to pay reasonable invoices submitted
14 by the claims administrator for the proposed Settlement Notice Plan.

15 **Costs of Notice Phase**

16 40. JND has provided Settlement Class Counsel with a cost estimate for the
17 Notice Phase. The cost estimate includes: Case-Specific Interactive Web Services;
18 CAFA Notice: Media costs for the digital media campaign; Direct Noticing; Objection
19 processing; Contact Center hours and Project Management Time. These costs vary
20 depending on the volume of Settlement Class Members who contact the call center or
21 reach out via email or letter, the number and objections as well as other factors.
22 Estimated costs range from \$750,000 to \$1.2 million. For this reason, StarKist agreed
23 to pay \$1 million and Lion Companies agreed to pay up to \$200,000 respectively
24 within thirty days of preliminary approval to cover the costs of this initial notice
25 process.
26
27

28 **ESTIMATED CLAIMS ADMINISTRATION COST**

41. Due to the potential volume of claims to be processed and monies to be

1 distributed, the Distribution Plan Costs are significant. The Distribution Plan includes
2 a case-site website and a contact center. Distribution costs include Claims Processing,
3 Deficiency Notices, Distribution Services via PayPal, and U.S. Mail including the
4 necessary follow up for any undeliverable items, Project Management Time
5 (distribution reports, tax return preparation). Even the estimated postage could be
6 almost \$800,000 if over one million claims need to be mailed. The costs will vary
7 significantly based on the number of claims received and the percentage of fraudulent
8 claims to be rejected. For example, the estimated range of processing from 500,000 to
9 2,000,000 claims could range from \$1.3 million to over \$5 million. Due to the
10 substantial cost of this process, if the StarKist and Lion Companies Settlement
11 Agreements are finally approved, Settlement Class Counsel will periodically petition
12 the Court for permission to pay the periodic costs and expense of the claims processing
13 and distribution out of the Total Settlement Fund.

14
15 **FEE AND EXPENSE AWARD**

16 42. EPPs will separately seek an award of attorney fees not to exceed one-
17 third of the Total Settlement Fund (\$152.2 million), net of any Expense Award or
18 Service Awards ordered by the Court. As to timing, Settlement Class Counsel request
19 that payment of any Attorneys' Fee Award follow the same payment schedule and
20 portion of the settlement paid as set forth in the StarKist Settlement Agreement.
21 StarKist SA, ¶1.24, *supra*. So, for example, if the Fee Award is one-third, then
22 Settlement Class Counsel could withdraw one-third from each payment paid until the
23 full Fee Award is received. This means that Settlement Class Counsel shares the same
24 risk of recovery as the Settlement Class Members if any of the Settling Defendants
25 would default under the Settlement Agreement. Counsel request that the first payment
26 of any Attorneys' Fee Award so ordered by the Court be paid five (5) days following
27 the Court's Order. *See* StarKist SA, ¶14.1 (permitting payment five days after award).

28 43. The total Expense Award is \$1,618,489.24. The requested Expense

1 Award breaks down as follow: (i) reimbursement of Counsel’s reasonable costs and
2 litigation expenses incurred since May 2021 in the amount of \$1,618,489.24 and (ii)
3 a request that \$206,379.11 be distributed to COSI as a reimbursement for
4 administration costs that will be common to both the proposed settlements and the
5 COSI Settlement.

6 44. A separate Motion for Fees and Costs will be filed twenty-one days
7 before the Objection Deadline. The Motion will provide a detailed breakdown of this
8 ‘hard’ reimbursement number which reflects actual costs contemporaneously
9 recorded on the accounting records of Plaintiffs’ counsel. As to the COSI request for
10 reimbursement, this is in accordance with the terms of the COSI Settlement
11 Agreement and discussed in detail above. As to the Awards, Settlement Class Counsel
12 request that any Expense or Service Awards so ordered by the Court be paid five (5)
13 days following the Court’s Order. *See* StarKist SA, ¶14.1 (permitting payment five
14 days after award subject to any undertaking required by the Court in event of appeal).
15 These requested awards, if so ordered by the Court, will be paid out of the Total
16 Settlement Fund. The Settlement Class Notice (Long Form) Ex. G will advise
17 Settlement Class Members of these requests, their amounts, and the timing for
18 payment.

19
20 **EXHIBITS**

21 45. Attached hereto as **Exhibit 3** is a true and correct copies of the slip
22 opinion *DeSilvio v. Lion Biotechnologies, Inc.*, Case No. 17-cv-02086 SI (June 30,
23 2021 N.D. Cal).

24 I declare under penalty of perjury under the laws of the United States of
25 America that the foregoing is true and correct. Executed this 13th day of August 2024
26 at San Diego, California.

27 /s/ Betsy C. Manifold

28 BETSY C. MANIFOLD

EXHIBIT 1

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

IN RE: PACKAGED SEAFOOD
PRODUCTS ANTITRUST
LITIGATION

This document relates to:

End Payer Plaintiff Class

Case No. 15-MD-2670 DMS (MSB)
MDL No. 2670

**SETTLEMENT AGREEMENT
BETWEEN END PAYER
PLAINTIFFS AND STARKIST
CO. AND DONGWON
INDUSTRIES CO., LTD.**

1 This Settlement Agreement (“Settlement Agreement”), dated August 13, 2024
2 (“Execution Date”), is made and entered into by and among Defendants StarKist Co.
3 (StarKist”) and Dongwon Industries Co., Ltd. (“DWI”) and Plaintiffs Louise Adams,
4 Nay Alidad, Jessica Bartling, Gay Birnbaum, Barbara Blumstein, Melissa Bowman,
5 Sally Bredberg, Barbara Buening, Michael Buff, Scott Caldwell, Jade Canterbury,
6 Laura Childs, Casey Christensen, Jody Cooper, Kim Craig, Sundé Daniels, Elizabeth
7 Davis-Berg, Brian Depperschmidt, Vivek Dravid, Gloria Emery, Robert Etten, Ana
8 Gabriela Felix Garcia, John Frick, Kathleen Garner, Stephanie Gipson, Kathy
9 Durand (formerly Gore), Andrew Gorman, Tina Grant, Edgardo Gutierrez, Lisa Hall,
10 Mary Hudson, Tya Hughes, Amy Jackson, Marissa Jacobus, Danielle Johnson, Zenda
11 Johnston, Amy Joseph, Michael Juetten, Steven Kratky, Kathy Lingnofski, Carla
12 Lown, Katherine McMahon, Diana Mey, Liza Milliner, Laura Montoya, the Estate
13 of Rick Musgrave, Jennifer A. Nelson, Corey Norris, Barbara Olson, Kirsten Peck,
14 John Pels, Elizabeth Perron, Valerie Peters, John Peychal, Audra Rickman, Erica
15 Rodriguez, Joelyna A. San Agustin, Amber Sartori, Rebecca Lee Simoens, Robert
16 Skaff, Greg Stearns, Nancy Stiller, Christopher Todd, John Trent, Elizabeth
17 Twitchell, Bonnie Vander Laan, Nigel Warren, Julie Wiese, Thomas E. Willoughby
18 III, and Daniel Zwirlein (collectively, “Named Plaintiffs”), both individually and on
19 behalf of a certified litigation class of end payer plaintiffs (together with Named
20 Plaintiffs, “End Payer Plaintiffs” or “EPPs”). This Settlement Agreement is intended
21 by the Parties to fully, finally, and forever resolve, discharge and settle the Released
22 Claims, upon and subject to the terms and conditions hereof.

23 WHEREAS, in the instant class action *In Re: Packaged Seafood Products*
24 *Antitrust Litigation*, No. 15-MD-2670 DMS (MSB), MDL No. 2670 (S.D. Cal.),
25 currently pending before the Honorable Dana M. Sabraw in the United States District
26 Court for the Southern District of California, EPPs have alleged that StarKist and
27 DWI participated in an unlawful conspiracy to restrain trade;

1 WHEREAS, StarKist and DWI deny EPPs’ allegations and have asserted a
2 number of defenses to EPPs’ claims;

3 WHEREAS, Settlement Class Counsel have concluded after carefully
4 considering EPPs’ claims, and the possible legal and factual defenses thereto, that it
5 is in EPPs’ best interests to enter into this Settlement Agreement with StarKist and
6 DWI to avoid the uncertainties and risks of further litigation and trial, and that the
7 settlement set forth herein is fair, reasonable, adequate and in the best interests of the
8 Settlement Class as defined below in Paragraph 1.25;

9 WHEREAS, StarKist and DWI, having maintained that there is no legal or
10 factual basis for their liability in this matter and that they have valid defenses to the
11 claims alleged, have nevertheless agreed to enter into this Settlement Agreement to
12 avoid the expense, inconvenience, and uncertainty of trial and further protracted
13 litigation;

14 WHEREAS, EPPs and StarKist and DWI agree that neither this Settlement
15 Agreement nor any statement made in the negotiation thereof shall be deemed or
16 construed to be an admission by or evidence against StarKist and DWI or evidence
17 of the truth of any of EPPs’ allegations;

18 WHEREAS, EPPs and StarKist and DWI have engaged in multiple arm’s-
19 length settlement negotiations, assisted both by a private mediator and Magistrate
20 Judge Michael S. Berg, and have reached this Settlement Agreement, subject to the
21 approval of the Court; and

22 NOW, THEREFORE, in consideration of the promises, covenants,
23 agreements, and releases set forth herein and for other good and valuable
24 consideration, and incorporating the above recitals herein, subject to the approval of
25 the Court, it is agreed by the undersigned counsel, on behalf of StarKist and DWI,
26 Named Plaintiffs, and the Settlement Class, that the claims that have been or could
27 have been asserted by EPPs in the Action be settled, compromised, and dismissed on

1 the merits and with prejudice as to StarKist and DWI, and, except as hereinafter
2 provided, without costs as to the EPPs, StarKist and/or DWI, subject to the approval
3 of the Court, on the following terms and conditions:

4 **1. Definitions**

5 1.1. “Action” means the class action captioned *In Re: Packaged Seafood*
6 *Products Antitrust Litigation*, No. 15-MD-2670 DMS (MSB), MDL No. 2670 (S.D.
7 Cal.), currently pending before the Honorable Dana M. Sabraw in the United States
8 District Court for the Southern District of California, all actions relating to the claims
9 alleged in the “Sixth Amended Consolidated Class Action Complaint of the Indirect
10 Purchaser End Payer Plaintiffs” and all actions that have been or are subsequently
11 filed in or transferred for consolidation and/or coordinated pretrial proceedings to the
12 Southern District of California by the Judicial Panel on Multidistrict Litigation as
13 part of MDL No. 2670.

14 1.2. “Claims” shall mean any and all actions, suits, claims, rights,
15 demands, assertions, allegations, causes of action, controversies, proceedings, losses,
16 damages, injuries, attorneys’ fees, costs, expenses, debts, liabilities, judgments, or
17 remedies, whether equitable or legal.

18 1.3. “Claims Administrator” shall mean JND Legal Administration
19 (“JND”), or any other third-party class action settlement claims administrator
20 mutually agreed upon by the Parties and approved by the Court for the purposes of
21 administering this settlement.

22 1.4. “Complaint” means the “Sixth Amended Consolidated Class Action
23 Complaint of the Indirect Purchaser End Payer Plaintiffs” [ECF No. 1461].

24 1.5. “Court” means the United States District Court for the Southern
25 District of California.

26 1.6. “Defendant” means any defendant named in EPPs’ Complaint (*i.e.*,
27 StarKist and DWI, as defined above, Bumble Bee Foods LLC, Lion Capital

1 (Americas), Inc., and Lion Capital LLP, and Tri-Union Seafoods LLC d/b/a Chicken
2 of the Sea and Thai Union Group Public Company Limited).

3 1.7. “Document” is defined to be synonymous in meaning and equal in
4 scope to the usage of this term in Federal Rule of Civil Procedure (“Federal Rule”)
5 34(a). A draft or non-identical copy is a separate document within the meaning of
6 this term.

7 1.8. The “End Payer Plaintiff Class” is the same as the class certified by
8 the Court (see ECF No. 1931), *i.e.*:

9 All persons and entities who resided in one of the States described in
10 paragraphs 113(b) to 113(gg) of the Fourth Consolidated Amended
11 Complaint, specifically Arizona, Arkansas, California, the District of
12 Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine, Massachusetts,
13 Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New
14 Hampshire, New Mexico, New York, North Carolina, North Dakota,
15 Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah,
16 Vermont, Virginia, West Virginia, and Wisconsin, who indirectly
17 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 June 1, 2011 through July 1, 2015 (the “Class Period”).

18 Excluded from the Class are all governmental entities, Defendants StarKist and
19 DWI, any parent, subsidiary or affiliate thereof, their officers, directors,
20 employees, and immediate families, as well as any federal judges or their staffs.
21 (ECF 1931).

22 1.9. “End Payer Plaintiffs” or “EPPs” refers collectively to the Named
23 Plaintiffs and the unnamed members of the certified End Payer Plaintiff Class defined
24 at Paragraph 1.8 above.

25 1.10. “Effective Date” means the earliest date on which all of the events
26 and conditions specified in Paragraph 7 herein have occurred or have been met.
27

1 1.11. "Escrow Account" means a federally-insured account or accounts
2 to be established by Flagstar Bank for the purpose of holding the Settlement Fund.

3 1.12. "Escrow Agent" means the bank or trust company that agrees to
4 establish and maintain the Escrow Account pursuant to the Escrow Agreement.

5 1.13. "Escrow Agreement" means an escrow agreement in a form
6 mutually satisfactory to EPPs and StarKist.

7 1.14. "Final Approval" means an order finally approving the EPP class
8 settlement and dismissing the Action with prejudice as to StarKist and DWI without
9 costs (other than those provided for in this Settlement Agreement), to be rendered by
10 the Court in the Action.

11 1.15. "Judgment" means a final order of judgment by the Court
12 dismissing the Action as to any Released Party and approving the Settlement
13 Agreement under Federal Rule 23(e), as described in Paragraph 6.1 herein.

14 1.16. "Named Plaintiffs" means the individual named plaintiffs
15 identified in the Complaint and listed above.

16 1.17 "Packaged Tuna" means shelf-stable tuna sold for human
17 consumption and packaged in either cans or pouches, and excludes tuna meal kits.

18 1.18. "Parties" means the Named Plaintiffs, Settlement Class Members,
19 and StarKist and DWI.

20 1.19. "Person" means an individual or an entity.

21 1.20. "Preliminary Approval" means an order preliminarily approving
22 the EPP class settlement to be rendered by the Court.

23 1.21. "Released Claims" means any and all Claims, whether class,
24 individual, or otherwise, that the Releasing Parties or any of them ever had, now has,
25 or hereafter can, shall, or may have, directly, representatively, derivatively, or in any
26 other capacity, against the Released Parties or any of them, whether such Claims are
27 based on federal, state, local, statutory, or common law, or any other law, code, rule,
28

1 or regulation of any country or other jurisdiction worldwide, whether such Claims
2 are known or unknown, suspected or unsuspected, asserted or unasserted, foreseen
3 or unforeseen, actual or contingent, liquidated or unliquidated, regardless of legal
4 theory, and regardless of the type or amount of relief or damages claimed, or Claims
5 that have been, could have been, or in the future might have been, claimed in law or
6 in equity, on account of, arising out of, resulting from, or in any way related to any
7 conduct regardless of legal theory, and regardless of the type or amount of relief or
8 damages claimed, or Claims that have been, could have been, or in the future might
9 have been, claimed in law or in equity, on account of, arising out of, resulting from,
10 or in any way related to EPPs' purchases of Packaged Tuna, including any conduct
11 concerning the pricing, selling, discounting, marketing, manufacturing, distribution,
12 or promotion, of Packaged Tuna, during the period from June 1, 2011 to July 31,
13 2015. The Released Claims also include all claims that could have been brought
14 based in whole or in part on the facts, occurrences, transactions, or other matters that
15 were alleged in the Complaint.

16 1.22. "Released Parties" means, jointly and severally, individually and
17 collectively: StarKist and DWI, their present and former parents, subsidiaries,
18 divisions, affiliates, and departments, their respective past and present officers,
19 directors, members, employees, agents, attorneys, servants, insurers, and
20 representatives of each of the aforesaid entities, and the predecessors, successors,
21 heirs, executors, administrators, and assigns of each of the foregoing. As used in this
22 definition, "affiliates" means entities controlling, controlled by, or under common
23 control with any of the Released Parties.

24 1.23. "Releasing Parties" means, jointly and severally, and individually
25 and collectively: Named Plaintiffs and all Settlement Class Members, their
26 predecessors, successors, present and former parents, subsidiaries, divisions,
27 affiliates, and departments, each of their respective past and present officers,
28

1 directors, employees, agents, attorneys, servants, and representatives, and the
2 predecessors, successors, heirs, executors, administrators, and assigns of each of the
3 foregoing.

4 1.24. "Settlement Amount" means One Hundred and Thirty Million
5 Dollars (\$130,000,000.00) in United States currency, which StarKist will deposit in
6 United States currency into the Escrow Account on the following schedule;

- 7 - Within 30 days after preliminary approval: \$32,000,000.00;
- 8 - Prior to the final approval hearing: \$18,000,000.00;
- 9 - Within 180 days after Preliminary Approval: \$15,000,000.00;
- 10 - Within 240 days after Preliminary Approval: \$12,000,000.00;
- 11 - Within 300 days after Preliminary Approval: \$11,000,000.00;
- 12 - Within 360 days after Preliminary Approval: \$11,000,000.00;
- 13 - Within 420 days after Preliminary Approval: \$11,000,000.00;
- 14 - Within 480 days after Preliminary Approval: \$10,000,000.00;
- 15 - Within 500 days after Preliminary Approval: \$10,000,000.00.

16 1.25. "Settlement Class" means the End Payer Plaintiffs, including the
17 Named Plaintiffs and all unnamed members of the certified End Payer Plaintiff Class
18 that did not timely request exclusion from the End Payer Plaintiff Class. For
19 avoidance of doubt, the Settlement Class does not include the Persons that timely
20 opted out of the End Payer Plaintiff Class. *See* ECF No. 3115 at Ex. F; *see also* ECF
21 No. 3120.

22 1.26. "Settlement Class Counsel" means Wolf Haldenstein Adler
23 Freeman & Herz LLP, the undersigned counsel for the Named Plaintiffs and the End
24 Payer Plaintiff Class.

25 1.27. "Settlement Class Member" means each member of the Settlement
26 Class as defined in Paragraph 1.25 and referred to in Paragraph 3 herein, including
27 the Named Plaintiffs.

1 1.28. “Settlement Fund” shall mean those monies representing the
2 consideration to be paid by StarKist to Named Plaintiffs and the Settlement Class
3 Members, including the Settlement Amount and any income earned on that amount
4 while such monies are held in the Escrow Account.

5 **2. Cooperation and Effectuation of this Settlement Agreement**

6 Counsel for Named Plaintiffs and StarKist and DWI shall use all reasonable
7 efforts to effectuate this Settlement Agreement, including cooperating in efforts to
8 obtain the Court’s approval of procedures (including the giving of class notice under
9 Federal Rules 23(c) and 23(e)) and to secure certification of the Settlement Class for
10 settlement purposes and the complete and final dismissal with prejudice of the Action
11 as to StarKist and DWI. Prior to the filing of any motions or other papers in
12 connection with the settlement, including, without limitation, the motion for
13 Preliminary Approval of the settlement (as contemplated in Paragraph 4.1 of this
14 Settlement Agreement) and for Final Approval of the settlement (as contemplated in
15 Paragraph 6.1 of this Settlement Agreement), Settlement Class Counsel will send
16 those papers to counsel for StarKist and DWI at least fourteen (14) days prior to their
17 filing, with the exception of the motion for Preliminary Approval of the settlement
18 and related papers which shall be sent to the counsel for StarKist and DWI a
19 reasonable amount of time prior to filing, and will use reasonable best efforts to
20 incorporate StarKist and DWI’s comments into any draft. The text of any proposed
21 form of order approving this Settlement Agreement shall be agreed upon by
22 Settlement Class Counsel and Counsel for StarKist and DWI before it is submitted
23 to the Court.

