

1 Betsy C. Manifold (182450)
manifold@whafh.com
2 Rachele R. Byrd (190634)
byrd@whafh.com
3 Alex J. Tramontano (276666)
tramontano@whafh.com
4 **Wolf Haldenstein Adler**
5 **Freeman & Herz LLP**
750 B Street, Suite 1820
6 San Diego, CA 92101
7 Telephone: 619/239-4599
8 Facsimile: 619/234-4599

9 *Class Counsel for the End Payer Plaintiffs*

10 [Additional counsel appear on signature page]

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 IN RE: PACKAGED SEAFOOD
14 PRODUCTS ANTITRUST
15 LITIGATION

) Case No.: 15-MD-2670 DMS (MDD)

) **DECLARATION OF BETSY C.**
) **MANIFOLD IN SUPPORT OF END**
) **PAYER PLAINTIFFS' MOTION**
) **FOR FINAL APPROVAL OF**
) **PARTIAL CLASS ACTION**
) **SETTLEMENT**

16 _____
19 This Document Relates to:
20
21 End Payer Plaintiffs Class Track

) DATE: July 15, 2022
) TIME: 1:30pm
) JUDGE: Hon. Dana M. Sabraw
) COURT: 13A (13th floor)

1 I, Betsy C. Manifold, declare as follows:

2 1. I am an attorney duly licensed to practice before all the courts of the State
3 of California. I am a member of the law firm Wolf Haldenstein Adler Freeman &
4 Herz LLP (“Wolf Haldenstein”), Class Counsel for End Payer Plaintiffs. I submit this
5 declaration in support of End Payer Plaintiffs’ Motion for Final Approval of Partial
6 Class Action Settlement. I have personal knowledge of the matters stated herein and,
7 if called upon, I could and would competently testify thereto.

8 **OVERVIEW**

9 2. This “icebreaker” settlement was the first settlement between EPPs and
10 any Defendant. After months of arms’-length negotiations with the COSI Defendants¹
11 initiated *after* the District Court’s three day evidentiary hearing in January 2019, the
12 parties finalized this early settlement *just before* the District Court issued its decision
13 certifying the Class. *See* ECF No. 1931 (July 30, 2019 Class Opinion). Although the
14 parties finalized this settlement before the Class Opinion, preliminary approval of
15 this partial settlement was delayed until January 26, 2022. *See* ECF No. 2734
16 (Preliminary Approval Order). The delay was due, in part, to the Defendants’ appeal
17 of the Class Certification Opinion. As the Court is well aware, the Class Certification
18 Opinion’s appellate journey in the Ninth Circuit ended with an April 8, 2022 *en banc*
19 decision of the Ninth Circuit upholding class certification. *See* ECF No. 2828 (Order
20 re Mandate Hearing). While claims remain against StarKist Co. and Bumble Bee
21 Foods LLC’s parent companies (“Non-settling Defendants”), this initial settlement
22 provides substantial relief including prosecution cooperation.²

24 _____
25 ¹ Tri-Union Seafood LLC d/b/a Chicken of the Sea International (“COSI”) and Thai
26 Union Group (“TUG”) (collectively the “COSI Defendants”).

27 ² The non-settling Defendants are StarKist Co. and its parent Dongwon Industries
28 Co., Ltd. (collectively “StarKist”) and various “Lion Capital” entities (Lion Capital

1 **COSI SETTLEMENT AGREEMENT**

2 3. The Maximum Settlement Amount is twenty million (\$20,000,000).
3 COSI Settlement Agreement, **Exhibit 1** at §1.a.xxvii.³ 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) (“Class and Settlement
7 Notice Fund”). **Exhibit 1** at 10-13.⁴ The COSI Settlement Agreement provides
8 substantial financial consideration as well as continuing cooperation for trial. *See*
9 **Exhibit 1** at § 10.

10 4. As discussed below, *before* reaching this early partial settlement with
11 COSI, Class Counsel litigated this case for nearly three years, successfully surviving
12 multiple motions to dismiss, completing fact discovery, briefing and argument on
13 class certification and engaging in expert discovery. Class Counsel have thoroughly
14 briefed, discovered, and analyzed this case, positioning them well to analyze the
15 COSI Settlement.

16 **HISTORY OF THE LITIGATION**

17 5. Once the MDL was established, Wolf Haldenstein became
18 instrumental in organizing the indirect cases and plaintiffs; and, on behalf of fifty-
19 four (54) End Payer Plaintiffs, filed a consolidated class action in this Court alleging
20 an antitrust conspiracy in the packaged seafood industry. *See* ECF No. 149. The
21 complaint followed the DOJ’s announcement of an investigation into the packaged
22 _____

23
24 (Americas), Inc.; Lion Capital LLP; and, Big Catch Cayman LP).

25 ³ A true and correct copy of the COSI Settlement Agreement Dated December 12,
26 2019 is hereto attached as **Exhibit 1**.

27 ⁴ If the reasonable costs of Class and Settlement Notice is less than \$5,000,000, the
28 difference shall be refunded to the COSI Defendants under Paragraph 18(b) of the
 COSI Settlement Agreement. *Id.* at 14-15.

1 seafood industry. Although the DOJ intervened and the case was stayed
2 temporarily, Wolf Haldenstein coordinated with the other Classes and individual
3 direct purchasers on a Protective Order and ESI and continued to investigate and
4 advance the case forward.

5 **WOLF HALDENSTEIN APPOINTED INTERIM LEAD COUNSEL**

6 6. In March 2016, the Court appointed Wolf Haldenstein as interim lead
7 counsel for the EPP Class. ECF No. 119. Due to the location of its offices in San
8 Diego, Wolf Haldenstein also volunteered (when asked by the Court) and has acted
9 as a plaintiff contact for the Court when it was necessary to set up conferences,
10 motion dates, and communicate information to multiple tracks and counsel in this
11 complex MDL.

12 7. In appointing interim lead counsel for the EPP class, the Court
13 provided a substantial list of Wolf Haldenstein's responsibilities. ECF No. 119.
14 Class Counsel's responsibilities included the following: (i) To conduct or
15 coordinate discovery on behalf of the EPPs consistent with the requirements of the
16 Federal Rules of Civil Procedure, including . . . the examination of witnesses in
17 depositions; (ii) To monitor the activities of co-counsel and to implement
18 procedures to ensure that schedules are met and unnecessary expenditures of time
19 and funds by counsel are avoided; (iii) To conduct all pre-trial, trial, and post-trial
20 proceedings on behalf of the class; and (iv) To employ and consult with experts.
21 *See* ECF No. 119 at 7-8.

22 **DISCOVERY**

23 8. Class Counsel pushed for the production of the DOJ Documents (once
24 the stay was lifted) which resulted in a production of over two million documents.
25 Wolf Haldenstein has coordinated at every stage of this litigation with other class
26 counsel in order to review these critical documents for use in the litigation. EPPs'
27 counsel specifically reviewed over 420,000 pages of COSI documents. Class
28 Counsel used this discovery to support substantial and expanded new allegations in

1 their amended complaint. These efforts result in opinions denying, in large part,
2 the Defendants’ Motion to dismiss.

3 9. Here, the conspiratorial conduct consisted, in part, of certain illegal
4 agreements among Bumble Bee, COSI and StarKist to fix prices. To prove
5 Defendants’ conduct was anti-competitive required Class Counsel to pursue their
6 claims against all three manufacturers concurrently. As a result, due to this joint
7 conduct, Class Counsel vigorously pursued discovery against all three defendants
8 which was instrumental in reaching an early settlement with one defendant (COSI).

