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

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

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This filing relates to the End Payer  
Plaintiff Class Action Track

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

**ORDER GRANTING END  
PAYER PLAINTIFFS'  
RENEWED MOTION FOR  
PRELIMINARY APPROVAL OF  
PARTIAL SETTLEMENT**

1 **I. INTRODUCTION**

2 Pending before the Court is the End Payer Plaintiffs (“EPPs”) renewed motion  
3 for preliminary approval of their “ice-breaker” settlement with Defendant Chicken of  
4 the Sea International (“COSI”) and its parent company, Defendant Thai Union Group  
5 PCL (“TUG”) (collectively “COSI”). As the applicant for leniency through the  
6 Department of Justice’s (“DOJ”) Antitrust Division corporate leniency program,  
7 COSI was obligated to and did provide valuable cooperation to the EPPs. Manifold  
8 Decl., ¶ 1. The EPPs ask the Court for preliminary approval of the COSI Settlement  
9 and the proposed settlement class notice, and that the Court set a hearing date for final  
10 approval.

11 The key monetary terms of the Settlement are as follows: (1) the maximum  
12 Settlement Amount is twenty million (\$20,000,000). COSI Settlement Agreement,  
13 §1.a.xxvii (ECF 2552-3 at 8); (2) under Paragraphs 11(b) and 18, up to five million  
14 (\$5,000,000) out of the Maximum Settlement Amount shall be used to cover the  
15 reasonable costs of Class and Settlement Notices and administration for distribution  
16 of the Settlement Fund of fifteen million (\$15,000,000) (“Settlement Fund”). ECF  
17 2552-3 at 13 and 14; and (3) if the reasonable costs of Class and Settlement Notice is  
18 less than \$5,000,000, the difference is refunded to the COSI Defendants under  
19 Paragraph 18(b) of the COSI Settlement Agreement. *Id.* at 14 and 15.

20 The EPPs seek reimbursement of litigation costs and expenses of \$4,155,027.67  
21 from the Settlement Fund. The EPPs also request that up to **\$1 million in notice costs**  
22 to be incurred by the claims administrator JND be approved by the Court prior to the  
23 final approval hearing. These notice costs will be paid out of the \$5 million set aside  
24 discussed above. The EPPs have waived any rights to seek an attorneys’ fee award  
25 from the COSI Settlement or from the COSI Defendants but have reserved their rights  
26 to seek an award of attorney fees from any further recoveries from the non-settling  
27 defendants and to base their request on the benefits conferred by the COSI Settlement.  
28

1 The Court previously denied without prejudice the EPPs’ Motion for  
2 Preliminary Approval. ECF No. 2651 (November 10, 2021 Order). At the Court’s  
3 invitation, the EPPs filed a renewed Motion. The renewed Motion specifically  
4 addresses, and as discussed below resolves, the three issues raised by the Court in its  
5 November 10, 2021 Order.

6 As described below, the proposed COSI Settlement is likely to be approved as  
7 fair, adequate, and reasonable at a final approval hearing, and accordingly, the Court  
8 GRANTS the EPPs’ Motion.

## 9 **II. BACKGROUND**

10 Before reaching the COSI Settlement, the Parties litigated this case for nearly  
11 three years, completing fact discovery, briefing and argument on class certification  
12 and engaging in expert discovery. The EPPs hired two experts for use against COSI.  
13 Manifold Decl. ¶26. The Court also certified the EPP Class in this case, following a  
14 three-day evidentiary hearing. ECF No. 1931 (“Class Order”). In December of 2019,  
15 the Ninth Circuit granted Defendants leave to appeal the Class Order and subsequently  
16 issued a panel opinion, *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods,*  
17 *LLC, et. al.*, No. 19-56514 (9th Cir. Apr. 6, 2021) (“Ninth Circuit Panel Opinion). On  
18 August 3, 2021, the Ninth Circuit vacated the Ninth Circuit Panel Opinion (*Olean*,  
19 ECF No. 128). On September 22, 2021, an *en banc* oral argument was held before  
20 the Ninth Circuit. It is not known when the Ninth Circuit will issue its *en banc*  
21 decision or if further appeals will follow.

