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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

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

**IN RE: PACKAGED SEAFOOD
PRODUCTS ANTITRUST
LITIGATION**

This filing relates to the End Payer
Plaintiff Class Action Track

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

**ORDER
GRANTING END PAYER
PLAINTIFFS' MOTION FOR
COSTS IN CONJUNCTION
WITH THE COSI SETTLEMENT**

1 **I. INTRODUCTION**

2 Pending before the Court is the End Payer Plaintiffs (“EPPs”) motion for costs
3 and expenses in conjunction with final approval of their “ice-breaker” settlement with
4 Defendant Chicken of the Sea International (“COSI”) and its parent company,
5 Defendant Thai Union Group PCL (“TUG”) (collectively “COSI”). In a separate
6 motion pending before the Court, the EPPs ask the Court for final approval of the
7 COSI Settlement.

8 In accordance with the Court’s Preliminary Approval Order dated January 26,
9 2022 (ECF No. 2734), the Court held a Final Approval Hearing on July 15, 2022.
10 After a robust notice plan to the settlement class members advising them of the July
11 15, 2022 Final Approval Hearing Date and of their rights to object, no objections were
12 received by the parties as to the settlement or as to the requested costs and expenses.¹
13 See ECF No. 2827 (Notice Declaration by Claims Administrator), Supplement
14 Manifold Decl., ¶ 5. [No objectors appeared at the July 15, 2022 hearing.]

15 As to cost and expenses, the Court notes that the Class Notice advised COSI
16 Settlement Class Members a portion of the Settlement Fund (up to \$5 million) may be
17 used by the Claims Administrator to administer notice and claims and detailed the
18 specific amount of the Expense Award (\$4,155,027.67) to be requested from the
19 Distribution Fund. See ECF No. 2827, Ex. F at 48, 52. Of significance, with regard
20 to the litigation expenses requested, Class Counsel does not seek an award of attorney
21 fees from the Distribution Fund but only requests reasonable out of pocket litigation
22 costs as of May 2021. See ECF No. 2673-2, Ex. 8 (confirming no agreement outside
23 of the settlement and unilateral waiver of any rights to seek attorneys’ fees from COSI
24 or Settlement Fund).²

25
26 ¹ The Claims Administrator further posted a copy of the motion papers detailing costs
27 on the settlement website.

28 ² The Class Notice advised the settlement class members that Class Counsel reserves
the right to request an award of attorney fees out of any recoveries from the Non-

1 The key monetary terms of the Settlement are as follows: (1) the maximum
2 Settlement Amount is twenty million (\$20,000,000). COSI Settlement Agreement,
3 §1.a.xxvii (ECF 2552-3 at 8); (2) under Paragraphs 11(b) and 18, up to five million
4 (\$5,000,000) out of the Maximum Settlement Amount shall be used to cover the
5 reasonable costs of Class and Settlement Notices and administration for distribution
6 of the Settlement Fund of fifteen million (\$15,000,000) (“Distribution Fund”). ECF
7 2552-3 at 13 and 14; and (3) if the reasonable costs of Class and Settlement Notice is
8 less than \$5,000,000, the difference is refunded to the COSI Defendants under
9 Paragraph 18(b) of the COSI Settlement Agreement. *Id.* at 14 and 15. Under the
10 settlement terms outlined above, an award of reasonable interim costs of class notice
11 and administration will not reduce the class relief provided in the Distribution Fund
12 (\$15,000,000). However, any reasonable and necessary litigation expenses awarded
13 to counsel are deducted from the Distribution Fund.

14 This “icebreaker” settlement was the first settlement between EPPs and any
15 Defendant. Although the parties finalized this early settlement before the District
16 Court issued its decision certifying the Class, preliminary approval of this partial
17 settlement was delayed until January 26, 2022.³ The delay was due, in part, to the
18 Defendants’ appeal of the Court’s Class Certification Opinion (ECF No. 1931). The
19 Class Certification Opinion’s appellate journey in the Ninth Circuit ended with an
20 April 8, 2022 *en banc* decision of the Ninth Circuit upholding class certification. *See*
21 ECF No. 2828 (Order re Mandate Hearing). While claims remain against StarKist Co.
22 and Bumble Bee Foods LLC’s parent companies (“Non-settling Defendants”), this
23

24 settling Defendants and to base that request upon the benefits conferred by the COSI
25 Settlement. ECF 2827, Ex. F (Class Notice) at 48, 52.

26 ³ *See* Declaration of Betsy C. Manifold in Support of End Payer Plaintiffs’ Renewed
27 Motion for Preliminary Approval of Partial Class Action Settlement (ECF No. 2552-
28 2), ¶¶ 1, 12. *See also* ECF No. 1931 (July 30, 2019 Class Certification Opinion) and
ECF No. 2734 (January 26, 2022 Order Granting End Payer Plaintiffs Renewed
Motion for Preliminary Approval of Partial Settlement).