9 10. Class Counsel coordinated with all of the plaintiff tracks in taking over
10 sixty (60) depositions including travel to Thailand and Korea. These depositions
11 included a dozen of the COSI’s executives. Additionally, Class Counsel served
12 more than twenty (20) third-party subpoenas in order to collect pricing data from
13 market participants.

14 11. Class Counsel also participated in coordinating, preparing for, and
15 attending multiple evidentiary proffers by COSI as the ACPERA leniency
16 applicant.

17 **CLASS CERTIFICATION**

18 12. All three Classes filed motions for class certification in May of 2018.
19 Three respected economists from different shops offered declarations in support of
20 the motions: Dr. Russell Mangum (“Mangum”) (DPPs), Dr. Michael Williams
21 (“Williams”) (CFPs), and Dr. David Sunding (“Sunding”) (EPPs). Defendants
22 countered with two experts, both from Edgeworth Economics: Dr. John Johnson
23 (“Johnson”) (responding to Mangum) and Dr. Laila Haider (“Haider”) (responding
24 to Sunding and Williams).

25 13. The parties participated in a three-day class certification hearing
26 January 14-16, 2019, which involved nine briefs, nine declarations, three experts,
27 hundreds of exhibits, and resulted in a 59-page order Class Order. See ECF Nos.
28 1128-1130, 1411, 1702-1704, and 1931.

1 14. As part of class discovery, Class Counsel also prepped and defended
2 16 individual EPP depositions. In additional, the EPPs offered the expert report of
3 Adoria Lim describing the close economic relationship between the parent
4 corporations and their subsidiaries (COSI, Bumble Bee and StarKist). Defendants
5 countered with their own economists - Dr. Ilya Srebulaev (Lion Capital/Bumble
6 Bee), Arthur Laby (COSI), and Robert Daines (StarKist). Class Counsel attended
7 all of the expert depositions and defended the depositions of their experts – Dr.
8 Sunding and Ms. Lim.

9 15. As part of the class certification process, Professor Sunding responded
10 at length to each criticism, submitting four reports, testifying at deposition twice,
11 and then as a live witness at a full-day hearing just on the EPP class for certification
12 purposes.

13 **ARM’S LENGTH NEGOTIATIONS**

14 16. As detailed above, Class Counsel only reached the COSI Settlement
15 after much in depth investigation, substantial discovery from all three defendants,
16 expert economist analyses of class-wide damages, and evaluation of the Court’s
17 decisions on the multiple motions to dismiss, directives on the conduct of discovery,
18 and its pre-trial rulings.

19 17. The COSI Settlement was the result of months of extensive arm’s
20 length negotiations. Almost immediately after the January 2019 class certification
21 hearings, Class Counsel and counsel for COSI began informal settlement
22 discussions. EPPs’ counsel were well prepared to engage in these discussion and
23 analyze any potential settlement having thoroughly briefed, discovered, and
24 analyzed this case.

25 18. After multiple exchanges over several months including several in
26 person meetings, the parties finally agreed to meet in person in Los Angeles,
27 California in the hopes that the parties’ differences could be resolved. This nearly
28

1 all day in person meeting occurred on April 25, 2019. A TUG executive came from
2 Asia to California to attend the April 25, 2019 negotiating session that resulted in
3 an agreement in principle. The parties reached a resolution only after Class Counsel
4 sat across the table from a member of TUG’s global leadership team to discuss face-
5 to-face the risks of continued litigation. At the end of the day, COSI signed a
6 memorandum of understanding (“MOU”) which outlined the basis for a potential
7 agreement to settle the EPPs’ claims.

8 19. After the parties executed the MOU, the parties then exchanged
9 multiple drafts and revisions of the Settlement Agreement. After nearly six months
10 of negotiating the final terms of the Settlement Agreement, on December 12, 2019,
11 COSI signed a final settlement agreement with EPPs. *See Ex. 1.*

12 20. The Settlement Agreement is the result of over three years and a half
13 years of hard fought litigation followed by months of extensive and challenging
14 arms’-length negotiations. Because of the time expended on this case and the merits
15 and expert discovery conducted, EPPs are in a good position to evaluate the value
16 of the Settlement.

17 21. This “icebreaker” settlement with the ACPERA applicant clears the
18 decks for further litigation and trial with the non-settling Defendants. If approved,
19 the EPPs further benefit from COSI’s continued cooperation at trial.

20 **RISK FACTORS FAVOR SETTLEMENT**

21 22. In reaching this result, Class Counsel balanced the strength of their case
22 against risk, expense, complexity and delay of further litigation. An icebreaker
23 settlement from the ACPERA leniency application is preferable to lengthy and
24 expensive litigation through summary judgment and trial. Notwithstanding the
25 cooperation provided by COSI and the criminal investigation, the issue of who was
26 damaged and to what extent remains hotly contested. COSI’s admissions in its
27 leniency application and its proffers to the plaintiffs only described certain acts that
28

1 occurred, not the impact of those acts. Further, the COSI Defendants maintain that
2 those acts ended earlier than the 2015 end date of the EPP class period.

3 23. The criminal case proceeded all the way through a jury trial, and half
4 dozen witnesses asserted privileges against self-incrimination. Even if EPPs prevail
5 on summary judgment, the class-wide damages alone will require a trial. EPPs will
6 have to put time, effort, and financial resources into that trial, and any appeal that
7 followed, which would prolong the litigation, and any recovery by class members,
8 for years.

9 24. Furthermore, setting the risks of litigation aside, COSI Defendants
10 have indicated that they may not be able to pay a full judgment.

11 25. The harm caused by the conspiracy and the resulting damages were so
12 large that thinly-capitalized Bumble Bee could not withstand the strain, and it filed
13 for bankruptcy and was sold off to a fishing company during this litigation, leaving
14 a shell from which no recovery has been achieved. The risks that EPPs face from
15 summary judgment, trial, and appeal, as well as the possibility that Defendants may
16 not be able to pay any resulting judgment following the conclusion of those
17 proceedings, all weigh strongly in favor of final approval.

18 26. Settlement was reached prior to the Court granting class certification,
19 which the EPPs recognized had risk. Class certification remains hotly contested.
20 Even now, there is a risk of further appeal to the Supreme Court—that may delay
21 the case even further. It is an appropriate consideration in approving the parties’
22 decision to achieve resolution by settlement. The risk of any appeal after trial also
23 weighs in favor of settlement approval.

24 27. The settlement amount must be considered in the context of potential
25 recovery. As a leniency applicant, COSI may be exempt from joint and several
26 liability, trebling, and is limited to single damages for its own sales.

27 28. COSI also settled first which breaks the ice for other potential serious
28

1 negotiations. As a result, some discount in the recovery is warranted especially in
2 consideration for COSI's continued cooperation.

3 29. Given these circumstances, the amount recovered is more than
4 reasonable. The Settlement Agreement provides a financial consideration of \$20
5 million and COSI's total exposure was limited to \$60 million based on EPPs'
6 expert's calculations and its status as the ACPERA leniency applicant. Not
7 surprisingly, COSI vehemently disputes the impact and the amount of damages.
8 Absent a settlement, COSI could proffer its own damages expert, necessitating a
9 trial on highly technical matters of econometrics. The bottom line is that the EPPs
10 secured one-third of the maximum possible recovery their own expert calculated
11 through Settlement. *See* ECF No. 1981-20 (Expert Merit Report of David Sunding
12 (Feb. 15, 2019) (filed under seal) (calculating COSI Defendants' overcharges to
13 EPPs to be \$60,078,695).
14

15 30. When combined with the cooperation the COSI Defendants have
16 agreed to provide, the relief provided for by the Settlement more than merits final
17 approval.

