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11
12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 IN RE: PACKAGED SEAFOOD) Case No.: 15-MD-2670 DMS (MSB)
15 PRODUCTS ANTITRUST)
16 LITIGATION) **END PAYER PLAINTIFFS’**
) **NOTICE OF MOTION AND**
17) **MOTION FOR FINAL**
) **APPROVAL OF CLASS ACTION**
18) **SETTLEMENTS**

19 This Document Relates To:)

20 End Payer Plaintiff Class Track)

) DATE: November 22, 2024
) TIME: 1:30 p.m.
) JUDGE: Hon. Dana M. Sabraw
) COURT: 13A (13th Floor)
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NOTICE OF MOTION

1
2 **PLEASE TAKE NOTICE** that, on November 22, 2024 at 1:30 p.m.,
3 pursuant to Federal Rule of Civil Procedure 23, the End Payer Plaintiffs (“EPPs”)
4 hereby move the court for an order granting final approval of the proposed class action
5 settlements between the EPPs and Defendants StarKist Co. (“StarKist”) and Dongwon
6 Co., Ltd (“DWI”) (the “StarKist Settlement Agreement”) and between EPPs and
7 Defendants Lion Capital LLP, Lion Capital (Americas), Inc. and Big Catch Cayman
8 LP (collectively the “Lion Companies” and the “Lion Companies Settlement
9 Agreement”). These proposed Settlement Agreements end the case for the EPPs.
10 Specifically, the EPPs request the Court:

11 (1) Grant final approval of the Settlement Agreements under Federal Rule of
12 Civil Procedure 23(e), after a Fairness Hearing and on finding that the proposed
13 settlement is fair, reasonable, adequate and in the best interests of the Settlement
14 Class;

15 (2) Find that the Settlement Class and Settlement Notice Distribution Plan is
16 reasonable and provided adequate notice to the Settlement Class;

17 (3) Grant final certification of the Settlement Class described in the
18 Settlement Agreements (ECF 3286-2 at pp. 23 and 55 (StarKist Settlement Agreement
19 ¶ 1.8, and Lion Companies Settlement Agreement ¶ 1.23.);

20 (4) Enter judgment dismissing the Action with prejudice as to EPPs’ claims
21 in accordance with the Settlement Agreements, and enjoining initiation,
22 commencement, or prosecution of any action asserting any Released Claims by
23 Released Parties

24 (5) Award a total of \$294,000.00 in service awards to the Settlement Class
25 Representatives; and

26 (6) Approve the use of up to \$5,000,000.00 from the Settlement Funds for
27 the additional work required by the Court-appointed claims administrator to process,
28 validate, and audit claims (and to distribute funds to Settlement Class Members).

NOT. MOT. FINAL APPROVAL
CLASS ACTION SETTLEMENT

No. 15-MD-2670 DMS (MSB)O

1 This Motion is based on the accompanying brief, the supporting declarations,
2 previously filed Declarations of Gina Intrepido-Bowden (ECF Nos. 3286-3 and 3317),
3 the record including the attached settlement agreements, any further briefing in this
4 matter, and the arguments at the hearing of this Motion. A proposed order is being
5 submitted contemporaneously with this Motion. The EPPs understand that StarKist,
6 DWI, and the Lion Companies do not oppose this Motion. This notice, the brief, and
7 all supporting papers will be posted concurrently on the Settlement Website.

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Dated: October 28, 2024

By: s/ Betsy C. Manifold
BETSY C. MANIFOLD

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NOT. MOT. FINAL APPROVAL
CLASS ACTION SETTLEMENT

No. 15-MD-2670 DMS (MSB)O

*Settlement Class Counsel for the End Payer
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12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 IN RE: PACKAGED SEAFOOD) Case No.: 15-MD-2670 DMS (MSB)
15 PRODUCTS ANTITRUST)
16 LITIGATION) **END PAYER PLAINTIFFS' BRIEF**
17) **IN SUPPORT OF THEIR**
18) **MOTION FOR FINAL**
19) **APPROVAL OF CLASS ACTION**
20) **SETTLEMENTS**

20 This Document Relates to:) DATE: November 22, 2024
21) TIME: 1:30 p.m.
22 End Payer Plaintiffs Class Track) JUDGE: Hon. Dana M. Sabraw
23) COURT: 13A (13th Floor)
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1 **I. INTRODUCTION**

2 After nine years of hard-fought litigation, and with the trial set to start on July
3 16, 2024, the End Payer Plaintiffs (“EPPs” or “Consumers”) reached settlements-in-
4 principle with StarKist, Dongwon Industries Co., Ltd. (“DWI”), and the Lion
5 Companies that, together with the prior partial settlement with COSI, fully and finally
6 resolve this indirect purchaser antitrust class action. The two new settlements provide
7 for combined cash payments of \$136,000,000. ECF No. 3302; Declaration of Betsy
8 C. Manifold (“Manifold Decl.”) in Support of the EPPs’ Motion for Final Approval,
9 ¶2 (filed herewith). The Court preliminarily approved both new settlements on August
10 23, 2024. ECF No. 3302. When added to the previously approved COSI partial
11 settlement, the settlements with StarKist and Lion provide Total Settlement Benefits
12 of \$152,200,000 in cash and will end the case for the EPPs.¹ These settlements
13 provide very substantial cash benefits to the Consumers and represent an exceptional
14 recovery for the EPP Classes. They easily warrant final judicial approval.

15 The deadline for objecting to the StarKist and Lion Settlement Agreements is
16 November 8, 2024. ECF No. 3302 at 18. To date, after a robust Settlement Notice
17 Plan (described in detail below), ***no objections have been received as of this filing.***
18 If any timely objections are received before the Objection Deadline (and Class
19 Counsel does not anticipate any), Class Counsel will address them by the November
20 15, 2024, filing deadline for this Motion for Final Approval. *Id.* EPPs have elected to
21 file this Motion for Final Approval ***before*** the filing deadline and to post the motion
22 papers on the Settlement Website with the EPPs’ Motion for Fees and Costs (“Fee
23 Motion”). This allows Settlement Class Members to better appreciate the settlement
24 accomplishment and to put the Fee Motion into context with final approval.