24 **3. Settlement Class Certification**

25 On July 30, 2019, the Court granted EPPs’ motion to certify a class pursuant
26 to Federal Rule 23(b)(3). The Settlement Class, as defined above in Paragraph 1.25,
27 is identical to the Court’s order certifying the litigation class in the Action at ECF

1 No. 1931, except that the Settlement Class also includes the Named Plaintiffs from
2 Illinois and excludes parties later excluded from the litigation class by the Court’s
3 Order in this Action at ECF No. 3120. The Parties hereby stipulate for purposes of
4 this settlement only that the requirements of Rule 23(a) and 23(b)(3) of the Federal
5 Rules are satisfied, and, subject to Court approval, the Settlement Class shall be
6 certified for settlement purposes.

7 **4. Motion for Preliminary Approval**

8 4.1. At an appropriate time after the Execution Date of this Settlement
9 Agreement, and after consultation as to timing with counsel for StarKist and DWI,
10 Settlement Class Counsel shall file with the Court a motion requesting entry of
11 Preliminary Approval, *inter alia*:

12 (a) finding the proposed settlement in the Settlement
13 Agreement has been negotiated at arm’s length, and
14 preliminarily approving the proposed settlement as fair,
15 reasonable, and adequate, and in the best interests of the
16 Settlement Class; scheduling a hearing to consider
17 (i) whether the proposed settlement should be approved as
18 fair, reasonable, and adequate to Settlement Class Members,
19 and whether the Judgment should be entered dismissing the
20 Claims of EPPs and all Settlement Class Members against
21 StarKist and DWI on the merits and with prejudice; and
22 (ii) whether to approve any application by Settlement Class
23 Counsel for an award of attorneys’ fees and payment of
24 costs and expenses (“Fairness Hearing”);

25 (b) certifying the Settlement Class for settlement purposes,
26 designating class representatives and Settlement Class
27 Counsel as defined herein, and finding that each element for

1 certification of the Settlement Class pursuant to Federal
2 Rule 23 is met;

3 (c) enjoining initiation, commencement, or prosecution of any
4 action or proceeding asserting any Released Claims
5 described in Paragraph 8 by any Releasing Party.

6 4.2. EPPs shall seek, and StarKist and DWI shall not oppose,
7 certification of the Settlement Class and appointment of Settlement Class Counsel as
8 lead counsel for purposes of this settlement.

9 **5. Notice to Settlement Class Members**

10 5.1. After Preliminary Approval of this Settlement Agreement and
11 submission to the Court and approval of a program to provide notice to the Settlement
12 Class in accordance with the requirements of the Federal Rules of Civil Procedure
13 and due process, Settlement Class Counsel shall provide the Settlement Class
14 Members with notice of the settlement and the date of the Fairness Hearing in a
15 manner to be approved by the Court.

16 5.2. Upon approval by the Court of a program to provide notice to the
17 Settlement Class, Settlement Class Counsel shall cause a summary notice of the
18 settlement to be published in such manner and scope as is reasonable and consistent
19 with the requirements of Federal Rule 23.

20 5.3. The costs and expenses associated with providing notice of the
21 settlement to members of the Settlement Class pursuant to the Court-approved
22 notification plan shall be paid from the Settlement Fund. StarKist and DWI agree to
23 permit use of the Settlement Fund towards the out-of-pocket costs and expenses of
24 administering the settlement, comprising out-of-pocket costs and expenses associated
25 with providing notice of the settlement to the Settlement Class (“Notice Costs”). Up
26 to a maximum of one million US dollars (USD \$1,000,000.00) of those Notice Costs
27 are not recoverable by StarKist or DWI if this Settlement Agreement does not

1 become final or is terminated to the extent such Notice Costs have actually been
2 expended or incurred. Other than as set forth in this Paragraph, StarKist and DWI
3 shall have no obligation to pay for the costs and expenses of providing notice of the
4 settlement to members of the Settlement Class. StarKist and DWI agree that
5 Settlement Class Counsel may withdraw funds as necessary from the Settlement
6 Fund after Preliminary Approval for the purpose of providing notice to the Settlement
7 Class of the settlement as described herein.

8 **6. Fairness Hearing**

9 6.1. At the Fairness Hearing, EPPs shall seek entry of Judgments:

- 10 (a) approving the Settlement Agreement and its terms as being
11 fair, reasonable, and adequate as to the Settlement Class,
12 within the meaning of Federal Rule 23, and directing its
13 consummation according to its terms;
- 14 (b) determining that the notices to Settlement Class Members
15 constituted, under the circumstances, the best practicable
16 notice of this Settlement Agreement and the Fairness
17 Hearing, and constituted due and sufficient notice for all
18 other purposes to all Persons entitled to receive notice;
- 19 (c) dismissing the Claims against StarKist and DWI with
20 prejudice, without costs;
- 21 (d) permanently barring and enjoining the institution,
22 commencement, or prosecution, by any of the Releasing
23 Parties, of any action asserting any Released Claim against
24 any Released Party, in any local, state, federal, or other court
25 of any nation, or in any agency or other authority or arbitral
26 or other forum wherever located;
- 27

- 1 (e) providing that any Settlement Class Member who fails to
- 2 object in the manner prescribed in the Settlement
- 3 Agreement shall be deemed to have waived any objections
- 4 to the settlement and the Settlement Agreement and will
- 5 forever be barred from making any such objections to the
- 6 settlement or the Settlement Agreement;
- 7 (f) retaining exclusive jurisdiction over the settlement and this
- 8 Settlement Agreement, including the administration and
- 9 consummation of the settlement; and
- 10 (g) determining under Federal Rule 54(b) that there is no just
- 11 reason for delay and directing that the Judgment of
- 12 dismissal as to StarKist and DWI shall be final and entered
- 13 forthwith.

14 6.2. Any Settlement Class Member who objects to the settlement may
15 appear, at that Person’s own expense, at the Fairness Hearing in person or through
16 counsel, to present any evidence or argument with respect to the settlement, to the
17 extent permitted by the Court. However, no such Person shall be heard, and no papers,
18 briefs, pleadings, or other documents shall be received and considered by the Court
19 unless such Person properly submits a written objection that includes: (a) notice of
20 intention to appear, (b) proof of membership in the Settlement Class, and (c) the
21 specific grounds for the objection and any reasons why such Person desires to appear
22 and be heard, as well as all documents or writings that such Person desires the Court
23 to consider. Such a written objection must be both filed with the Court no later than
24 thirty-five (35) days prior to the date set for the Fairness Hearing, and mailed to both
25 Settlement Class Counsel and StarKist counsel at the addresses set forth below and
26 provided in the notices to the Settlement Class, postmarked (or mailed by overnight
27 delivery) no later than thirty-five (35) days prior to the date of the Fairness Hearing:

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For Settlement Class Counsel
Betsy C. Manifold
Wolf Haldenstein Adler Freeman & Herz LLP
Symphony Towers
750 B Street, Suite 1820
San Diego, CA 92101

For StarKist Counsel
Ashley Bauer
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111

Any Person who fails to object in the manner prescribed herein shall be deemed to have waived any objections to the Settlement Agreement and will forever be barred from making any such objections to this Settlement Agreement in the Action or in any other action or proceeding, unless otherwise permitted for good cause shown as determined by the Court.

7. Effective Date of Agreement

The Effective Date of this Settlement Agreement is the earliest date on which all of the following events and conditions have occurred or have been met: (a) the Court has entered a Judgment, following notice to the Settlement Class and the Fairness Hearing, approving this Settlement Agreement under Federal Rule 23(e) and dismissing the Action as against any Released Party who is named as a Defendant in the Action, with prejudice as to all Settlement Class Members and without costs except as specified herein; and (b) the time for appeal or to seek permission to appeal from the Court’s approval of the Settlement Agreement and entry of the Judgment has expired or, if appealed, approval of this Settlement Agreement and the Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or

1 review. Neither the provisions of Federal Rule 60 nor the All Writs Act, 28 U.S.C.
2 § 1651, shall be taken into account in determining the above-stated times.

3 **8. Release and Covenant Not to Sue**

4 8.1. Upon the occurrence of the Effective Date, and only after the
5 completion of all installment payments pursuant to the Settlement Amount due by
6 StarKist and DWI as set forth in Paragraphs 1.24 and 10.1 herein, and in
7 consideration of the payment of the Settlement Amount set forth in Paragraph 1.24
8 herein (the sufficiency of which is hereby again acknowledged), each of the
9 Releasing Parties shall be deemed to have, and by operation of the Judgment shall
10 have, fully, finally, and forever released, relinquished, and discharged all Released
11 Claims against the Released Parties, shall have covenanted not to sue or otherwise
12 seek to establish liability against any of the Released Parties based, in whole or in
13 part, upon any of the Released Claims, and shall be permanently barred and enjoined
14 from instituting, commencing, prosecuting, or asserting any such Released Claim
15 against any of the Released Parties.

16 8.2. *Waiver of California Civil Code § 1542 and Similar Laws.* With
17 respect to any and all Released Claims, the Parties stipulate and agree that, upon the
18 Effective Date and the completion of all installment payments pursuant to the
19 Settlement Agreement as set forth Paragraphs 1.24 and 10.1 herein, EPPs shall
20 expressly waive and, upon the Effective Date and the completion of all installment
21 payments pursuant to the Settlement Agreement as set forth Paragraphs 1.24 and 10.1
22 herein, each of the Releasing Parties shall be deemed to have waived, and by
23 operation of the Judgment shall have waived: (i) the provisions, rights, and benefits
24 of California Civil Code Section 1542 and South Dakota Codified Laws Section 20-
25 7-11 (to the extent either or both of them apply to the Action), each of which provides
26 that:

1 **A GENERAL RELEASE DOES NOT EXTEND TO**
2 **CLAIMS THAT THE CREDITOR OR RELEASING**
3 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN**
4 **HIS OR HER FAVOR AT THE TIME OF EXECUTING**
5 **THE RELEASE AND THAT, IF KNOWN BY HIM OR**
6 **HER, WOULD HAVE MATERIALLY AFFECTED HIS**
7 **OR HER SETTLEMENT WITH THE DEBTOR OR**
8 **RELEASED PARTY.**

9 (ii) any equivalent, similar, or comparable present or future law or principle of law
10 in any jurisdiction (U.S. or foreign); and/or (iii) any law or principle of law in any
11 jurisdiction (whether U.S. or foreign) that would similarly limit or restrict the effect
12 or scope of the provisions of the release set forth above. Releasing Parties expressly
13 acknowledge that they may hereafter discover facts in addition to or different from
14 those facts that any of them or their counsel now knows or believes to be true with
15 respect to the subject matter of the Settlement Agreement, but upon the completion
16 of the installment payments pursuant to the Settlement Agreement as set forth in
17 Paragraphs 1.24 and 10.1 herein, and retroactive to the Effective Date, each Plaintiff
18 shall expressly have, and, upon the Effective Date, each Releasing Party shall be
19 deemed to have, and by operation of the Judgment shall have, fully, finally, and
20 forever settled and released any and all Released Claims, known or unknown,
21 suspected or unsuspected, contingent or non-contingent, whether or not concealed or
22 hidden, that now exist or heretofore have existed, upon any theory of law or equity
23 now existing or coming into existence in the future, including, but not limited to,
24 conduct that is negligent, reckless, intentional, with or without malice, or a breach of
25 any duty, law, or rule, without regard to the subsequent discovery of existence of
26 such different or additional facts. EPPs acknowledge, and the Releasing Parties shall
27 be deemed to have acknowledged, and by operation of the Judgment shall have
28 acknowledged, that the foregoing waiver was separately bargained for and a key
29 element of the settlement of which this release is a part.

1 Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as
2 necessary or advisable to carry out the provisions of Paragraph 10.6, including the
3 “relation-back election” (as defined in Treas. Reg. § 1.468B-1) so as to enable the
4 Settlement Fund to be treated as a “qualified settlement fund” from the earliest date
5 possible. Such elections shall be made in compliance with the procedures and
6 requirements contained in such regulations. It shall be the responsibility of the
7 Escrow Agent to timely and properly prepare and deliver the necessary
8 documentation for signature by all necessary parties, and thereafter to cause the
9 appropriate filing to occur.

10 10.5 For the purpose of § 468B of the Internal Revenue Code of 1986,
11 as amended, and the regulations promulgated thereunder, the “administrator” shall
12 be the Claims Administrator. The Claims Administrator shall timely and properly file
13 all information and other tax returns necessary or advisable with respect to the
14 Settlement Fund (including without limitation the returns described in Treas. Reg. §
15 1.468B-2(k)(l)). Such returns (as well as the elections described in Paragraph 10.4)
16 shall be consistent with Paragraph 10.7.

17 10.6 All (i) taxes (including any estimated taxes, interest, or penalties)
18 arising with respect to the income earned by the Settlement Fund, including any taxes
19 or tax detriments that may be imposed upon StarKist and DWI or any other Released
20 Party with respect to any income earned by the Settlement Fund for any period during
21 which the Settlement Fund does not qualify as a “qualified settlement fund” for
22 federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred
23 in connection with the operation and implementation of Paragraphs 10.4 through 10.8
24 (including, without limitation, expenses of tax attorneys and/or accountants and
25 mailing and distribution costs and expenses relating to filing (or failing to file) the
26 returns described in Paragraph 10.5 (“Tax Expenses”)), shall be paid out of the
27 Settlement Fund.

1 10.7 Neither StarKist and DWI nor any other Released Party nor their
2 respective counsel shall have any liability or responsibility, including filing
3 responsibility, for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses
4 shall be treated as, and considered to be, a cost of administration of the Settlement
5 Fund and shall be timely paid by the Claims Administrator out of the Escrow Account
6 from the Settlement Fund. The Claims Administrator shall be obligated
7 (notwithstanding anything herein to the contrary) to withhold from distribution to
8 any claimants authorized by the Court any funds necessary to pay such amounts
9 including the establishment of adequate reserves for any Taxes and Tax Expenses (as
10 well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-
11 2(1)(2)). Neither StarKist and DWI nor any other Released Party are responsible, nor
12 shall they have any liability, therefor. EPPs and StarKist and DWI agree to cooperate
13 with the Escrow Agent, each other, and their tax attorneys and accountants to the
14 extent reasonably necessary to carry out the provisions of Paragraphs 10.2 through
15 10.10. StarKist and DWI make no representation to EPPs regarding the appropriate
16 tax treatment of the Settlement Fund, income earned on the Settlement Fund, or any
17 distribution taken from the Settlement Fund.

18 10.8 If this Settlement Agreement does not receive Final Approval by
19 the Court, or if the Action is not certified as a class action for settlement purposes, or
20 if this Settlement Agreement is terminated or voided for any reason, then all amounts
21 paid by StarKist and DWI into the Settlement Fund (other than costs that may already
22 have reasonably been incurred or expended in accordance with Paragraphs 5.3 and
23 10.6) shall be returned to StarKist and DWI from the Escrow Account by the Escrow
24 Agent along with any interest accrued thereon, within ten (10) business days after
25 such order becomes final and non-appealable.

26 10.9 StarKist and DWI shall not be liable for any costs, fees, or
27 expenses of any of EPPs' respective attorneys, experts, advisors, agents, or
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1 representatives, except all such costs, fees, and expenses as provided for in
2 Paragraphs 5.3 and 10.6 or otherwise approved by the Court may be paid out of the
3 Settlement Fund.

4 10.10 If, after all costs (including notice costs), attorneys' fees, and any
5 other expenses have been paid from the Settlement Fund, there are any remaining
6 funds, they shall be distributed to the Settlement Class, or in Settlement Class
7 Counsel's reasonable judgment, be made the subject of an application to the Court
8 by EPPs for *cypres* distribution in accordance with governing standards in the Ninth
9 Circuit.

10 **11. Administration of the Settlement Fund**

11 11.1. The costs and expenses of administration of the settlement
12 pursuant to the terms of this Settlement Agreement shall be paid out of the Settlement
13 Fund. The Claims Administrator(s) shall, on a monthly basis, submit invoices, with
14 appropriate supporting documentation, to Settlement Class Counsel for payment
15 from the Escrow Account. To the extent practicable, the administration of this
16 settlement shall be coordinated with the administration of other aspects of this
17 Action, including, but not limited to, any other settlement(s) entered into between
18 EPPs and any other settling Defendant(s) and/or the administration of any recovery
19 obtained on behalf of the class by summary judgment or trial.

20 11.2. StarKist and DWI shall not have any responsibility, financial
21 obligation, or liability whatsoever with respect to the investment, distribution, or
22 administration of the Settlement Fund, including, but not limited to, the costs and
23 expenses of such investment, distribution, and administration, except as expressly
24 otherwise provided in the Settlement Agreement.

25 **12. Withdrawal From or Modification of the Settlement**

26 12.1. If the Court declines to approve this Settlement Agreement or any
27 material part hereof, or if such approval is materially modified or set aside on appeal,
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1 or if the Court does not enter the Judgment, or if the Court enters the Judgment and
2 appellate review is sought and, on such review, such Judgment is not affirmed or is
3 materially modified, then StarKist and DWI and EPPs shall each, in their respective
4 sole discretion, have the option to rescind this Settlement Agreement in its entirety.

5 12.2. If StarKist and DWI choose to exercise the option to rescind
6 pursuant to Paragraph 12.1, any and all amounts then constituting the Settlement
7 Fund (including all income earned thereon and excluding any reasonable expenses
8 that have been paid or incurred associated with providing notice to the Settlement
9 Class, administering the Settlement Fund, incurred or paid under Paragraph 10.8 of
10 this Settlement Agreement, and/or any Taxes already paid on such income), together
11 with any amounts, including attorneys' fees, paid to Settlement Class Counsel
12 pursuant to Paragraph 14 below (including all income earned thereon), shall be
13 returned forthwith to StarKist. A modification or reversal on appeal of any amount
14 of Settlement Class Counsel's fees and/or expenses awarded by the Court or any plan
15 of allocation or distribution of the Settlement Fund shall not be deemed a
16 modification of all or a part of the terms of this Settlement Agreement or the
17 Judgment.

18 12.3. StarKist, DWI and EPPs expressly reserve all of their rights if this
19 Settlement Agreement does not become effective or if it is rescinded pursuant to
20 Paragraph 12.1 of this Settlement Agreement. In addition, if for any reason (including
21 a party's exercise of a valid right to rescind this Settlement Agreement), the
22 Settlement Agreement does not receive Final Approval by the Court, then the
23 certification of the Settlement Class shall become null and void without further Court
24 action, and shall not be used or referred to for any further purpose in the Action or in
25 any other action or proceeding, and shall not prejudice any party in arguing for or
26 against contested class certification in this Action or in any other proceeding. Further,
27 this Agreement, whether or not it is finally approved and whether or not StarKist and

1 DWI or EPPs elect to rescind it under Paragraph 12.1 of the Settlement Agreement,
2 and any and all negotiations, Documents, and discussions associated with it, shall not
3 be deemed or construed to be an admission or evidence of any violation of any statute
4 or law, or of any liability or wrongdoing by StarKist and DWI or any Defendant, or
5 of the truth of any of the claims or allegations contained in the Complaint or any
6 other pleading filed by EPPs in the Action, or waiver or invalidity of any defense,
7 and evidence thereof shall neither be discoverable nor used directly or indirectly
8 except in a proceeding to enforce or interpret the Settlement Agreement.

9 **13. No Admissions**

10 The Parties intend the settlement as described herein to be a final and
11 complete resolution of all disputes between them with respect to the Released Claims,
12 and it shall not be deemed an admission by any party as to the jurisdiction of the
13 Court over the claims asserted against StarKist and DWI, or as to the merits of any
14 claim or defense or any allegation made in the Action.