## 22 **III. SETTLEMENT TERMS**

23 The Court finds that the proposed settlement was the result of contentious  
24 arms’-length negotiations. See Manifold Declaration (citing multiple in-person  
25 meetings including a Los Angeles meeting with a TUG senior official from Asia, and  
26 written exchanges over the course of six months). The COSI Settlement, referred to  
27 as an “ice breaker” Settlement, is the EPPs’ first with any of the Defendants and was  
28

1 reached at an early and crucial stage of the litigation before the Class Order was issued.  
2 Manifold Decl. ¶17.

3 Some of the material terms of the Settlement Agreement are as follows:

4 **Settlement Class Definition.** The Settlement Class definition is the same as the  
5 EPP Class certified by the Court (*see* ECF No. 1931.)

6 **Benefits.** The Settlement Agreement requires the COSI Defendants to make  
7 four payments totaling \$20 million into a Settlement Fund. Manifold Decl., Ex. 1,  
8 §11. Up to \$5 million will be used to cover the costs of notice to the COSI Settlement  
9 Class and for claims administration. *Id.*, Ex. 1 §§ 11(b) & (c) & 18.<sup>1</sup> The remaining  
10 \$15 million, less any award of litigation expenses by this Court, will be distributed to  
11 Authorized Claimants on a *pro rata* basis. *Id.* Ex. 1, §§ 1(b)(xiv) & 16.

12 The Settlement Agreement also requires the COSI Defendants to continue to  
13 cooperate fully with EPPs' case. Manifold Decl., Ex. 1 § 10. COSI's cooperation  
14 could provide substantial benefit to EPPs as they pursue their case against the other  
15 non-settling Defendants.

16 **Distribution.** All Settlement Class Members will be treated equally. Each  
17 Authorized Claimant in the Class shall receive a *pro rata* share of the Distribution  
18 Funds as described in the Class Notice. Declaration of Jennifer Keough (JND)  
19 ("Keough Decl."), Ex. I Payments to Authorized Claimants will not be immediately  
20 distributed but held until the claims against all non-settling Defendants have been  
21 resolved by settlement, judgment or trial including any appeals and in accordance with  
22 any subsequent Court orders. *Id.* The proposed escrow of the settlement funds is based  
23 on the EPPs belief that there is potential for additional settlement monies to be  
24 recovered from or a favorable judgment against the non-settling Defendants, which  
25 would add additional funds to be distributed. With the costs of claims administration,

26 \_\_\_\_\_  
27 <sup>1</sup> If class notice and claims administration of the COSI Settlement cost less than \$5  
28 million, then EPPs will return any remainder to the COSI Defendants. *Id.* Ex. 1,  
§18(b)(i).

1 it is more efficient to delay distribution of this partial settlement until the remaining  
 2 claims are resolved. The Court agrees that the distribution of the partial settlement to  
 3 Authorized Claimants should be delayed until further order of the Court.

4 **Release.** In exchange for the foregoing relief, the EPPs have agreed to release  
 5 “all claims, . . . in any way arising out of or relating in any way to the sale or pricing  
 6 of Packaged Tuna during the Class Period, including, but not limited to, any conduct  
 7 alleged or causes of action in any way arising out of the Complaint or in any similar  
 8 action filed in state court...” *Id.*, Ex. 1 ¶8. *See also* Ex.1, ¶9 (citing §1542 of California  
 9 Civil Code, releasing under California law “with respect to the subject matter of  
 10 provisions” in Paragraph 8.)

11 **Attorneys’ Fees and Costs.** Settlement Class Counsel waived their rights to  
 12 seek legal fees from the COSI Defendants or the Settlement Fund. Settlement Class  
 13 Counsel will seek reimbursement for \$4,155,027.67 in actual litigation costs to date.  
 14 EPPs seeks permission to advance media costs of up to \$1 million for the notice  
 15 program from the \$5 million set aside for administration costs (discussed below).