18 31. Settlement Class Counsel anticipate a recovery from the remaining
19 non-settling Defendants, given their admissions about liability and damages, and
20 the criminal guilty pleas and convictions related to this case. Accordingly, at this
21 point in the case, giving notice of the COSI Settlement and approving a plan to
22 distribute its settlement funds along with those from future recoveries is the most
23 streamlined and economical approach.

24 32. On May 16, 2022, I received a weekly report from the claims
25 administrator JND Legal Administration LLC ("JND"). The weekly report contains
26 data showing as of May 16, 2022, the notice program reached over 761 million
27 consumers by digital impression, resulting in 1,760,053 page views, by 518,086
28 unique visitors to the settlement website. This generated 285,383 digital media

1 clicks on the website, 1,142 telephone calls, and 349 emails related to the notice.

2 I declare under penalty of perjury under the laws of the United States of
3 America that the foregoing is true and correct. Executed this 25th day of May 2022
4 at San Diego, California.

5
6 s/ Betsy C. Manifold

7 BETSY C. MANIFOLD
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TUNA: 28421

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PACKAGED SEAFOOD) Case No.: 15-MD-2670 JLS (MDD)
PRODUCTS ANTITRUST)
LITIGATION)
)
)
THIS DOCUMENT PERTAINS TO)
THE EPP TRACK ONLY)
)

SETTLEMENT AGREEMENT

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

WHEREAS, Plaintiffs are prosecuting the *In re: Packaged Seafood Products Antitrust Litigation*, 15-MD-2670 (S.D. Cal.) on their own behalf and on behalf of the EPPs against, among others, the COSI Defendants;

WHEREAS, Plaintiffs allege in their operative complaint in the Action (the Sixth Amended Complaint dated October 5, 2018 (the “Complaint”)) that from June 2011 to July 2015 the COSI Defendants participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Packaged Tuna products at an artificially high level in violation of Section I of the Sherman Act, and various state antitrust and unfair competition laws;

WHEREAS, Plaintiffs Motion for Class Certification was GRANTED by the Court on July 30, 2019, Dkt 1931;

1 WHEREAS, the COSI Defendants assert defenses to Plaintiffs’ claims;

2 WHEREAS, Plaintiffs and their counsel have conducted investigation by
3 engaging in extensive discovery regarding the merits and economics of the allegations
4 and provided to the Court extensive legal and evidentiary submissions regarding the
5 Action and have concluded that their claims are valid, but nevertheless also conclude
6 that resolving their claims against the COSI Defendants according to the terms set
7 forth below is in the best interest of the Plaintiffs and the EPPs they represent;

8 WHEREAS, Plaintiffs are unaware of any deficiency in COSI’s compliance
9 with the Antitrust Criminal Penalty Enhancement and Reform Act (“ACPERA”), and
10 do not contend that, as of the Execution Date, COSI’s cooperation was inadequate;
11 and COSI fully contends and understands that its ACPERA cooperation will continue
12 after the execution date of this Agreement;

13 WHEREAS, the COSI Defendants have nevertheless agreed to enter into this
14 Agreement to avoid further expense, inconvenience, and to obtain releases, orders,
15 and judgment contemplated by this Agreement, and to bring to a close all claims that
16 have been or could have been asserted against the COSI Defendants based on the
17 allegations of the Action, as more particularly set out below.

18 NOW, THEREFORE, in consideration of the covenants, agreements, and
19 releases set forth herein and for other good and valuable consideration, it is agreed by
20 and among the undersigned that the Action be settled, compromised, and dismissed
21 on the merits with prejudice as to the COSI Releasees, and except as herein provided,
22 without costs as to the Plaintiffs, the EPPs, or the COSI Defendants, subject to the
23 approval of the Court, on the following terms and conditions:

24 **A. DEFINITIONS**

25 1. As used in this Agreement the following terms shall have the meanings
26 specified below:

27 a. Class Definition

28

1 “Classes” and “Settlement Classes” means the classes certified by the Court in
2 its July 30, 2019 Order Granting Motions for Class Certification. *See Order Granting*
3 *Motions for Class Certification*, 15-md-02670-JLS-MDD (S.D. Cal.), ECF No. 1931
4 (Jul. 30, 2019). The Court defines the Classes as:

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

18 And

19 All persons and entities who resided in [State, District, or Territory],
20 who indirectly purchased Packaged Tuna in cans or pouches smaller
21 than forty ounces for end consumption and not for resale, produced by
22 any Defendant or any current or former subsidiary or affiliate thereof,
23 or any co-conspirator, during the period June 1, 2011 through July 1,
24 2015. The class excludes purchases of meal kits. Also excluded from
25 the Class is the Court.

26 b. General Definitions

- 27 i. “Action” or “Actions” means all EPP actions consolidated and/or
28 included as part of *In re Packaged Seafood Products Antitrust*
Litigation, Case No. 3:15-md-2670-JLS-MDD (S.D. Cal.).
- ii. “Authorized Claimant” means any EPP who, in accordance with the
terms of this Agreement, is entitled to a distribution consistent with
any Distribution Plan or order of the Court ordering distribution to
the Class Members.

- 1 iii. “Claims Administrator” means the claims administrator(s) to be
2 selected by Class Counsel.
- 3 iv. “Class and Settlement Notice” means the notice to the Class that is
4 approved by the Court, in accordance with ¶ 3(b), 5(c), and 36.
5 *See Exhibit __.*
- 6 v. “Class Period” means the period from and including June 1, 2011
7 through July 1, 2015.
- 8 vi. “Class Counsel” means the law firm of Wolf Haldenstein Adler
9 Freeman & Herz LLP.
- 10 vii. “Class Members” means a Person who falls within the definition of
11 the Classes and who does not timely and validly elect to be excluded
12 from the Classes in accordance with the procedure to be established
13 by the Court.
- 14 viii. “COSI Defendants’ Counsel” means the law firms of Allen & Overy,
15 LLP and Simpson Thacher Bartlett, LLP.
- 16 ix. “COSI Releasees” refers jointly and severally, individually and
17 collectively to the COSI Defendants, their predecessors; successors;
18 assigns; affiliates; and any and all past, present, and future parents,
19 owners, subsidiaries, divisions, departments, and affiliates, and all of
20 their heirs, executors, devisees, administrators, officers, executives,
21 directors, stockholders, partners, members, agents, attorneys,
22 advisors, auditors, accountants, contractors, servants, employees,
23 representatives, insurers, and assignees. Notwithstanding the
24 foregoing, “COSI Releasees” does not include any other Defendant
25 or co-conspirator, either explicitly or as a third party beneficiary.
- 26 x. “Court” means the United States District Court for the Southern
27 District of California and the Honorable Janis L. Sammartino or her
28 successor, or any other Court in which the Action is proceeding.