15 **14. Settlement Class Counsel's Attorneys' Fees and Expenses**

16 14.1. The procedure for, and the allowance or disallowance by the Court
17 of, any application by Settlement Class Counsel for attorneys' fees and expenses are
18 not part of the Settlement Agreement and are to be considered by the Court separately
19 from the Court's consideration of the fairness, reasonableness, and adequacy of the
20 settlement. Any order or proceeding relating to any application for, or approval of,
21 attorneys' fees and expenses, the pendency of any such application, or any appeal or
22 review of an order relating thereto or reversal or modification thereof, shall not
23 operate to terminate or cancel this Settlement Agreement, or affect or delay the
24 finality of the Judgment. StarKist and DWI agree that Settlement Class Counsel may
25 withdraw from the Settlement Fund any amount awarded by the Court for attorneys'
26 fees and costs five (5) days following the Court's award, subject to an appropriate
27 financial undertaking required by the Court in the event of an appeal of the Court's

1 award of attorneys' fees and expenses. Attorneys' fees and expenses authorized by
2 the Court to be paid from the Settlement Fund shall be payable notwithstanding the
3 existence of any timely filed objections to the Settlement Agreement, to any payment
4 of fees, expenses, or incentives or potential for appeal therefrom, or collateral attack
5 on the Settlement Agreement or any part thereof, subject to Settlement Class
6 Counsel's obligation to make appropriate refunds or repayments to the Settlement
7 Fund, if the Effective Date does not occur, or the Settlement Agreement is subject to
8 successful collateral attack, or the fee or cost amount is reduced or reversed.

9 14.2. StarKist and DWI shall have no responsibility for, and no liability
10 whatsoever with respect to, the division of attorneys' fees and expenses among
11 counsel representing the EPPs, and any negotiation or dispute among counsel
12 representing the EPPs in that regard shall not operate to terminate or cancel this
13 Settlement Agreement or affect or delay the finality of the Judgment.

14 14.3. Except as otherwise provided herein, EPPs and StarKist and DWI
15 shall each be responsible for bearing their own costs and fees incurred in this Action.

16 **15. Miscellaneous Provisions**

17 15.1. StarKist and DWI expressly represent that they have obtained all
18 required approvals from their management for this Settlement Agreement.

19 15.2. This Settlement Agreement shall constitute the entire agreement
20 between the Parties pertaining to the settlement of the Action against StarKist and
21 DWI and supersedes any and all prior and contemporaneous undertakings of the
22 Parties in connection therewith. The terms of the Settlement Agreement are and shall
23 be binding upon each of the Parties hereto, their heirs, executors, administrators,
24 representatives, agents, attorneys, partners, successors, predecessors-in-interest, and
25 assigns, and upon all other Persons claiming any interest in the subject matter hereto
26 through any of the parties hereto including any Settlement Class Members.

1 15.3. This Settlement Agreement may be modified or amended only by
2 a writing executed by Settlement Class Counsel and counsel for StarKist and DWI,
3 subject (if after preliminary or final approval by any court) to approval by the Court.
4 Amendments and modifications may be made without notice to the Settlement Class
5 unless notice is required by law or by the Court.

6 15.4. None of the Parties hereto shall be considered to be the drafter of
7 this Settlement Agreement or any its provisions hereof for the purpose of any statute,
8 case law, or rule of interpretation or construction that would or might cause any
9 provision to be construed against the drafters of this Settlement Agreement.

10 15.5. This Settlement Agreement shall be construed and interpreted to
11 effectuate the intent of the Parties which is to provide, through this Settlement
12 Agreement, for a complete resolution of the Released Claims with respect to the
13 Released Parties.

14 15.6. Nothing expressed or implied in this Settlement Agreement is
15 intended to or shall be construed to confer upon or give any person or entity other
16 than Settlement Class Members, Releasing Parties, and Released Parties any right or
17 remedy under or by reason of this Settlement Agreement.

18 15.7. This Settlement Agreement shall be binding upon, and inure to the
19 benefit of, the Releasing Parties and the Released Parties.

20 15.8. EPPs and StarKist and DWI acknowledge that they have been
21 represented by counsel and have made their own investigations of the matters covered
22 by this Settlement Agreement to the extent they have deemed it necessary to do so.
23 Therefore, EPPs and StarKist and DWI and their respective counsel agree that they
24 will not seek to set aside any part of the Settlement Agreement on the grounds of
25 mistake. Moreover, EPPs and StarKist and DWI and their respective counsel
26 understand, agree, and expressly assume the risk that any fact may turn out
27 hereinafter to be other than, different from, or contrary to the facts now known to

1 them or believed by them to be true, and further agree that the Settlement Agreement
2 shall be effective in all respects and shall not be subject to termination, modification,
3 or rescission by reason of any such difference in facts. If any provision of this
4 Settlement Agreement is found by a court of competent jurisdiction to be illegal,
5 invalid, or unenforceable for any reason, the remainder of this Settlement Agreement
6 will not be affected and, in lieu of each provision that is found illegal, invalid, or
7 unenforceable, a provision will be added as a part of this Settlement Agreement that
8 is as similar to the illegal, invalid, or unenforceable provision as may be legal, valid,
9 and enforceable.

10 15.9. All terms of this Settlement Agreement shall be governed by, and
11 interpreted according to, the substantive laws of the State of Delaware without regard
12 to its choice of law or conflicts of laws principles.

13 15.10. StarKist and DWI, Named Plaintiffs, and all Settlement Class
14 Members hereby irrevocably submit to the exclusive jurisdiction of the Court for any
15 suit, action, proceeding, or dispute arising out of or relating to this Settlement
16 Agreement or the applicability of this Settlement Agreement, including, without
17 limitation, any suit, action, proceeding, or dispute relating to the release provisions
18 herein. StarKist and DWI do not, by way of this Settlement Agreement, submit to
19 the jurisdiction of the Court for any other purpose.

20 15.11. This Settlement Agreement may be executed in counterparts.
21 Facsimile or Portable Document Format signatures shall be considered as valid
22 signatures for purposes of execution of this Settlement Agreement, but original
23 signature pages shall thereafter be collated for filing of this Settlement Agreement
24 with the Court.

25 15.12. Each of the undersigned attorneys represents that he or she is
26 fully authorized to enter into the terms and conditions of, and execute, this Settlement
27 Agreement, subject to Court approval, and the undersigned Settlement Class Counsel

1 represent that they are authorized to execute this Settlement Agreement on behalf of
2 Named Plaintiffs and the Settlement Class.

3 IN WITNESS HEREOF, the Parties, through their fully authorized
4 representatives, have agreed to this Settlement Agreement as of the Execution Date
5 written above.

6 [signature page follows]
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Dated: August 13, 2024

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

By: *Betsy C. Manifold*
Betsy C. Manifold
Rachele R. Byrd
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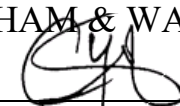
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*Counsel for the End Payer Plaintiffs and
the End Payer Plaintiff Class*

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Dated: August 13, 2024

LATHAM & WATKINS LLP

By: 

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*Counsel for Defendants StarKist Co. and
Dongwon Industries Co., Ltd.*

EXHIBIT 2

1 Betsy C. Manifold (#182450)
2 **WOLF HALDENSTEIN ADLER**
3 **FREEMAN & HERZ LLP**
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10 *Class Counsel for the End Payer Class*

11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 **IN RE: PACKAGED SEAFOOD
15 PRODUCTS ANTITRUST
16 LITIGATION**

17 Case No. 15-MD-2670 DMS (MSB)
18 MDL No. 2670

19 This document relates to:
20
21 End Payer Plaintiff Class

22 **SETTLEMENT AGREEMENT
23 BETWEEN END PAYER
24 PLAINTIFFS AND LION
25 CAPITAL LLP, LION CAPITAL
26 (AMERICAS), INC., AND BIG
27 CATCH CAYMAN LP**

28 **SETTLEMENT AGREEMENT BETWEEN END
PAYER PLAINTIFFS AND LION CAPITAL LLP,
LION CAPITAL (AMERICAS), INC., AND BIG
CATCH CAYMAN LP**

CASE No. 15-MD-2670-DMS (MSB)

1 This Settlement Agreement (“Settlement Agreement”), dated August 6, 2024
2 (“Execution Date”), is made and entered into by and among Defendant Lion Capital
3 (Americas), Inc. and Specially Appearing Defendants Lion Capital LLP and Big
4 Catch Cayman LP¹ (collectively “the Lion Companies”) and End Payer Plaintiffs
5 Plaintiffs Louise Adams, Nay Alidad, Jessica Bartling, Gay Birnbaum, Barbara
6 Blumstein, Melissa Bowman, Sally Bredberg, Barbara Buening, Michael Buff,
7 Scott Caldwell, Jade Canterbury, Laura Childs, Casey Christensen, Jody Cooper,
8 Kim Craig, Sundé Daniels, Elizabeth Davis-Berg, Brian Depperschmidt Vivek
9 Dravid, Gloria Emery, Robert Etten, Ana Gabriela Felix Garcia, John Frick, Kathleen
10 Garner, Stephanie Gipson, Kathy Durand (formerly Gore), Andrew Gorman, Tina
11 Grant, Edgardo Gutierrez, Lisa Hall, Mary Hudson, Tya Hughes, Amy Jackson,
12 Marissa Jacobus, Danielle Johnson, Zenda Johnston, Amy Joseph, Michael Juetten,
13 Steven Kratky, Kathy Lingnofski, Carla Lown, Katherine McMahon, Diana Mey,
14 Liza Milliner, Laura Montoya, Estate of Rick Musgrave, Jennifer A. Nelson, Corey
15 Norris, Barbara Olson, Kirsten Peck, John Pels, Elizabeth Perron, Valerie Peters,
16 John Peychal, Audra Rickman, Erica Rodriguez, Joelyna A. San Agustin, Amber
17 Sartori, Rebecca Lee Simoens, Robert Skaff, Greg Stearns, Nancy Stiller,
18 Christopher Todd, John Trent, Elizabeth Twitchell, Bonnie Vander Laan, Nigel
19 Warren, Julie Wiese, Thomas E. Willoughby III, and Daniel Zwirlein (collectively,
20 “Named Plaintiffs”), individually, on behalf of a certified litigation class of end payer
21 plaintiffs, and as representatives of the Settlement Class as defined herein.

22 WHEREAS, in the instant class action *In Re: Packaged Seafood Products*
23 *Antitrust Litigation*, No. 15-MD-2670 DMS (MSB), MDL No. 2670 (S.D. Cal.),
24 currently pending before the Honorable Dana M. Sabraw in the United States District
25 Court for the Southern District of California, End Payer Plaintiffs have alleged that

26 ¹ As noted herein, Big Catch Cayman LP was previously dismissed from the
27 Action by the Court with prejudice. (ECF No. 3103.)

1 the Lion Companies participated in an unlawful conspiracy to restrain trade in
2 violation of various state antitrust and consumer laws;

3 WHEREAS, the Lion Companies deny End Payer Plaintiffs' allegations and
4 have asserted a number of defenses to End Payer Plaintiffs' claims; the United States
5 District Court for the Southern District of California granted the Lion Companies'
6 motion for summary judgment as to claims against Big Catch Cayman LP pursuant
7 to ECF No. 3103; and Lion Capital LLP maintains that the United States District
8 Court for the Southern District of California lacks personal jurisdiction over the
9 claims Plaintiffs asserted against it;

10 WHEREAS, Lead Counsel for End Payer Plaintiffs have concluded after
11 carefully considering the claims made by End Payer Plaintiffs and the Settlement
12 Class, and the possible legal and factual defenses thereto, that it is in the best interests
13 of End Payer Plaintiffs and the Settlement Class to enter into this Settlement
14 Agreement with the Lion Companies to avoid the uncertainties and risks of further
15 litigation and trial, and that the settlement set forth herein is fair, reasonable, adequate
16 and in the best interests of the Settlement Class;

17 WHEREAS, the Lion Companies, having maintained that there is no legal or
18 factual basis for their liability in this matter and that they have valid defenses to the
19 claims alleged, have nevertheless agreed to enter into this Settlement Agreement to
20 avoid the expense, inconvenience, and uncertainty of trial and further protracted
21 litigation;

22 WHEREAS, End Payer Plaintiffs and the Lion Companies agree that neither
23 this Settlement Agreement nor any statement made in the negotiation thereof shall be
24 deemed or construed to be an admission by or evidence against the Lion Companies,
25 or evidence of the truth of any of End Payer Plaintiffs' allegations;

26 WHEREAS, End Payer Plaintiffs and the Lion Companies have engaged in
27 multiple arm's length settlement negotiations, first with the assistance of private

1 mediators, and subsequently assisted by Magistrate Judge Michael S. Berg, and have
2 reached this Settlement Agreement subject to approval of the Court; and

3 NOW, THEREFORE, in consideration of the promises, covenants,
4 agreements, and releases set forth herein and for other good and valuable
5 consideration, and incorporating the above recitals herein, subject to the approval of
6 the Court, it is agreed by the undersigned, on behalf of the Lion Companies, End
7 Payer Plaintiffs, and the Settlement Class, that the claims of End Payer Plaintiffs and
8 the Settlement Class that have been or could have been asserted in the Action be
9 settled, compromised, and dismissed on the merits and with prejudice as to the Lion
10 Companies, and, except as hereinafter provided, without costs as to End Payer
11 Plaintiffs, the Settlement Class, or the Lion Companies, subject to the approval of the
12 Court, on the following terms and conditions:

13 **1. Definitions**

14 1.1. "Action" means the class action captioned *In Re: Packaged Seafood*
15 *Products Antitrust Litigation*, No. 15-MD-2670 DMS (MSB), MDL No. 2670 (S.D.
16 Cal.), currently pending before the Honorable Dana M. Sabraw in the United States
17 District Court for the Southern District of California, all actions relating to the claims
18 alleged in the "Sixth Amended Consolidated Class Action Complaint of the Indirect
19 Purchaser End Payer Plaintiffs" and all actions that have been or are subsequently
20 filed in or transferred for consolidation and/or coordinated pretrial proceedings to the
21 Southern District of California by the Judicial Panel on Multidistrict Litigation as
part of MDL No. 2670.

22 1.2. "Claims" shall mean any and all actions, suits, claims, rights,
23 demands, assertions, allegations, causes of action, controversies, proceedings, losses,
24 damages, injuries, attorneys' fees, costs, expenses, debts, liabilities, judgments, or
25 remedies, whether equitable or legal.
26

1 1.3. "Claims Administrator" shall mean JND or any other third-party
2 class action settlement claims administrator mutually agreed upon by the Parties and
3 approved by the Court for the purposes of administering this settlement.

4 1.4. "Complaint" means the Sixth Amended Consolidated Class Action
5 Complaint of the Indirect Purchaser End Payer Plaintiffs [ECF No. 1461].

6 1.5. "Court" means the United States District Court for the Southern
7 District of California.

8 1.6. "Defendants" means the Lion Companies, as defined above,
9 Bumble Bee Foods LLC, StarKist Co. and Dongwon Industries Co., Ltd., and
10 Tri-Union Seafoods LLC d/b/a Chicken of the Sea and Thai Union Group PCL.

11 1.7. "Document" is defined to be synonymous in meaning and equal in
12 scope to the usage of this term in Federal Rule of Civil Procedure ("Federal Rule")
13 34(a). A draft or non-identical copy is a separate document within the meaning of
14 this term.

15 1.8. "Effective Date" means the earliest date on which all of the events
16 and conditions specified in Paragraph 7 herein have occurred or have been met.

17 1.9. "End Payer Plaintiffs" means the named class representatives
18 defined above and the unnamed members of the certified End Payer Plaintiff class,
19 defined in ECF No. 1931.

20 1.10. "Escrow Account" means an account to be established with
21 Huntington Bank for the purpose of holding the Settlement Funds.

22 1.11. "Escrow Agent" means the bank or trust company that agrees to
23 establish and maintain the Escrow Account pursuant to the Escrow Agreement.

24 1.12. "Escrow Agreement" means an escrow agreement in a form
25 mutually satisfactory to EPPs and the Lion Companies.

26 1.13. "Final Approval" means an order finally approving the End Payer
27 Plaintiffs' class settlement and dismissing the Action with prejudice as to the Lion

1 Companies without costs (other than those provided for in this Agreement), to be
2 rendered by the Court in the Action.

3 1.14. "Judgment" means a final order of judgment by the Court
4 dismissing the Action as to any Released Party and approving the Settlement
5 Agreement under Federal Rule 23(e), as described in Paragraph 6.1 herein.

6 1.15. "Packaged Tuna Products" means shelf-stable tuna sold for human
7 consumption and packaged in either cans or pouches, and excludes meal kits.

8 1.16. "Parties" means End Payer Plaintiffs, Settlement Class Members,
9 and the Lion Companies.

10 1.17. "Person" means an individual or an entity.

11 1.18. "Preliminary Approval" means an order preliminarily approving
12 the settlement to be rendered by the Court in the Action.

13 1.19. "Released Claims" means any and all Claims, whether class,
14 individual, or otherwise, that the Releasing Parties or any of them ever had, now has,
15 or hereafter can, shall, or may have, directly, representatively, derivatively, or in any
16 other capacity, against the Released Parties or any of them, whether such Claims are
17 based on federal, state, local, statutory, or common law, or any other law, code, rule,
18 or regulation of any country or other jurisdiction worldwide, whether such Claims
19 are known or unknown, suspected or unsuspected, asserted or unasserted, foreseen
20 or unforeseen, actual or contingent, liquidated or unliquidated, regardless of legal
21 theory, and regardless of the type or amount of relief or damages claimed, or Claims
22 that have been, could have been, or in the future might have been, claimed in law or
23 in equity, on account of, arising out of, resulting from, or in any way related to any
24 conduct regardless of legal theory, and regardless of the type or amount of relief or
25 damages claimed, or Claims that have been, could have been, or in the future might
26 have been, claimed in law or in equity, on account of, arising out of, resulting from,
27 or in any way related to any conduct concerning the pricing, selling, discounting,
28 manufacturing, distribution, promotion, or marketing of Packaged Tuna Products

1 during the period from June 1, 2011 to July 31, 2015 that could have been brought
2 based in whole or in part on the facts, occurrences, transactions, or other matters that
3 were alleged in the Complaint.

4 1.20. "Released Parties" means, jointly and severally, individually and
5 collectively: the Lion Companies, their present and former parents, subsidiaries,
6 divisions, affiliates, and departments, their respective past and present officers,
7 directors, members, employees, agents, attorneys, servants, insurers, and
8 representatives of each of the aforesaid entities, and the predecessors, successors,
9 heirs, executors, administrators, and assigns of each of the foregoing. As used in this
10 definition, "affiliates" means entities controlling, controlled by, or under common
11 control with any of the Released Parties.

12 1.21. "Releasing Parties" means, jointly and severally, and individually
13 and collectively: End Payer Plaintiffs and all Settlement Class Members, their
14 predecessors, successors, present and former parents, subsidiaries, divisions,
15 affiliates, and departments, each of their respective past and present officers,
16 directors, employees, agents, attorneys, servants, and representatives, and the
17 predecessors, successors, heirs, executors, administrators, and assigns of each of the
18 foregoing.

19 1.22. "Settlement Amount" means Six Million Dollars (\$6,000,000.00)
20 in United States currency. The Lion Companies will deposit Three Million Dollars
21 (\$3,000,000.00) in United States currency into the Escrow Account within thirty (30)
22 days after Preliminary Approval by the Court and Three Million Dollars
23 (\$3,000,000.00) in United States currency into the Escrow Account within forty-five
24 (45) days after Final Approval by the Court. Up to Two Hundred Thousand Dollars
25 (\$200,000) in United States currency of the Three Million Dollars (\$3,000,000) in
26 United States currency to be deposited into the Escrow Account within thirty (30)
27 days after Preliminary Approval by the Court shall be used for notice and
28 administration of claims.

1 1.23. "Settlement Class" means the End Payer Plaintiffs, including the
2 Named Plaintiffs and all unnamed members of the certified End Payer Plaintiff Class
3 that did not timely request exclusion from the End Payer Plaintiff Class. The certified
4 End Payer Plaintiff Class consists of a multistate Cartwright Act class ("Cartwright
5 Class") and multiple individual State Law Classes for 32 States, Districts, and
6 Territories ("State Classes"). The Cartwright Class consists of 31 State Classes,
7 including the District of Columbia. ECF 1931 at 46 (certifying Cartwright Class with
8 32 states, including the District of Columbia); ECF 2925 at 10:9-17 (excising the
9 South Carolina claimants from the Cartwright Class). For avoidance of doubt, the
10 Settlement Class is the Named Plaintiffs and certified End Payer Plaintiff Class, less
11 any Persons that timely opted out of the End Payer Plaintiff Class. *See* ECF No. 3120,
12 which incorporates the list of Persons at Ex. F of ECF No. 3115.

