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Class Counsel for the Direct Purchaser Class

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

IN RE: PACKAGED SEAFOOD
PRODUCTS ANTITRUST
LITIGATION

This filing relates to the Direct
Purchaser Plaintiff Class Action
Track

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-](https://www.post-gazette.com/business/money/2019/01/25/StarKist-Walmart-million-settle-antitrust-claims-tuna-price/stories/201901250139)
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.

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.¹

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 ¹ 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

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

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

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

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

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