16 **Notice Payment.** COSI has agreed to pay \$5 million into the Settlement Fund  
 17 for the costs of notice and claims administration. Within thirty (30) after Preliminary  
 18 Approval of the Settlement is granted by the Court, the EPPs seek permission to  
 19 disburse up to \$1 million prior to final approval upon receipt of valid invoices from  
 20 the Claims Administrator approved by the Court. *Id.*, Ex 1, § 18.

21 **Notice Plan.** The EPPs retained an experienced and well-respected claims  
 22 administrator who prepared a comprehensive and robust notice plan to alert Settlement  
 23 Class Members of the COSI Settlement. *See* Keough Decl., ¶¶3-7, Ex. B. JND is a  
 24 nationally recognized claim administration firm that has successfully handled the  
 25 notice and administration service for numerous complex class actions including  
 26 settlements requiring extensive media campaigns. Keough Decl., Ex. A. JND  
 27 estimates that the Proposed Notice Plan will reach approximately 85% of the  
 28 Settlement Class. *Id.*, ¶¶13, 28, 35, 38, and Ex. B. *The FJC’s Judges’ Class Action*

1 *Notice and Claims Process Checklist and Plain Language Guide* (“FJC Checklist”)  
 2 considers a Notice Plan with a high reach (above 70%) effective. *Id.*, ¶11. The  
 3 Proposed Notice Plan includes a robust 12-week media campaign with an extensive  
 4 digital effort, publication in *People* magazine, spots on iHeart radio, an interactive  
 5 case website and a 24-hour toll-free number. Keough Decl., ¶¶13, 20-29 and Ex. B.

6 In response to the Court’s November 10, 2021 Order (ECF No. 2651 at 2:26-  
 7 27), the EPPs provided more detail about the “proposed method of distributing relief  
 8 to the class, including the method for processing class member claims” as required by  
 9 Federal Rule of Civil Procedure 23(e) (2) (C) (ii). The EPPs explained how JND will  
 10 both efficiently process millions of Settlement Class members claims and effectively  
 11 distribute monies to Authorized Claimants through the means to be elected by the  
 12 claimant (usually electronic). Intrepido-Bowden Decl., ¶¶s 11-21. For example, to  
 13 allow for a distribution election by an Authorized Claimant, the Claim Form was  
 14 revised by adding a box for the claimant to check (check or PayPal) and confirming  
 15 an email or address for distribution.

16 As discussed below, the effectiveness of the robust Notice Plan proposed by  
 17 JND and the efficient, convenient and user-friendly online claim process and  
 18 distribution methodology (based on the claimant’s own preference for payment)  
 19 favors approval of the settlement proposal under Federal Rule of Civil Procedure 23(e)  
 20 (2) (C) (ii).

#### 21 **IV. DISCUSSION**

22 In deciding whether to approve a proposed settlement, the Ninth Circuit has a  
 23 “strong judicial policy that favors settlements, particularly where complex class action  
 24 litigation is concerned.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 556  
 25 (9th Cir. 2019) (en banc) (internal quotation omitted); *In re Syncor ERISA Litig.*, 516  
 26 F.3d 1095, 1101 (9th Cir. 2008). “[T]here is [also] an overriding public interest in  
 27 settling and quieting litigation,” and this is “particularly true in class action suits.” *Van*  
 28 *Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

1 In December of 2018, the Rules Committee revised Federal Rule of Civil  
2 Procedure 23 to formalize the preliminary approval process for district courts when  
3 first evaluating a proposed class action settlement. *See* Fed. R. Civ. P. 23(e)(1). Under  
4 the new rule, “[t]he court must direct notice [of the proposed settlement] in a  
5 reasonable manner to all class members who would be bound by the proposal if giving  
6 notice is justified by the parties’ showing that the court will likely be able to: (i)  
7 approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of  
8 judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