25

26 _____
27 ¹ The Court previously approved a partial settlement with COSI which adds \$16.2
28 million to the Total Settlement Benefits of \$152.2 million. ECF No. 2871 (COSI Final
Approval Order) and 3286-1 (MPA) at 7 n.2. *See also* Manifold Decl., ¶¶ 2-5.

1 The StarKist and Lion Companies Settlement Agreements were vigorously and
2 extensively negotiated at arm’s-length by counsel experienced in antitrust class
3 actions and were actively aided by United States Magistrate Judge Michael S. Berg.
4 ECF No. 3286-2 ¶¶ 7-8. Having lodged the proposed Final Pretrial Order with the
5 Court, Class Counsel were prepared to try this antitrust litigation to verdict. Manifold
6 Decl., ¶¶ 39-40. It was only through the extraordinary efforts of Judge Berg, who
7 oversaw multiple heated mediation sessions between the settling parties in April,
8 May, June, and July 2024, that these settlements were achieved – literally on the steps
9 of the courthouse at the eve of trial. ECF No. 3286-2 ¶¶ 17-24. *Collectively, the Total*
10 *Settlement Benefits of \$152.2 million represent approximately 68% of the EPP*
11 *Classes’ single damages as calculated by the EPPs’ expert.*² By any measure, this
12 excellent outcome for the EPPs is eminently fair, adequate, and reasonable, is in the
13 best interest of Consumers, and fully warrants final approval.

14 The proposed Settlement Class (less opt-outs) is essentially the same Class as
15 previously certified by the Court (ECF No. 1931) and as the Settlement Class certified
16 by the Court in the COSI partial settlement. ECF No. 2871 at 6. Based on these prior
17 determinations by the Court, the proposed Settlement Class (consisting of the same
18 Cartwright and State Law Consumer Classes, less any opt-outs) also satisfies Rules
19 23(a) and 23(b)(3) for settlement purposes. Finally, the EPPs respectfully request that
20 the Court find that the robust Settlement Class Notice Plan undertaken by the claims
21 administrator satisfies due process and adequately provided Notice to Class Members.
22 See ECF No. 3313-1 (Notice Declaration).

23 **II. RELEVANT PROCEDURAL HISTORY**

24 Having presided over this complex litigation for many years, the Court is well
25 familiar with the factual background and procedural history of the case. A summary
26 of relevant events is included in the accompanying Manifold Declaration. Only key
27

28 ² See Expert Report of David Sunding, dated February 16, 2019, p. 17, Table 2
(single damages of \$224 million).

1 events are highlighted here.

2 **A. Substantial Discovery Was Conducted**

3 Plaintiffs took more than 200 depositions and served more than 20 third-party
4 subpoenas to collect pricing data from market participants. ECF No. 2846-2 at ¶10.
5 In total, millions of pages of documents were produced and then reviewed by EPPs’
6 counsel. Manifold Decl., ¶25. The EPPs also moved to amend the scheduling order
7 to add the Lion Defendants, which the Court granted. *See* ECF No. 884 at 12.

8 After several rounds of motions to dismiss, each brought separately by different
9 groups of Defendants against different Plaintiff tracks, Defendants answered the
10 operative EPP Complaint [ECF No. 1461]. *See* Answers, ECF Nos. 1562, 1602, 1603,
11 1690, 1691 and 2639. All of the state law claims in the operative Complaint were
12 found to be timely or tolled by either the Discovery Rule or Fraudulent Concealment.
13 *See* ECF No. 295 at 99-101 (citing the Court’s State Law Statute of Limitations
14 Compendium).

15 **B. Class Certification Was Hard-Fought and the Decision Widely
16 Cited**

17 Notably, class certification of the EPP Consumer Classes was especially hard-
18 fought, involving three highly respected economists retained by Plaintiffs, Dr. Russel
19 Mangum (DPPs), Dr. Michael Williams (CFPs), and Dr. David Sunding (EPPs), and
20 countered by two equally respected economists hired by Defendants, Dr. John
21 Johnson and Dr. Laila Haider. Manifold Decl., ¶31; ECF No. 2846-2 at ¶12. EPP
22 Class Counsel prepped and defended 16 individual EPP Class Representative
23 depositions. Manifold Decl., ¶31. On January 14-16, 2019, the Court conducted a
24 three-day evidentiary hearing on class certification. *Id.*, ¶32. The Court ultimately
25 certified a Cartwright Act Class consisting of all persons and entities who resided in
26 one of the states identified in the EPPs’ operative complaint and indirectly purchased
27 Packaged Tuna in consumer-sized cans or pouches produced by any Defendant during
28 the period June 1, 2011 through July 1, 2015 (the “Class Period”). ECF No. 1931 at
46. The Court also certified a statewide damages class for each State identified in the

1 operative complaint. *Id.* The Court appointed Wolf Haldenstein as Class Counsel. *Id.*
2 at 58-59.

3 The Court's class certification decision withstood extensive appeals in the
4 Ninth Circuit, resulting in a comprehensive decision that has become the nation's
5 leading antitrust class certification order, having been cited no fewer than 994 times
6 by district courts throughout the United States. Manifold Decl., ¶33. The Supreme
7 Court denied a petition for *certiorari* from the Ninth Circuit's decision. *Id.*

8 C. Expert Discovery and Successful Dispositive Motions

9 In preparation for trial, EPPs engaged two experts: Dr. Sunding (economist)
10 and Adoria Lim (forensic accountant). Manifold Decl., ¶34. The Defendants hired
11 eight experts: Dr. Randal Heeb (economist), Dr. Michael Moore (economist), Gary
12 Kleinrichert (accountant), Andres Lerner (economist), Janusz Ordover (economist),
13 Dennis W. Carlton (economist), Robert Daines (law professor), and Ilya A. Strebulaev
14 (private equity professor). *Id.* Extensive expert discovery concluded on February 23,
15 2023. ECF No. 2980.

