

1 Michael P. Lehmann (Cal. Bar No. 77152)  
 2 Bonny E. Sweeney (Cal. Bar No. 176174)  
 3 Christopher L. Lebsock (Cal. Bar No. 184546)  
 4 Samantha J. Stein (Cal. Bar No. 302034)  
 5 HAUSFELD LLP  
 6 600 Montgomery Street, Suite 3200  
 7 San Francisco, CA 94111  
 8 Tel: (415) 633-1908  
 9 Fax: (415) 358-4980  
 10 E-mail: mlehmann@hausfeld.com  
 11 E-mail: bsweeney@hausfeld.com  
 12 E-mail: clebsock@hausfeld.com  
 13 E-mail: sstein@hausfeld.com

14 *Class Counsel for the Direct Purchaser Class*

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

17 IN RE: PACKAGED SEAFOOD PRODUCTS ANTITRUST LITIGATION
18
19 This filing relates to the Direct Purchaser Plaintiff Class Action Track
20
21
22
23
24
25
26
27
28

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

**DECLARATION OF BONNY E.  
 SWEENEY IN SUPPORT OF  
 DIRECT PURCHASER  
 PLAINTIFFS' MOTION FOR  
 PRELIMINARY APPROVAL OF  
 SETTLEMENT**

DATE: May 20, 2021  
 TIME: 10:30 a.m.  
 JUDGE: Janis L. Sammartino  
 CTRM: 4D

1 I, Bonny E. Sweeney, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California. I am a  
3 partner at Hausfeld LLP, 600 Montgomery St., Suite 3200, San Francisco, CA, 94111.  
4 I make this declaration in support of the Direct Purchaser Plaintiffs’ (the “DPPs”)  
5 Motion for Preliminary Approval of their proposed Settlement with Chicken of the  
6 Sea International (“COSI”) and its parent company, Thai Union Group PCL (“TUG”).  
7 I have personal knowledge of the facts set forth herein and, if called upon to do so, I  
8 could and would testify competently thereto.

9 2. Attached as Exhibit A is a true and accurate copy of the proposed Settlement  
10 Agreement between the DPPs, COSI, and TUG, executed on March 11, 2021.

11 3. Attached as Exhibit B is a true and correct copy of a news article available  
12 at [https://www.post-gazette.com/business/money/2019/01/25/StarKist-Walmart-  
13 million-settle-antitrust-claims-tuna-price/stories/201901250139](https://www.post-gazette.com/business/money/2019/01/25/StarKist-Walmart-million-settle-antitrust-claims-tuna-price/stories/201901250139).

14 4. The Court appointed Hausfeld LLP as Class Counsel for the Direct  
15 Purchaser Plaintiffs.

16 5. I and the other attorneys at my firm who have worked on this case are  
17 experienced attorneys who have litigated many prior complex antitrust class actions  
18 such as this one, including against leniency applicants under the Antitrust Criminal  
19 Penalty Enhancement and Reform Act (“ACPERA”). We have successfully resolved  
20 many of those cases in districts within this Circuit. We have brought that experience  
21 and knowledge to bear on behalf of the Class and in this proposed Settlement. As  
22 described below, the negotiations leading to the settlement with COSI and TUG were  
23 vigorous, informed, and thorough; occurred over a span of many months; and were  
24 not concluded until after the completion of fact and expert discovery and full briefing  
25 of dispositive motions. The parties conducted their negotiations in good faith under  
26 the supervision of mediator Jan Adler (ret.), a former United States Magistrate Judge  
27 for this District.

28

1           6. Class Counsel believe that the proposed Settlement provides fair  
2 compensation to the Settlement Class and is likely to be approved at a final approval  
3 hearing. The settlement amount is fair, adequate, and reasonable in light of COSI’s  
4 status as the leniency applicant in the U.S. Department of Justice’s (“DOJ”) criminal  
5 investigation. Unlike its co-conspirators, COSI’s maximum civil liability following a  
6 trial might well be limited by ACPERA to single damages and liability only for  
7 overcharges on its own sales, as opposed to treble damages and joint and several  
8 liability that COSI’s co-conspirators are subject to under the Clayton Act, 15 U.S.C.  
9 § 15. Following the DOJ’s criminal investigation, COSI admitted violations of the  
10 Sherman Act, sought leniency, and cooperated with both the DOJ and civil claimants  
11 by providing evidence against its co-conspirators and co-Defendants, StarKist Co. and  
12 Bumble Bee Foods LLC.<sup>1</sup>

