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7 *Class Counsel for the End Payer Plaintiffs*

8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 IN RE: PACKAGED SEAFOOD
13 PRODUCTS ANTITRUST
LITIGATION

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

**SUPPLEMENTAL
DECLARATION OF BETSY C.
MANIFOLD IN SUPPORT OF
END PAYER PLAINTIFFS'
MOTION FOR COSTS IN
CONJUNCTION WITH THE
COSI SETTLEMENT**

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18 This Document Relates to:
19 End Payer Plaintiffs Class Track

DATE: July 15, 2022
TIME: 1:30 p.m.
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
3 State of California. I am a member of the law firm Wolf Haldenstein Adler Freeman
4 & Herz LLP (“Wolf Haldenstein”), Class Counsel for End Payer Plaintiffs. I submit
5 this supplemental declaration in further support of **END PAYER PLAINTIFFS’**
6 **MOTION FOR COSTS IN CONJUNCTION WITH THE COSI**
7 **SETTLEMENT**. I have personal knowledge of the matters stated herein and, if
8 called upon, I could and would competently testify thereto.

9 **OVERVIEW**

10 2. This “icebreaker” settlement was the first settlement between EPPs
11 and any Defendant and was preliminarily approved on January 26, 2022. *See* ECF
12 No. 2734. After months of arms’-length negotiations with the COSI Defendants¹
13 initiated *after* the District Court’s three day evidentiary hearing in January 2019,
14 the parties finalized this early settlement *just before* the District Court issued its
15 decision certifying the Class. *See* ECF No. 1931 (July 30, 2019 Class Certification
16 Opinion). The Class Certification Opinion’s appellate journey in the Ninth Circuit
17 ended with an April 8, 2022 *en banc* decision of the Ninth Circuit upholding class
18 certification. *See* ECF No. 2828 (Order re Mandate Hearing). While claims remain
19 against StarKist Co. and Bumble Bee Foods LLs parent companies (“Non-settling
20 Defendants”), this initial settlement provides substantial relief including invaluable
21 prosecution cooperation by COSI to allow the EPPs to pursue the other Non-settling
22 Defendants.

23 **CLASS COUNSEL SEEKS APPROVAL OF COSTS AND EXPENSES**

24 3. Class Counsel requests approval of the following costs and expenses:

25 _____

26 ¹ Tri-Union Seafood LLC d/b/a Chicken of the Sea International (“COSI”) and Thai
27 Union Group (“TUG”) (collectively the “COSI Defendants”).

28

1 (i) Class notice (\$914,090) and administration costs (\$233,000) incurred through
2 April in the amount of \$1,147,090; (ii) a further distribution of \$597,870 as
3 permitted under the Settlement Agreement to cover estimated administration costs
4 of \$500,000 and a reminder media effort in the amount of \$97,870; and (iii) an
5 Expense Award of \$4,155,027.67 to reimburse Class Counsel for specific out of
6 pocket litigation costs incurred as of May 2021.

7 4. The Class Notice provided the specific amount of the Expense Award
8 (\$4,155,027.67) to be requested. *See* ECF No. 2827, Ex. F at 48, 52. The Class
9 Notice also advised COSI Settlement Class Members that a portion of the
10 Settlement Fund (up to \$5 million) may be used by the Claims Administrator to
11 administer notice and claims. *Id.*

12 5. ***No objection to these costs was received as of May13, 2022 (the last***
13 ***day to object to the settlement) and no objection was received after the deadline***
14 ***to date.*** Class Counsel remains willing to address any objection (timely or not) at
15 the July 15, 2022 Final Approval Hearing. For the convenience of COSI Settlement
16 Class Members, the Claims Administrator will post a copy of these motion papers
17 detailing costs on the settlement website.

18 **COSTS OF CLASS NOTICE AND CLAIMS ADMINISTRATION**

19 6. Under the terms of the COSI Settlement, five million (\$5,000,000) out
20 of the twenty million (\$20,000,000) shall be used to cover the reasonable costs of
21 Class and Settlement Notices and administration for the distribution of the
22 Settlement Fund (\$15,000,000). The Court's Preliminary Approval Order (ECF
23 No. 2734 allowed for an interim distribution of \$1 million prior to final approval of
24 the COSI Settlement. *Id.* at 13:5-8. In accordance with the Preliminary Approval
25 Order and under the terms provided in the Settlement Agreement, the Claims
26 Administrator received an interim distribution of \$914,090,000 to fund and conduct
27
28

1 a robust notice plan reaching tens of millions of Class Members.²

2 7. Class Counsel requests an additional distribution of \$830,870 to cover
3 the following: a follow up notice ad campaign (\$97,870) and administration costs
4 (\$733,000). The administration costs consist of \$233,000 incurred through April
5 plus an estimated \$500,000 to cover on-going costs of the website, contact center,
6 and process forms.