- 1 xi. “Date of Final Approval” means the date on which the Court enters
- 2 an order granting final approval to this Agreement, pursuant to Rule
- 3 23(e) of the Federal Rules of the Civil Procedure, as provided in ¶ 5.
- 4 xii. “Date of Preliminary Approval” means the date on which the Court
- 5 enters an order granting preliminary approval to this Agreement,
- 6 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as
- 7 provided in ¶ 3.
- 8 xiii. “Defendant” or “Defendants” means any or all of the Defendants
- 9 named in the Action, now or in the future.
- 10 xiv. “Distribution Funds” means the Settlement Fund, less the payment
- 11 set forth in ¶11(b).
- 12 xv. “Distribution Plan” means any plan or formula of allocation of the
- 13 Settlement Fund, to be approved by the Court, whereby the
- 14 Distribution Funds shall in the future be distributed to Authorized
- 15 Claimants.
- 16 xvi. “Effective Date” means the first date by which all of the following
- 17 events and conditions have been met or have occurred:
- 18 a. All parties have executed this Agreement;
- 19 b. The Court has preliminarily approved the Agreement and the
- 20 motion after providing notice to the Class as defined herein;
- 21 c. The Court has entered a final approval of the Agreement; and
- 22 d. The Court has entered a Final Judgment.
- 23 xvii. “Escrow Account” means the account in which the Escrow Agent that
- 24 holds the Settlement Fund.
- 25 xviii. “Escrow Agent” means the agent jointly designated by Class Counsel
- 26 and the COSI Defendants, and any successor agent that will receive
- 27 the deposit and maintain the Settlement Fund as set forth in ¶¶ 20-27
- 28 of this Agreement.

1 xxiv. “Packaged Tuna” means shelf stable packaged tuna in cans or
2 pouches smaller than forty ounces

3 xxv. “Persons” means an individual or an entity.

4 xxvi. “Releasors” refers jointly and severally, individually and collectively,
5 Plaintiffs, and each and every Class Member on their own behalf and
6 on behalf of their respective past, present, and/or future direct and
7 indirect parents, members, subsidiaries and affiliates, and their past,
8 present and/or future officers, directors, employees, managers,
9 members, partners, agents shareholders (in their capacity as
10 shareholders), attorneys and legal representatives, servants, and
11 representatives, and the predecessors, successors, heirs, executors,
12 administrators and assigns of each of the foregoing.

13 xxvii. “Settlement Maximum Amount” means the cash payment of twenty
14 million U.S. dollars (\$20,000,000.00).

15 xxviii. “Settling Parties” means, collectively, the Plaintiffs (on behalf of
16 themselves and the Classes) and the COSI Defendants.

17 **B. APPROVAL OF THIS AGREEMENT AND DISMISSAL OF CLAIMS**
18 **AGAINST THE COSI DEFENDANTS**

19 2. Settling Parties shall use their best efforts to effectuate this Agreement
20 and its purpose, and secure the prompt, complete, and Final Judgment of the Action
21 as to COSI Defendants, but not as to any other party. Settling Parties agree to take
22 whatever further steps, if any, may be necessary in this regard, including
23 implementation of this Agreement in individual state courts.

24 3. *Motion for Preliminary Approval.* At a time to be determined by Class
25 Counsel, Class Counsel shall submit to the Court a motion, which the COSI
26 Defendants shall not oppose, requesting entry of an order, substantially in the form of
27 Exhibit ___, attached hereto, preliminarily approving the Agreement (“Preliminary
28 Approval Order”). The Preliminary Approval Order shall provide that, *inter alia*:

1 a. The settlement proposed in the Agreement has been negotiated at
2 arm's length and is preliminarily determined to be fair, reasonable, adequate, and in
3 the best interests of the Class Members;

4 b. the Class Notice meets the requirements of Rule 23 of the Federal
5 Rules of Civil Procedure and due process, and constitutes the best notice practicable
6 under the circumstances for settlement purposes;

7 c. a Fairness Hearing on the settlement proposed in this Agreement
8 shall be held by the Court to determine whether the proposed settlement is fair,
9 reasonable, and adequate and whether it should be finally approved by the Court; and

10 d. Class Members who wish to exclude themselves must submit an
11 appropriate and timely request for exclusion;

12 e. Class Members who wish to object to this Agreement must submit
13 an appropriate and timely written statement of the grounds for objection;

14 f. Class Members who wish to appear to object to this Agreement
15 may do so at the Fairness Hearing; and

16 g. Attorneys representing Class Members who wish to object to this
17 Agreement must submit an appropriate and timely written statement of representation
18 and the grounds for objection.

19 4. The costs of notice and claims administration up to five million U.S.
20 dollars (\$5,000,000.00) shall be paid by the COSI Defendants with the funds being
21 taken from the Settlement Fund, subject to the provision of paragraph 9(b).

22 5. Plaintiffs shall seek, and the COSI Defendants will not object
23 unreasonably to, the entry of an order and final judgment. The terms of that order
24 and final judgment will include, at a minimum, the substance of the following
25 provisions:

26 a. approving the certified Classes to this settlement;

27 b. approving this Agreement and its terms as being a fair, reasonable
28 and adequate settlement within the meaning of Rule 23 of the Federal Rules of Civil

1 Procedure or other applicable law and directing its consummation according to its
2 terms;

3 c. finding the notice given constitutes due, adequate and sufficient
4 notice, and meets the requirements of due process and the Federal Rules of Civil
5 Procedure;

6 d. directing the Action be dismissed with prejudice and, except for
7 as provided for in this Agreement, without costs or attorneys' fees, as to the COSI
8 Defendants;

9 e. reserving exclusive jurisdiction over the settlement and this
10 Agreement, including the administration and consummation of this settlement to the
11 United States District Court for the Southern District of California; and

12 f. determining under Federal Rule of Civil Procedure 54(b) that
13 there are no just reasons for delay and directing that the judgment of dismissal as to
14 the COSI Defendants shall be final and appealable.

15 6. This Agreement shall be deemed executed as of the Execution Date.

16 7. Neither this Agreement (whether or not it should become Final) nor the
17 Final Judgment, nor any and all negotiations, documents and discussions associated
18 with such negotiations, shall be deemed construed as an admission by, or form the
19 basis of an estoppel by a third party against, the COSI Releasees, or evidence of any
20 violation of any statutes or law or of any liability or wrongdoing whatsoever by any
21 of the COSI Releasees, or of the truth of any of the claims or allegations contained in
22 any complaint or any other pleading filed by Plaintiffs in this Action, and evidence
23 thereof shall not be discoverable, or used directly or indirectly, in any way, whether
24 in this Action or in any other action or proceeding. Neither this Agreement, nor any
25 terms and provisions, nor any of the negotiations or proceedings connected with it,
26 nor any action taken to carry out this Agreement by any of the Plaintiffs or the COSI
27 Defendants shall be referred to, offered into evidence or received in evidence in any
28 pending or future civil, criminal or administrative action or proceeding, except in a

1 proceeding to enforce this Agreement, or to defend against the assertion of Released
2 Claims, or as otherwise required by law.

3 **C. RELEASE, DISCHARGE, AND COVENANT NOT TO SUE**

4 8. In addition to the effect of any final judgment entered in accordance with
5 this Agreement, upon this Agreement becoming Final, and in consideration of the
6 Settlement Amount, and for other valuable consideration, the COSI Releasees shall
7 be released, acquitted, and forever discharged from any and all claims, demands,
8 actions, suits, causes of action, whether class, individual, or otherwise in nature that
9 Releasers, ever had, now have, or hereafter can, shall, or may ever have, that now
10 exist, on account of, or in any way arising out of the Complaint, any and all known
11 and unknown, foreseen and unforeseen, suspected or unsuspected, actual or
12 contingent, liquidated or unliquidated claims, injuries, damages, and the
13 consequences thereof in any way arising out of or relating in any way to the sale or
14 pricing of Packaged Tuna during the Class Period, including, but not limited to, any
15 conduct alleged or causes of action in any way arising out of the Complaint, or in any
16 similar action filed in state court, including, without limitation, any claims arising
17 under any federal or state antitrust, unjust enrichment, unfair competition, trade
18 practice statutory or common law, and consumer protection law (the “Released
19 Claims”).