16 After the close of discovery, in September 2019, the seven Defendants, three
17 Plaintiff Classes, and 53 Direct Action Plaintiffs who remained in the case filed
18 various dispositive motions and engaged in substantial briefing. Wolf Haldenstein
19 played a substantial and leading role in organizing, coordinating, drafting, and filing
20 the documents associated with over twenty (20) dispositive motions. Manifold Decl.,
21 ¶35. Plaintiffs filed four motions for partial summary judgment [ECF Nos. 1976,
22 1993, 2009, 2035] and three narrow *Daubert* motions [ECF Nos. 1970, 1987, 2034],
23 including a motion for summary judgment motion filed by the EPPs against StarKist,
24 which the Court granted on liability. Defendants filed thirteen dispositive motions:
25 ten joint motions for summary judgment [ECF No. 1973, 1992, 1998, 1999, 2001,
26 2007, 2010, 2015, 2023, 2025] and three *Daubert* motions [1967, 1981, 1984].

27 Plaintiffs largely prevailed on the *Daubert* and summary judgment motions.
28 Manifold Decl., ¶37.

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D. The Court Granted Final Approval for the Partial COSI Settlement

The COSI “icebreaker” settlement was the first settlement between the EPPs and any Defendant. It adds \$16,200,000 million to the Total Settlement Benefits of \$152,200,000. In granting final approval to the COSI partial settlement, the Court found “that the Claims Administrator (JND) engaged in a notice program with appropriate depth of reach for a settlement class with tens of millions of consumers.” ECF No. 2871 at 2:18-22. The Court concluded that the “settlement class members received the best notice that is practicable in such a large consumer action.” *Id.* at 2-3. The Court also certified a Settlement Class (which is the same Settlement Class proposed here less opt-outs).³ *See* ECF No. 2871 at 7:15-23. The Court noted that it had “previously certified a contested EPP Class for trial under the requirements of Rule 23(a) and (b)(3)” and that “the Ninth Circuit *En Banc* Opinion affirmed the Class Order and did not alter the Court’s previous findings” that the Consumer Classes satisfied Rule 23’s requirements. *Id.* “The Court [saw] no reason to change its view, and affirm[ed] its certification for the purpose of the settlement classes here.” *Id.*

E. Preparations for Trial Were Substantially Complete

Following the partial COSI settlement, preparations for the trial scheduled to begin on July 16, 2024, were substantially complete when the proposed settlements were reached. The extensive trial preparation included numerous motions *in limine* filed by all parties, the Local Rule 16.1(f) meeting held on June 3, 2024, the preparation of joint jury instructions, which Plaintiffs presented to the Court along with their respective supplemental instructions and objections on May 31, 2024, and preparation of the proposed Pre-Trial Order, which Class Counsel lodged with the Court on June 14, 2024, in anticipation of a final Pretrial Conference on June 21,

³ *See also* ECF Nos. 1931 (Class Order), 3120 (Opt-Out Report), 3286-2 at 26, ¶1.25 (StarKist SA) and at 55, ¶1.24 (Lion SA).

1 2024. Virtually all pre-trial proceedings were completed before these settlements
2 were reached.

3 **III. THE SETTLEMENTS**

4 **A. The Settlements Were the Result of Arm's-Length Negotiations**

5 The parties made notable attempts to settle the matter throughout the litigation.
6 Since mid-2019, Class Counsel engaged in several informal settlement discussions
7 with the Settling Defendants and many more formal negotiations (most presided over
8 with extreme care and exceptional skill by Magistrate Judge Berg) with counsel for
9 StarKist and the Lion Companies. ECF 3286-2 at 7-9, ¶¶ 17, 18, 22 (including Bumble
10 Bee). In particular, the EPPs and StarKist participated in multiple settlement
11 conferences with Magistrate Berg on October 4, 2023, April 25, 2024, May 22, May
12 23, 2024, and June 3, 2024. *Id.* at ¶¶ 20, 21. It was through the extraordinary efforts
13 of Judge Berg that the parties reached a settlement. With Judge Berg's oversight and
14 guidance, the EPPs and StarKist finally reached a settlement in principle in the
15 amount of \$130,000,000 at the end of the June 3, 2024 conference.

16 The EPPs and the Lion Companies also attended a joint settlement conference
17 before Magistrate Berg on August 7, 2023. ECF 3286-2 at ¶ 23. Counsel for the EPPs
18 and for the Lion Companies continued to conduct informal and formal settlement
19 negotiations, including a lengthy but unsuccessful formal mediation with Judge
20 Michael (retired). *Id.* On June 17, 2024, nearly a year after beginning the settlement
21 process and with the trial date imminent, the EPPs again met with the Lion Companies
22 (and their principals and insurers) in a day-long settlement conference with Magistrate
23 Berg that culminated in the parties reaching a settlement in principle. *Id.*, ¶ 24. The
24 settlement conference culminated in the parties reaching a \$6,000,000 settlement in
25 principle, but only after the Lion Companies' and its founders' financial condition
26 was carefully evaluated by Class Counsel and by Judge Berg. *Id.*

27 Based on this ample record, the Court found that the proposed settlements were
28 the result of arm's-length negotiations. ECF No. 3302 at 4. After carefully reviewing

1 the monetary terms, the Settlement Class definitions, and the releases provided for in
2 both settlement agreements, the Court granted preliminary approval “as each is likely
3 to be finally approved after the Fairness Hearing.” *Id.* at 7.

4 **B. The Settlement Class Was Certified By the Court in the**
5 **Preliminary Approval Order**

6 Under the StarKist and Lion Agreements, the Settlement Class is substantially
7 the same as the Consumer Classes and the COSI Settlement Class previously certified
8 by the Court with no material changes.⁴ No consumers sought exclusion from the EPP
9 Settlement Class in the COSI Settlement. The only minor difference is that the
10 Settlement Class here *excludes* 114 consumers who subsequently opted out of the
11 EPP Classes and *includes* the three individual Illinois Plaintiffs. *See* ECF Nos. 3120,
12 2871. Manifold Decl., ¶50. The Settlement Class Counsel and Settlement Class
13 Representatives are the same as Class Counsel and Class Representatives previously
14 appointed by the Court in the Class Order. ECF No. 1931 at 58-9; ECF No. 3286-2 at
15 26, ¶ 1.26 and at 56, ¶ 3. For these reasons, the Court concluded in its Preliminary
16 Approval Order that “certification of the Settlement Class is appropriate for all
17 reasons set forth in the Class Order.” ECF No. 3302 at 7.