7 8. The claims administrator has expended substantial efforts and incurred
8 significant expenses in providing a robust and expansive class notice. Notice Decl.,
9 ¶¶ 6-22. According to JND’s Weekly Distribution Report, as of May 20, 2022, JND
10 had delivered over 760 million digital media impressions with over 1.8 million page
11 views on the settlement website.

12 9. JND has provided a breakdown of the expenses necessarily incurred
13 by the Claims Administrator to date and has provided a detailed estimate of follow
14 up notice costs and claims administration for reimbursement as provided under the
15 terms of the Settlement Agreement. *See Exhibit 1 (Declaration of Gina M.*
16 ***Intrepido-Bowden re Costs of Notice and Claims Administration)***. For
17 example, JND seeks reimbursement for media placements, website administration,
18 and robust responses to class member inquiries. *Id.* These are standard expenses
19 incurred by a claims administrator in creating and implementing a robust notice
20 plan in a complex antitrust case.

21 10. Both JND and Class Counsel carefully scrutinized all requested
22 expenses. Class Counsel believes that these expenses are in line with those
23 approved by courts in other complex antitrust cases and an important element of the
24 notice and claims process. *It is important to note the Distribution Fund*
25 *(\$15,000,000) is not reduced by the award of these reasonable interim costs of*
26

27 ² *See Declaration of Gina M. Intrepido-Bowden re: Implementation of COSI*
28 *Settlement Notice on behalf of End Payer Plaintiffs (“Notice Decl.”), filed on May*
9, 2022 [ECF No. 2827].

1 *class notice and administration.*

2 **FOLLOW UP AD CAMPAIGN TO INCLUDE CLASS NOTICE**

3 11. In order to conserve resources, Class Counsel seeks to delay the follow
4 up notice ad campaign in order to combine this campaign with an appropriate and
5 robust class notice plan to be submitted by motion within fourteen (14) days of court
6 approval of the costs motion. Class Counsel believes this will conserve resources,
7 avoid confusion, and create a more effective class notice by building on the digital
8 hits already created by the settlement notices.

9 **ATTORNEY COSTS AND EXPENSES**

10 12. During this lengthy and hard-fought litigation, Class Counsel incurred
11 substantial expert costs (\$3.2 million) as well as expenses (approximately
12 \$929,000) related to document storage, depositions, e-discovery, translation
13 services, research, and travel costs. A breakdown of the unreimbursed expenses
14 necessarily incurred by Wolf Haldenstein this case is set forth in **Exhibit 2**.

15 13. These are standard expenses incurred in prosecuting a civil lawsuit and
16 are the type of expenses billed by Wolf Haldenstein to its paying clients. These
17 standard expenses are also the type of expenses typically bill by other attorneys to
18 paying clients in the marketplace. There expenses were all carefully scrutinized by
19 Class Counsel.

20 14. These costs were reasonable and necessary to achieve this early ‘ice
21 breaker’ settlement in a complex antitrust conspiracy between the three dominant
22 manufacturers of packaged tuna. In an extensive and robust notice plan (with no
23 objection received to date), COSI Settlement Class Members were advised that
24 Class Counsel would not seek any attorney fees but would ask the Court for an
25 Expenses Award of \$4,155,027.67 to cover these expenses. ECF 2827, Ex. F (Class
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27
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1 Notice) at 48, 52.³

2 **HISTORY OF THE LITIGATION**

3 15. Once the MDL was established, Wolf Haldenstein became
4 instrumental in organizing the indirect cases and plaintiffs; and, on behalf of fifty-
5 four (54) End Payer Plaintiffs, filed a consolidated class action in this Court alleging
6 an antitrust conspiracy in the packaged seafood industry. *See In re Packaged*
7 *Seafood Products Antitrust Litig.*, MDL No. 2670 (ECF No. 149) (S.D. Cal., filed
8 May 23, 2016). The complaint followed the DOJ’s announcement of an
9 investigation into the packaged seafood industry. Although the DOJ intervened and
10 the case was stayed temporarily, Wolf Haldenstein coordinated with the other
11 Classes and individual direct purchasers on a Protective Order and ESI and
12 continued to investigate and advance the case forward.