9 Here, although now on appeal, the Court previously certified a contested EPP  
10 Class for trial. ECF No. 1931. The Court also appointed Wolf Haldenstein as Class  
11 Counsel for the EPP Class and the named plaintiffs as the Class Representatives in  
12 this case. *Id.* Nothing in the Ninth Circuit appellate briefing or in the record before  
13 this Court would alter the Court’s prior analysis on the determinations under Federal  
14 Rule of Civil Procedure Rule 23(a). Nonetheless, the EPPs took a belt and suspenders  
15 approach – both citing the Court’s analysis in its class certification order on these  
16 uncontested issues and separately briefing (without the benefit of the Court’s prior  
17 class certification order) that both Federal Rule of Civil Procedure 23(a) and 23(b)(3)  
18 were satisfied and warrant certification of a settlement class.

19 In considering whether a settlement class is appropriate, the Court need not  
20 determine whether the proposed class would present manageability concerns. *In re*  
21 *Hyundai and Kia Fuel Economy Litig.*, 926 F.3d at 556-57 (citing *Amchem Prods.,*  
22 *Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Instead, the Court need only determine  
23 whether the proposed Settlement Class satisfies the remaining requirements of Rules  
24 23(a) and (b). *Id.*

25 The Court finds that the requirements of both Federal Rule of Civil Procedure  
26 23(a) and 23(b)(3) have been adequately met and the Court conditionally certifies the  
27 proposed Settlement Class for purposes of judgment under Rule 23(e)(1)(B). The  
28 Court need only determine whether it will likely be able to approve the proposed

1 Settlement at final approval. *See* Fed. R. Civ. P. 23(e)(1) advisory committee’s note  
2 (2018) (“The decision to give notice of a proposed settlement to the class is an  
3 important event. It should be based on a solid record supporting the conclusion that  
4 the proposed settlement will likely earn final approval after notice and an opportunity  
5 to object.”). At any final approval hearing, the Court will need to determine whether  
6 the proposed Settlement Agreement is “fair, reasonable, and adequate” and thus merits  
7 the Court’s approval under Rule 23(e)(1)(C).

8 As amended, Rule 23 now provides a checklist of factors to consider when  
9 assessing whether a proposed settlement is fair, reasonable, and adequate. *See* Fed. R.  
10 Civ. P. 23(e)(2). Ultimately, as the Ninth Circuit has admonished, the key “underlying  
11 question remains this: Is the settlement fair?” *In re Volkswagen “Clean Diesel” Mktg.,*  
12 *Sales Practices, & Prods. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018).

### 13 **A. The Settlement is Likely to be Approved.**

14 The Court finds that the Proposed Settlement meets all the relevant factors to  
15 demonstrate that preliminary approval is appropriate. The totality of the factors show  
16 that this Settlement is well within the range of possible approval.

#### 17 **1. The *Churchill Village* Factors Favor Preliminary Approval**

18 Under the first *Churchill Village* factor, this Court considers the strength of  
19 plaintiffs’ case. *See* Fed. R. Civ. P. 23(e)(2)(C). The case against the COSI  
20 Defendants regarding liability is strong. Although EPPs believe they have a powerful  
21 liability case, the EPPs must, however, balance the strength of their case against the  
22 second *Churchill* factor: the risk, expense, complexity and delay of further litigation.  
23 Fed. R. Civ. P. 23(e)(2)(C)(i). Notwithstanding the presence of an ACPERA leniency  
24 applicant and a criminal investigation, the issue of who was damaged and to what  
25 extent remains hotly contested. COSI’s admissions in its leniency application and its  
26 proffers to the plaintiffs only described certain acts that occurred, not the impact of  
27 those acts. Further, the COSI Defendants maintain that those acts ended earlier than  
28 the 2015 end date of the EPP Class Period.



1           Furthermore, setting the risks of litigation aside, COSI Defendants have  
2 indicated that they may not be able to pay a full judgment. The harm caused by the  
3 conspiracy and the resulting damages were so large that thinly-capitalized Bumble  
4 Bee could not withstand the strain, and it filed for bankruptcy and was sold off to a  
5 fishing company during this litigation, leaving a shell from which no recovery has  
6 been achieved. These risks all weigh strongly in favor of preliminary approval.