18 **C. Key Settlement Terms**

19 Complete copies of both the StarKist Agreement and the Lion Agreement are
20 attached to the Declaration of Betsy C. Manifold in Support of EPPs’ Motion for
21 Preliminary (“Preliminary Approval Motion”) as Exhibits 1 and 2, respectively. *See*
22 ECF No. 3286-2 at 19-46 (StarKist Agreement) and 47-72 (Lion Agreement). The
23 Preliminary Approval Motion provides a detailed summary of the key terms in both
24 settlements and is available (along with the exhibits) on the Settlement Website. *See*
25 ECF No. 3286-1 at 13-15.

26 The \$136 million fund created by the proposed Settlement Agreements, along
27

28 ⁴ *See* ECF No. 1931; ECF No. 3286-2 at 23, ¶ 1.8 and at 56, ¶ 3; *see also* ECF No.
2871 (Order approving the COSI Settlement).

1 with the \$16.2 million in benefits from the COSI Partial Settlement, will be used to
2 make payments to the Settlement Class Members and, as finally approved by the
3 Court, to pay costs of notice, claims administration and distribution, attorneys' fees,
4 expenses, costs, and service awards.⁵ See ECF No. 3286-2 at 22 (StarKist Settlement)
5 at 22, ¶ 1.2 and at 40, ¶14.1; ECF No. 3286-2 at 54-71 (Lion Settlement), ¶¶ 1.22,
6 10.9, 10.10, 11.1.

7 The cost of a robust notice program to a large consumer class is substantial. For
8 this reason, StarKist agreed to advance \$1,000,000 and the Lion Companies agreed to
9 pay up to \$200,000 to cover the costs of notice and administration. Manifold Decl.,
10 ¶59. When it granted preliminary approval of the settlements, the Court found that
11 agreement to be appropriate, and approved the advancement of these costs to the
12 Claims Administrator under the terms of both Agreements. ECF No. 3302 at 15 (“an
13 interim distribution of \$1.2 million for notice costs prior to the Fairness Hearing is
14 appropriate and is approved under the terms provided in the Settlement Agreements”).
15 As of October 18, 2024, JND Legal Administration LLC (“JND”) has incurred
16 reasonable expenses in the amount of \$726,702.30, slightly below the estimates
17 provided to the Court. Manifold Decl., ¶59. As permitted by the terms of proposed
18 Settlement Agreements, Class Counsel has paid JND for these reasonable costs of
19 notice administration. *Id.*; ECF No. 3302 at 15; ECF No. 3286-2 at 29, ¶5.3 and at 58,
20 ¶ 5.3 (advanced Notice Costs not recoverable by the Settling Defendants).
21 Defendants' remaining payments into the Settlement Fund will be made as provided
22 by their respective Settlement Agreements, as discussed *infra*.

23 1. StarKist Settlement Agreement

24 *Payment Schedule.* The StarKist Settlement Agreement provides that StarKist
25 will pay a total \$130,000,000 in cash over a period from Preliminary Approval (on
26 August 23, 2024) to 500 days after Preliminary Approval. The first payment of \$32
27 million was paid on September 21, 2024, within 30 days after Preliminary Approval.

28 _____
⁵ Capitalized terms are defined within the StarKist and Lion Agreements.

1 ECF No. 3286-2 at 26, ¶ 1.24. Manifold Decl. ¶14. As of the date of the Fairness
2 Hearing on November 22, 2024, the second payment of \$18 million from StarKist is
3 due. *Id.* Payment of the remaining settlement funds is triggered by a specific number
4 of days *after* Preliminary Approval. ECF No. 3286-2 at 26, ¶ 1.24. For the Court’s
5 and Settlement Class Members’ convenience, the payment schedule is attached to the
6 Fee Motion as Appendix A.

7 *Released Claims.* The Released Claims are those “arising out of, resulting from,
8 or in any way related to EPPs’ purchases of Packaged Tuna, including any conduct
9 concerning the pricing, selling, discounting, marketing, manufacturing, distribution,
10 or promotion, of Packaged Tuna, during the period from June 1, 2011 to July 31,
11 2015.” *Id.* at ¶ 1.21 The Released Claims also include all claims that could have been
12 brought based in whole or in part on the facts, occurrences, transactions, or other
13 matters that were alleged in the Complaint. *Id.* The StarKist Agreement also contains
14 a waiver of California Civil Code § 1542. *Id.* at ¶ 8.2.

15 *Attorneys’ Fees and Expenses.* As to any Fee Award, “the allowance or
16 disallowance by the Court” of any application for fees is not part of the Settlement
17 Agreement, will be considered by the Court separately and “shall not operate to
18 terminate or cancel” the Settlement Agreement or “delay the finality of the
19 Judgment.” ECF No. 3286-2 at 40, ¶ 14.1.

20 **2. Lion Companies Settlement Agreement**

21 *Payment Schedule.* Under the terms of the Lion Agreement, the Lion
22 Companies have deposited \$3 million in the Settlement Fund Escrow. ECF No. 3286-
23 2 at 54, ¶ 1.22); Manifold Decl. ¶15. The remaining \$3 million will be deposited
24 within 45 days after Final Approval. *Id.*

25 *Released Claims.* The Released Claims are those that arise out of, result from
26 or relate to “any conduct concerning the pricing, selling, discounting, manufacturing,
27 distribution, promotion, or marketing of Packaged Tuna Products during the period
28 from June 1, 2011 to July 31, 2015 that could have been brought based in whole or in

1 part on the facts, occurrences, transactions, or other matters that were alleged in the
2 Complaint.” ECF No. 3286-2 at 53, ¶ 1.19.

3 *Attorneys’ Fees and Expenses.* As to any Fee Award, the Lion Agreement is
4 substantially similar to the StarKist Agreement. Any order relating to the application
5 for fees and expenses should be considered separately and “shall not operate to
6 terminate or cancel” the settlement or “delay the finality of the Judgment.” ECF No.
7 3286-2 at 68, ¶ 14.1.

8 **D. Agreements Required to Be Identified Under Fed. R. Civ. P.**
9 **23(e)(3)**

10 All the terms of the settlements are contained within the respective Settlement
11 Agreements. Manifold Decl. ¶51; ECF No. 3286-2 at 19-72. EPPs have not entered
12 into any additional agreements with the Settling Defendants in connection with the
13 proposed settlements. *Id.*

14 **IV. NOTICE AND CLAIMS DISTRIBUTION PROCESS**

15 Notice was provided to the Settlement Class via email, U.S. Mail, posting on
16 the Settlement Website, in *People* and by digital publication. ECF No. 3313-1.