13 **WOLF HALDENSTEIN APPOINTED INTERIM LEAD COUNSEL**

14 16. In March 2016, the Court appointed Wolf Haldenstein as interim lead
15 counsel for the EPP Class. ECF No. 119. Due to the location of its offices in San
16 Diego, Wolf Haldenstein also volunteered (when asked by the Court) and has acted
17 as a plaintiff contact for the Court when it was necessary to set up conferences,
18 motion dates, and communicate information to multiple tracks and counsel in this
19 complex MDL.

20 17. In appointing interim lead counsel for the EPP class, the Court
21 provided a substantial list of Wolf Haldenstein’s responsibilities. ECF No. 119.
22 Class Counsel’s responsibilities for the costs and expenses included the following:
23 (i) To conduct or coordinate discovery on behalf of the EPPs consistent with the
24 requirements of the Federal Rules of Civil Procedure, including . . . the examination
25 of witnesses in depositions; (ii) To monitor the activities of co-counsel and to
26

27 ³ The Class Notice also stated that *Class Counsel does not request an award of*
28 *attorneys’ fees out of the Settlement Fund* but reserves the right to do so out of any
recoveries from the Non-settling Defendants. *Id.*

1 implement procedures to ensure that schedules are met and unnecessary
2 expenditures of time and funds by counsel are avoided; (iii) To collect time,
3 lodestar, and expense reports from each of the law firms working on behalf of the
4 class of EPPs; (iv) To conduct all pre-trial, trial, and post-trial proceedings on
5 behalf of the class; and (v) To employ and consult with experts. *See* ECF No. 119
6 at 7-8.

7 18. Class Counsel performed these duties and responsibilities and incurred
8 reasonable and necessary expenses in the conduct of this litigation in order to reach
9 this early partial settlement on behalf of the COSI Settlement Class.

10 **DISCOVERY COSTS**

11 19. Class Counsel pushed for the production of the DOJ Documents (once
12 the stay was lifted) which resulted in a production of over two million documents.
13 The costs of hosting the millions of documents produced, and making them
14 available for both counsel and experts' teams to review online, was shared to reduce
15 cost to the classes. This reduced amount reflects the proportional share of the EPPs
16 after splitting with the other classes and would be greater if the sharing agreement
17 had not been resolved. This amount has been not incurred but paid. *See Ex. 2.*
18 Indeed, Wolf Haldenstein has coordinated at every stage of this litigation with other
19 class counsel in order to effectively manage not only the parties' resources and costs
20 but preserve judicial resources.

21 20. The three separate class tracks harmonized their factual allegations (as
22 appropriate) based on coordinated investigation efforts (as needed) to support
23 substantial and expanded new allegations. Class Counsel further coordinated on
24 the filing of all of the Class amended complaints, responsive briefing among all of
25 the parties, and oral argument to ensure a similar time line for all three class tracks.
26 These efforts permitted the Court to issue coordinated opinions denying, in large
27 part, the Defendants' Motion to dismiss.

28 21. Here, the conspiratorial conduct consisted, in part, of certain illegal

1 agreements among Bumble Bee, COSI and StarKist to fix prices. To prove
2 Defendants' conduct was anti-competitive required Class Counsel to pursue their
3 claims against all three manufacturers concurrently.⁴ For example, in its
4 interrogatory responses, COSI furnished a chart of seven different unlawful
5 agreements reflecting coordinated conduct by all three defendants. A copy of the
6 COSI chart is attached hereto as **Exhibit 3**. As a result, due to this joint conduct,
7 the cost and expenses incurred in generally pursuing discovery against all three
8 defendants was instrumental in reaching an early settlement with one defendant
9 (COSI) such that discovery costs cannot be reasonably divided or parsed out by
10 individual defendant. *Id.*

11 **DEPOSITION COSTS**

12 22. Class Counsel coordinated with all of the plaintiff tracks in taking over
13 60 depositions including travel to Thailand and Korea. These international
14 depositions required the use of translators for both documents and testimony. Class
15 Counsel incurred, and has already paid, the cost (reporters, videographers, and
16 sometimes translators) for each of these depositions. *See Ex. 2*. Transcript costs for
17 depositions taken by defense counsel of plaintiffs, including the individual EPP
18 class representatives and Direct Action Plaintiffs (used by Defendants in opposing
19 class), were also incurred and paid out of pocket, years ago, and without recovery
20 until the instant motion. Class Counsel also participated in coordinating, preparing
21 for, and attending multiple evidentiary proffers by COSI as the ACPERA leniency
22 applicant.