20 9. In addition to the provisions of paragraph 8 of this Agreement, Releasers
21 hereby expressly waive and release, upon this Agreement becoming Final, any and all
22 provisions, rights, and benefits conferred by § 1542 of the California Civil Code,
23 which states:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
25 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
26 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
27 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
28 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

1 or by any law of any state or territory of the United States, or principle of common
2 law, which is similar, comparable, or equivalent to § 1542 of the California Civil
3 Code. Each Releasor may hereafter discover facts other than or different from those
4 which he, she, or it knows or believes to be true with respect to the claims which are
5 the subject matter of the provisions of paragraphs 8 and 9 of this Agreement, but each
6 Releasor hereby expressly waives and fully, finally, and forever settles and releases,
7 upon this Agreement becoming Final, any known or unknown, suspected or
8 unsuspected, contingent or non-contingent claim with respect to the subject matter of
9 the provisions of paragraphs 8 and 9 of this Agreement.

10 **D. COOPERATION**

11 10. COSI agrees to continue to fulfill its obligations under ACPERA. As
12 such, COSI will continue to fulfill the same obligation under ACPERA as if the
13 Plaintiffs and COSI were still in litigation. This includes, but is not limited to: (a)
14 giving full and truthful assistance in any investigation, discovery and/or trial relevant
15 to the claims in the Plaintiffs' Complaint; (b) producing to Plaintiffs all reasonably-
16 available liability evidence relevant Packaged Tuna sales, pricing or alleged
17 agreements regarding Packaged Tuna sales and pricing, to the extent not already
18 produced; (c) producing all reasonably-available evidence relevant to Packaged Tuna
19 sales, pricing and damages, to the extent not already produced; (d) making any witness
20 under its control (including any officers, directors, or employees) available to provide
21 testimony at deposition or trial or via declaration or affidavit, in the form requested
22 by the Plaintiffs; (e) meeting and conferring on providing (i) an oral proffer of said
23 employees' testimony upon request or (ii) making employees reasonably available for
24 interviews by Plaintiffs' counsel in the United States.

25 **E. SETTLEMENT AMOUNT AND FUNDS**

26 11. Subject to the provisions hereof, and in full, complete and final
27 settlement of the Action as provided herein, the Settlement Amount paid by COSI
28

1 shall be allocated as follows:

2 a. Fifteen million U.S. dollars (\$15,000,000.00) is to be deposited
3 into the Settlement Fund. Class Counsel shall submit a plan for distribution to
4 Authorized Claimants from the Distribution Funds and for attorneys' fees and
5 attorneys' costs from the Settlement Funds.

6 b. Of the \$20,000,000.00 deposited into the Settlement Fund, a
7 maximum of five million U.S. dollars (\$5,000,000.00) shall be used for the cost of
8 Class and Settlement Notice.

9 c. Within sixty (60) days of preliminary approval, but no later than
10 necessary to pay for any notice required by the Court, COSI will deposit the
11 \$5,000,000.00 into an interest-bearing escrow account.

12 d. The remaining Distribution Funds payments will be made as
13 follows (i) five million U.S. dollars (\$5,000,000.00) will be paid on or before the
14 earlier of July 1, 2020 or within 30 days after final approval of the settlement; (ii) five
15 million U.S. dollars (\$5,000,000.00) will be paid within 30 days after final approval
16 of the settlement; and (iii) five million U.S. dollars (\$5,000,000.00) will be paid
17 within 30 days prior to the distribution of the Distribution Funds to the Authorized
18 Claimants.

19 12. The amounts set forth in paragraph 11(d) shall not revert to COSI, except
20 (i) in the event the Court does not enter an order and final judgment as set forth in
21 paragraph 5, or (ii) as otherwise set forth in this Agreement.

22 13. The parties to this Agreement shall establish an escrow fund or funds for
23 the purposes of receiving the payments of the Distribution Funds which shall be
24 distributed in accordance with subsequent Court orders.

25 14. Releasers shall look solely to Distribution Funds for settlement and
26 satisfaction against COSI Releasees of all related claims.

27
28

1 15. Payments to Authorized Claimants shall be made from the Distribution
2 Funds.

3 16. After this Agreement becomes Final the Distribution Funds shall be
4 distributed as follows: each Authorized Claimant shall receive a *pro rata* share of the
5 Distribution Funds as described in the Class Notice. In no event shall any COSI
6 Releasee have any responsibility, financial obligation, or liability whatsoever with
7 respect to the investment, distribution, or administration of the Distribution Funds,
8 including but not limited to, the costs and expenses of such distribution and
9 administration, with the sole exception of the provisions set forth in paragraphs 11(b)
10 and 18 of this Agreement.

11 17. Any award to Plaintiffs and Class Counsel shall be paid from the
12 Distribution Funds including any reimbursement and indemnification, and for all
13 expenses. The COSI Releasees shall not be liable for any costs, fees, or expenses of
14 any Plaintiffs' or the Class Members' respective attorneys, experts, advisors, agents,
15 or representative, but all such costs, fees and expenses as approved by the Court shall
16 be paid out of the Distribution Funds.

17 18. The Class and Settlement Notice:

18 a. Money from the \$5,000,000.00 paid into the Settlement Fund for
19 Class and Settlement Notice will be disbursed upon receipt of a valid invoice(s) from
20 the Claims Administrator approved by the Court for the provision of notice to the
21 Class and administration for distribution of the Settlement Fund and any other funds
22 received by the Class from any other Defendant in the Action by settlement or
23 judgment.

24 b. Monies from the \$5,000,000.00 paid into the Settlement Fund for
25 Class and Settlement Notice are subject to refund to the COSI Defendants as follows:

26 i. In the event that the total cost of Class Notice and claims
27 administration is less than five million U.S. dollars (\$5,000,000.00)
28 the difference of the five million U.S. dollars (\$5,000,000.00) and the

1 actual amounts paid into the Settlement Fund for Class and
2 Settlement Notice shall be returned to the COSI Defendants.

3 ii. If, subsequent to the date of this Agreement, a settlement is made with
4 any other Defendant in the Action, or an amount for the Classes
5 collected is from any judgment, the Plaintiffs shall apply to the Court,
6 after consultation with the COSI Defendants' Counsel, for an award
7 allocation for notice and administration from the amounts available
8 from the subsequent settlement or judgments. Class Counsel, in
9 consultation with the COSI Defendants' Counsel, will use reasonable
10 best efforts to achieve an allocation sufficient to cover the entirety of
11 the \$5,000,000.00 paid by COSI into the Settlement Fund for Class
12 and Settlement Notice. Any amounts approved by the Court for these
13 purposes from such subsequent settlement or judgment in the Action
14 shall be credited against and/or reduce the amount paid by COSI into
15 the Settlement Fund for Class and Settlement Notice, dollar for dollar.
16 At the conclusion of the Action, or at such earlier time as the parties
17 to the Agreement may agree, upon approval of the Court, any
18 amounts remaining of the \$5,000,000.00 paid by COSI into the
19 Settlement Fund for Class and Settlement Notice shall be returned to
20 the COSI Defendants.