1 initial settlement provides substantial relief including prosecution cooperation by the
2 COSI Defendants to assist the EPPs in pursuing the other Non-settling Defendants.

3 In light of this substantial initial \$20 million settlement, and for the reasons
4 discussed below, the Court will approve certain specific costs and expenses.

5 First, to cover the costs of class notice and administration through April 2022,
6 the Court approves the request to pay media costs (\$914,090) and administration costs
7 (\$233,000) of \$1,147,090 as reasonable and necessary costs for notice and claims
8 administration given the depth of the reach of the robust notice plan undertaken by the
9 Claims Administrator. See ECF No. 2827 (Notice Declaration by Claims
10 Administrator).

11 Second, for the same reasons, the Court approves a further distribution of
12 \$597,870 as permitted under the Settlement Agreement to cover estimated
13 administration costs (\$500,000) and a reminder media campaign (\$97,870). The Court
14 approves Class Counsel's request that the proposed follow up campaign be delayed in
15 order for Class Counsel to submit a Class Notice plan combining these media efforts no
16 later than fourteen days (14) from the date of this order.

17 Finally, the Court approves an Expense Award of \$4,155,027.67 to reimburse
18 Class Counsel for specific, reasonable and necessary out of pocket litigation costs
19 incurred as of May 2021.

20 **II. DISCUSSION**

21 Under FRCP Rule 23(h), “[i]n a certified class action, the court may award
22 reasonable attorney’s fees and nontaxable costs that are authorized by law or the
23 parties’ agreement.” This rule is equitable in nature and “rests on the perception that
24 persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly
25 enriched at the successful litigant’s expense.” *Boeing Co. v. Van Gemert*, 444 U.S.
26 472, 478 (1980). Here, Class Counsel is *not* requesting an award of attorneys’ fee.
27 The Court finds when considering an equitable analysis based on the financial burden
28 incurred by plaintiffs in achieving a substantial financial benefit to the settlement class

1 (\$20,000,000) after surviving multiple motions to dismiss and completing substantive
2 and class discovery, an award of reasonable costs is appropriate.

3 As an initial crosscheck to the reasonableness of Class Counsel's request for an
4 Expense Award of \$4,155,027.67, the Court considers the DPPs' request for out of
5 pocket costs of \$4,410,636.71. *See* Memorandum of Points and Authorities in Support
6 of Direct Purchaser Plaintiffs' Motion for Attorneys' Fees and Costs and Service
7 Awards for the Class Representatives in Conjunction with COSI/TUG Settlement,
8 ECF No. 2785-1 at 19-20. The DPPs' expense request arises out of a contested fee
9 dispute decided by a well-respected arbitrator and includes an award of similar expert
10 costs as well as litigation expenses. The comparison is appropriate (and the EPP's
11 expenses are approximately \$250,000 less) because the various MDL tracks
12 (including the classes) coordinated and equally shared litigation expenses for
13 document hosting, translations, and discovery costs to create efficiencies and engaged
14 similar econometric experts to model the relevant market for their respective class. As
15 a result, the Court finds that the contested DPP expense request is good crosscheck on
16 the reasonableness and fairness of Settlement Class Counsel's request.

17 **A. Notice and Administration Costs Are Reasonable**

18 The claims administrator expended substantial efforts and incurred significant
19 expenses in providing a robust and expansive class notice. Notice Decl., ¶¶ 6-22. As
20 of May 20, 2022, JND had delivered over 760 million digital media impressions with
21 over 1.8 million page views on the settlement website. Supp. Manifold Decl., ¶8.
22 JND provided a breakdown of the expenses necessarily incurred by a claims
23 administrator to date and has provided a detailed estimate of follow up notice costs
24 and claims administration for reimbursement as provided under the terms of the
25 Settlement Agreement. *Id.*, Ex. 1. For example, JND seeks reimbursement for media
26 placements, website administration, and robust responses to class member inquiries.
27 *Id.* The Court finds that these are standard expenses incurred by a claims
28 administrator in creating and implementing a robust notice plan in a complex

1 consumer action with antitrust and other claims. Both JND and Class Counsel
2 represent to the Court that they carefully scrutinized all requested expenses. *Id.*

3 In order to conserve resources, Class Counsel further requests Court approval
4 to delay the follow up notice ad campaign in order to combine this follow up campaign
5 with an appropriate and robust class notice plan to be submitted by motion no later
6 than fourteen (14) days of court approval of the costs motion. After reviewing these
7 submissions, the Court finds that the requested costs of class notice and administration
8 are reasonable in light of the robust notice plan reaching tens of millions of settlement
9 class members and warrants approval by the Court under the terms of the Settlement
10 Agreement.