23 **CLASS CERTIFICATION**

24 23. All three Classes filed motions for class certification in May of 2018.
25 Three respected economists from different shops offered declarations in support of

26 _____
27 ⁴ The DOJ also criminally prosecuted Lischewski, Bumble Bee's former CEO, and
28 on December 3, 2019, a jury found that he had conspired with StarKist and COSI
to fix packaged tuna prices in violation of the Sherman Act. *See United States v.*
Lischewski, 2019 U.S. Dist. LEXIS 86432 (N.D. Cal. 2019).

1 the motions: Dr. Russell Mangum (“Mangum”) (DPPs), Dr. Michael Williams
2 (“Williams”) (CFPs), and Dr. David Sunding (“Sunding”) (EPPs). Defendants
3 countered with two experts, both from Edgeworth Economics: Dr. John Johnson
4 (“Johnson”) (responding to Mangum) and Dr. Laila Haider (“Haider”) (responding
5 to Sunding and Williams).

6 24. As part of class discovery, Class Counsel also prepped and defended
7 16 individual EPP depositions. In addition, the EPPs offered the expert report of
8 Adoria Lim describing the close economic relationship between the parent
9 corporations and their subsidiaries (COSI, Bumble Bee and StarKist). Defendants
10 countered with their own economists - Dr. Ilya Srebulaev (Lion Capital/Bumble
11 Bee), Arthur Laby (COSI), and Robert Daines (StarKist). Class Counsel attended
12 all of the expert depositions and defended the depositions of their experts – Dr.
13 Sunding and Ms. Lim.

14 25. As part of the class certification process, Professor Sunding responded
15 at length to each criticism, submitting four reports, testifying at deposition twice,
16 and then as a live witness at a full-day hearing just on the EPP class for certification
17 purposes.

18 26. On July 19, 2022, the district court issued a thorough opinion granting
19 class certification that carefully evaluated the parties’ evidence and arguments.
20 ECF No. 1931 (“Class Opinion”).

21 27. Although the parties finalized this early settlement before the Class
22 Opinion was issued, preliminary approval was delayed, in part, due to the
23 Defendants’ appeal of the Class Opinion.

24 **EXHIBITS**

25 28. A true and correct copy of the following exhibits is attached hereto:

26 **Exhibit 1 Declaration of Gina M. Intrepido-Bowden re Costs of Notice and**
27 **Claims Administration dated May 24, 2020.**

28 **Exhibit 2 Expenses Incurred by Wolf Haldenstein as of May 2021**

EXHIBIT 1

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8 *Class Counsel for the End Payer Plaintiffs*

9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12
13 IN RE: PACKAGED SEAFOOD
14 PRODUCTS ANTITRUST
15 LITIGATION

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

**DECLARATION OF GINA M.
INTREPIDO-BOWDEN RE: COSI
SETTLEMENT COSTS ON
BEHALF OF END PAYER
PLAINTIFFS**

16 This Document Relates To:

17
18 End Payer Plaintiffs Class Track

DATE: July 15, 2022
TIME: 1:30 p.m.
JUDGE: Hon. Dana M. Sabraw
COURT: 13A (13th Floor)

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
3 previously submitted a Declaration regarding the Implementation of COSI
4 Settlement Notice on Behalf of End Payer Plaintiffs (“EPPs”), dated May 9, 2022,
5 and a Declaration regarding the Claim Process, dated December 1, 2021. ECF No.
6 2827 and 2673-9, respectively. JND’s Chief Executive Officer (“CEO”), Jennifer
7 M. Keough, previously submitted a Declaration regarding the Proposed Plan for
8 COSI Settlement Notice on Behalf of EPPs, dated April 9, 2021. ECF No. 2552-
9 6. I provide this Declaration to summarize the notice costs to date as well as the
10 estimated fees and expenses for the administration of the COSI Settlement.

11 **NOTICE PLAN COSTS**

12 2. JND designed and implemented a robust Notice Plan in the above
13 captioned matter that ran from February 17, 2022 through April 13, 2022, and
14 reached over 85% of potential COSI Settlement Class Members. Overall, more
15 than 574 million impressions were served through the leading digital network
16 (Google Display Network) and the top social media platform (Facebook); one print
17 placement appeared in *People* magazine; and a total of 8,642 radio spots aired in
18 110 U.S. markets across 206 radio stations. Additional efforts included over 38
19 million impressions being delivered through a targeted programmatic digital buy;
20 over 148 million impressions being served through a digital “look-a-like” targeting
21 effort; 32,982 impressions being delivered through an internet search campaign,
22 and the distribution of a national press release in English and Spanish.