17 **A. An Experienced and Well-Respected Claims Administrator**

18 The EPPs again retained JND, an experienced and well-respected claims
19 administrator. The Court previously approved JND as Claims Administrator for the
20 COSI Settlement and to disseminate the Class Notice. ECF Nos. 2734 and 2781. Their
21 prior experience in this case promotes greater efficiency. *See* ECF No. 2552-6.

22 **B. The Notice Plan Reached 70% of the Settlement Class**

23 The Settlement Notice Plan, approved by the Court’s Preliminary Approval
24 Order, was robust and provided the Settlement Class Notice (in various forms) to
25 Settlement Class Members via email, posting on the Settlement Website and by digital
26 and print publication. ECF No. 3313-1 (Notice Declaration), ¶¶4-20; ECF No. 3302
27 at 12-19. The digital effort delivered over 549 million impressions to adults over 18
28 in the U.S. (more than originally planned). ECF No. 3313-1, ¶4. A one-third-page
color notice was placed in the October 7, 2024, issue of *People* magazine which

1 included a QR Code for quick and direct access to the Settlement Website. *Id.*, ¶9. As
2 directed by the Preliminary Approval Order, on September 6, 2024, JND mailed the
3 Court-Approved notice via first-class U.S. Mail (“Mailed Notice”) to 265,926 COSI
4 Settlement Claimants. ECF No. 3313-1, ¶¶12-14; ECF No. 3302 at 13. A national
5 press release was distributed to English and Spanish media outlets via PR Newswire
6 and was picked up 585 times with a potential audience of 179.5 million. ECF No.
7 3313-1, ¶19. The digital and print efforts alone reached more than 70% of potential
8 Settlement Class Members and further extended by Mail Notice. *Id.*, ¶26.

9 **C. The Form of Notice Was Reasonable**

10 Rule 23(e)(1)(B) requires the Court to “direct notice in a reasonable manner to
11 all class members who would be bound by a proposed settlement...” regardless of
12 whether the class was certified under Rule 23(b)(3). *Manual for Complex Litigation*,
13 § 21.312 (4th ed. 2023). The best practicable notice is that which is “reasonably
14 calculated, under all circumstances, to apprise interested parties of the pendency of
15 the action and afford them an opportunity to present their objections.” *Mullan v. Cent.*
16 *Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The notice must contain specific
17 information in plain, easily understood language, including the nature of the action
18 and the rights of the class members. Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii).

19 *Form of Notice:* The Settlement Notices, as approved by the Court, comply
20 with Fed. R. Civ. P. 23(c). ECF No. 3302 at 13 (“proposed form of the settlement
21 notices complies with Rule 23(c)”). See ECF No. 3313, ¶¶ 12-19, Ex. C (**Mailed**
22 **Notice**), Ex. D (**Email Notice**), and Ex. F (**Press Release**). Consistent with Rule
23 23(c)(2)(B), the Settlement Notices each describe “(i) the nature of the action; (ii) the
24 definition of the [Settlement] Class certified; (iii) the class claims, issues, or defenses;
25 (iv) [a directive] that a Settlement Class Member may enter an appearance through an
26 attorney if the member so desires; and (v) the binding effect of judgment on members
27 [of the Settlement Class] under Rule 23(c)(3).” *Id.*

28 *No Secondary Right to Opt-Out:* No right to opt-out was provided in the Mail

1 or Email Notices to the COSI Claimants because the COSI Claimants had already
2 been given the opportunity to opt out as part of the COSI Settlement. *See* ECF No.
3 3313, ¶¶ 12-19, Ex. C (*Mailed Notice*) and Ex. D (*Email Notice*); ECF No. 2871. The
4 *Press Release* also advised Settlement Class Members that there was no secondary
5 right to opt out. *See* ECF No. 3313, ¶¶ 12-19, Ex. F (*Press Release*) at 55 (“There is
6 no additional opportunity to exclude yourself (“Opt Out”) from the StarKist and Lion
7 Settlements.”). The *Press Release* explained that Settlement Class Members were
8 already provided two opportunities to “opt out” in both the COSI Settlement and then
9 in the Litigation Class. *Id.* *See* ECF Nos. 2871, 3120.

10 *Terms of Any Fee or Costs Award:* The Settlement Class Notices all advised
11 Settlement Class Members that Class Counsel would request a fee of 33%. *See* ECF
12 No. 3313-1, ¶¶ 12-19, Ex. C (*Mailed Notice*) (“Class Counsel will request an award
13 of attorney fees equal to 33% of the Total Settlement Fund”); Ex. D (*Email Notice*)
14 (same language); Ex. F (*Press Release*) (“Class Counsel will ask the Court to approve:
15 (1) attorneys’ fees equal to 33% of the Total Settlement Fund...” and repeated in
16 Spanish). The Settlement Notices also disclosed that Class Counsel would request
17 reimbursement for out-of-pocket litigation costs incurred since May 2021 in the
18 amount of \$1,618,489.24 and service awards totaling \$294,000. *See* ECF No. 3313-
19 1, ¶¶ 12-19, Ex. C (*Mailed Notice*) at 34, Ex. D (*Email Notice*) at 38 and Ex. F (*Press*
20 *Release*) at 54.