7           The third factor, the risk of maintaining class certification through trial, also  
8 weighs in favor of preliminary approval. *In re Bluetooth Headset Prods. Liab. Litig.*,  
9 654 F.3d 935, 946 (9<sup>th</sup> Cir. 2011). Settlement was reached prior to the Court granting  
10 class certification, which the EPPs recognized had risk. Class certification was and  
11 remains hotly contested. It is an appropriate consideration in approving the parties'  
12 decision to achieve resolution by settlement. The risk of any appeal after trial also  
13 weighs in favor of settlement approval.

14           The fourth *Churchill Village* factor, the amount obtained through the  
15 Settlement, also supports preliminary approval. *See also* Fed. R. Civ. P. 23(e)(2)(C);  
16 *Procedural Guidance for Class Action Settlements* § 1(e) (suggesting courts consider  
17 amount of settlement to potential recovery). The Settlement with COSI must be  
18 viewed in light of limits on potential recovery. COSI applied for and was granted  
19 leniency applicant status under ACPERA § 213(a), 118 Stat. at 665 (as amended).  
20 This status offers the leniency applicant, essentially a cooperator with the  
21 Government, certain civil protections. The leniency applicant is (a) exempt from joint  
22 and several liability, which otherwise attaches by operation of law in antitrust  
23 litigation; and (b) is exempt from trebling, which is likewise automatic in antitrust  
24 cases. Accordingly, COSI's maximum exposure – by statute – was its single damages  
25 for its own sales: no single damages for the conspiracy, and nothing trebled.  
26 *Morningstar Packing Co. v. S.K. Foods, L.P.*, No. 2:09-cv-00208, 2015 WL 3797774  
27 (E.D. Cal. June 18, 2015).

1 In assessing the amount recovered here, the Court considers that, as the “first  
2 settlement in the litigation,” this agreement carries additional “significant value”  
3 because it may “‘break the ice’ and bring other defendants to the point of serious  
4 negotiations.” *In re Linerboard Antitrust Litig.*, 292 F.Supp.2d 631 (E.D. Pa. 2003).  
5 Courts typically approve settlements that offer the first settling party a discount due to  
6 “the significant value in and of itself as an icebreaker settlement,” particularly when,  
7 as here, the settling defendants have agreed to cooperate in the remaining litigation.  
8 *In re Domestic Airline Travel Antitrust Litig.*, 378 F.Supp.3d 10, 19 (D.D.C. 2019); *In*  
9 *re Ampicillin Antitrust Litig.*, 82 F.R.D. 652, 654 (D.D.C. 1979) (finding that  
10 “assistance in the case” will “prove invaluable to the plaintiffs”).

11 Given these circumstances, the amount recovered is more than reasonable. The  
12 Settlement Agreement provides substantial benefits to Class Members: \$5 million for  
13 notice and administration costs, and \$15 million in a Settlement Fund to escrow for  
14 Settlement Class Members and to reimburse litigation expenses. COSI’s total  
15 exposure was limited to \$60 million based on EPPs’ expert’s calculations and its status  
16 as the ACPERA leniency applicant. And, COSI has vehemently disputed the impact  
17 and the amount of damages. Absent a settlement, COSI would proffer its own  
18 damages expert, necessitating a trial on highly technical matters of econometrics.  
19 EPPs secured one-third of the maximum possible recovery their own expert calculated  
20 through Settlement and falls within the range of likely approval.