13 1.24. "Settlement Class Counsel" means Wolf Haldenstein Adler
14 Freeman & Herz LLP, the undersigned counsel for the Named Plaintiffs and the End
15 Payer Plaintiff Class.

16 1.25. "Settlement Class Member" means each member of the Settlement
17 Class as defined in Paragraph 1.23 and referred to in Paragraph 3 herein.

18 1.26. "Settlement Fund" shall mean those monies representing the
19 consideration to be paid the Lion Companies to End Payer Plaintiffs and the
20 Settlement Class Members, including the Settlement Amount and any income earned
21 on that amount while such monies are held in the Escrow Account.

22 **2. Cooperation and Effectuation of this Settlement Agreement**

23 End Payer Plaintiffs and the Lion Companies shall use all reasonable efforts
24 to effectuate this Settlement Agreement, including cooperating in End Payer
25 Plaintiffs' efforts to obtain the Court's approval of procedures (including the giving
26 of class notice under Federal Rules 23(c) and 23(e)) and to secure certification of the
27 Settlement Class for settlement purposes and the complete and final dismissal with

1 prejudice of the Action as to the Lion Companies. Prior to the filing of any motions
2 or other papers in connection with the settlement, including, without limitation, the
3 motion for Preliminary Approval of the settlement (as contemplated in Paragraph 4.1
4 of this Settlement Agreement) and for Final Approval of the settlement (as
5 contemplated in Paragraph 6.1 of this Settlement Agreement), End Payer Plaintiffs
6 will send those papers to the Lion Companies at least seven (7) days prior to their
7 filing, with the exception of the motion for Preliminary Approval of the settlement
8 and related papers which shall be sent to the Lion Companies a reasonable amount
9 of time prior to filing, and will use reasonable best efforts to incorporate the Lion
10 Companies' comments into any draft. The text of any proposed form of order
11 approving this Settlement Agreement shall be agreed upon by End Payer Plaintiffs
12 and the Lion Companies before it is submitted to the Court.

13 **3. Settlement Class Certification**

14 On July 30, 2019, the Court granted End Payer Plaintiffs' motion to certify a
15 class pursuant to Federal Rule 23(b)(3). The Settlement Class, as defined above in
16 paragraph 1.23, is almost identical to the Court's order certifying the litigation class
17 in the Action at ECF No. 1931, except that the Settlement Class also includes the
18 Named Plaintiffs from Illinois and excludes parties later excluded from the litigation
19 class by the Court's Order in this Action at ECF No. 3120, which incorporates the
20 list of Persons at Ex. F of ECF No. 3115. The parties to this Settlement Agreement
21 hereby stipulate for purposes of this settlement only that the requirements of Rule
22 23(a) and 23(b)(3) of the Federal Rules are satisfied, and, subject to Court approval,
the Settlement Class shall be certified for settlement purposes.

23 **4. Motion for Preliminary Approval**

24 4.1. At an appropriate time after the Execution Date of this Settlement
25 Agreement, and after consultation as to timing with counsel for the Lion Companies,
26 End Payer Plaintiffs shall file with the Court a motion requesting entry of Preliminary
27 Approval, *inter alia*:

28 SETTLEMENT AGREEMENT BETWEEN END
PAYER PLAINTIFFS, LION CAPITAL LLP, LION
CAPITAL (AMERICAS), INC., AND BIG CATCH
CAYMAN LP

CASE NO. 15-MD-2670-DMS (MSB)

- 1 (a) finding the proposed settlement in the Settlement
2 Agreement has been negotiated at arm's length, and
3 preliminarily approving the proposed settlement as fair,
4 reasonable, and adequate, and in the best interests of the
5 Settlement Class; scheduling a hearing to consider (i)
6 whether the proposed settlement should be approved as fair,
7 reasonable, and adequate to Settlement Class Members, and
8 whether the Judgment should be entered dismissing the
9 Claims of End Payer Plaintiffs and all Settlement Class
10 Members against the Lion Companies on the merits and
11 with prejudice; and (ii) whether to approve any application
12 by Settlement Class Counsel for an award of attorneys' fees
13 and payment of costs and expenses ("Fairness Hearing");
- 14 (b) certifying the Settlement Class for settlement purposes,
15 designating class representatives and Settlement Class
16 Counsel as defined herein, and finding that each element for
17 certification of the Settlement Class pursuant to Federal
18 Rule 23 is met;
- 19 (c) enjoining initiation, commencement, or prosecution of any
20 action or proceeding asserting any Released Claims
21 described in Paragraph 8 by any Releasing Party.

22 4.2. End Payer Plaintiffs shall seek, and the Lion Companies shall not
23 oppose, certification of the Settlement Class and appointment of Settlement Class
24 Counsel as lead counsel for purposes of this settlement.

25 5. Notice to Settlement Class Members

26 5.1. After Preliminary Approval of this Settlement Agreement and
27 submission to the Court and approval of a program to provide notice to the Settlement
28 Class in accordance with the requirements of the Federal Rules of Civil Procedure

1 and due process, Settlement Class Counsel shall provide those Settlement Class
2 Members identified with notice of the settlement and the date of the Fairness Hearing
3 in a manner to be approved by the Court.

4 5.2. Upon approval by the Court of a program to provide notice to the
5 Class, Settlement Class Counsel shall cause a summary notice of the settlement to be
6 published in such manner and scope as is reasonable and consistent with the
7 requirements of Federal Rule 23.

8 5.3. Except as provided herein, the costs and expenses associated with
9 providing notice of the settlement to members of the Settlement Class pursuant to the
10 Court-approved notification plan shall be paid from the Settlement Fund, and the
11 Lion Companies shall have no obligation to pay for the costs and expenses of
12 providing notice of the settlement to members of the Settlement Class. The Lion
13 Companies agree that Settlement Class Counsel may withdraw funds as necessary
14 from the Settlement Fund after Preliminary Approval for the purpose of providing
15 notice to the class of the settlement as described herein, which shall be non-
16 refundable. If the costs and expenses associated with providing notice of this
17 Settlement with Lion Companies exceeds \$200,000, Settlement Class Counsel shall
18 seek prior Court approval for good cause shown to withdraw such additional funds.
19 If the settlement is not finally approved, the Lion Companies shall not be entitled to
20 any sums spent or owing for purposes of disseminating notice and/or administering
the notice program as approved by the Court.

21 **6. Fairness Hearing**

22 6.1. At the Fairness Hearing, End Payer Plaintiffs shall seek entry of
23 Judgments:

- 24 (a) approving the Settlement Agreement and its terms as being
25 fair, reasonable, and adequate as to the Settlement Class,
26 within the meaning of Federal Rule 23, and directing its
consummation according to its terms;

- (b) determining that the notices to Settlement Class Members constituted, under the circumstances, the best practicable notice of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- (c) dismissing the Claims against the Lion Companies with prejudice, without costs;
- (d) permanently barring and enjoining the institution, commencement, or prosecution, by any of the Releasing Parties, of any action asserting any Released Claim against any Released Party, in any local, state, federal, or other court of any nation, or in any agency or other authority or arbitral or other forum wherever located;
- (e) providing that any Settlement Class Member who fails to object in the manner prescribed in the Settlement Agreement shall be deemed to have waived any objections to the settlement and the Settlement Agreement and will forever be barred from making any such objections to the settlement or the Settlement Agreement;
- (f) retaining exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of the settlement; and
- (g) determining under Federal Rule 54(b) that there is no just reason for delay and directing that the Judgment of dismissal as to the Lion Companies shall be final and entered forthwith.

6.2. Any Settlement Class Member who objects to the settlement may appear, at that Person's own expense, at the Fairness Hearing in person or through

1 counsel, to present any evidence or argument with respect to the settlement, to the
2 extent permitted by the Court. However, no such Person shall be heard, and no
3 papers, briefs, pleadings, or other documents shall be received and considered by the
4 Court unless such Person properly submits a written objection that includes: (a)
5 notice of intention to appear, (b) proof of membership in the Settlement Class, and
6 (c) the specific grounds for the objection and any reasons why such Person desires to
7 appear and be heard, as well as all documents or writings that such Person desires the
8 Court to consider. Such a written objection must be both filed with the Court no later
9 than thirty-five (35) days prior to the date set for the Fairness Hearing, and mailed to
10 Settlement Class Counsel and the Lion Companies' counsel at the addresses provided
11 in the notices to the Settlement Class, postmarked (or mailed by overnight delivery)
12 no later than thirty-five (35) days prior to the date of the Fairness Hearing. Any
13 Person who fails to object in the manner prescribed herein shall be deemed to have
14 waived any objections to the Settlement Agreement and will forever be barred from
15 making any such objections to this Settlement Agreement in the Action or in any
16 other action or proceeding, unless otherwise permitted for good cause shown as
determined by the Court.

17 **7. Effective Date of Agreement**

18 The Effective Date of this Settlement Agreement is the earliest date on which
19 all of the following events and conditions have occurred or have been met: (a) the
20 Court has entered a Judgment, following notice to the Settlement Class and the
21 Fairness Hearing, approving this Settlement Agreement under Federal Rule 23(e) and
22 dismissing the Action as against any Released Party who is named as a Defendant in
23 the Action, with prejudice as to all Settlement Class Members and without costs
24 except as specified herein; and, (b) the time for appeal or to seek permission to appeal
25 from the Court's approval of the Settlement Agreement and entry of the Judgment
26 has expired or, if appealed, approval of this Settlement Agreement and the Judgment
27 has been affirmed in its entirety by the court of last resort to which such appeal has

28 SETTLEMENT AGREEMENT BETWEEN END
PAYER PLAINTIFFS, LION CAPITAL LLP, LION
CAPITAL (AMERICAS), INC., AND BIG CATCH
CAYMAN LP

CASE NO. 15-MD-2670-DMS (MSB)

1 been taken and such affirmance has become no longer subject to further appeal or
2 review. Neither the provisions of Federal Rule 60 nor the All Writs Act, 28 U.S.C.
3 § 1651, shall be taken into account in determining the above-stated times.

4 **8. Release and Covenant Not to Sue**

5 8.1. Upon the occurrence of the Effective Date, and only after the
6 completion of all installment payments pursuant to the Settlement Amount due by
7 the Lion Companies as set forth in Paragraphs 1.22 and 10.1 herein, and in
8 consideration of the payment by the Lion Companies of the Settlement Amount set
9 forth in Paragraph 1.22 herein (the sufficiency of which is hereby again
10 acknowledged), each of the Releasing Parties shall be deemed to have, and by
11 operation of the Judgment shall have, fully, finally, and forever released,
12 relinquished, and discharged all Released Claims against the Released Parties, shall
13 have covenanted not to sue or otherwise seek to establish liability against any of the
14 Released Parties based, in whole or in part, upon any of the Released Claims, and
15 shall be permanently barred and enjoined from instituting, commencing, prosecuting,
16 or asserting any such Released Claim against any of the Released Parties.

17 8.2. With respect to any and all Released Claims, the Parties stipulate
18 and agree that, upon the Effective Date and the completion of all installment
19 payments pursuant to the Settlement Agreement as set forth Paragraphs 1.22 and 10.1
20 herein, End Payer Plaintiffs shall expressly waive and, upon the Effective Date and
21 the completion of all installment payments pursuant to the Settlement Agreement as
22 set forth Paragraphs 1.22 and 10.1 herein, each of the Releasing Parties shall be
23 deemed to have waived, and by operation of the Judgment shall have waived, the
24 provisions, rights, and benefits of California Civil Code Section 1542 and South
25 Dakota Codified Laws Section 20-7-11 (to the extent either or both of them apply to
26 the Action), each of which provides that, “[a] general release does not extend to
27 claims which the creditor does not know or suspect to exist in his favor at the time of
28 executing the release, which if known by him must have materially affected his

1 settlement with the debtor,” and of any similar provision, statute, regulation, rule, or
2 principle of law or equity of any other state or territory of the United States or any
3 other applicable jurisdiction. Releasing Parties expressly acknowledge that they may
4 hereafter discover facts in addition to or different from those facts that any of them
5 or their counsel now knows or believes to be true with respect to the subject matter
6 of the Settlement Agreement, but upon the completion of the installment payments
7 pursuant to the Settlement Agreement as set forth in Paragraphs 1.22 and 10.1 herein,
8 and retroactive to the Effective Date, each Plaintiff shall expressly have, and, upon
9 the Effective Date, each Releasing Party shall be deemed to have, and by operation
10 of the Judgment shall have, fully, finally, and forever settled and released any and all
11 Released Claims, known or unknown, suspected or unsuspected, contingent or non-
12 contingent, whether or not concealed or hidden, that now exist or heretofore have
13 existed, upon any theory of law or equity now existing or coming into existence in
14 the future, including, but not limited to, conduct that is negligent, reckless,
15 intentional, with or without malice, or a breach of any duty, law, or rule, without
16 regard to the subsequent discovery of existence of such different or additional facts.
17 End Payer Plaintiffs acknowledge, and the Releasing Parties shall be deemed to have
18 acknowledged, and by operation of the Judgment shall have acknowledged, that the
19 foregoing waiver was separately bargained for and a key element of the settlement
20 of which this release is a part.

21 **9. Reservation of Settlement Class Members’ Rights**

22 All rights of any Settlement Class Member against any alleged co-conspirator
23 or any other Person other than the Released Parties are specifically reserved by End
24 Payer Plaintiffs and the Settlement Class Members.

25 **10. Settlement Consideration**

26 10.1. The total monetary amount payable by the Lion Companies
27 (comprising class damages, costs of class notice and administration, and attorneys’
28 fees and costs) in settlement of all claims relating to the Action and all Released

1 Claims, is the Settlement Amount described above in Paragraph 1.22. The deposited
2 sums shall be held in the Escrow Account until there is an order from the District
3 Court concerning distribution or use of the Settlement Amount. The Escrow Agent
4 shall be subject to escrow instructions mutually acceptable to Settlement Class
5 Counsel and the Lion Companies, and such escrow is to be administered under the
6 Court’s continuing supervision and control. The timing provisions herein are a
7 material part of this Settlement Agreement.

8 10.2. The Escrow Agent shall cause the funds deposited in the Escrow
9 Account to be invested in instruments backed by the full faith and credit of the United
10 States Government or fully insured by the United States Government or an agency
11 thereof, or money market funds invested substantially in such instruments, and shall
12 reinvest any income from these instruments and the proceeds of these instruments as
13 they mature in similar instruments at their then-current market rates.

14 10.3. All funds held in the Escrow Account shall be deemed and
15 considered to be in *custodia legis* of the Court and shall remain subject to the
16 jurisdiction of the Court, until such time as such funds shall be distributed pursuant
17 to this Settlement Agreement and/or further order(s) of the Court.

18 10.4. End Payer Plaintiffs and the Lion Companies intend for the
19 Settlement Fund to be treated as being at all times a “qualified settlement fund”
20 within the meaning of Treas. Reg. § 1.468B-1. In addition, the Claims Administrator
21 shall timely make such elections as necessary or advisable to carry out the provisions
22 of Paragraph 10, including the “relation-back election” (as defined in Treas. Reg.
23 § 1.468B-1) so as to enable the Settlement Fund to be treated as a “qualified
24 settlement fund” from the earliest date possible. Such elections shall be made in
25 compliance with the procedures and requirements contained in such regulations. It
26 shall be the responsibility of the Claims Administrator to timely and properly prepare
27 and deliver the necessary documentation for signature by all necessary parties, and
28 thereafter to cause the appropriate filing to occur.

1 10.5. For the purpose of § 468B of the Internal Revenue Code of 1986,
2 as amended, and the regulations promulgated thereunder, the “administrator” shall
3 be the Claims Administrator. The Claims Administrator shall timely and properly file
4 all information and other tax returns necessary or advisable with respect to the
5 Settlement Fund (including without limitation the returns described in Treas. Reg. §
6 1.468B-2(k)(1)). Such returns (as well as the elections described in Paragraph 10.4)
7 shall be consistent with Paragraph 10.7.

8 10.6. All (i) taxes (including any estimated taxes, interest, or penalties)
9 arising with respect to the income earned by the Settlement Fund, including any taxes
10 or tax detriments that may be imposed upon the Lion Companies or any other
11 Released Party with respect to any income earned by the Settlement Fund for any
12 period during which the Settlement Fund does not qualify as a “qualified settlement
13 fund” for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs
14 incurred in connection with the operation and implementation of Paragraphs 10.4
15 through 10.8 (including, without limitation, expenses of tax attorneys and/or
16 accountants and mailing and distribution costs and expenses relating to filing (or
17 failing to file) the returns described in Paragraph 10.5 (“Tax Expenses”)), shall be
18 paid out of the Settlement Fund.

19 10.7. Neither the Lion Companies nor any other Released Party nor their
20 respective counsel shall have any liability or responsibility, including filing
21 responsibility, for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses
22 shall be treated as, and considered to be, a cost of administration of the Settlement
23 Fund and shall be timely paid by the Claims Administrator out of the Settlement
24 Fund. The Claims Administrator shall be obligated (notwithstanding anything herein
25 to the contrary) to withhold from distribution to any claimants authorized by the
26 Court any funds necessary to pay such amounts including the establishment of
27 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may
28 be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). Neither the Lion

1 Companies nor any other Released Party are responsible, nor shall they have any
2 liability therefor. End Payer Plaintiffs and the Lion Companies agree to cooperate
3 with the Claims Administrator, each other, and their tax attorneys and accountants to
4 the extent reasonably necessary to carry out the provisions of Paragraphs 10.2
5 through 10.10. The Lion Companies make no representation to End Payer Plaintiffs
6 regarding the appropriate tax treatment of the Settlement Fund, income earned on the
7 Settlement Fund, or any distribution taken from the Settlement Fund.

8 10.8. If this Settlement Agreement does not receive Final Approval by
9 the Court, or if the Action is not certified as a class action for settlement purposes, or
10 if this Settlement Agreement is terminated or voided for any reason, then all amounts
11 paid by the Lion Companies into the Settlement Fund (other than costs that may
12 already have reasonably been incurred or expended in accordance with Paragraphs
13 5.3 and 10) shall be returned to the Lion Companies from the Escrow Account by the
14 Escrow Agent along with any interest accrued thereon, within ten (10) business days
15 after such order becomes final and non-appealable.

16 10.9. The Lion Companies shall not be liable for any costs, fees, or
17 expenses of any of End Payer Plaintiffs' respective attorneys, experts, advisors,
18 agents, or representatives, but all such costs, fees, and expenses as provided for in
19 Paragraphs 5.3 and 10 or otherwise approved by the Court may be paid out of the
20 Settlement Fund.

21 10.10. If, after all costs (including notice costs), attorneys' fees, and any
22 other expenses have been paid from the Settlement Fund, there are any remaining
23 funds, they shall be distributed to the Settlement Class, or in Settlement Class
24 Counsel's reasonable judgment, be made the subject of an application to the Court
25 by End Payer Plaintiffs for *cy pres* distribution in accordance with governing
26 standards in the Ninth Circuit.

27 **11. Administration of the Settlement Fund**

1 11.1. The costs and expenses of administration of the settlement
2 pursuant to the terms of this Settlement Agreement shall be paid out of the Settlement
3 Fund. The Claims Administrator(s) shall, on a monthly basis, submit invoices, with
4 appropriate supporting documentation, to Settlement Class Counsel for payment
5 from the Escrow Account. To the extent practicable, the administration of this
6 settlement shall be coordinated with the administration of other aspects of this
7 Action, including, but not limited to, any other settlement(s) entered into between
8 End Payer Plaintiffs and any other settling Defendant(s) and/or the administration of
9 any recovery obtained on behalf of the class by summary judgment or trial.

10 11.2. The Lion Companies shall not have any responsibility, financial
11 obligation, or liability whatsoever with respect to the investment, distribution, or
12 administration of the Settlement Fund, including, but not limited to, the costs and
13 expenses of such investment, distribution, and administration, except as expressly
14 otherwise provided in the Settlement Agreement.