21 **D. Plan of Distribution**

22 Each Authorized Claimant in the Settlement Class shall receive a *pro rata* share
23 of the Distribution Funds as described in the Settlement Class Notice.” ECF No. 3313-
24 1, Ex. F (*Press Release*) at 54 (estimating price per can recovery). Payments to
25 Authorized Claimants will not be immediately distributed but held until all settlement
26 amounts have been paid by the Settling Defendants as required by the Settlement
27 Agreements. *See also* ECF 3286-3 at 16, ¶ 41. It is not efficient to make multiple
28 distributions, with the costs of claims administration, it is more efficient to delay

1 distribution until all settlement funds are received. *Id.*

2 Once the Court grants final approval of the proposed settlements, all appeals
3 are exhausted, and all monies are collected under the Settlement Agreements, JND
4 will distribute payments as specified on the claimant’s Claim Form. *See* ECF 3286-3
5 at 13, ¶ 32, Ex. H (Claim Form). JND will send payments to the address (check) or
6 email (electronic payment such as via PayPal) provided by the claimant on the Claim
7 Form. *Id.* If the total final payment of a particular claim is less than \$5.00, no
8 distribution will be made to the Authorized Claimant. *Id.* ¶ 33, Ex. H.⁶ It is typical to
9 provide for such a *de minimis* claim threshold so that the costs of administration are
10 not out of proportion to the size of the payments. *Id.*

11 **E. The Claims Process: Access to Online Submission of Claim Forms**

12 The print notice and digital ads included an embedded link and the print ad a
13 QR code, both of which allow Settlement Class Members to receive more information
14 about the Settlements as well as complete and file an online Claim Form. ECF No.
15 3313-1, ¶9, Ex. A (*Digital Ads*), Ex B (*People Ad*) and Ex. C (*Mailed Notice*) at 34.
16 The same claims process was approved by the Court in the COSI Settlement. ECF
17 No. 2781 at 15:8-22. The Settlement Notice documents also provide a toll-free
18 number to contact JND with any questions. ECF No. 3313-1, Ex. B (*People Ad*) at
19 30; Ex. C (*Mailed Notice*) at 34, Ex. D (*Email Notice*) at 38 and Ex. F (*Press*
20 *Release*) at 56, 60.

21 According to Ms. Intrepido-Bowden, Vice President of JND Legal
22 Administration and a judicially recognized legal notice expert, claimants “generally
23 favor online claims forms” because the process is user-friendly and convenient. ECF
24 No. 3286-3, ¶¶ 25-26. Online claim processing is faster, easier, more efficient, and
25 results in fewer deficiencies. *Id.* at ¶25. If a Settlement Class Member is either unable
26

27 _____
28 ⁶ *See also* Long Form Notice on Settlement Website (same language). *See*
<https://www.tunaendpurchasersettlement.com> (IMPORTANT DOCUMENTS)

1 or unwilling to file a claim on-line, she may request a printed claim form and either
2 return it to JND via United States Mail (post-marked before the Claims Cut-off Date)
3 or create a pdf of the completed Claim Form and e-mail it to JND (before the Claims
4 Cut-off Date). *Id.*, ¶¶ 27-28.

5 Next, JND will review, determine the validity of, process and hold on to all
6 Claim Forms submitted by claimants. *Id.*, ¶ 31. JND will flag any issues (such as
7 failure to sign a paper or pdf Claim Form) and follow up with the claimant as
8 necessary. *Id.* JND will also review the Claim Forms to ensure submission by a single
9 claim per claimant. *Id.* (avoiding doctored documentation and multiple payments to a
10 single recipient).

11 **F. Objections**

12 The Objection Deadline is November 8, 2024. *To date, no objections have*
13 *been received.*

14 **V. ARGUMENT**

15 Final approval is a multi-step inquiry: first, the Court must certify the proposed
16 settlement class; second, it must determine that the settlement proposal is “fair,
17 reasonable, and adequate;” and third, it must assess whether notice has been provided
18 in a manner consistent with Rule 23 and due process. Fed. R. Civ. P. 23(e)(2); *Adoma*
19 *v. Univ. of Phoenix Inc.*, 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012). These procedures
20 safeguard class members’ due process rights and enable the Court to fulfill its role as
21 the guardian of class interests.⁷ The Settlement satisfies each of these requirements.

22 **A. The Court Should Grant Final Approval of the Settlement**

23 Rule 23(e) requires the district court to determine whether a proposed
24 settlement is “fair, reasonable, and adequate.” *In re Online DVD-Rental Antitrust*
25 *Litig.*, 779 F.3d 934, 944 (9th Cir. 2015). To assess the fairness of a class settlement,
26 Ninth Circuit courts consider a number of factors, including: (1) the strength of the
27

28 ⁷ See 4 Albert Conte & Herbert Newberg, *Newberg On Class Actions* §§ 11.22, *et seq.*
4th ed. 2002).

1 plaintiffs' case; (2) the risk, expense, complexity, and likely duration of future
2 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the
3 amount offered in settlement; (5) the extent of discovery completed and the stage of
4 the proceedings; (6) the experience and views of counsel; (7) the presence of a
5 governmental participant; and (8) the reaction of class members to the proposed
6 settlement. *Id.* (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
7 2004)). Rule 23(e)(2) also requires courts to consider whether (1) class representatives
8 and counsel have adequately represented the class; (2) the proposal was negotiated at
9 arm's length; (3) the settlement provides adequate relief for the class; and (4) the
10 proposal "treats class members equitably relative to each other."

11 These factors are not exclusive. This Court may consider any combination of
12 factors that it deems appropriate to assessing the fairness of the settlement.
13 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 254 (N.D. Cal. 2015) (noting
14 "The court need not consider all of these factors, or may consider others.").

15 This Court previously determined that the Settlement satisfies each of the
16 requirements of Rule 23(e)(2). *See* Preliminary Approval Order at 3, 17-18. There is
17 no reason to depart from the Court's preliminary conclusion that the proposed
18 Settlement is fair, adequate, and reasonable.

19 **1. The Churchill Village Factors Favor Final Approval**

20 Under the first *Churchill Village* factor, this Court considers the strength of
21 plaintiffs' case. *See* Fed. R. Civ. P. 23(e)(2)(C). This includes the difficulty of
22 "prevailing at summary judgment, prevailing on appeal, as well as the difficulty of
23 satisfying any judgment in favor of the class." *Carlin v. DairyAmerica, Inc.*, 380 F.
24 Supp. 3d 998, 1009 (E.D. Cal. 2019). In considering this factor, the Court need not
25 reach "any ultimate conclusion" about the case, "for it is the very uncertainty of
26 outcome" and avoiding more litigation "that induce consensual settlements." *Bravo*
27 *v. Gale Triangle, Inc.*, CV 16-03347, 2017 WL 708766, at *9 (C.D. Cal. Feb. 16,
28 2017). Given the criminal convictions, guilty pleas, and admissions by COSI,

1 StarKist, and Bumble Bee, liability as to the plea period (November 2011 to
2 December 2013) was strong. However, claims falling outside the plea period were
3 vigorously disputed by all Defendants. In addition, Bumble Bee was bankrupt and the
4 claims against DWI and the Lion Companies – who were never convicted and not part
5 of the criminal investigation by the Department of Justice and never criminally
6 charged – were likewise disputed. All the Defendants disputed the scope, duration,
7 and effect of the conspiracy. Manifold Decl., ¶41.