13           7. Based on existing and anticipated requests for exclusion (from the Direct  
14 Action Plaintiffs (“DAPs”), for example), the proposed Settlement will deliver  
15 approximately \$13 million in compensation to remaining Class members.  
16 Specifically, the Settlement amount is calculated at 3.2% of COSI and TUG commerce  
17 that remains in the Settlement Class following notice and the opportunity to opt out.  
18 This is significant relief for the Settlement Class Members, whose purchases (after the  
19 DAPs are excluded) represent approximately 20% the commerce at issue in this case,  
20 as described in the DPPs’ economist’s expert report. *See* Mangum Merits Reply  
21 Report ¶ 244, attached to the Declaration of Samantha Stein (ECF No. 2143), Ex. 242.  
22 By comparison, it has been publicly reported that one of the most powerful retailers  
23 in the market, Wal-Mart, which was Defendant StarKist’s largest customer and  
24 accounted for approximately 20% of packaged tuna purchases during the relevant

---

25           <sup>1</sup> When Bumble Bee and StarKist pleaded guilty to violations of the antitrust laws, the  
26 DOJ sent letters to DPP Class Counsel pursuant to the Crime Victim Rights Act to  
27 notify victims of the conspiracy, including DPP Class members, of their rights to be  
28 heard in connection with the sentencing of these companies.

1 period, settled with StarKist for \$20.5 million. *See* Mangum Merits Report ¶ 61,  
2 attached to the Declaration of Samantha Stein (ECF No. 2143), Ex. 24. And Class  
3 Counsel were able to more precisely calculate Wal-Mart’s settlement as a percentage  
4 of its commerce based on information available to it and can confirm that the  
5 Settlement is in the range of Wal-Mart settlement. Notably, StarKist is *not* the leniency  
6 applicant, and so remains subject to joint and several liability and treble damages.  
7 Thus, comparatively, the DPPs’ proposed settlement achieves a result that is fair,  
8 reasonable and adequate—and does so without taking any fees or costs out of the  
9 Class’s recovery or burdening class members with the distractions associated with  
10 litigating on their own behalf.

11 8. The Settlement was achieved after significant discovery and development of  
12 the case. Among other things, Class Counsel have conducted extensive discovery,  
13 reviewing millions of pages of documents and taking depositions of dozens of  
14 witnesses, including several of COSI’s and TUG’s employees and former employees.  
15 Class Counsel have also conducted extensive written discovery, including serving  
16 interrogatories to which COSI responded by describing its conspiracy with StarKist  
17 and Bumble Bee during the relevant period, admitting it had entered into agreements  
18 to raise prices with these competitors. As a result of these and other efforts, Class  
19 Counsel were able to secure relief from COSI/TUG for a period of time longer than  
20 the period for which the DOJ has secured guilty pleas.

21 9. Class Counsel have also investigated and litigated claims against the parent  
22 entity Defendants in this case (which were not charged by the DOJ), and as a result of  
23 those efforts, TUG is settling with the DPPs as well. Although TUG denied its  
24 participation in the conspiracy and any potential alter ego or agency liability, it  
25 produced discovery and its top executives sat for depositions.

26 10. The Parties also conducted expert discovery and briefed dispositive  
27 motions, with the DPPs and COSI/TUG filing cross motions for summary judgment  
28

1 on various issues and *Daubert* motions against the opposing experts. *See, e.g.*, ECF  
2 Nos. 1967, 1970, 1976, 1984, 2001, 2015, 2030. The DPPs hired three experts for use  
3 against COSI and TUG: Dr. Russell Mangum (economist); Dr. Gary Hamilton  
4 (sociologist); and Marianne DeMario (forensic accountant). COSI and TUG hired four  
5 experts to oppose the DPPs: Dr. Randal Heeb (economist); Dr. Michael Moore  
6 (economist); Gary Kleinrichert (accountant); and Arthur Laby (attorney). The Parties  
7 have completed all expert depositions and submitted final expert reports. The experts  
8 in this case have serious disputes about the likely overcharge percentage, among other  
9 things.

10 11. All of this discovery, expert work and motion practice has given Class  
11 Counsel more than sufficient information to evaluate the DPPs' claims. Particularly  
12 in light of the late stage of the litigation, Class Counsel is well-positioned to make an  
13 informed decision as to the value of the settlement compared to the risks of continued  
14 litigation.

15 12. The Settlement—the DPPs' first with any of the Defendants—was  
16 negotiated over two years, at arm's length, with the assistance and oversight of a  
17 neutral mediator, the Honorable Jan Adler (retired), a former Magistrate Judge in the  
18 Southern District of California. The Settlement Agreement was negotiated over  
19 multiple in-person, video conference, and telephonic mediation sessions.

20 13. The DPPs also understand that they were the last party in the litigation to  
21 settle with COSI and TUG, after years of vigorously fought litigation. All of the  
22 DAPs—which comprise the largest members of the DPP Class and collectively  
23 account for approximately 80% of the purchases by DPP Class members—have  
24 already entered into settlement agreements with COSI and TUG and have dismissed  
25 their claims against these Defendants. Class Counsel understand that the DPPs'  
26 proposed Settlement is in a range similar to the DAP settlements.

27  
28

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.