21 **F. ESCROW ACCOUNT**

22 19. The Escrow Account will be established at a bank to be agreed by
23 Plaintiffs and the COSI Defendants as soon as practicable. The Escrow Account is to
24 be administered under the Court's continuing supervision and control.

25 20. The Escrow Agent shall cause the funds deposited in the Escrow
26 Account to be invested in instruments backed by the full faith and credit of the United
27 States Government or fully insured by the United States Government or an agency
28

1 thereof, or money market invested substantially in such instruments, and shall reinvest
2 any income from these instruments and the proceeds of these instruments as they
3 mature in similar instruments at their then-current market rates.

4 21. All funds held in the Escrow Account shall be deemed and considered to
5 be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the
6 Court, until such time as such funds shall be distributed pursuant to this Agreement
7 and/or further order(s) of the Court.

8 22. Settling Parties agree to treat the Settlement Fund as being at all times
9 “qualified settlement funds” within the meaning of Treas. Reg. §1.468B-1. In
10 addition, the Escrow Agent shall timely make such elections as necessary or advisable
11 to carry out the provisions of this paragraph, including the “relation-back election”
12 (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such
13 elections shall be made in compliance with the procedures and requirements contained
14 in such regulations. It shall be the responsibility of the Escrow Agents to timely and
15 properly prepare and deliver the necessary documentation for signature by all
16 necessary parties, and thereafter to cause the appropriate filing to occur.

17 23. For the purpose of Treas. Reg. §1.468B of the Internal Revenue Code of
18 1986, as amended, and the regulations promulgated thereunder, the “administrator”
19 shall be the Escrow Agent for the Escrow Account. The Escrow Agent shall timely
20 and properly file all informational and other tax returns necessary or advisable with
21 respect to the Settlement Fund (including without limitation the returns described in
22 Treas. Reg. §1.468B-2(k)(1)). Such returns (as well as the election described in
23 paragraph 23) shall be consistent with paragraph 23 and in all events shall reflect that
24 all Taxes, as defined below (including any estimated Taxes, interest or penalties), on
25 the income earned by the Settlement Fund shall be paid out of the Settlement Fund as
26 provided in paragraphs 23-24 of this Agreement.

27 24. All (i) taxes (including any estimated taxes, interest or penalties) arising
28 with respect to the income earned by the Settlement Fund, including any taxes or tax

1 detriments that may be imposed upon the COSI Defendants or any other COSI
2 Releasee, with respect to any income earned by the Settlement Fund for any period
3 during which the Settlement Fund does not qualify as “qualified settlement funds” for
4 federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred
5 in connection with the operation and implementation of paragraphs 23 (including,
6 without limitation, expenses of tax attorneys and/or accountants and mailing and
7 distribution costs and expenses relating to filing (or failing to file) the returns (“Tax
8 Expenses”)), shall be paid out of the Settlement Fund.

9 25. Neither the COSI Defendants nor any other COSI Releasee nor their
10 respective counsel shall have any liability or responsibility for the Taxes or the Tax
11 Expenses. Taxes and Tax Expenses shall be timely paid by the Escrow Agent out of
12 the Settlement Fund without prior order from the Court and the Escrow Agent shall
13 be obligated (notwithstanding anything herein to the contrary) to withhold from
14 distribution to any Authorized Claimants any funds necessary to pay such amounts
15 including the establishment of adequate reserves for any Taxes and Tax Expenses (as
16 well as any amounts that may be required to be withheld under Treas. Reg. 13
17 §1.46813-2(1)(2)). Neither the COSI Defendants nor any other COSI Releasee is
18 responsible nor shall they have any liability therefore. Plaintiffs and the COSI
19 Defendants agree to cooperate with the Escrow Agent, each other, and their tax
20 attorneys and accountants to the extent reasonably necessary to carry out the
21 provisions of paragraphs 23-26.

22 26. If the Agreement does not receive Court approval, then all amounts paid
23 by the COSI Defendants into the Settlement Fund shall be returned to the COSI
24 Defendants from the Escrow Account by the Escrow Agent, along with any interest
25 accrued thereon less expenses incurred for Taxes or any other expenses incurred by
26 the Settlement Fund, as set forth in paragraph 33. In the event the Agreement does
27 not receive Court approval, Class Counsel shall not be entitled to attorneys’ fees
28 arising out of or related to Class Notice and/or the administration, management, and

1 investment of the Gross Settlement Fund, Distribution Funds or Notice Funds.

2 **G. ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

3 27. Class Counsel may submit an application or applications to the Court
4 for: (i) an award of attorneys' fees plus (ii) reimbursement of expenses and costs
5 incurred in connection with prosecuting the Action, plus interest on such Attorneys'
6 fees, costs, and expenses at the same rate and for the same period as earned by the
7 Settlement Fund (until paid) as may be awarded by the Court ("Fee and Expense
8 Award") upon final approval of this Agreement. The Fee and Expense Award will be
9 withdrawn from the Distribution Fund. COSI Defendants shall not unreasonably
10 oppose such application and Class Counsel reserves the right to make additional
11 applications for fees and expenses incurred.

12 28. The Fee and Expense Award, as approved by the Court, shall be paid
13 from the Distribution Funds. Class Counsel shall allocate the Fee and Expense Award
14 among other counsel involved in this Action in a manner which they in good faith
15 believe reflects the contribution of such counsel to the prosecution and settlement of
16 the Action.

17 29. The procedure for and the allowance or disallowance by the Court of the
18 application by Class Counsel for attorneys' fees, costs, and expenses to be paid out,
19 and any plan for distribution of the Distribution Funds to Authorized Claimants, are
20 not part of this Agreement, and are to be considered by the Court separately from the
21 Court's consideration of the fairness, reasonability, and adequacy of the settlement,
22 and any order or proceeding related to Class Counsel's application, or any plan of
23 allocation, or any appeal from such orders shall not operate to terminate or cancel this
24 Agreement or affect or delay the finality of the judgment approving settlement.

25 30. Neither the COSI Defendants nor any COSI Releasees under this
26 Agreement shall have any responsibility for, or interest in, or liability whatsoever with
27 respect to any payment to Class Counsel for any fees or expenses awarded in the
28

1 Action.

2 31. Neither the COSI Defendants nor any COSI Releasees under this
3 Agreement shall have any responsibility for, interest in, or liability whatsoever with
4 respect to the allocation among Class Counsel, and/or any other person who may
5 assert some claim hereto, of any Fee and Expense Award that the Court may make in
6 the Action.