14 **12. Withdrawal From or Modification of the Settlement**

15 12.1. If the Court declines to approve this Settlement Agreement or any
16 material part hereof, or if such approval is materially modified or set aside on appeal,
17 or if the Court does not enter the Judgment, or if the Court enters the Judgment and
18 appellate review is sought and, on such review, such Judgment is not affirmed or is
19 materially modified, then the Lion Companies and End Payer Plaintiffs shall each, in
20 their respective sole discretion, have the option to rescind this Settlement Agreement
21 in its entirety.

22 12.2. If the Lion Companies choose to exercise the option to rescind
23 pursuant to Paragraph 12.1, any and all amounts then constituting the Settlement
24 Fund (including all income earned thereon and excluding any reasonable expenses
25 that have been paid or incurred associated with providing notice to the Settlement
26 Class, administering the Settlement Fund, incurred or paid under Paragraph 10.6 of
27 this Settlement Agreement, and/or any Taxes already paid on such income), together

1 with any amounts, including attorneys' fees, paid to Settlement Class Counsel
2 pursuant to Paragraph 14 below (including all income earned thereon), shall be
3 returned forthwith to the Lion Companies. A modification or reversal on appeal of
4 any amount of Settlement Class Counsel's fees and/or expenses awarded by the Court
5 or any plan of allocation or distribution of the Settlement Fund shall not be deemed
6 a modification of all or a part of the terms of this Settlement Agreement or the
7 Judgment.

8 12.3. The Lion Companies and End Payer Plaintiffs expressly reserve
9 all of their rights if this Settlement Agreement does not become effective or if it is
10 rescinded pursuant to Paragraph 12.1 of this Settlement Agreement. In addition, if
11 for any reason (including a party's exercise of a valid right to rescind this Settlement
12 Agreement), the Settlement Agreement does not receive Final Approval by the Court,
13 then the certification of the Settlement Class shall become null and void without
14 further Court action, and shall not be used or referred to for any further purpose in
15 the Action or in any other action or proceeding, and shall not prejudice any party in
16 arguing for or against contested class certification in this Action or in any other
17 proceeding. Further, this Agreement, whether or not it is finally approved and
18 whether or not the Lion Companies or End Payer Plaintiffs elect to rescind it under
19 Paragraph 12.1 of the Settlement Agreement, and any and all negotiations,
20 documents, and discussions associated with it, shall not be deemed or construed to
21 be an admission or evidence of any violation of any statute or law, or of any liability
22 or wrongdoing by the Lion Companies or any Defendant, or of the truth of any of the
23 claims or allegations contained in the Complaint or any other pleading filed by End
24 Payer Plaintiffs in the Action, or waiver or invalidity of any defense, and evidence
25 thereof shall neither be discoverable nor used directly or indirectly except in a
26 proceeding to enforce or interpret the Settlement Agreement.

27 **13. No Admissions**

1 The Parties intend the settlement as described herein to be a final and
2 complete resolution of all disputes between them with respect to the Released Claims,
3 and it shall not be deemed an admission by any party as to the jurisdiction of the
4 Court over the claims asserted against the Lion Companies, or as to the merits of any
5 claim or defense or any allegation made in the Action.

6 **14. Settlement Class Counsel’s Attorneys’ Fees and Expenses**

7 14.1. The procedure for, and the allowance or disallowance by the Court
8 of, any application by Settlement Class Counsel for attorneys’ fees and expenses are
9 not part of the Settlement Agreement and are to be considered by the Court separately
10 from the Court’s consideration of the fairness, reasonableness, and adequacy of the
11 settlement. Any order or proceeding relating to any application for, or approval of,
12 attorneys’ fees and expenses, the pendency of any such application, or any appeal or
13 review of an order relating thereto or reversal or modification thereof, shall not
14 operate to terminate or cancel this Settlement Agreement, or affect or delay the
15 finality of the Judgment. The Lion Companies agree that Settlement Class Counsel
16 may withdraw from the Settlement Fund any amount awarded by the Court for
17 attorneys’ fees and costs five (5) days following the Court’s award, subject to an
18 appropriate financial undertaking required by the Court in the event of an appeal of
19 the Court’s award of attorneys’ fees and expenses. Attorneys’ fees and expenses
20 authorized by the Court to be paid from the Settlement Fund shall be payable
21 notwithstanding the existence of any timely filed objections to the Settlement
22 Agreement, to any payment of fees, expenses, or incentives or potential for appeal
23 therefrom, or collateral attack on the Settlement Agreement or any part thereof,
24 subject to Settlement Class Counsel’s obligation to make appropriate refunds or
25 repayments to the Settlement Fund, if the Effective Date does not occur, or the
26 Settlement Agreement is subject to successful collateral attack, or the fee or cost
27 amount is reduced or reversed.

1 14.2. The Lion Companies shall have no responsibility for, and no
2 liability whatsoever with respect to, the division of attorneys' fees and expenses
3 among counsel representing the End Payer Plaintiffs, and any negotiation or dispute
4 among counsel representing the End Payer Plaintiffs in that regard shall not operate
5 to terminate or cancel this Settlement Agreement, or affect or delay the finality of the
6 Judgment.

7 14.3. Except as otherwise provided herein, End Payer Plaintiffs and the
8 Lion Companies shall each be responsible for bearing their own costs and fees
9 incurred in this Action.

10 **15. Miscellaneous Provisions**

11 15.1. The Lion Companies expressly represent that they have obtained
12 all required approvals from their management for this Settlement Agreement.

13 15.2. This Settlement Agreement shall constitute the entire agreement
14 between the Parties pertaining to the settlement of the Action against the Lion
15 Companies and supersedes any and all prior and contemporaneous undertakings of
16 the Parties in connection therewith. The terms of the Settlement Agreement are and
17 shall be binding upon each of the Parties hereto, their heirs, executors, administrators,
18 representatives, agents, attorneys, partners, successors, predecessors-in-interest, and
19 assigns, and upon all other Persons claiming any interest in the subject matter hereto
20 through any of the parties hereto including any Settlement Class Members.

21 15.3. This Settlement Agreement may be modified or amended only by
22 a writing executed by End Payer Plaintiffs and the Lion Companies, subject (if after
23 preliminary or final approval by any court) to approval by the Court. Amendments
24 and modifications may be made without notice to the Settlement Class unless notice
25 is required by law or by the Court.

26 15.4. None of the Parties hereto shall be considered to be the drafter of
27 this Settlement Agreement or any its provisions hereof for the purpose of any statute,

1 case law, or rule of interpretation or construction that would or might cause any
2 provision to be construed against the drafters of this Settlement Agreement.

3 15.5. This Settlement Agreement shall be construed and interpreted to
4 effectuate the intent of the parties which is to provide, through this Settlement
5 Agreement, for a complete resolution of the Released Claims with respect to the
6 Released Parties.

7 15.6. Nothing expressed or implied in this Settlement Agreement is
8 intended to or shall be construed to confer upon or give any person or entity other
9 than Settlement Class Members, Releasing Parties, and Released Parties any right or
10 remedy under or by reason of this Settlement Agreement.

11 15.7. This Settlement Agreement shall be binding upon, and inure to the
12 benefit of, the Releasing Parties and the Released Parties.

13 15.8. End Payer Plaintiffs and the Lion Companies acknowledge that
14 they have been represented by counsel and have made their own investigations of the
15 matters covered by this Settlement Agreement to the extent they have deemed it
16 necessary to do so. Therefore, End Payer Plaintiffs and the Lion Companies and their
17 respective counsel agree that they will not seek to set aside any part of the Settlement
18 Agreement on the grounds of mistake. Moreover, End Payer Plaintiffs and the Lion
19 Companies and their respective counsel understand, agree, and expressly assume the
20 risk that any fact may turn out hereinafter to be other than, different from, or contrary
21 to the facts now known to them or believed by them to be true, and further agree that
22 the Settlement Agreement shall be effective in all respects and shall not be subject to
23 termination, modification, or rescission by reason of any such difference in facts. If
24 any provision of this Settlement Agreement is found by a court of competent
25 jurisdiction to be illegal, invalid, or unenforceable for any reason, the remainder of
26 this Settlement Agreement will not be affected and, in lieu of each provision that is
27 found illegal, invalid, or unenforceable, a provision will be added as a part of this

1 Settlement Agreement that is as similar to the illegal, invalid, or unenforceable
2 provision as may be legal, valid, and enforceable.

3 15.9. All terms of this Settlement Agreement shall be governed by, and
4 interpreted according to, the substantive laws of the State of California without regard
5 to its choice of law or conflicts of laws principles.

6 15.10. The Lion Companies, End Payer Plaintiffs, and all Settlement
7 Class Members hereby irrevocably submit to the exclusive jurisdiction of the Court
8 for any suit, action, proceeding, or dispute arising out of or relating to this Settlement
9 Agreement or the applicability of this Settlement Agreement, including, without
10 limitation, any suit, action, proceeding, or dispute relating to the release provisions
11 herein. The Lion Companies do not, by way of this Settlement Agreement, submit to
12 the jurisdiction of the Court for any other purpose.

13 15.11. This Settlement Agreement may be executed in counterparts.
14 Facsimile or Portable Document Format signatures shall be considered as valid
15 signatures for purposes of execution of this Settlement Agreement, but original
16 signature pages shall thereafter be collated for filing of this Settlement Agreement
17 with the Court.

18 15.12. Each of the undersigned attorneys represents that he or she is
19 fully authorized to enter into the terms and conditions of, and execute, this Settlement
20 Agreement, subject to Court approval, and the undersigned Settlement Class Counsel
21 represent that they are authorized to execute this Settlement Agreement on behalf of
22 End Payer Plaintiffs and the Settlement Class.

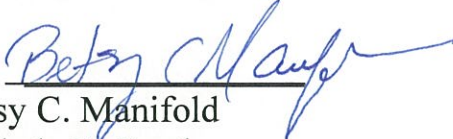
23 IN WITNESS HEREOF, the Parties hereto through their fully authorized
24 representatives have agreed to this Settlement Agreement as of the date first written
25 above.

26 [signature page follows]

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Dated: August 7, 2024

WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP

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Class Counsel for the End Payer Plaintiffs

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Dated: August 7, 2024

SULLIVAN & CROMWELL LLP

By: 

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Counsel for Defendant Lion Capital (Americas), Inc. and Specially Appearing Defendants Lion Capital LLP and Big Catch Cayman LP

EXHIBIT 3

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LEONARD DESILVIO, et al.,

Plaintiffs,

v.

LION BIOTECHNOLOGIES, INC., et al.,

Defendants.

Case No. [17-cv-02086-SI](#)

**ORDER MODIFYING AND
APPROVING DISTRIBUTION PLAN**

Re: Dkt. No. 142

United States District Court
Northern District of California

WHEREAS, by its Judgment Approving Class Action Settlement dated April 17, 2019 (ECF No. 139) and its Order Approving Plan of Allocation dated April 17, 2019 (ECF No. 137), this Court approved the terms of the settlement set forth in the Stipulation of Settlement and Release (ECF No. 121) (“Settlement” or “Stipulation”) and the proposed plan for allocating the net settlement proceeds to eligible Settlement Class Members (“Plan of Allocation”);

WHEREAS, this Court had directed the parties to consummate the terms of the Settlement and Plan of Allocation;

WHEREAS, the Settlement provided for consideration of \$3,250,000 in cash (“Settlement Amount”) and, pursuant to the terms of the Stipulation, the Settlement Amount was deposited into an escrow account established by Lead Counsel for the benefit of the Settlement Class;

WHEREAS, as set forth in the Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses; and (III) Settlement Fairness Hearing (ECF No. 132-3) (“Notice”), the deadline for Settlement Class Members to submit Claims to the Court-approved claims administrator for the Settlement, JND Legal Administration (“JND”), in order to be potentially eligible to participate in the distribution of the Net Settlement Fund has passed;

United States District Court
Northern District of California

1 WHEREAS, in satisfaction of due process requirements, all Settlement Class Members who
2 submitted Claims that were in any way ineligible or deficient were: (i) informed that their Claims
3 were ineligible or deficient; and (ii) given opportunities to correct any curable deficiencies prior to
4 their Claims being finally rejected, or to contest the determination as to such deficiencies, by
5 requesting judicial review;

6 WHEREAS, the process of reviewing Claims has been completed;

7 WHEREAS, Lead Plaintiff, through Lead Counsel, now seeks authorization to distribute the
8 proceeds of the Settlement Fund to Authorized Claimants, after deduction of any taxes, fees, and
9 expenses previously approved by the Court or approved by this Order (“Net Settlement Fund”); and

10 WHEREAS, this Court retained continuing and exclusive jurisdiction of this Action in
11 connection with, among other things: (i) the disposition of the Settlement Fund; and (ii) any motion
12 to approve the Class Distribution Order.

13 WHEREAS, the Court finds it appropriate to eliminate from the Initial Distribution any
14 Authorized Claimant whose *pro rata* share calculates to less than \$5.00 and distribute funds to
15 authorized Claimants whose *pro rata* share of the Net Settlement Fund would be \$5.00 or more.

16 NOW, THEREFORE, upon careful consideration of: (i) the Declaration of Luiggy Segura
17 in Support of Lead Plaintiff’s Motion for Approval of Distribution Plan submitted on behalf of JND
18 (“Segura Declaration”); (ii) the Memorandum of Points and Authorities in Support of Lead
19 Plaintiff’s Motion for Approval of Distribution Plan; and (iii) the other submissions and papers on
20 file with the Court; and upon all prior proceedings heretofore and herein, and after due deliberation,
21 it is hereby

22 ORDERED, that all capitalized terms not otherwise defined herein shall have the same
23 meanings as set forth in the Stipulation and the Segura Declaration; and it is further

24 ORDERED, that the administrative determinations of JND accepting the Claims described
25 in the Segura Declaration and listed on Exhibits B and C thereto, calculated pursuant to the Court
26 approved Plan of Allocation set forth in the Notice, are hereby approved, and said Claims are hereby
27 accepted; and it is further

28 ORDERED, that JND be paid the sum of \$89,854.54 from the Net Settlement Fund as

United States District Court
Northern District of California

1 payment for its outstanding fees and expenses incurred in connection with the administration of the
2 Settlement and the fees and expenses expected to be incurred by JND in connection with the Initial
3 Distribution of the Net Settlement Fund; and it is further

4 ORDERED, JND shall conduct the Initial Distribution of the Net Settlement Fund as set
5 forth in ¶ 47 of the Segura Declaration except for sections (a)(ii)-(iii) of ¶ 47; and it is further

6 ORDERED, JND will eliminate from the Initial Distribution any Authorized Claimant
7 whose *pro rata* share calculates to less than \$ 5.00. These Claimants will not receive any payment
8 from the Net Settlement Fund, and JND will send notifications to these Claimants advising them of
9 that fact; and it is further

10 ORDERED, after eliminating Claimants who would receive less than \$5.00, JND will
11 recalculate the *pro rata* share of the Net Settlement Fund for Authorized Claimants who would
12 receive \$5.00 or more pursuant to the calculation. This *pro rata* share is the Authorized Claimant’s
13 “Distribution Amount”; and it is further

14 ORDERED, that all checks to Authorized Claimants issued in the Initial Distribution shall
15 bear the notation “CASH PROMPTLY. VOID AND SUBJECT TO REDISTRIBUTION IF NOT
16 CASHED BY 90 DAYS AFTER ISSUE DATE.” Lead Counsel and JND are authorized to take
17 appropriate actions to locate and/or contact any Authorized Claimant who has not cashed his, her,
18 or its check within said time; and it is further

19 ORDERED, that Authorized Claimants who do not cash their checks within the time allotted
20 will irrevocably forfeit all recovery from the Net Settlement Fund; and it is further

21 ORDERED, that, after making reasonable and diligent efforts to have Authorized Claimants
22 negotiate their Initial Distribution checks, JND will, if cost-effective to do so, redistribute any funds
23 remaining in the Net Settlement Fund by reason of uncashed checks or otherwise nine (9) months
24 after the Initial Distribution to Authorized Claimants who have cashed their Initial Distribution
25 checks and who would receive at least \$5.00 from such redistribution, after payment of any unpaid
26 fees and expenses incurred in administering the Settlement, including for such redistribution; and it
27 is further ORDERED, that JND may make additional redistributions of balances remaining in the
28 Net Settlement Fund to Authorized Claimants who have cashed their prior checks and who would

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Northern District of California

1 receive at least \$5.00 on such additional redistributions if Lead Counsel, in consultation with JND,
2 determines that additional redistributions, after payment of any unpaid fees and expenses incurred
3 in administering the Settlement, including for such redistributions, would be cost-effective; and it is
4 further

5 ORDERED, that, at such time as Lead Counsel, in consultation with JND, determines that
6 further redistribution of the funds remaining in the Net Settlement Fund is not cost-effective, any
7 otherwise valid Claims received after January 25, 2021 or Claims adjusted after January 25, 2021
8 may be paid in accordance with ¶ 47(f) of the Segura Declaration; and it is further

9 ORDERED, that any balance that remains in the Net Settlement Fund after further
10 distributions or payment of any otherwise valid Claims received after January 25, 2021, or Claims
11 adjusted after January 25, 2021, in accordance with ¶ 47(f) of the Segura Declaration, which is not
12 cost-effective to reallocate, will be contributed, after payment of any unpaid fees and expenses
13 incurred in administering the Settlement, to the National Consumer Law Center, a non-sectarian,
14 not-for-profit charitable organization; and it is further

15 ORDERED, that the Court finds that the administration of the Settlement and the proposed
16 distribution of the Net Settlement Fund comply with the terms of the Stipulation and the Plan of
17 Allocation and that all persons and entities involved in the review, verification, calculation,
18 tabulation, or any other aspect of the processing of the Claims submitted in connection with the
19 Settlement of this Action, or who are otherwise involved in the administration or taxation of the
20 Settlement Fund or the Net Settlement Fund are released and discharged from any and all claims
21 arising out of such involvement, and, pursuant to the release terms of the Settlement, all Settlement
22 Class Members, whether or not they are to receive payment from the Net Settlement Fund, are barred
23 from making any further claims against the Net Settlement Fund or the parties released pursuant to
24 the Settlement beyond the amount allocated to them pursuant to this Order; and it is further

25 ORDERED, that JND is hereby authorized to destroy paper copies of Claims and all
26 supporting documentation one (1) year after the Second Distribution of the Net Settlement Fund, if
27 that occurs, or, if there is no Second Distribution, two (2) years after the Initial Distribution and all
28 electronic copies of the same one (1) year after all funds have been distributed; and it is further


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ORDERED, that this Court retain jurisdiction over any further application or matter which may arise in connection with this Action; and it is further

ORDERED, that no Claim received or adjusted after January 25, 2021 be included in the Initial Distribution of the Net Settlement Fund; and it is further ORDERED, that in accordance with this District’s Procedural Guidance for Class Action Settlements, Lead Counsel shall file a Post-Distribution Accounting within twenty-one (21) days following the date of the Initial Distribution of the Net Settlement Fund and post the Post-Distribution Accounting on the website for the Settlement.

IT IS SO ORDERED.

Dated: June 30, 2021



SUSAN ILLSTON
United States District Judge

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PACKAGED SEAFOOD
PRODUCTS ANTITRUST
LITIGATION

Case No. 15-MD-2670 DMS (MDD)

**DECLARATION OF GINA
INTREPIDO-BOWDEN RE:
PROPOSED SETTLEMENT
NOTICE PLAN FOR STARKIST
AND LION SETTLEMENTS ON
BEHALF OF END PAYER
PLAINTIFFS**

This Document Relates to:
End Payer Plaintiffs Class
Track

1 I, Gina M. Intrepido-Bowden, declare and state as follows:

2 1. I am a Vice President at JND Legal Administration LLC (“JND”). I am
3 a nationally recognized legal notice expert with more than 20 years of experience
4 designing and implementing class action legal notice programs. I have been involved
5 in many of the largest and most complex class action notice programs, including all
6 aspects of notice dissemination. JND’s Chief Executive Officer, Jennifer M.
7 Keough, previously submitted a Declaration regarding the Proposed Plan for COSI
8 Settlement Notice on Behalf of EPPs, dated April 9, 2021. ECF No. 2552-6. JND’s
9 background and experience was included in the Keough Declaration.