21 This proposed settlement compares favorably to other antitrust and class action  
22 settlements that have received approval. *See In re Domestic Airline Travel Antitrust*  
23 *Litig.*, 378 F.Supp.3d at 19 (finding \$15 million settlement to be “in line” with other  
24 icebreaker settlements); *see also Carlin v. DairyAmerica, Inc.*, 380 F. Supp.3d 998,  
25 1011 (E.D. Cal. 2019) (“Courts regularly approve class settlements where class  
26 members recover less than one quarter of the maximum potential recovery amount.”);  
27 *In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding  
28 settlement that provided plaintiffs one-sixth of their potential recovery to be “fair and

1 adequate”); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal.  
2 2015) (approving settlement that provided between 8.5 and 25.4 percent of the  
3 potential recovery); *In re Critical Path, Inc.*, No. C01-00551, 2002 WL 32627559  
4 (N.D. Cal. June 18, 2002) (finding \$17.5 million settlement “not unreasonable” when  
5 compared to potential recovery of \$200 million). When combined with the  
6 cooperation the COSI Defendants have agreed to provide, the relief provided for by  
7 the Settlement more than merits preliminary approval.

8 The fifth and sixth *Churchill Village* factors also support preliminary approval.  
9 Because of the time expended on this case, EPPs were in a good position to evaluate  
10 the value of the COSI Settlement. *See Bravo v. Gale Triangle, Inc.*, No. CV 16-03347  
11 BRO (GJSx), 2017 WL 708766, at \*11 (C.D. Cal. Feb. 16, 2017) (finding that  
12 extensive discovery shows that counsel fully understand case’s factual and legal  
13 issues). Furthermore, EPPs are represented by Class Counsel with substantial  
14 experience in litigating and evaluating antitrust class actions. Manifold Decl., Ex. 3.  
15 Their views and experience also weigh in favor of approval.

16 **2. Rule 23(e) Factors Support Preliminary Approval**

17 As noted above, in addition to the *Churchill Village* factors, Rule 23(e)(2)  
18 requires courts to consider whether (1) class representatives and counsel have  
19 adequately represented the class; (2) the proposal was negotiated at arm’s length; (3)  
20 the settlement provides adequate relief for the class; and (4) the proposal “treats class  
21 members equitably relative to each other.” The Court finds that for the reasons  
22 discussed above, EPPs have established that class representatives and their counsel  
23 have adequately represented the class’ interest; the COSI Settlement provides  
24 adequate relief for the class; and the proposal treats Settlement Class Members  
25 equitably.

26 In addition, when considering whether the settlement resulted from arm’s-  
27 length negotiations, courts often find it useful to look at issues including (1)  
28 “attorneys’ fees out of proportion to class member compensation;” (2) an agreement

1 by the defendant not to contest class counsel’s attorney’s fees; and (3) an agreement  
2 to allow unawarded attorneys’ fees to revert to the defendants. *Volkswagen Clean*  
3 *Diesel Marketing Litig.*, 895 F.3d at 611 & n. 19 (citing *In re Bluetooth Headset Prod.*  
4 *Liab. Litig.*, 654 F.3d at 947); *Procedural Guidance for Class Action Settlements*  
5 §1(h). Here, Settlement Class Counsel will **not** be requesting any attorney fees, just  
6 reimbursement for litigation costs and expenses, so these usual concerns are moot.  
7 The COSI Defendants and any Settlement Class Member are free to object to Class  
8 Counsel’s request for reimbursement from the Settlement Fund.

9 The terms of the COSI Settlement Agreement further make clear that it is not  
10 the result of collusion. It is similarly apparent that the COSI Settlement – secured after  
11 multiple discussions and with experience counsel and a core COSI executive  
12 present— resulted from hard-fought, arm’s-length negotiations. Manifold Decl., ¶¶  
13 11-14.

14 **a. EPPs’ Class Notice and Claims Program Is Reasonable.**

15 The Court must also assess whether the notice and claims program is reasonable  
16 so Settlement Class Members can object to, or opt out of, the Settlement. *See* Fed. R.  
17 Civ. P. 23(e)(4) -(5). Class Counsel retained JND, an experienced notice and claims  
18 administrator, to serve as the notice provider and settlement claims administrator. The  
19 Court approves and appoints JND as the Claims Administrator. EPPs and JND have  
20 developed an extensive and robust notice program which satisfies prevailing reach  
21 standards. JND also developed a distribution plan which includes an efficient and user  
22 friendly claims process with an effective distribution program. The Notice is  
23 estimated to reach over 85% of potential class members via notice placements with  
24 the leading digital network (Google Display Network), the top social media site  
25 (Facebook), and a highly read consumer magazine (*People*). The proposed Class  
26 Notice clearly explains the objection process to Settlement Class Members and  
27 informs them that they may appear at the fairness hearing or retain counsel to represent  
28

1 their interests. Class members may appear at the Fairness Hearing, or submit a timely  
2 and appropriate written statement through counsel.