7 **H. TERMINATION IF THE AGREEMENT IS NOT APPROVED OR**
8 **FINAL JUDGEMENT IS NOT ENTERED**

9 32. Unless otherwise ordered by the Court, in the event that the Effective
10 Date does not occur or this Agreement is rescinded or terminated or cancelled or
11 otherwise fails to become effective for any reason, the Agreement does not receive
12 final approval by the Court, or the Judgment is reversed or vacated following any
13 appeal taken therefrom, then:

14 a. Within five (5) business days after written notification of such
15 event is sent by the COSI Defendants' Counsel to the Escrow Agent, the remaining
16 funds in the Settlement Fund (including accrued interest earned on the Settlement
17 Fund while held in escrow and excluding Taxes and Tax Expenses that have been
18 paid or that have accrued and will be payable at some later date, and attorneys' fees
19 and costs that have been disbursed pursuant to Court order) after reasonable expenses
20 incurred will be refunded, reimbursed and repaid by the Escrow Agent to COSI; if
21 said amount or any portion thereof is not returned within such five (5) day period,
22 then interest shall accrue thereon at the rate of ten percent (10%) per annum until the
23 date that said amount is returned;

24 b. within thirty (30) business days after written notification of such
25 event is sent by the COSI Defendants' Counsel to Class Counsel, all attorneys' fees
26 and costs which have been disbursed to Class Counsel pursuant to Court order shall
27 be refunded, reimbursed and repaid by Class Counsel to COSI;

28 c. the Escrow Agent or its designee shall apply for any tax refund

1 owed to the Settlement Fund and pay the proceeds to COSI, after deduction of any
2 fees or expenses reasonably incurred in connection with such application(s) for
3 refund, pursuant to such written request;

4 d. the Settling Parties shall be deemed to have reverted and restored
5 to their respective positions in the Action as of the day before the Execution Date, and
6 without waiver of any positions or respective claims and defenses, asserted in the
7 Action as of the day before the Effective Date, which shall then resume proceedings
8 in the District Court, that Court having retained jurisdiction over the Agreement and
9 related matters and, except as otherwise expressly provided in this Agreement, the
10 Settling Parties shall proceed in all respects as if this Agreement had not been
11 executed.

12 33. Plaintiffs and the COSI Defendants agree that this Agreement, whether
13 or not it shall become Final, and any and all negotiations, documents, and discussions
14 associated with its negotiation, shall not be deemed or construed to be an admission
15 or evidence of any violation of any statute or law or of any liability or wrongdoing by
16 the COSI Releasees, or of the truth of any of the claims or allegations in the
17 complaints or any other pleadings filed by Plaintiffs in the Action, and evidence
18 thereof shall not be discoverable or used directly or indirectly, in any way, whether in
19 the Action or in any other action or proceeding.

20 34. This Agreement shall be construed and interpreted to effectuate the
21 intent of the Settling Parties, which is to provide, through this Agreement, for a
22 complete resolution of the Released Claims with respect to each COSI Releasee as
23 provided in this Agreement.

24 35. The Parties to this Agreement contemplate and agree that, prior to final
25 approval of the Agreement, appropriate notice of (i) the Settlement and (ii) of a
26 Fairness Hearing at which the Court will consider the approval of this Agreement will
27 be given to Class Members.

28 **I. MISCELLANEOUS**

1 36. **Voluntary Settlement.** The Settling Parties agree that the Settlement
2 Amount and the other terms of the Agreement as described herein were negotiated in
3 good faith by the Settling Parties, and reflect a settlement that was reached voluntarily
4 and after consultation with competent legal counsel.

5 37. **Consent to Jurisdiction.** This Agreement and any disputes between or
6 among COSI Releasees, and any Class Members concerning matters contained
7 therein is subject to the continuing and exclusive jurisdiction of the United States
8 District Court for the Southern District of California before the Honorable Janis L.
9 Sammartino or her successor for any suit, action, proceeding, or dispute arising out
10 of or relating to this Agreement or the applicability of this Agreement, including,
11 without limitation, any suit, action, proceeding, or dispute relating to the release
12 provisions herein. If, for any reason, this Agreement is rescinded, terminated or fails
13 to become effective, then, in such event, nothing in this Agreement shall be construed
14 as any agreement to personal jurisdiction (general or specific) or subject matter
15 jurisdiction so as to confer the jurisdiction of the District Court over the Settling
16 Parties for any purpose other than any suit, action, proceeding, or dispute arising out
17 of or relating to this Agreement or the applicability of this Agreement. Nor shall it
18 constitute any waiver of any defenses based on personal or subject matter jurisdiction.
19 The Court shall retain exclusive jurisdiction over the implementation and enforcement
20 of this Agreement.

21 38. **Binding Effect.** This Agreement shall be binding upon, and inure to the
22 benefit of, the successors and assigns of the parties hereto. Without limiting the
23 generality of the foregoing, each and every covenant and agreement herein by
24 Plaintiffs and Class Counsel shall be binding upon all Class Members.

25 39. **Authorization to Enter Agreement.** The undersigned representatives of
26 the COSI Defendants represent that they are fully authorized to enter into and to
27 execute this Agreement on behalf of the COSI Defendants. Class Counsel, on behalf
28 of all Class Members, represent that they are, subject to Court approval, expressly

1 authorized to take all action required or permitted to be taken by or on behalf of all
2 Class Members pursuant to this Agreement to effectuate its terms and to enter into
3 and execute this Agreement and any modifications or amendments to the Agreement
4 on behalf of all Class Members that they deem appropriate.

5 40. **Notice.** All notices under this Agreement shall be in writing. Each such
6 notice shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified
7 mail, return receipt requested, postage pre-paid; (d) Federal Express or similar
8 overnight courier; or (e) facsimile and first class mail, postage pre-paid and, if directed
9 to any Class Member, shall be addressed to Class Counsel at their addresses set forth
10 below, and if directed to the COSI Defendants, shall be addressed to the COSI
11 Defendants' Counsel at the addresses set forth below or such other addresses as Class
12 Counsel or the COSI Defendants may designate, from time to time, by giving notice
13 to all parties hereto in the manner described in this paragraph.

14 If directed to the Class Members, address notice to:

15 WOLF HALDENSTEIN ADLER FREEMEN & HERZ LLP
16 Fred Taylor Isquith (isquith@whafh.com)
17 Thomas H. Burt (burt@whafh.com)
18 270 Madison Avenue
19 New York, New York 10016
20 Telephone: (212) 545-4600
21 Facsimile: (212) 545-4653

22 If directed to the COSI Defendants, address notice to:

23 ALLEN & OVERY LLP
24 John Roberti (john.roberti@allenovery.com)
25 1101 New York Avenue, N.W.
26 Washington, D.C. 20005
27 Telephone: (202) 683-2800
28 Facsimile: (202) 683-3999

SIMPSON THACHER & BARTLETT LLP
John Terzaken (john.terzaken@stblaw.com)
900 G Street, N.W.

1 Washington, D.C. 20001
2 Telephone: (202) 636-5858

3 41. **Confidentiality of Settlement Negotiations.** Class Counsel shall keep
4 strictly confidential and not disclose to any third party, including specifically any
5 counsel representing any other current or former party to the Actions, any non-public
6 information regarding the Settling Parties' negotiation of this settlement and/or the
7 Agreement. For the sake of clarity, information contained within this Agreement shall
8 be considered public, and the COSI Defendants may issue a press release regarding
9 execution of the Agreement and the amount paid in connection with the Agreement.

10 42. **Headings.** The headings used in this Agreement are intended for the
11 convenience of the reader only and shall not affect the meaning or interpretation of
12 this Agreement.

13 43. **No Party Deemed to Be the Drafter.** None of the parties hereto shall be
14 deemed to be the drafter of this Agreement or any provision hereof for the purpose of
15 any statute, case law or rule of interpretation or construction that would or might cause
16 any provision to be construed against the drafter hereof.

17 44. **Choice of Law.** This Agreement shall be considered to have been
18 negotiated, executed and delivered, and to be wholly performed, in the State of
19 California, and the rights and obligations of the parties to this Agreement shall be
20 construed and enforced in accordance with, and governed by, the internal, substantive
21 laws of the State of California without giving effect to that State's choice of law
22 principles.