10 2. In its order Granting End Payer Plaintiffs’ Motion for Final Approval
11 of Partial Settlement dated, July 15, 2022, this Court recognized JND as an
12 “experienced and well-respected claims administrator” and referred to our plan as a
13 “robust notice plan” that alerted “Settlement Class Members of the COSI Settlement
14 Agreement”). ECF No. 2871. In its order Granting in Part and Denying in Part End
15 Payer Plaintiffs’ Renewed Motion for Approval of Class Notice Plan and Motion to
16 Shift Notice Costs onto Defendant StarKist, dated March 13, 2023, this Court
17 appointed JND as the administrator for the Class Notice Plan. ECF No. 3023

18 3. In June 2024, StarKist Co. and its parent Dongwon Industries Co., Ltd.
19 (collectively “StarKist”) and various “Lion Capital Companies” (Lion Capital LLP,
20 Lion Capital (Americas), Inc., and Big Catch Cayman LP) (collectively “Lion
21 Companies”) reached a settlement. I have been asked by Counsel to prepare a Notice
22 Plan to reach EPP Class Members and inform them about their rights and options in
23 this recently proposed settlement.

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1 **NOTICE PLAN OVERVIEW**

2 7. The objective of the Notice Plan is to provide the best notice
3 practicable, consistent with the methods and tools employed in other court-approved
4 notice programs. The FJC’s *Judges’ Class Action Notice and Claims Process*
5 *Checklist and Plain Language Guide* (“FJC Checklist”) considers a notice plan with
6 a high reach (above 70%) effective.

7 8. JND designed a robust Notice Plan that is estimated to reach over 70%
8 of potential Class Members via digital placements with the Google Display Network
9 (“GDN”), which reaches over 90 percent of internet users, and two of the top social
10 media platforms (Facebook and Instagram), as well as a print placement in a top
11 consumer magazine (*People*). Additional efforts include direct notice to all COSI
12 Settlement Claimants, a targeted programmatic digital buy, digital look-alike
13 (“LAL”) and retargeting, a Google search campaign, and the distribution of a
14 national press release in English and Spanish. These additional efforts will extend
15 reach beyond 70% and help stimulate claims.

16 **RESEARCH TOOLS**

17 9. When designing our Notice Plan, JND utilized reputable advertising
18 media research tools to ensure that the best media is selected and that our reach
19 calculations can withstand the most critical review and challenge. Reach refers to
20 the percentage of a specific population group exposed to a media vehicle or a
21 combination of media vehicles containing a notice at least once over the course of a
22 campaign. Reach factors out duplication, representing total different/net persons.
23 The media research tools we utilized in our analysis and will use to implement our
24 Notice Plan include:

1 a. **MRI**: MRI data was used to analyze the demographics and
2 media usage of potential Class Members, as well as to determine the reach of
3 our proposed print effort. Understanding who we are trying to reach is key in
4 determining how best to reach them. MRI is a nationally accredited research
5 firm that provides consumer demographics, product and brand usage, and
6 audience/exposure in all forms of advertising media through probabilistic and
7 address-based sampling. MRI is the leading producer of media and consumer
8 research in the U.S.

9 b. **Comscore**: JND uses Comscore data to not only analyze where
10 potential Class Members are spending time on the internet, but more
11 importantly, for calculating the reach of our proposed digital effort.
12 Comscore's multi-reach platform allows us to analyze unduplicated audiences
13 (net reach) across multiple platforms (e.g., Google, Facebook, Instagram) and
14 devices (desktop and mobile). Through the platform we assess the efficiency
15 and effectiveness of our proposed media plans by reducing waste and
16 improving campaign performance across all devices.

17 c. **Google Active View**: At the time of implementation, our digital
18 experts will verify and monitor our digital placements. Google Active View,
19 which is accredited by the Media Rating Council (MRC), will be used to
20 measure viewable impressions across the web and in apps. Google Active
21 View supports the Interactive Advertising Bureau (IAB) and MRC definition
22 of viewability. A minimum of 50% of the ad is in view for a minimum of one
23 second for display ads. In addition, over a hundred complex algorithms will
24 be used to spot bad traffic as it happens to prevent invalid clicks, impressions,
25 views, or interactions. These efforts prevent impressions from being served
26 and counted when they have not been loaded onto a person's screen.

1 fish salad recipe,” “tuna fish sandwich recipe,” “canned tuna fish recipes,” “StarKist
2 tuna,” “tuna fish sandwich,” “tuna fish online,” “tuna fish salad,” “tuna class action,”
3 “tuna fish recipe,” “best tuna fish sandwich recipe,” “tuna fish,” “albacore tuna,”
4 “StarKist class action,” and “StarKist class action claim,” and/or visited
5 Starkist.com. A portion will also be allocated to Spanish-language sites. A portion
6 of the Facebook and Instagram impressions will be allocated toward users who
7 expressed interest in or “liked” pages similar to StarKist, Tuna Salad, BJ's, Costco,
8 Publix, Kroger, Walmart, Shoprite, etc. A portion will also target Spanish-language
9 accounts.

10 16. The digital activity will be served across all devices (desktop, laptop,
11 tablet, and mobile), with a heavy emphasis on mobile devices. The digital ads,
12 attached as Exhibit A, will include an embedded link to the case website, where
13 Class Members can get more information about the Settlement, as well as file a claim
14 online.

15 17. ***Print Effort:*** JND proposes one notice insertion in *People* magazine to
16 extend reach, particularly among Class Members who may not frequent the internet,
17 such as older Class Members. With an average national circulation of almost three
18 million, and an audience of 22 million, *People* reaches 9% of Canned Tuna
19 Purchasers. A QR code will appear in the print notice so that readers can quickly
20 access the case website for more information or file an online claim from their
21 mobile device. A copy of the print notice is attached as Exhibit B.

22 18. ***Additional Efforts:*** When designing notice programs, one of the goals
23 is to build a program that will capture the attention of news organizations that will
24 write articles/post about the Settlement and advise people where to find notice.
25 Another goal is to help stimulate claims. To assist in getting out additional “word of
26 mouth” about the Settlement, JND’s Notice Plan includes a targeted programmatic
27

1 digital buy, digital look-alike (“LAL”) and retargeting, a Google search campaign,
2 and the distribution of a national press release in English and Spanish.

3 a. **Direct Notice Effort**: JND will send a Postcard Notice, attached
4 as Exhibit C, to COSI Settlement Claimants alerting them about the proposed
5 Settlement. An Email Notice, attached as Exhibit D, will also be sent to COSI
6 Settlement Claimants with a valid email address.

7 b. **Programmatic Digital**: Approximately 714,000 impressions
8 will target Adults 18+ who have likely purchased canned tuna per third-party
9 audience data. Efforts will also utilize Amazon’s shopper data to target those
10 who are likely to have purchased StarKist tuna products.

11 c. **LAL/Retargeting Digital**: Approximately 10 million
12 impressions will target Adults 18+ based on audience data collected from a
13 tracking tag placed on the case website. Audience data will be used to target
14 accounts and devices that have similar attributes to those who have visited the
15 case website or submitted a claim (LAL), as well as those who have visited
16 the case website but have yet to file a claim (retargeting).

17 d. **Internet Search Campaign**: Using a search engine (as opposed
18 to typing the desired URL in the navigation bar) is a common way to navigate
19 to a specific website. . As a result, JND proposes a Google search effort to
20 assist interested Class Members in finding the case website. The Keyword List
21 utilized with GDN will be applied and expanded to include additional
22 keywords based on content on the home page of the case website, as well as
23 other case information. These keywords are words and phrases that are bid on
24 when they match the search term (or a variation of the search term) a person
25 types into their Google search bar. When a search term matches a keyword or
26 phrase, a Responsive Search Ad (RSA) may be served, generating a tailored
27 message relevant to the search term. RSAs utilize machine learning to pair
28

1 various combinations of ad copy (headlines and descriptions) based on which
2 groupings have worked well previously (i.e., produced a strong
3 CTR/conversion performance) and what the platform anticipates will generate
4 ideal results for the unique searcher. When the RSA is clicked on, the visitor
5 will be redirected to the case website where they can get more information.
6 Samples of the RSAs are attached as Exhibit E.

7 e. **Press Release**: A press release, attached as Exhibit F, will be
8 distributed at the launch of the notice campaign to over 6,000 media outlets in
9 English and Spanish nationwide.

10 19. **Case Website**: JND will update and maintain the case website,
11 www.tunaendpurchasersettlement.com. The case website has an easy-to-navigate
12 design and is formatted to emphasize important information and deadlines. It
13 contains, among other things, information about the proposed Settlement, a
14 Frequently Asked Questions section, a list of important dates and important
15 documents, the ability to download a Long Form Notice, attached as Exhibit G, and
16 information about how Class Members can access the toll-free telephone number.

17 20. The case website was optimized for mobile visitors so that information
18 loads quickly on mobile devices. It was also designed to maximize search engine
19 optimization through Google and other search engines. Keywords and natural
20 language search terms are included in the site's metadata in order to maximize search
21 engine rankings. The case website is ADA-complaint.

22 21. The case website address will be prominently displayed in all printed
23 notice materials and accessible through a hyperlink embedded in the digital notices
24 and through a QR code included in the print and postcard notices.

1 27. If a Class Member is unable to access a Claim Form online, then they
2 may request that a printed Claim Form be sent to them via U.S. Mail. The Class
3 Member may either return the printed Claim Form, postmarked before the claims
4 cut-off date or sent via email before the claims cut-off date.

5 28. To complete the Claim Form (online or printed), claimants will need to
6 provide their name and contact information as well as the total number of cans or
7 pouches of packaged tuna purchased from June 1, 2011 through July 1, 2015.
8 Claimants will also be required to affirm with a signature each of the following: (1)
9 that they purchased one or more Packaged Tuna products from one of the
10 Defendants; (2) that their purchases were made from June 1, 2011 to July 1, 2015;
11 (3) that they were residing in Arizona, Arkansas, California, the District of
12 Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan,
13 Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New
14 Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South
15 Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, or
16 Wisconsin at the time of purchase; (4) that the cans or pouches purchased were
17 smaller than forty ounces; (5) that they used the purchases for end consumption and
18 not for resale; (6) that the information provided in the Claim Form is true and correct
19 to the best of their knowledge; (7) that the amount they receive will be calculated
20 according to the terms of the Settlement and that payments will be distributed after
21 the Court grants final approval of the Settlement; and (8) that claims valued at less
22 than \$5.00 will not be paid. The claimant also has the option of electing a check or
23 PayPal form of payment.

1 29. The COSI Settlement Class Members who filed a Claim in the COSI
2 Settlement will be advised that they need ***not*** submit another Claim. All valid and
3 authorized Claims will be entitled to a pro rata share of the Total Settlement Fund.
4 As discussed below, JND will take steps to remove duplicate claims (de-duplication)
5 in case multiple Claims are filed by an individual Settlement Class Member.

6 **DISTRIBUTING SETTLEMENT FUNDS TO CLASS MEMBERS**

7 30. As outlined in the Long Form Notice, Class Members who timely
8 submit a valid claim are eligible to receive Settlement compensation on a *pro rata*
9 basis such that the Total Settlement Fund is exhausted. The Total Settlement Fund
10 includes the settlement distribution funds from the COSI, StarKist and Lion
11 Settlement Agreements.

12 31. JND will review, determine the validity of, process and hold on to all
13 Claim Forms submitted by claimants. JND will undertake steps such as de-
14 duplication by analyzing and standardizing claimant addresses to ensure a single
15 claim per claimant and will review payment instructions to ensure multiple payments
16 are not directed to a single recipient. JND will also identify and flag any claims that
17 are incomplete and will seek additional information from the claimant, as necessary.
18 Examples of deficiencies include: (i) a claimant who submits a mailed copy of the
19 Claim Form and fails to sign the Claim Form; (ii) a claimant who fails to provide
20 purchase information; (iii) a claimant who submits a Claim Form but previously
21 opted out of the COSI Settlement or Class and (iv) other defects that make it
22 impossible for the JND to fully process the claim.

23 32. JND will distribute payments pursuant to the method specified on the
24 claimant's Claim Form, *i.e.*, PayPal or check. Payments will be distributed after the
25 Court grants final approval to the Settlement. When mailing or emailing a payment,
26 JND will send the benefit to the address or email provided by the claimant on the
27 Claim Form or to the claimant's preferred address or email, if provided to JND.

28

1 that does not require Class Members to utilize unique identifiers or upload
2 supporting documentation, we will pay close attention to OCF submissions so that
3 we can implement new controls as necessary and limit fraudulent filings.

4 **PLAN DELIVERY**

5 38. To calculate reach, JND used MRI and a Comscore reach and frequency
6 platform. According to these two reputable media reach platforms, the proposed
7 digital and print plan will reach more than 70% of potential Class Members. Reach
8 will be further extended by the direct notice effort to COSI Settlement Claimants,
9 the targeted programmatic digital media campaign, a digital LAL and retargeting
10 effort, an internet search campaign, and the distribution of a national press release.
11 The provided reach exceeds that of other court-approved programs and meets the
12 standard set forth by the FJC.

13 **NOTICE DESIGN AND CONTENT**

14 39. All notice documents have been written in plain language and comply
15 with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Due
16 Process Clause of the United States Constitution, and the FJC's guidelines for class
17 action notices. Each of the notice documents contain summaries of the proposed
18 Settlement and the options that are available to Class Members, including the right
19 to object to the Settlement by filing an appropriate and timely objection. Class
20 Members also have a right to appear at the Fairness Hearing. As detailed in the Long
21 Form Notice, attorneys for objectors must submit an appropriate and timely written
22 statement of representation and the grounds for objection. Additionally, the notice
23 documents provide instructions on how to obtain more information about the
24 Settlement.

25 40. To the extent that some Class Members may speak Spanish as their
26 primary language, the printed notice documents include a subheading in Spanish
27 directing Spanish-speaking Class Members to visit the case website or call the toll-
28

1 free-number for a Spanish-language notice. In addition, the digital notices and the
2 press release will both be translated into Spanish.

3 **ADMINISTRATION COSTS**

4 41. The StarKist and Lion Settlement Agreements provides that a total of
5 \$35 million will be paid within thirty (30) days of Preliminary Approval of the
6 Settlements and \$1.2 million may be withdrawn from the Settlement Fund without
7 further approval from the Defendants or the Court to pay for the costs and expenses
8 incurred in connection with providing notice to the Class and the administration of
9 the Settlement after Preliminary Approval. The Settlement Agreement also provides
10 that additional sums, to the extent required for notice and administration, shall not
11 be withdrawn without prior approval of the Court, on good cause shown. Payments
12 to Authorized Claimants will not be immediately distributed but held until all
13 settlement amounts have been paid by the Settling Defendants as required by the
14 Settlement Agreements. With the costs of claims administration, it is more efficient
15 to delay distribution until all settlement funds are received.

16 42. After considering the tasks involved in the administration of this
17 settlement, JND estimates that overall administration costs for this matter (which
18 includes the Notice Phase (which occurs after Preliminary Approval and before Final
19 Approval), Claims Administration and Distribution) will range between \$2,100,000
20 and \$5,800,000. These figures include hard costs for the notice phase of the
21 administration as well as the more variable costs associated with the claim
22 processing and distribution phases of the administration.

23 43. The Notice Phase estimate is primarily determined by the number of
24 COSI Claimants who will be sent direct notice, the digital effort which is intended
25 to reach other potential Class Members, and the number of contacts handled by the
26 Settlement Contact Center. The notice phase is estimated to cost approximately
27 \$750,000 to \$1.2 million.

28

1 44. The cost for the claims and distribution phase is harder to anticipate as
2 it depends heavily on how many new claims are submitted and the degree to which
3 the website is subjected to fraudulent activity that requires monitoring and
4 management. The higher the claims rate, the longer it takes to process, review, and
5 analyze claims for validity. Greater volume also leads to more deficiency outreach
6 and potential document review for deficiency responses. The claims and distribution
7 phase is estimated to cost between approximately \$1,350,000 if 500,000 new claims
8 are submitted and approximately \$5,050,000 if 2,000,000 new claims are submitted.

9 **CONCLUSION**

10 45. In my opinion, the Notice Plan as described herein provides the best
11 notice practicable under the circumstances and is consistent with, and exceeds, other
12 similar court-approved best notice practicable notice programs, Rule 23 of the
13 Federal Rules of Civil Procedure, and the FJC’s guidelines for Best Practicable Due
14 Process notice. It meets due process and Rule 23 requirements to apprise Class
15 Members of the Settlement. The Notice Plan is designed to effectively reach more
16 than 70% of potential Class Members and provide them with information to
17 understand their rights and options, as well as the ability to take next steps to learn
18 more about the Settlement.

19 I declare under penalty of perjury under the laws of the State of California that
20 the foregoing is true and correct. Executed on the 2nd day of August 2024, at
21 Stone Harbor, NJ.
22

23
24 

25 _____
26 Gina M. Intrepido-Bowden
27
28

- EXHIBIT A -

Banner Ads

728 x 90

LEGAL NOTICE

PURCHASERS OF **CANNED OR POUCHED TUNA** MAY GET CASH FROM CLASS ACTION SETTLEMENTS TOTALING **\$152.2 MILLION**

FILE A CLAIM

300 x 600

LEGAL NOTICE

PURCHASERS OF **CANNED OR POUCHED TUNA** MAY GET CASH FROM CLASS ACTION SETTLEMENTS TOTALING **\$152.2 MILLION**

FILE A CLAIM

300 x 250

LEGAL NOTICE

PURCHASERS OF **CANNED OR POUCHED TUNA** MAY GET CASH FROM CLASS ACTION SETTLEMENTS TOTALING **\$152.2 MILLION**

FILE A CLAIM

320 x 50

LEGAL NOTICE

Purchasers of **Canned or Pouched Tuna** may get cash from class action settlements totaling **\$152.2 Million**

FILE A CLAIM



Facebook Ads

Facebook Desktop News Feed

Class Action Notice
Sponsored · 🌐

**PURCHASERS OF
CANNED OR
POUCHED TUNA
MAY GET
CASH FROM
CLASS ACTION
SETTLEMENTS
TOTALING
\$152.2
MILLION**

TUNAENDPURCHASERSETTLEMENT.COM
File a Claim

Learn more

Like Comment Share

Facebook Stories

Class Action Notice
Sponsored

**PURCHASERS OF
CANNED OR POUCHED TUNA
MAY GET CASH FROM CLASS
ACTION SETTLEMENTS TOTALING
\$152.2 MILLION**

Learn more

Facebook Mobile News Feed

Class Action Notice
Sponsored · 🌐

**PURCHASERS OF
CANNED OR
POUCHED TUNA
MAY GET
CASH FROM
CLASS ACTION
SETTLEMENTS
TOTALING
\$152.2
MILLION**

tunaendpurchaser settlement...
File a Claim

Learn more

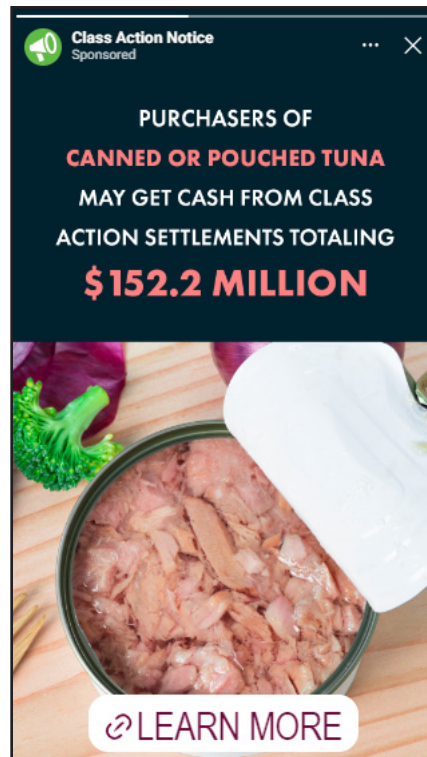
Like Comment Share

Instagram Ads

Instagram Feed



Instagram Stories



- EXHIBIT B -

LEGAL NOTICE – Packaged Tuna Antitrust Settlements

Purchasers of **Canned or Pouched Tuna** may qualify to get cash from class action settlements totaling **\$152.2 million**



▶ **File your claim today**

www.TunaEndPurchaserSettlement.com • 866-615-0977

Para una notificación en español, visite el sitio web o llame al número gratuito



- EXHIBIT C -

NOTICE UPDATE

**Regarding the EPP
Packaged Tuna Class
Action Settlements**

*Para una notificación en español, visite
www.TunaEndPurchaserSettlement.com*

Records indicate that you filed a claim in *In Re: Packaged Seafood Products Antitrust Litigation*, No. 15-MD-2670 DMS (MDD). This Notice is to provide you with an update regarding two additional proposed Settlements and your rights and options. If your mailing address or email address has changed since you filed your claim, please send your update to the Claims Administrator by mail or email to ensure that you receive any communications about your claim.