8 Therefore, the EPPs were required to balance the strength of their case against
9 the second *Churchill* factor: the risk, expense, complexity and delay of further
10 litigation. Fed. R. Civ. P. 23(e)(2)(C)(i). “In most situations, unless the settlement is
11 clearly inadequate, its acceptance and approval are preferable to lengthy and
12 expensive litigation with uncertain results.” *Bravo*, 2017 WL 708766, at *9 (internal
13 quotation omitted). EPPs faced added complexities and risks at trial because, as
14 consumers, the EPPs needed to prove liability for a multistate Cartwright Act Class
15 claim and Individual State Law Class claims as well as proving pass-through of the
16 overcharge to the consumers. Ultimately, at trial, the outcome of litigation is always
17 uncertain. Antitrust class actions are particularly complex and inherently risky. *See In*
18 *re NCAA Ath. Grant-In-Aid Cap Antitrust Litig.*, No. 4:14-cv-02758-CW, 2017 WL
19 6040065, at *3 (N.D. Cal. Dec. 6, 2017) (noting that “antitrust class action is arguably
20 the most complex action to prosecute. The legal and factual issues involved are always
21 numerous and uncertain in outcome.”) (Internal quotation marks omitted.)

22 Proving damages at trial also is an expert-intensive and uncertain process, often
23 involving conflicting testimony. Achieving maximum damages was based on two key
24 assumptions: the jury would believe the EPPs’ expert (not the Defendants’ expert);
25 and the jury would award full damages for the entire Class Period and for all the
26 repealer act states. The reaction of a jury, or even a judge, to such complex and
27 contradictory disputed expert testimony is highly unpredictable, and in a battle of the
28 experts, a jury could find either no damages or just a fraction of the damages sought.

1 *Dexter’s LLC v. Gruma Corp.*, No. 23-cv-212, 2023 WL 8790268, at *4 (S.D. Cal.
2 Dec. 19, 2023) (“The court shall consider the vagaries of litigation and compare the
3 significance of immediately recovery by way of the compromise to the mere
4 possibility of relief in the future, after protracted and expensive litigation”)(quoting
5 *Nat’l Rural Telecomms Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal.
6 2004)).

7 Even a jury verdict is no assurance of success. Antitrust cases with complex
8 expert econometric modeling and treble damages face the very real risks of reversal
9 at trial, after verdict and on appeal, and this case was no exception. *In re National*
10 *Football League’s Sunday Ticket Antitrust Litig.*, 2:15-md-02668-PSG, Judgment
11 (C.D. Cal. August 20, 2024) (ECF No. 1542), is a cautionary tale. From June 5
12 through June 26, 2024, the Court presided over a jury trial in that direct purchaser
13 antitrust action against the NFL by a commercial class and a residential class of
14 DirecTV subscribers to the NFL Sunday Ticket. *Id.* at 2. The NFL defendants moved
15 for judgment under Rule 50(a) at the close of the plaintiffs’ case, which the Court
16 denied. *Id.* On June 27, 2024, the jury returned a verdict in Plaintiffs’ favor and
17 finding that NFL Defendants had violated the Sherman Act and awarded the
18 commercial class nearly \$100 million and the residential class over \$4.6 billion in
19 damages. Thereafter, based on the Court’s own view of the plaintiffs’ experts, the
20 Court granted judgment for the defendants as a matter of law and vacated both
21 verdicts. *Id.*

22 The risk and expense necessary to prosecute these claims through trial and an
23 all-but-certain post-trial appeal are very real. *See, e.g., Torrissi v. Tucson Elec. Power*
24 *Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993) (approving settlement based in part on
25 “inherent risks of litigation”). After trial, an appeal would follow (no matter which
26 side won) which “prolong the litigation, and any recovery by class members, for
27 years.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009).

28 Furthermore, setting the risks of litigation aside, Bumble Bee sold its assets in

1 the bankruptcy proceedings. *See* ECF No. 2279 at ¶2, Ex. A (January 24, 2020 Sale
2 Order authorizing sale of substantially all Bumble Bee assets). Even if successful at
3 trial, the EPPs were concerned that post-trial events would threaten any verdict they
4 obtained. In addition to post-trial motions, the EPPs faced a significant risk that they
5 would be unable to collect or enforce their judgment against either DWI or the Lion
6 Companies, all foreign defendants who might not have sufficient assets in the United
7 States to satisfy the judgment, and that StarKist might not have sufficient assets itself
8 to satisfy the judgment. *See Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734,740 (9th
9 Cir. 2016) (assessing reasonableness can include weighing “the risk of nonpayment”
10 and “the difficulty and risks inherent in litigating against *defendants* in a [foreign
11 nation]”). The litigation risks at trial, on appeal, and after a judgment were all very
12 real here.

13 The third *Churchill Village* factor, the risk of maintaining class certification
14 through trial, also weighs in favor of final approval. *In re Bluetooth Headset Prods.*
15 *Liab. Litig.*, 654 F.3d 935, at 946 (9th Cir. 2011); *Bellinghausen v. Tractor Supply*
16 *Co.*, 306 F.R.D. 245, 255 (N.D. Cal. 2015) (citing risk of *maintaining* certification
17 “if the litigation were to proceed”); *Chen v. Chase Bank USA*, No. 19-cv-01082, 2020
18 WL 3432644, at *6 (N.D. Cal. June 23, 2020) (same). Certification was hotly
19 contested. The Class Order was appealed to the Ninth Circuit, reviewed *en banc*, and
20 an appeal to the Supreme Court was made. The risk of further appeal after trial was
21 highly likely and weighs in favor of approval.

22 The fourth *Churchill Village* factor, the amount obtained through the
23 Settlement, also supports final approval. *See also* Fed. R. Civ. P. 23(e)(2)(C);
24 *Procedural Guidance for Class Action Settlements* § 1(e) (suggesting courts consider
25 amount of settlement to potential recovery). The Total Settlement Benefit is \$152.2
26 million. Regression modeling by the EPPs’ expert, Professor David Sunding, shows
27 single damages equal to \$224 million.⁸ Trebled, this is approximately \$672 million.