11 **B. An Award of Class Counsel’s Reasonable Expenses Is Warranted**

12 “Reasonable costs and expenses incurred by an attorney who creates or
13 preserves a common fund are reimbursed proportionately by those class members who
14 benefit by the settlement.” *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362,
15 1366 (N.D. Cal. 1995) (citation omitted). Such expense awards comport with the
16 notion that the district court may “spread the costs of the litigation among the
17 recipients of the common benefit.” *Wininger v. SI Mgmt. L.P.*, 301 F.3d 1115, 1121
18 (9th Cir. 2002).

19 Class Counsel has incurred expenses of \$4,155,027.67 as of May 2021 in the
20 prosecution of this Action.⁴ Supp. Manifold Decl., ¶¶ 3, 4, Ex. 2. Class Counsel
21 provides a breakdown of the unreimbursed expenses necessarily incurred by counsel
22

23 _____
24 ⁴ In March 2016, the Court appointed Wolf Haldenstein as interim lead counsel for the
25 EPP Class. ECF No. 119. Interim lead counsels’ responsibilities included procedures
26 to monitor expenditures, maintain expense reports, employ experts, and generally
27 conduct all pre-trial, trial and post-trial proceedings, Class Counsel has affirmed to
28 the Court they diligently performed these tasks and have incurred reasonable and
necessary expenses in doing so. *See* ECF No. 119 at 7-8; Manifold Supp. Decl., ¶¶
16-18.

1 in this case. *Id.*, Ex. 2. For example, Class Counsel seeks reimbursement for expert
2 fees (\$3,226,002.90) and for filing fees, service of process, legal research, document
3 storage, photocopying, court reporters, mediation, and translation fees (approximately
4 \$929,024.77).⁵ *Id.* The Court finds that these costs were reasonable and necessary to
5 achieve this early ‘ice breaker’ settlement in a complex antitrust conspiracy between
6 the three dominant manufacturers of packaged tuna. This “hard figure” represents the
7 amount of specific costs incurred by Interim Lead and Class Counsel as of May 2021
8 to reach this early partial settlement. Supp. Manifold Decl., ¶¶ 3, 12, Ex. 2.

9 These are standard expenses incurred in prosecuting a civil lawsuit of this kind,
10 and are the type of expenses typically billed by attorneys to paying clients in the
11 marketplace. Class Counsel represents to the Court that they carefully scrutinized
12 these expenses. *Id.* These expenses are in line with those approved by courts in this
13 District and are all the type of expenses routinely charged to hourly paying clients.
14 *See, e.g., In re LendingClub Sec. Litig.*, 2018 U.S. Dist. LEXIS 163500, at *15 (N.D.
15 Cal. 2018) (expenses such as expert and consultant fees, court fees, travel and lodging
16 costs, legal research fees, and copying expenses were reasonable and recoverable); *In*
17 *re High-Tech Empl. Antitrust Litig.*, 2015 U.S. Dist. LEXIS 118052, at *58-59 (N.D.
18 Cal. 2015).

19 The Court finds an expense award of \$4,155,027.67 to be fair and reasonable.

20 **III. CONCLUSION**

21 The Court finds that the requested costs and expenses are reasonable, necessary
22 and fair and warrant final approval. The Court hereby ORDERS as follows:

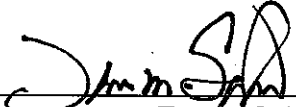
23 _____
24 ⁵ Class Counsel detailed these efforts in support of their request for an expense award.
25 *See e.g.* Manifold Supp. Decl., ¶ 19 (harmonized review of over two million
26 documents and shared storage costs for all productions with the other classes); ¶ 22
27 (costs taking over 60 depositions including travel to Thailand and Korea); ¶¶ 23-25
28 (detailing extensive expert costs for class certification including multiple expert
reports, depositions, and an evidentiary hearing); and ¶¶ 23-25 (costs from defending
16 individual EPP depositions).

- 1 (i) The costs of class notice and administration in the amount of \$1,147,090
2 incurred as of April 2022 shall be paid under the terms of the Settlement
3 Agreement;
- 4 (ii) An estimated additional distribution of \$830,870 may be paid under the
5 terms of the Settlement Agreement to cover the costs of a follow up notice
6 campaign and on-going claims administration;
- 7 (iii) an Expense Award in the amount of \$4,155,027.67 is approved and to be
8 paid from the Distribution Fund under the terms of the Settlement
9 Agreement; and
- 10 (iv) Class Counsel shall file a plan for distribution for class notice no later than
11 fourteen (14) days from the date of this order.

12 **IT IS SO ORDERED.**

13 Dated:

14 7-15-22

15 
16 THE HONORABLE DANA M. SABRAW
17 UNITED STATES DISTRICT COURT JUDGE
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