3 Here, the Settlement treats all Class members equitably, and there are no  
4 differences between the scope of relief between any Class members.

5 **INTERIM DISTRIBUTION OF MONIES TO CLAIMS ADMINISTRATOR**

6 Given its depth of reach, and the need to reach tens of millions of Settlement  
7 Class Members, an interim distribution of \$1 million prior to final approval of the  
8 COSI Settlement is approved under the terms provided in the Settlement Agreement.

9 In light of all of the foregoing, the proposed COSI Settlement merits  
10 preliminary approval as it is likely to be finally approved after the Fairness Hearing.

11 **CONCLUSION**

12 For the foregoing reasons, the Court hereby preliminarily approves the COSI  
13 Settlement, and ORDERS the following:

14 (1) The Court certifies, for settlement purposes, the following Settlement  
15 Class:

16  
17 All persons and entities who reside in one of the States described in  
18 paragraphs 113(b) to 113(gg) of the Fourth Consolidated Amended  
19 Complaint, specifically Arizona, Arkansas, California, the District of  
20 Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine,  
21 Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska,  
22 Nevada, New Hampshire, New Mexico, New York, North Carolina,  
23 North Dakota, Oregon, Rhode Island, South Carolina, South Dakota,  
24 Tennessee, Utah, Vermont, Virginia, West Virginia, and Wisconsin,  
25 who indirectly purchased Packaged Tuna in cans or pouches smaller  
26 than forty ounces for end consumption and not for resale, produced by  
27 any Defendant or any current or former subsidiary or affiliate thereof, or  
28 any co-conspirator during the period from June 1, 2011 to July 1, 2015.

26 (2) The Court appoints Wolf Haldenstein as Settlement Class Counsel.

27 (3) The Court appoints the named plaintiffs in the Class Order (ECF No.  
28 1931) as Class Representatives for settlement purposes.

1 (4) The Court finds that the COSI Settlement Agreement has been negotiated  
2 at arm’s length.

3 (5) The Court finds the COSI Settlement is fair, reasonable, and adequate, and  
4 in the best interests of the Settlement Class.

5 (6) The Court approves the notice content<sup>2</sup> and plan for providing notice of  
6 the COSI Settlement to members of the Settlement Class.

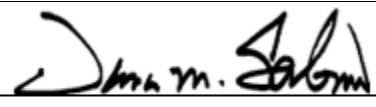
7 (7) The Court orders COSI and TUG to provide the relevant notices as  
8 required by the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*

9 (8) Finally, the Court adopts and sets the following deadlines:

10	Deadline for disseminating Class notice	April 13, 2022
11	Deadline for filing of affidavit attesting that notice was disseminated as ordered	May 9, 2022
12		
13		
14	Deadline for Class members to opt out of the Class and/or of the Settlement and deadline to object to the Settlement	May 13, 2022
15		
16		
17	Plaintiffs to file a motion for final approval and to request costs and expenses incurred to date of	May 25, 2022
18		
19	\$4,155,027.67.	
20	Final approval hearing	July 15, 2022, at 1:30 p.m.

21 **IT IS SO ORDERED.**

22 Dated: January 26, 2022

  
 \_\_\_\_\_  
 Hon. Dana M. Sabraw, Chief Judge  
 United States District Court

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 \_\_\_\_\_  
<sup>2</sup> The notice requires one correction: The address for the Clerk of Court is 333 West Broadway, San Diego, CA 92101.