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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)

) **STIPULATION CONCERNING**
) **CLASS ACTION SETTLEMENT**
) **AGREEMENT**

This Document Relates to:

End Payer Plaintiffs Class Track

1 This Stipulation is made and entered into by and between Tri-Union Seafood
2 LLC d/b/a Chicken of the Sea International (“COSI”) and Thai Union Group (“TUG”)
3 (collectively the “COSI Defendants”) on one hand, and plaintiff class representatives
4 (“Plaintiffs”), both individually and on behalf of a settlement class of End Purchaser
5 Plaintiffs (“EPPs”) as defined in the Court’s class certification order in *In re:*
6 *Packaged Seafood Products Antitrust Litigation*, 15-MD-2670 (S.D. Cal.) (ECF No.
7 1931) (“Class Order”) and subject to approval of this Court. Both the COSI
8 Defendants and EPPs are collectively the “Settling Parties.”

9 WHEREAS, the Settling Parties entered into a Settlement Agreement
10 (“Agreement”) dated December 12, 2019 (ECF No. 1552-3);

11 WHEREAS, the Ninth Circuit granted Defendants leave to appeal the Class
12 Order and subsequently issued a panel opinion, *Olean Wholesale Grocery Coop., Inc.*
13 *v. Bumble Bee Foods, LLC, et. al.*, No. 19-56512 (9th Cir. Apr. 6, 2021) (“Ninth
14 Circuit Panel Opinion);

15 WHEREAS, on August 3, 2021, the Ninth Circuit vacated the Ninth Circuit
16 Panel Opinion (*Olean*, ECF No. 128);

17 WHEREAS, on September 22, 2021, an *en banc* oral argument was held before
18 the Ninth Circuit;

19 WHEREAS, it is not known when the Ninth Circuit will issue its *en banc*
20 decision or if further appeals will follow;

21 WHEREAS, on November 10, 2021 (ECF No. 2651), the Court issued an
22 **ORDER DENYING WITHOUT PREJUDICE CLASS PLAINTIFFS**
23 **MOTIONS FOR PRELIMINARY APPROVAL OF THE SETTLEMENTS**
24 **WITH DEFENDANTS CHICKEN OF THE SEA AND THAI UNION GROUP**
25 (“November 10, 2021 ORDER”);
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1 WHEREAS, the Court in its November 10, 2021 ORDER invited counsel to
2 meet and confer on concerns raised by the Court during oral argument;

3 WHEREAS, after having met and conferred, the Settling Parties now wish to
4 provide this Stipulation in order to address the Court’s questions raised in the
5 November 10, 2021 ORDER; and

6 WHEREAS, the Settlement Agreement shall remain binding upon all Class
7 Members (as defined in the Agreement, §1.b.vii), with the clarifications below agreed
8 in writing and executed by the Settling Parties.

9 NOW, THEREFORE, the Settling Parties stipulate as follows:

10 **DEFINITIONS**

11 1. As used in this Stipulation, all terms shall have the same meaning as
12 specified in the Agreement, §A.1 (ECF 2552-3 at 3-8).

13 **SETTLEMENT AMOUNT AND FUNDS**

14 2. The Settlement Maximum Amount is twenty million U.S. Dollars
15 (\$20,000,000). Agreement, §1.a.xxvii (ECF 2552-3 at 8). Under Paragraphs 11(b)
16 and 18, up to five million U.S. Dollars (\$5,000,000) out of the Settlement Maximum
17 Amount may be used to cover the reasonable costs of Class and Settlement Notices
18 and administration for the Settlement Fund (“Class and Settlement Notice Fund”).
19 ECF 2552-3 at 13 and 14. Class Counsel and its Claims Administration Professionals
20 will develop the Class and Settlement Notice and administration plan in their sole
21 discretion. If the reasonable costs of Class and Settlement Notice and administration
22 is less than \$5,000,000, the difference shall be refunded to the COSI Defendants under
23 Paragraph 18(b) of the Agreement. *Id.* at 14 and 15.

24 3. Under Paragraph 17 of the Agreement, any award by the Court for any
25 costs, fees or expenses (other than the costs of Class and Settlement Notice and the
26 administration for the distribution of the Settlement Fund as set forth in Paragraphs
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1 11(b) and 18 (described above) shall be paid from the Distribution Funds
2 (\$15,000,000).

3 4. The aforementioned terms (Agreement, ¶¶ 11, 17 and 18) remain in full
4 force and effect and unchanged by this Stipulation. ECF No. 2552-3 at 12-15.

5 **ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

6 5. The Agreement (¶¶ 27-31) provides that Class Counsel “may” submit an
7 application to the Court for an award of attorneys’ fees plus reimbursement of
8 litigation costs and expenses in connection with prosecuting this Action. Agreement,
9 ¶ 27 (ECF No. 2552-3 at 18).

10 6. Plaintiffs and Class Counsel have determined unilaterally that they will
11 not seek an award of attorneys’ fees, but instead will seek only reimbursement of
12 litigation costs and expenses from the Distribution Fund. Agreement, ECF 2552-3 at
13 14, 18, 19. As a result, there will be no “Fee Award” from the Distribution Fund as
14 described in Paragraphs 27 to 31 of the Agreement. *Id.*

15 7. As discussed above, the Settling Parties have agreed to a Class and
16 Settlement Notice Fund of up to \$5,000,000 as set forth in Paragraph 18.

17 8. The remaining terms and conditions as to any Expense Award, subject to
18 approval by the Court, as described in Paragraphs 27 to 31 of the Agreement remain
19 unchanged and in full, force, and effect. ECF 2552-3 at 18, 19.

20 9. Other than as set forth in the Settlement Agreement, Plaintiffs and Class
21 Counsel unilaterally waive any and all rights to seek or collect attorney fees and
22 expenses in this Action directly from the COSI Defendants.

23 10. Plaintiffs and Class Counsel reserve all rights to seek and collect attorney
24 fees and to seek reimbursement for reasonable expenses, subject to Court approval,
25 from any non-settling defendant in this Action whether by settlement, trial or
26 judgment. Plaintiffs and Class Counsel further reserve the right to base any such
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1 request or award for fees and expenses on the benefits obtained in the COSI Settlement
2 Agreement.

3 11. As to any other reasonable litigation costs and expenses (such as expert
4 fees and discovery costs already incurred by Plaintiffs and Plaintiffs' Counsel), any
5 request and/or award of reasonable costs and expenses from the Distribution Fund to
6 Plaintiffs and Plaintiffs' Counsel: (i) shall be governed by Paragraphs 27 to 31 of the
7 Settlement Agreement; (ii) shall be specifically identified in the Class and Settlement
8 Notice disseminated to class members; (iii) will be subject to scrutiny by the Court
9 and the proposed Settlement Class, and (iv) will only be awarded as finally approved
10 by the Court.

11 12. The COSI Defendants have *no* agreement with Plaintiffs and Class
12 Counsel for the reimbursement or award of fees and costs other than as set forth in the
13 Agreement.

14 13. *Notice.* All notices under Paragraph 40 of the Agreement, if directed to
15 the Class Members shall be directed to:

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18 manifold@whafh.com
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1 CLASS COUNSEL, on behalf of the EPPs, individually and on behalf of
2 Class Members.

3
4 By: /s/ Betsy C. Manifold
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24 *Class Counsel for the End Payer Plaintiffs*

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