Tuna End Purchaser Settlement
of 50
c/o JND Legal Administration
PO Box 91442
Seattle, WA 98111

[QR BARCODE]

Postal Service: Please do not mark barcode

[ALPHANUMERIC IDENTIFIER]

[NAME]

[ADDRESS1]

[ADDRESS2]

[CITY], [STATE] [ZIP]

- On July 15, 2022, the Court approved a settlement reached in this antitrust class action between the End Payer Plaintiffs (“EPPs”) and Tri-Union Seafood LLC d/b/a Chicken of the Sea International and Thai Union Group (collectively “COSI”). That settlement is referred to as the COSI Settlement in this Notice. Records indicate that you have filed in the COSI Settlement.
 - On July 11, 2024, a proposed settlement was reached in this antitrust action between the EPPs and StarKist, Co. (“StarKist”) and Dongwon Industries Co. Ltd (“DWI”) (collectively “StarKist” or the “Settling Defendants”). That settlement is referred to as the StarKist Settlement.
 - On July 11, 2024, a proposed settlement was reached in this antitrust action between the EPPs and the Lion Companies (Lion Capital LLP, Lion Capital (Americas), Inc. and Big Catch Cayman, LP) (collectively “Lion” or the “Settling Defendants”) and is referred to as the Lion Settlement.
 - The StarKist and Lion Settlements resolve all remaining Class claims in this action.
 - If approved by the Court, the StarKist and Lion Settlements will resolve the EPPs’ claims that from June 1, 2011 to July 1, 2015 StarKist and Lion participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Packaged Tuna products at an artificially high level in violation of antitrust and unfair competition laws.
 - Both StarKist and Lion deny many of the allegations and have asserted defenses to the EPPs’ claims. They agreed to the proposed Settlements to avoid further litigation, the risks of an adverse jury verdict, substantial trial, costs, and inconvenience to the EPPs, StarKist and Lion. If approved, the StarKist and Lion Settlements will release StarKist and Lion from the claims in this case.
 - StarKist has agreed to pay \$130 million over an eighteen-month period to resolve all Class claims. Lion has agreed to pay \$6 million to resolve all Class claims.
 - The StarKist and Lion Settlements total \$136 million. Once the \$16.2 million in benefits provided by the COSI Settlement are added, the total settlements in this antitrust case are **\$152.2 million** (“Total Settlement”).
-

Your Options:

- Do nothing. Stay in the Settlement Class and receive your payment from the Total Settlement, assuming your previously filed claim is valid.
- Object. Tell the Court what you do not like about the StarKist and Lion Settlements. You will still be bound by the StarKist/Lion Settlements, and you may still receive your payment. The deadline to object is **Month X, 2024**. Go to www.TunaEndPurchaserSettlement.com for details.
- Attend the Fairness Hearing. Ask to speak in Court about the StarKist and Lion Settlements. If you want your attorney to represent you, you must pay for that attorney. File your Notice of Intent to Appear by **Month X, 2024**.

Fairness Hearing: The Court will hold a Fairness Hearing at 1:30 p.m. on **11** to consider whether the proposed StarKist and Lion Settlements should be approved as fair, reasonable, and adequate. The Court will consider the amount of any attorneys' fees award, reimbursement amounts for litigation costs, and the amount of any service awards for the individual EPPs. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the StarKist and Lion Settlements. We do not know how long these decisions will take. **You will not be paid until after final approval, judgment is entered, all funds are paid in accordance with the Settlement Agreements, and all appeals are exhausted.** The Court appointed the law firm of Wolf Haldenstein Adler Freeman & Herz LLP as Class Counsel on behalf of the EPPs and Settlement Class Members. However, you or your own lawyer are welcome to come at your own expense.

How will Class Counsel be paid? Class Counsels' fees and out-of-pocket litigation expenses will be paid from the Total Settlement Fund. Class Counsel will request an award of attorneys' fee equal to 33% of the Total Settlement Fund. The Court already approved an expense award in the amount of \$4,155,027.67 for out-of-pocket costs incurred as of May 2021. Class Counsel will also request reimbursement for out-of-pocket costs in the amount of \$1,824,868.35 incurred since May 2021, and a total service award of \$288,000 to be distributed to the individual EPPs based on their contribution to the case.

Questions? Visit www.TunaEndPurchaserSettlement.com, write Tuna End Purchaser Settlement, c/o JND Legal Administration, P.O. Box 91442, Seattle, WA 98111, email info@TunaEndPurchaserSettlement.com, or call toll-free 1-866-615-0977.



PLEASE DO NOT CONTACT THE COURT.

Name: _____

Current Address: _____

Place
Stamp
Here

Address Change Form

To make sure your information remains up-to-date in our records, please confirm your address by filling in the above information and depositing this postcard in the U.S. Mail.

Tuna End Purchaser Settlement
c/o JND Legal Administration
PO Box 91442
Seattle, WA 98111

- EXHIBIT D -

From: info@TunaEndPurchaserSettlement.com

To: [COSI Claimant email address]

Subject: Notice Update – EPP Packaged Tuna Settlement

COURT-APPROVED LEGAL NOTICE

Official, Court-approved Notice about the EPP Packaged Tuna class action settlements.

Please review the important information below.

Para una notificación en español, visite www.TunaEndPurchaserSettlement.com

Records indicate that you filed a claim in *In Re: Packaged Seafood Products Antitrust Litigation*, No. 15-MD-2670 DMS (MDD). This Notice is to provide you with an update regarding two additional proposed Settlements and your rights and options. If your mailing address or email address has changed since you filed your claim, please send your update to the Claims Administrator by mail or email to ensure that you receive any communications about your claim.

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- The StarKist and Lion Settlements total \$136 million. Once the \$16.2 million in benefits provided by the COSI Settlement is added, the total settlements in this antitrust case are **\$152.2 million** (“Total Settlement”).

YOUR LEGAL RIGHTS AND OPTIONS		
DO NOTHING	<ul style="list-style-type: none"> Stay in the Settlement Class and receive your payment from the Total Settlement, assuming your previously filed claim is determined to be valid. 	
OBJECT	<ul style="list-style-type: none"> Tell the Court what you do not like about the StarKist and Lion Settlements. You will still be bound by the StarKist and Lion Settlements and you may still receive your payment. 	Postmarked by [REDACTED]
ATTEND THE HEARING	<ul style="list-style-type: none"> Ask to speak in Court about the StarKist and Lion Settlements—If you want your attorney to represent you, you must pay for that attorney. File your Notice of Intent to Appear by [REDACTED]. 	[REDACTED] at 1:30 p.m.

The Court’s Fairness Hearing: The Court will hold a Fairness Hearing at 1:30 p.m. on [REDACTED] at the United States District Court for the Southern District of California, Edward J. Schwartz Courthouse, 333 West Broadway, San Diego, CA 92101. At the Fairness Hearing, the Court will consider whether the proposed StarKist and Lion Settlements should be approved as fair, reasonable, and adequate. The Court will consider the amount of any attorneys’ fees award, reimbursement amounts for litigation costs, and the amount of any service awards for the individual EPPs. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the StarKist and Lion Settlements. We do not know how long these decisions will take. **You will not be paid until after final approval, judgment is entered, all funds are paid in accordance with the Settlement Agreements, and all appeals are exhausted.**

The Court appointed the law firm of Wolf Haldenstein Adler Freeman & Herz LLP as Class Counsel on behalf of the EPPs and Settlement Class Members. However, you or your own lawyer are welcome to come at your own expense.

How will Class Counsel be paid?

You will not have to pay any Class Counsel fees or out-of-pocket litigation expenses. All fees and expenses will be paid from the Total Settlement Fund. Class Counsel will request an award of attorneys’ fee equal to 33% of the Total Settlement Fund. The Court has already approved an expense award in the amount of \$4,155,027.67 to reimburse Class Counsel for specific, reasonable, and necessary out-of-pocket litigation costs incurred as of May 2021. Class Counsel will also request reimbursement of reasonable out-of-pocket litigation costs in the amount of \$1,824,868.35 incurred since May 2021.

Additionally, Class Counsel will request a total service award of \$288,000 to be distributed to the individual EPPs based on their contribution to the case.

Questions? For more detailed information, including how to file an exclusion or objection, visit www.TunaEndPurchaserSettlement.com, write Tuna End Purchaser Settlement, c/o JND Legal Administration, P.O. Box 91442, Seattle, WA 98111, email info@TunaEndPurchaserSettlement.com, or call toll-free 1-866-615-0977.


PLEASE DO NOT CONTACT THE COURT.

To unsubscribe from this list, please click on the following link: [Unsubscribe](#)

- EXHIBIT E -

Responsive Search Ads - Sample List


4

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Packaged Tuna Class Action - Settlements Totaling \$152.2M

Tuna purchasers have rights and options in settlements totaling \$152.2M. File a claim. Purchasers of canned or pouched tuna may qualify to get cash benefits.


[Important Documents](#) [File a Claim](#) [Key Dates](#)

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Packaged Tuna Class Action - Certain Products Affected

Purchasers of canned or pouched tuna may qualify to get cash benefits. Tuna purchasers have rights and options in settlements totaling \$152.2M. File a claim.


[File a Claim](#) [Key Dates](#) [Important Documents](#)

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Packaged Tuna Class Action - Settlements Totaling \$152.2M

Purchasers of canned or pouched tuna may qualify to get cash benefits. Tuna purchasers have rights and options in settlements totaling \$152.2M. File a claim.

[Important Documents](#) · [Key Dates](#)

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Packaged Tuna Class Action - Certain Products Affected

Tuna purchasers have rights and options in settlements totaling \$152.2M. File a claim. Purchasers of canned or pouched tuna may qualify to get cash benefits.

[Important Documents](#) · [Key Dates](#)

- EXHIBIT F -

If you bought Canned or Pouched Tuna between June 1, 2011 and July 1, 2015, you may qualify to get cash from class action settlements totaling \$152.2 million

Seattle / **Month x, 2024** / JND Legal Administration

Proposed Settlements have been reached in an antitrust class action called *In Re: Packaged Seafood Products Antitrust Litigation*, No. 15-MD-2670 DMS (MDD) in the United States District Court for the Southern District of California. Those who sued are called the End Payer Plaintiffs or EPPs. The companies they sued are the Defendants and include Tri-Union Seafoods LLC d/b/a Chicken of the Sea International and Thai Union Group PCL (collectively “COSI”), StarKist Company and its parent company, Dongwon industries Co. Ltd (collectively “StarKist”) and Bumble Bee Foods, LLC (“Bumble Bee”) and its parent companies Lion Capital (Americas), Inc. (“Lion America”).

On July 15, 2022, the Court approved a settlement reached in this antitrust class action between the EPPs and COSI (the “COSI Settlement”). On July 1, 2024, a proposed settlement was reached in this antitrust action between the EPPs and StarKist (the “StarKist Settlement”). And, on July 1, 2024, a proposed settlement was reached in this antitrust action between the EPPs and Lion (the “Lion Settlement”).

If approved by the Court, the StarKist and Lion Settlements will resolve the EPPs’ claims that from June 1, 2011 to July 1, 2015 StarKist and Lion participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Packaged Tuna products at an artificially high level in violation of antitrust and unfair competition laws.

Both StarKist and Lion deny many of the allegations and have asserted defenses to the EPPs’ claims. They agreed to the proposed Settlements to avoid further litigation, the risks of an adverse jury verdict, substantial trial, costs, and inconvenience to the EPPs, StarKist and Lion. If approved, the StarKist and Lion Settlements will release StarKist and Lion from the claims in this case, thereby resolving all remaining EPP claims in this action.

Am I part of the Settlement Class? The StarKist and Lion Settlement Class includes all persons and entities who resided in Arizona, Arkansas, California, the District of Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, 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 (the “Class Period”). The StarKist and Lion Settlement Class excludes purchases of meal kits. Also excluded from the StarKist and Lion Settlement Class is the Court, the Defendants, and individuals who previously opted out of the COSI Settlement Class or certified Class.

What do the StarKist and Lion Settlements provide? If approved, StarKist has agreed to pay \$130 million and Lion \$6 million, for a total \$136 million in benefits. With the \$16.2 million in benefits provided by the COSI Settlement, the total settlement benefits in this antitrust case are **\$152.2 million** (“Total Settlement”).

All fees and expenses in this matter will be paid from the Total Settlement Fund. Class Counsel will ask the Court to approve: (1) attorneys’ fee equal to 33% of the Total Settlement Fund; (2) \$1,824,868.35 in out-of-pocket litigation costs incurred since May 2021; and (3) \$288,000 in service awards to be distributed to the individual EPPs based on their contribution to the case. The Court has already approved an expense award in the amount of \$4,155,027.67 to reimburse Class Counsel for out-of-pocket litigation costs incurred as of May 2021.

Based on the Total Settlement amount of \$152.2 million, it is estimated that Settlement Class Members will receive approximately \$24.50 for every 200 cans purchased (approximate number of cans if you purchased packaged tuna weekly during the Settlement Class Period) or approximately \$0.12 per can. The actual per-can payment amount will depend on the amount of attorneys’ fees and costs, service awards for the individual EPPs, and administration costs that are awarded by the Court, as well as the number of valid claims received and the volume of cans/pouches represented in those claims.

How can I get a payment? Go to www.TunaEndPurchaserSettlement.com to file or download the Claim Form. Your claim must be submitted online or postmarked by **Month x, 2024**. *If you already filed a claim in the COSI Settlement, you do not need to file another claim for payment.* By filing a claim, you will be bound by the Total Settlement and you will give up your right to sue or continue to sue StarKist and Lion for the claims in this case.

What are my other options?

Do nothing. Unless you previously filed a valid claim in the COSI Settlement, you will not receive money. You will give up your right to sue or continue to sue StarKist and Lion for the claims in this case.

Object. You may tell the Court what you do not like about the StarKist and Lion Settlements. You will still be bound by the StarKist and Lion Settlements and you may still file a claim. For details on how to object, go to www.TunaEndPurchaserSettlement.com. Objections must be postmarked by **Month x, 2024**.

There is no additional opportunity to exclude yourself (“Opt Out”) from the StarKist and Lion Settlements. Settlement Class Members were provided two opportunities to exclude or “opt out” in both the COSI Settlement Class Notice and then in the Litigation (“Class”) Notice. If you provided a valid and timely opt out or exclusion as part of the COSI Settlement Class and Class Notice, then you will be excluded from the Settlement Class.

The Court’s Fairness Hearing. The Court will hold a Fairness Hearing at 1:30 p.m. on **□** at the United States District Court for the Southern District of California, Edward J. Schwartz Courthouse, 333 West Broadway, San Diego, CA 92101. At the Fairness Hearing, the Court will consider whether the proposed StarKist and Lion Settlements should be approved as fair, reasonable, and adequate. The Court will consider the amount of any attorneys’ fees award, reimbursement amounts for litigation costs, and the amount of any service awards for the EPPs. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the StarKist and Lion Settlements. Payments will be made to Settlement Class Members who submit a valid and timely Claim Form **after the Court grants “final approval” of the StarKist and Lion Settlements, all funds have been paid as required by the Settlement Agreements, final judgments are entered, and all appeals are exhausted.** We do not know how long these decisions will take. Please be patient.

The Court appointed the law firm of Wolf Haldenstein Adler Freeman & Herz LLP as Class Counsel on behalf of the EPPs and Class Members. However, you or your own lawyer are welcome to come to the hearing at your own expense.

Questions? Visit www.TunaEndPurchaserSettlement.com, write Tuna End Purchaser Settlement, c/o JND Legal Administration, P.O. Box 91442, Seattle, WA 98111, email info@TunaEndPurchaserSettlement.com, or call toll-free 1-866-615-0977.

PLEASE DO NOT CONTACT THE COURT.

- EXHIBIT G -

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CASE NO. 15-MD-2670 DMS (MDD)

If you bought Canned or Pouched Tuna between June 1, 2011 and July 1, 2015, you may qualify to get cash from class action settlements totaling \$152.2 million

A federal court authorized this Notice. This is not a solicitation from a lawyer.

Para una notificación en español, visite www.TunaEndPurchaserSettlement.com o llame 1-866-615-0977.

- On July 30, 2019, the United States District Court for the Southern District of California (The “Court”) certified a class of all persons and entities who reside in the states of Arizona, Arkansas, California, District of Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin (referred to as the End Payer Plaintiffs) who *indirectly* purchased Chicken of the Sea, StarKist, or Bumble Bee tuna in cans or pouches smaller than 40 ounces (“Packaged Tuna”) from June 1, 2011 through July 1, 2015 for their own consumption (the “Class”).
- Defendants appealed the July 30, 2019 Class Order certifying the Class. On April 8, 2022, the Ninth Circuit Court of Appeals affirmed the Court’s July 30, 2019 Class Order. On August 8, 2022, Defendants petitioned the U.S. Supreme Court to review the Ninth Circuit’s April 8, 2022 judgment. On November 14, 2022, the U.S. Supreme Court denied the petition and declined the opportunity to review the Class Order.
- On November 10, 2021, the Court issued an order granting in part and denying in part the End Payer Plaintiffs’ (“EPPs”) motion for summary judgment.
- On July 15, 2022, the Court finally approved a settlement reached in this antitrust class action between the EPPs and Tri-Union Seafood LLC d/b/a Chicken of the Sea International and Thai Union Group (collectively “COSI”). That settlement is referred to as the COSI Settlement in this Notice.
- COSI agreed to pay \$15 million for Class Member benefits and up to \$5 million for notice and administration costs which resulted in a total benefit to the Settlement Class of \$16.2 million. Class Counsel agreed that no attorney fees would be paid out of the COSI Settlement at the time of final approval, but reserved the right to request attorneys’ fees at a later date. The Court approved an expense award in the amount of \$4,155,027.67 in order to reimburse Class Counsel for specific, reasonable, and necessary out-of-pocket litigation costs incurred as of May 2021.
- The COSI Settlement was with COSI **only** and did not dismiss the Class claims against StarKist, Co. (“StarKist”), Dongwon Industries Co. Ltd (“DWI”) or the Lion Companies (Lion Capital LLP, Lion Capital (Americas), Inc. or Big Catch Cayman, LP). Claims against Bumble Bee were dismissed in bankruptcy. A trial was set for July 16, 2024 to try the Class claims against StarKist, DWI, and the Lion Companies. The COSI Settlement has not been distributed to Claimants to allow for the remaining Class claims to be litigated to judgment, trial, or dismissal.
- On July 11, 2024, a proposed settlement was reached in this antitrust action between StarKist, DWI and the EPPs (collectively “StarKist” or the “Settling Defendants”) and is referred to as the StarKist Settlement.