23 45. **Amendment Waiver.** This Agreement shall not be modified in any
24 respect except by a writing executed by all the parties hereto, and the waiver of any
25 rights conferred hereunder shall be effective only if made by written instrument of the
26 waiving party. The waiver by any party of any breach of this Agreement shall not be
27 deemed or construed as a waiver of any other breach, whether prior, subsequent or
28 contemporaneous, of this Agreement.

1 46. ***Execution in Counterparts.*** This Agreement may be executed in one or
2 more counterparts. All executed counterparts and each of them shall be deemed to be
3 one and the same instrument. Counsel for the parties to this Agreement shall exchange
4 among themselves original signed counterparts and a complete set of executed
5 counterparts shall be filed with the Court.

6 47. ***Notification of State Officials.*** Within ten (10) days of filing of this
7 Agreement in court, the COSI Defendants will provide to the appropriate state
8 officials and the appropriate federal official the notice required by the Class Action
9 Fairness Act of 2005, 28 U.S.C. § 1715(b) (“CAFA”).

10 48. ***Integrated Agreement.*** This Agreement constitutes the entire agreement
11 between the Settling Parties pertaining to the settlement of the Action against the
12 COSI Defendants and no representations, warranties or inducements have been made
13 to any party concerning this Agreement other than the representations, warranties and
14 covenants contained and memorialized herein. It is understood by the Settling Parties
15 that, except for the matters expressly represented herein, the facts or law with respect
16 to which this Agreement is entered into may turn out to be other than or different from
17 the facts now known to each party or believed by such party to be true; each party
18 therefore expressly assumes the risk of the facts or law turning out to be so different,
19 and agrees that this Agreement shall be in all respects effective and not subject to
20 termination by reason of any such different facts or law. Except as otherwise provided
21 herein, each party shall bear its own costs and attorneys’ fees. This Agreement
22 supersedes any and all prior and contemporaneous undertakings of the Settling Parties
23 in connection therewith. All terms of the Agreement are contractual and not mere
24 recitals.

25 49. This Agreement does not settle or compromise any claims by Plaintiffs
26 or the Class Members against any Defendant or alleged co-conspirator other than the
27 COSI Releasees. All rights against such other Defendants or alleged co-conspirators
28 are specifically reserved by Plaintiffs and Class Members. COSI’s Packaged Tuna

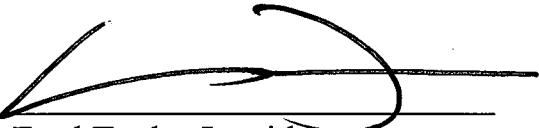
1 sales during the Class Period shall not be removed from the Action, and any other
2 Defendant shall remain responsible for any liability on such sales as provided by law.

3 50. Except as otherwise set forth herein, this Agreement shall not affect
4 whatever rights Releasers or any of them may have (i) to participate in or benefit
5 from, where appropriate, any relief or other recovery as part of a settlement or
6 judgment in any action on behalf of any direct purchasers of Packaged Tuna; (ii) to
7 participate in or benefit from any relief or recovery as part of a judgment or settlement
8 in this action against any other party named as Defendant (other than COSI Releasee).

9 51. In the event that any or all of the remaining Defendants enter into
10 bankruptcy proceedings, the COSI Defendants shall not oppose or take no position on
11 any pleading by Plaintiffs in opposition to any bankruptcy stay with regards to this
12 Agreement. Further, the parties to this Agreement agree that in the event that the
13 Action is stayed due to bankruptcy proceedings, any proceedings regarding this
14 Agreement shall be excluded from the stay and shall proceed in United States District
15 Court for the Southern District of California before the Honorable Janis L.
16 Sammartino or her successor for any suit, action, proceeding, or dispute arising out
17 of or relating to this Agreement.

18
19
20
21
22
23
24
25
26
27
28

1 CLASS COUNSEL, on behalf of EPPs individually and on behalf of the
2 Class Members.

3
4
5
6 By: 

Date: _____, 2019

7 Fred Taylor Isquith
8 Thomas H. Burt
9 270 Madison Avenue
10 New York, New York 10016
11 Telephone: (212) 545-4600
12 Facsimile: (212) 545-4653
isquith@whafh.com
burt@whafh.com

13 Betsy C. Manifold
14 Marisa C. Livesay
15 Brittany N. DeJong
16 750 B Street, Suite 1820
17 San Diego, CA 92101
18 Telephone: (619) 239-4599
19 Facsimile: (619) 234-4599
manifold@whafh.com
byrd@whafh.com
livesay@whafh.com
dejong@whafh.com

Carl Malmstrom
111 West Jackson, Suite 1700
Chicago, IL 60604
Telephone: (312) 984-0000
Facsimile: (312) 212-4401
malmstrom@whafh.com

*Class
Coun
sel
for
the
Indir
ect
Purc
haser
End
Paye
r
Plain
tiffs*

21 **WOLF HALDENSTEIN ADLER**
22 **FREEMAN & HERZ LLP**

23
24
25
26
27
28



Date: Dec. 12, 2019

John Roberti
Kelse Moen
Jana Steenholdt
ALLEN & OVERY LLP
1101 New York Avenue, N.W.
Washington, D.C. 20005
Telephone: (202) 683-3800
Facsimile: (202) 683-3999
E-mail: john.roberti@allenovery.com
kelse.moen@allenovery.com
jana.steenholdt@allenovery.com

Brian Fitzpatrick
Joshua L. Shapiro
ALLEN & OVERY LLP
1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 610-6300
Fax: (212) 610-6399
Email: brian.fitpatrick@allenovery.com
joshua.shapiro@allenovery.com

*Counsel for Defendants Tri-Union Seafoods
LLC d/b/a Chicken of the Sea International
and Thai Union Group PCL*

1 CLASS COUNSEL, on behalf of EPPs individually and on behalf of the Class
2 Members.

3
4
5

6 By: _____ Date: _____, 2019

7 Fred Taylor Isquith
8 Thomas H. Burt
9 270 Madison Avenue
10 New York, New York 10016
11 Telephone: (212) 545-4600
12 Facsimile: (212) 545-4653
isquith@whafh.com
burt@whafh.com

13 Betsy C. Manifold
14 Marisa C. Livesay
15 Brittany N. DeJong
16 750 B Street, Suite 1820
17 San Diego, CA 92101
18 Telephone: (619) 239-4599
19 Facsimile: (619) 234-4599
manifold@whafh.com
byrd@whafh.com
livesay@whafh.com
dejong@whafh.com

Carl Malmstrom
111 West Jackson, Suite 1700
Chicago, IL 60604
Telephone: (312) 984-0000
Facsimile: (312) 212-4401
malmstrom@whafh.com

21 **WOLF HALDENSTEIN ADLER**
22 **FREEMAN & HERZ LLP**

23 *Class Counsel for the*
24 *Indirect Purchaser End Payer Plaintiffs*

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: _____

Date: _____, 2019

John Roberti
Kelse Moen
Jana Steenholdt
ALLEN & OVERY LLP
1101 New York Avenue, N.W.
Washington, D.C. 20005
Telephone: (202) 683-3800
Facsimile: (202) 683-3999
E-mail: john.roberti@allenovery.com
kelse.moen@allenovery.com
jana.steenholdt@allenovery.com

Brian Fitzpatrick
Joshua L. Shapiro
ALLEN & OVERY LLP
1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 610-6300
Fax: (212) 610-6399
Email: brian.fitpatrick@allenovery.com
joshua.shapiro@allenovery.com

*Counsel for Defendants Tri-Union Seafoods
LLC d/b/a Chicken of the Sea International
and Thai Union Group PCL*