23 3. The cost of the notice effort was \$914,090.

24 4. In addition, JND designed a claims stimulation effort consisting of
25 over 100 million impressions being served through a digital “reminder” effort, as
26 well as a second press release to be disseminated to various news outlets. The cost
27 of this effort is \$97,870. It is our understanding that this reminder effort will be
28

1 merged with a notice effort that will alert Class Members of the court’s certification
2 of the Class.

3 **ADMINISTRATION FEES AND EXPENSES**

4 5. JND’s administration fees and expenses incurred from November 2021
5 through April 2022 were \$233,000. Based on our experience, we estimate the
6 remaining administration fees and expenses -- which include the maintenance of
7 the case website and contact center, processing of forms, project management and
8 other necessary tasks -- to be approximately \$500,000. Together, the total COSI
9 Settlement administration fees and expenses are estimated to be \$733,000.

10
11 I declare under penalty of perjury under the laws of the State of California
12 that the foregoing is true and correct. Executed on the 24th day of May 2022,
13 in Philadelphia, PA.

14
15 

16 Gina M. Intrepido-Bowden

EXHIBIT 2

In re Packaged Seafood Products Antitrust Litigation

Case No. 3:15-md-02670-DMS-MDD

Litigation Fund Expenditures

Alternative Dispute Resolution

JAMS \$3,950.00

Data Analytics / Market Research Services

Information Resources, Inc. \$62,235.63

ESI / Discovery / eDiscovery Expenses

D4, LLC \$292,632.58

Special Counsel \$71,233.85

Discovia \$3,822.82

Kenny Nachwalter \$17,250.00

Nussbaum Law Group, P.C. \$3,100.00

Experts / Econometrics / Consulting Services

Atheneum Partners \$3,500.00

The Brattle Group, Inc. \$3,222,502.90

Litigation Conference in Chicago

Fred T. Isquith \$3,881.43

Reporter / Transcription Services

Frank J. Rangus \$428.40

Gayle Wakefield, RPR, CRR \$382.80

Veritext \$157,376.72

Translation Services

Consortra Translations \$2,181.45

Korean Language Services, Inc. \$1,975.00

TransPerfect Translations \$5,307.80

Subtotal	\$3,851,761.38
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WHAFH Expenditures

Secretarial Overtime	\$8,378.40
Atuna Subscription	\$399.00
Filing Fees	\$532.82
Travel	\$93,937.94
Meals	\$2,308.46
Carfare	\$10,954.59
Overnight Delivery / Messenger	\$3,674.07
Reproduction / Duplication	\$75,618.50
Phone / Fax / Postage	\$7,156.36
Service of Process	\$3,956.91
ADR (JAMS)	\$359.86
Translation (TransPerfect)	\$10,615.60
Transcription Services	\$1,086.75

Computer Internet Research Services

Lexis	\$73,038.97
Pacer	\$2,536.67
Courtlink	\$7,833.28

Other Computer / Computing Services

Laptop	\$266.00
First Digital Solutions	\$612.11

Subtotal	\$303,266.29
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Grand Total Expenses	\$4,155,027.67
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EXHIBIT 3

COSI Agreement Chart

Nature of Agreement	Time Period	Individuals with Information
Agreement between Bumble Bee and COSI to reduce the size of cans from 6 oz to 5 oz for branded tuna products	As early as March 2008	John Sawyer, Shue Wing Chan
Agreement among Bumble Bee and COSI on timing of list price increase for branded tuna products	As early as June 2008	Mike White, John Sawyer, Shue Wing Chan
Agreement among Bumble Bee and COSI on timing of net price increase for branded tuna products	As early as May 2010	Mike White, John Sawyer, Shue Wing Chan
Agreement among Starkist, Bumble Bee and COSI on timing of list and/or net price increase for branded tuna products	As early as February 2011	Mike White, John Sawyer, Shue Wing Chan
Agreement among Starkist, Bumble Bee and COSI on timing of list price increase for branded tuna products	As early as November 2011	Mike White, John Sawyer, Shue Wing Chan
Agreement among Bumble Bee and COSI not to aggressively discount products through promotions for branded tuna products	As early as November 2011	Shue Wing Chan
Agreement among Starkist, Bumble Bee and COSI not to produce a branded, FAD-Free Product	As early as February 2012	John Sawyer, Shue Wing Chan

*The individuals listed worked for COSI