- On July 1, 2024, a proposed settlement was reached in this antitrust action between the Lion Companies and the EPPs (collectively “Lion” or the “Settling Defendants”) and is referred to as the Lion Settlement.
- The StarKist and Lion Settlements resolve all remaining Class claims in this action. All three settlements – the COSI, StarKist, and Lion Settlements – are collectively the Total Settlement.
- If approved by the Court, the StarKist and Lion Settlements will resolve the EPPs’ claims that from June 1, 2011 to July 1, 2015 StarKist and Lion participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Packaged Tuna products at an artificially high level in violation of antitrust and unfair competition laws.
- Both StarKist and Lion deny many of the allegations and have asserted defenses to the EPPs’ claims. They agreed to the proposed Settlements to avoid further litigation, the risks of an adverse jury verdict, substantial trial, costs, and inconvenience to the EPPs, StarKist and Lion. If approved, the StarKist and Lion Settlements will release StarKist and Lion from the claims in this case.
- StarKist has agreed to pay \$130 million over an eighteen-month period to resolve all Class claims.
- Lion has agreed to pay \$6 million to resolve all Class claims.
- The StarKist and Lion Settlements total \$136 million. Once the \$16.2 million in benefits provided by the COSI Settlement are added, the total combined common fund in this antitrust case is **\$152.2 million** (“Total Settlement Fund”).
- Class Counsel will ask the Court to: (1) approve the payment of attorneys’ fees; to reimburse Class Counsel for reasonable out-of-pocket costs and expenses incurred after May 2021; (2) approve service awards for the individual EPPs; and (3) cover the reasonable cost of notice and claims administration out of the Total Settlement Fund. Class Counsel reserve the right to seek fees based on the Total Settlement Fund.
- Case updates will be provided at the Case Website at www.TunaEndPurchaserSettlement.com or by calling toll-free at 1-866-615-0977.
- Your legal rights are affected whether you act or don’t act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS		
FILE A CLAIM	<ul style="list-style-type: none"> • File a claim for payment in the Total Settlement online or by mail. • If you already filed a claim in the COSI Settlement, you do not need to file another claim for payment. • Be bound by the Total Settlement. • Give up your right to sue or continue to sue StarKist and Lion for the claims in this case. 	Submitted online or postmarked by the initial claims date of [redacted], 2024
NO ADDITIONAL OPPORTUNITY TO BE EXCLUDED (“OPT OUT”)	<ul style="list-style-type: none"> • If you previously asked to be excluded from the COSI Settlement or certified Class and your exclusion was approved by the Court, then you are not a member of the Settlement Class and are also excluded from the StarKist and Lion Settlements. 	
OBJECT	<ul style="list-style-type: none"> • Tell the Court what you do not like about the StarKist and Lion Settlements—You will still be bound by the StarKist and Lion Settlements and you may still file a claim. 	Postmarked by [redacted]
ATTEND THE HEARING	<ul style="list-style-type: none"> • Ask to speak in Court about the StarKist and Lion Settlements—If you want your attorney to represent you, you must pay for that attorney. • File your Notice of Intent to Appear by [redacted] 	[redacted] at 1:30 p.m.
DO NOTHING	<ul style="list-style-type: none"> • Unless you previously filed a valid claim in the COSI Settlement, you will not receive money. • Give up your right to sue or continue to sue StarKist and Lion for the claims in this case. 	

- Your rights and options—**and the deadlines to exercise them**—are explained in this Notice. The deadlines may be moved, canceled, or otherwise modified, so please check the Case Website, www.TunaEndPurchaserSettlement.com, regularly for updates and further details.
- The Court in charge of this case still has to decide whether to approve the StarKist and Lion Settlement Agreements. **Payments to Settlement Class Members will be made: (1) if the Court finally approves the StarKist and Lion Settlements; and (2) ONLY AFTER entry of judgment by the Court, receipt of all funds to be paid under the Settlement Agreements, and any appeal has been fully and finally resolved.** It is unknown if any party will seek to appeal the approval of either or both Settlements. Please be patient.

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Basic Information

1. Why is there a Notice?

You have the right to know about the proposed Settlements and your rights and options before the Court decides whether to approve the StarKist and Lion Settlements.¹ The Court in charge of this case is the United States District Court for the Southern District of California. The case is called *In Re: Packaged Seafood Products Antitrust Litigation*, No. 15-MD-2670 DMS (MDD). Those who sued are called the End Payer Plaintiffs or EPPs. The companies they sued are called the Defendants and include Tri-Union Seafoods LLC d/b/a Chicken of the Sea International and Thai Union Group PCL (collectively “COSI”), StarKist Company and its parent company, Dongwon Industries Co. Ltd (collectively “StarKist”), and Bumble Bee Foods, LLC (“Bumble Bee”) and its parent companies Lion Capital LLC, Lion Capital (Americas), Inc. and Big Catch Cayman LP (the “Lion Companies” or “Lion”). Defendant Bumble Bee filed for bankruptcy and has been dismissed from the case.

As a Settlement Class Member, unless you chose to opt out in the COSI Settlement or after the Litigation Notice and your opt out was approved by the Court, you will be bound by the judgment of the Court as to StarKist and the Lion Companies in this antitrust class action. The Court will resolve issues for everyone in the StarKist and Lion Settlement Class, except for those who previously excluded themselves.

The proposed Settlements are with StarKist and the Lion Companies. A settlement with COSI was previously approved by the Court in July 2022. These two proposed Settlements finally resolve all outstanding Class claims in this antitrust class action. All three settlements – the COSI, StarKist and Lion Settlements – are combined to create one common fund referred herein as the Total Settlement Fund.

If the Court approves both the proposed StarKist and Lion Settlement Agreements, and after objections, and appeals are resolved, you will be bound by the judgment and terms of the StarKist and Lion Settlements. This Notice explains the lawsuit, certification of a Settlement Class by the Court, the StarKist and Lion Settlements, and your legal rights.

2. What is this lawsuit about?

End Payer Plaintiffs allege that from June 2011 to July 2015 Defendants participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Packaged Tuna products at an artificially high level in violation of antitrust and unfair competition laws. In July 2019, the Court certified a class of End Payer Plaintiffs and selected Wolf Haldenstein Adler Freeman & Herz LLP to act as Class Counsel (the “Class Order”).

Defendants appealed the Class Order. On April 8, 2022, the Ninth Circuit Court of Appeals affirmed the District Court’s Class Order. On August 8, 2022, the Defendants petitioned the U.S. Supreme Court to review the Ninth Circuit’s April 8, 2022 judgement. On November 14, 2022, the U.S. Supreme Court denied the petition and declined the opportunity to review the Class Order.

The EPPs have now reached proposed Settlements with StarKist, DWI, and the Lion Companies. StarKist, DWI and the Lion Companies deny many of the allegations and have asserted defenses to the EPPs’ claims. They agreed to the proposed Settlements to avoid further litigation, the risks of an adverse jury verdict, substantial trial, costs, and inconvenience to the EPPs, StarKist and Lion. If approved, the StarKist and Lion Settlements will release StarKist and Lion from the claims in this case.

¹ The StarKist and Lion Settlements are on behalf of *indirect* purchasers of Packaged Tuna (i.e., persons who did not purchase directly from the Defendants), for personal use and not resale. There are separate class actions pending on behalf of *direct* purchasers, that is, entities such as retailers, wholesalers, and distributors that bought Packaged Tuna directly from one or more of the Defendants, and for commercial food preparers such as caterers and restaurants.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people or businesses called class representatives sue on behalf of others who have similar claims, all of whom together are a “class.” Individual class members do not have to file a lawsuit to participate in the class action settlement or be bound by the judgment in the class action. One court resolves the issues for everyone in the class, except for those who exclude themselves from the class.

4. Why are there two Settlements?

The Court did not decide in favor of either the End Payer Plaintiffs or Defendants StarKist and Lion. Trials involve risks to both sides; therefore, the EPPs and StarKist and the EPPs and Lion have agreed to settle the case. The EPPs and Class Counsel think the StarKist and Lion Settlements are in the best interests of the Class and are fair, reasonable, and adequate.

Who is Affected?

5. Am I part of the StarKist and Lion Settlement Class?

The StarKist and Lion Settlement Class includes all persons and entities who *resided* in Arizona, Arkansas, California, the District of Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, 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 (the “Class Period”).

The StarKist and Lion Settlement Class excludes purchases of meal kits. The Court, the Defendants, and individuals who previously opted out of the COSI Settlement Class or certified Class also are excluded from the StarKist and Lion Settlement Class.

6. I’m still not sure if I’m included.

If you are still not sure if you are included, please review the detailed information contained in the Settlement Agreements available at www.TunaEndPurchaserSettlement.com. You may also call the Claims Administrator at 1-866-615-0977.

The StarKist and Lion Settlement Benefits

7. What do the StarKist and Lion Settlements provide?

If the StarKist Settlement Agreement is approved, StarKist has agreed to pay \$130 million over an eighteen-month period to resolve all Class claims. If the Lion Settlement Agreement is approved, the Lion Companies have agreed to pay \$6 million to resolve all Class claims. The StarKist and Lion Settlements total \$136 million. Once the \$16.2 million in benefits provided by the COSI Settlement are added, the Total Settlement Fund in this antitrust case is **\$152.2 million**. Each authorized claimant in the Settlement Class will receive a *pro rata* share of the Total Settlement Fund after payment of attorneys’ fees and costs, service awards for the individual EPPs, and administration costs.

Class Counsel will ask the Court to: (1) approve the payment of attorneys’ fees; to reimburse Class Counsel for reasonable out-of-pocket costs and expenses incurred; (2) approve service awards for the individual EPPs;

and (3) cover the reasonable cost of notice and claims administration out of the Total Settlement Fund. The Court has already approved an expense award in the amount of \$4,155,027.67 to reimburse Class Counsel for specific, reasonable, and necessary out-of-pocket costs incurred as of May 2021. Class Counsel will also request reimbursement of reasonable, and necessary out-of-pocket costs in the amount of \$1,824,868.35 and a total service award of \$288,000 for the sixty-nine individual EPPs representing 31 different states. The Settlement Agreements take no position as to Attorneys' Fees. Counsel will request an award of attorneys' fee equal to 33% of the Total Settlement, to be paid over the same schedule provided in the StarKist Settlement Agreement.

8. What can I get from the StarKist and Lion Settlements?

Based on the Total Settlement amount of \$152.2 million, it is estimated that Settlement Class Members will receive approximately \$24.50 for every 200 cans purchased (approximate number of cans if you purchased packaged tuna weekly during the Settlement Class Period) or approximately \$0.12 per can. The actual per-can payment amount will depend on the amount of attorneys' fees and costs, service awards for the individual EPPs, and administration costs that are awarded by the Court, as well as the number of valid claims received, and the volume of cans/pouches represented in those claims.

If the total payment for any Settlement Class Member is less than \$5.00, no payment will be made to the Settlement Class Member. The value of the payment will remain in the Total Settlement Fund for further distribution.

If, after all eligible claims are paid, checks sent to eligible claimants remain unclaimed or otherwise not redeemed after 60 days from the date of the check, then Class Counsel will seek the Court's recommendation on the distribution of any remaining funds.

How to Get a Payment

9. How can I get a payment?

To be eligible to receive a payment from the StarKist and Lion Settlements, you must complete a Claim Form so that it is submitted online or postmarked by the initial claims deadline of [*]. The Claim Form can be obtained online at www.TunaEndPurchaserSettlement.com or by writing or emailing the Claims Administrator at the address listed below.

Tuna End Purchaser Settlement
c/o JND Legal Administration
P.O. Box 91442
Seattle, WA 98111

info@TunaEndPurchaserSettlement.com

If you already filed a claim in the COSI Settlement, you do not need to file another claim for payment. If you did not file a claim in the COSI Settlement, and you do not submit a valid Claim Form by the initial claims deadline of [*], you will **not** receive a payment, but you will be bound by the Court's judgment in this case.

10. When do I get my payment?

Payments will be made to Settlement Class Members who submit a valid and timely Claim Form **after the Court grants "final approval" of the StarKist and Lion Settlements, all funds have been paid as required by the**

Settlement Agreements, final judgments are entered, and all appeals are exhausted. If the Court approves the StarKist and Lion Settlements, there will be continuing litigation based on objections to the Settlements. It's always uncertain how long it may take to resolve any appeal. Please be patient.

No Additional Opportunity to Opt Out or Exclude Yourself from the StarKist and Lion Settlement Class

There is no additional opportunity to exclude yourself or “opt out” from the StarKist and Lion Settlements.

11. What does it mean that I cannot exclude myself from the StarKist and Lion Settlement Class at this time?

Settlement Class Members were provided two opportunities to exclude or “opt out” in both the COSI Settlement Class Notice and then in the Litigation (“Class”) Notice. If you provided a valid and timely opt out or exclusion as part of the COSI Settlement Class and Class Notice, then you will be excluded from the Settlement Class. There is no additional opportunity to opt out or exclude yourself as part of the StarKist and Lion Settlement Class.

Objecting to the StarKist and Lion Settlements


12. How do I tell the Court that I don't like the StarKist and Lion Settlements?

If you are a StarKist and Lion Settlement Class Member, you can object to the StarKist and Lion Settlements if you don't like part, or all of it. The Court will consider your views.

To object to the StarKist and Lion Settlements, you must send a written objection that includes:

- Your full name, current address, email address (if available), and telephone number;
- If represented by an attorney with respect to the objection, his or her name, address, email address, bar number, telephone number, and signature;
- A written statement containing the factual and legal grounds for the objection(s);
- A statement, under penalty of perjury, indicating your membership in the StarKist and Lion Settlement Class;
- A statement indicating whether or not you intend to speak at the Final Approval Hearing;
- Your signature or the signature of a legally authorized representative;
- The case name and case number (*In Re: Packaged Seafood Products Antitrust Litigation*, No. 15-MD-2670 DMS (MDD) – End Payer Plaintiffs); and
- A list of any other objections you or your attorney filed for any class action settlement submitted to any court in the United States in the previous five years.

If you or your attorney want to appear and speak at the Final Approval Hearing, the Objection must also contain: (1) a detailed description of any and all evidence you may offer at the Final Approval Hearing, including photocopies of any and all exhibits which you or your attorney may introduce; and (2) the names and addresses of any witnesses expected to testify at the Final Approval Hearing.

Your objection, along with any supporting material you wish to submit, must be filed with the Court, with a copy mailed to the Claims Administrator, Class Counsel, Counsel for StarKist, and Counsel for Lion, postmarked by  at the following addresses:

Clerk of the Court	Class Counsel
Office of the Clerk United States District Court for the Southern District of California Edward J. Schwartz Courthouse 333 West Broadway San Diego, CA 92101	Wolf Haldenstein Adler Freeman & Herz LLP 750 B Street, Suite 1820 San Diego, CA 92101 619-239-4599 Attn: Betsy C Manifold
Claims Administrator	Counsel for StarKist
Tuna End Purchaser Settlement c/o JND Legal Administration P.O. Box 91442 Seattle, WA 98111	LATHAM & WATKIN LLP 505 Montgomery Street, Suite 2000 San Francisco, CA 94111-6538 Attn: Christopher Yates
	Counsel for Lion Companies
	SULLIVAN & CROMWELL LLP 1888 Century Park East, Suite 2100 Los Angeles, CA 90067 Attn: Adam S. Paris

13. What is the difference between excluding myself and objecting?

Objecting is telling the Court that you do not like something about the StarKist and Lion Settlements. You can object only if you did not previously exclude yourself as part of the COSI Settlement Class or the certified Class. If you previously provided a valid and timely request to be excluded, you have no standing to object because the StarKist and Lion Settlements no longer affect you.

The Lawyers Representing You

14. Do I have a lawyer in this case?

The Court has appointed the law firm of Wolf Haldenstein Adler Freeman & Herz LLP as Class Counsel on behalf of the End Payer Plaintiffs and Settlement Class Members. Their contact information is provided above in Question 15. Unless you previously provided a valid and timely request to be excluded, you do not need to hire your own lawyer because Class Counsel is working on your behalf.

15. How will the lawyers be paid?

You will not have to pay any fees or costs out-of-pocket. Any litigation expenses awarded by the Court will be paid from the Total Settlement Fund. Class Counsel will ask the Court to approve the payment of attorneys' fees and to reimburse Class Counsel for reasonable out-of-pocket costs and expenses incurred after May 2021 out of the Total Settlements. Settlement Class Counsel will request an award of attorneys' fee equal to 33% of the Total Settlement, to be paid over the same 18-month payment schedule provided in the StarKist Settlement Agreement for the Settlement Amount. If approved by the Court, 33% of each StarKist payment will be paid to

Settlement Class Counsel until any Court-approved fee award is paid. Class Counsel will request reimbursement of reasonable litigation cost in the amount of \$1,824,868.35 incurred since May 2021. The Court has already approved an expense award in the amount of \$4,155,027.67 to reimburse Class Counsel for specific, reasonable, and necessary out-of-pocket costs incurred as of May 2021.

For your review, Class Counsels' motion for approval for fees and costs will be posted at www.TunaEndPurchaserSettlement.com on or before []. If you wish to object to Class Counsel's request for a fee award and reimbursement of expenses, you must do so by []. See Question [].

The Court's Fairness Hearing

16. When and where will the Court decide whether to approve the StarKist and Lion Settlements?

The Court will hold a Fairness Hearing at 1:30 p.m. on [] at the United States District Court for the Southern District of California, Edward J. Schwartz Courthouse, 333 West Broadway, San Diego, CA 92101. At the Fairness Hearing, the Court will consider whether the proposed StarKist and Lion Settlements should be approved as fair, reasonable, and adequate. The Court will consider the amount of any attorneys' fees award, reimbursement amounts for litigation costs, and the amount of any service awards for the individual EPPs. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the StarKist and Lion Settlements. We do not know how long these decisions will take.

17. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to come at your own expense. If you send an objection, you do not have to come to court to talk about it. As long as you mail your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

18. May I speak at the hearing?

Yes. If you did not request exclusion from the StarKist and Lion Settlement Class, you may ask permission for you or your own attorney to speak at the Fairness Hearing, at your own expense. To do so, you must send a letter saying that is your "Notice of Intention to Appear." You must file your request with the Clerk of the Court and serve it on Class Counsel and Counsel for StarKist and Lion no later than []. The addresses for the Court, Class Counsel, and Counsel for StarKist and for the Lion Companies are provided in Question 15. You cannot ask to speak at the hearing if you previously excluded yourself from the COSI Settlement Class or the certified Class.

If You Do Nothing

19. What happens if I do nothing at all?

If you do nothing, unless you previously filed a claim in the COSI Settlement, you will not receive money and you will give up your right to sue or continue to sue StarKist and Lion for the claims in this case.

Getting More Information

20. How do I get more information about the case?

This Notice summarizes the case and the proposed StarKist and Lion Settlements. More detailed information is available at www.TunaEndPurchaserSettlement.com. You can also contact the Claims Administrator:

Tuna End Purchaser Settlement
c/o JND Legal Administration
P.O. Box 91442
Seattle, WA 98111
info@TunaEndPurchaserSettlement.com
1-866-615-0977

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

- EXHIBIT H -

of 50
Tuna End Purchaser Settlement
c/o JND Legal Administration
P.O. Box 91442
Seattle, WA 98111

TUNA END PURCHASER SETTLEMENT CLAIM FORM

Please complete each section of the Claim Form below by the initial claims date of
in order to be eligible to receive a payment.

SECTION I: CONTACT INFORMATION

First Name	Last Name	
Street Address		
City	State	Zip Code
Email Address	Phone Number	

SECTION II: PURCHASE INFORMATION

TOTAL NUMBER OF CANS OR POUCHES OF PACKAGED TUNA purchased from June 1, 2011 to July 1, 2015:

SECTION III: AFFIRMATION

I hereby affirm each of the following:

- I purchased one or more Packaged Tuna products from one of the Defendants—Tri-Union Seafoods LLC d/b/a Chicken of the Sea International and Thai Union Group PCL (collectively “COSI”), StarKist Company and its parent company, Dongwon Industries Co. Ltd (collectively “StarKist”) and Bumble Bee Foods, LLC (“Bumble Bee”) and its parent companies Lion Capital (Americas), Inc. (“Lion America”) and Big Catch Cayman LP (the “Lion Companies”).
- My purchases were made from June 1, 2011 to July 1, 2015.
- I was residing in Arizona, Arkansas, California, the District of Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, or Wisconsin at the time of purchase.
- The cans or pouches I purchased were smaller than forty ounces.
- I used the purchases for end consumption and not for resale.
- The information provided in this Claim Form is true and correct to the best of my knowledge.
- I understand that the amount I receive will be calculated according to the terms of the Settlement Agreements and that payments will be distributed **after final approval, judgment is entered, all funds are paid in accordance with the Settlement Agreements, and all appeals are exhausted.**
- I understand that claims will not be paid if the value is less than \$5.00.

Signature

Date

I would like to receive my payment:

By Check

By PayPal

Email, if different than Section I: _____