28

⁸ *See* Expert Report of David Sunding, dated February 16, 2019, p. 17, Table 2.

1 Based on the maximum single damages of \$224 million for the entire conspiracy
2 period, ***a total recovery of \$152,000,000 is nearly 68% of the maximum single***
3 ***damages*** and over 20% of maximum treble damages. It is larger than the penalty
4 amount recovered by the government in the criminal case and substantially higher (in
5 absolute dollars) than the recovery by the DPPs in their direct action against StarKist.
6 *See* DPP Fee Brief at 14:1-6 (ECF No. 3312-1). The EPP recovery also is comparable
7 to the DPPs' percentage recovery as well. *See id.*

8 Here, a 68% recovery of single damages is meaningful and exceeds the usual
9 range of recovery of 30-40% which is typical. *See Rodriguez*, 563 F.3d at 954 (finding
10 a settlement that was approximately 30% of the estimated damages before trebling
11 fair, adequate, and reasonable); *accord Edwards v. Nat'l Milk Producers Fed'n*, No.
12 11-cv-04766-JSW, 2017 WL 3616638, at *3 (N.D. Cal. June 26, 2017) (finding a
13 settlement representing approximately 30% of the total estimated single damages fair
14 and reasonable). Obtaining nearly 68% of single damages, particularly in a case where
15 single damages are as high as they were in this case, is an excellent result and easily
16 warrants final judicial approval.

17 The fifth and sixth *Churchill Village* factors also support final approval. These
18 factors consider the stage of the proceedings and the experience and views of counsel.
19 Preparations for a July 16, 2024, trial were substantially complete ***before*** the proposed
20 settlements were reached. *See* §I.D., *supra*. Class Counsel had lodged the proposed
21 Pre-Trial Order with the Court in anticipation of a final Pretrial Conference on June
22 21, 2024. ECF No. 3259. EPPs were in the best position to evaluate any proposed
23 settlements. Class Counsel is a nationally recognized antitrust and class action law
24 firm with considerable expertise representing indirect purchaser plaintiff classes in
25 antitrust matters. Manifold Decl., ¶45. Class Counsel has proven that it is ready,
26 willing and able to try this case to verdict, but believe this to be an excellent settlement
27 under the circumstance and support its approval. *Id.*

28 The seventh *Churchill Village* factor – the presence of a governmental

1 participant does not raise any concerns. While the DOJ has brought criminal charges
2 based on the same underlying conduct, it has not sought restitution in any of its cases.
3 A CAFA Notice was served on the DOJ and the relevant states on August 23, 2024
4 and provided them the opportunity to “raise any concerns that they have during the
5 normal course of the class action settlement procedures.” *Bellinghausen*, 306 F.R.D.
6 at 258; Manifold Decl., Ex. 1, § 47; *see also Procedural Guidance for Class Action*
7 *Settlements* § 10 (CAFA compliance). *See* ECF No. 3313-1 at 2, ¶3. **To date, no**
8 **governmental entity has provided any comment.**

9 The eighth and final *Churchill Village* factor considers the reaction of class
10 members to the **proposed** settlement when determining the Settlement’s fairness.
11 *Churchill Vill.*, 361 F.3d at 575. “It is established that the absence of a large number
12 of objections to a proposed class action settlement raises a strong presumption that
13 the terms of a proposed class action are favorable to the class members.” *DIRECTV*,
14 221 F.R.D. at 529 (collecting cases); *see also In re Fleet/Norstar Sec. Litig.*, 935 F.
15 Supp. 99, 107 (D.R.I. 1996). **To date, there is no objection.** This factor weighs in
16 favor of approval.

17 2. The Rule 23(e) Factors Support Approval of the Settlement

18 As noted above, in addition to the *Churchill Village* factors, Rule 23(e)(2)
19 requires courts to consider whether (1) class representatives and counsel have
20 adequately represented the class; (2) the proposal was negotiated at arm’s length; (3)
21 the settlement provides adequate relief for the class; and (4) the proposal “treats class
22 members equitably relative to each other.”

23 *First*, after nearly a decade of hard fought litigation including the active
24 participation of the Class Representatives throughout, including preparing to testify
25 at trial in July 2024, the Class Representatives and Class Counsel have adequately
26 represented the Settlement Class. Manifold Decl., ¶¶46-47. This multistate antitrust
27 litigation involved a significant financial investment of over \$5 million to reach a
28 successful resolution that involved factual investigations, research, complex

1 econometric modeling, representation of over 65 Class Representatives, coordination
2 among multiple plaintiff groups, tens of millions of documents, 200 depositions, trial
3 preparation and related criminal and bankruptcy proceedings. *See* §II, *supra*. As a
4 result of Counsel’s skill and expertise, this case has become a model for econometric
5 regression modeling in complex antitrust matters, particularly when it comes to what
6 an expert has shown related to antitrust injury at class certification.

7 *Second*, the proposed settlements were hard-fought, negotiated at arm’s-length
8 against highly experienced opposing counsel and only achieved after extensive face-
9 to-face settlement meetings overseen by Judge Berg and on the very eve of trial. ECF
10 No. 3286-2, ¶¶ 17-24. The difficulty of achieving such a settlement against such
11 experienced and motivated opposing counsel (Latham & Watkins and Sullivan &
12 Cromwell) is substantial. *See, e.g., Fernandez v. Corelogic Credco, LLC*, No. 20-cv-
13 1262, 2024 WL 3209391, at * 16 (S.D. Cal. June 24, 2024) (“Fernandez”) (analyzing
14 whether defense counsel was “experienced and quality”); *In re Heritage Bond Litig.*,
15 No. 02-ML1475 DT, 2005 WL 1594403, at *20 (C.D. Cal. June 10, 2005) (“The Court
16 also notes that the quality of opposing counsel is important in evaluating the quality
17 of Plaintiff’s counsel’s work.”)

18 In considering whether the settlement resulted from arm’s-length negotiations,
19 courts often find it useful to look to the issue of attorneys’ fees and review any
20 agreements with the defendants about awarding fees (such as a no contest clause or a
21 reverter of unawarded fees). *In re Volkswagen “Clean Diesel” Mktg., Sales Practices,*
22 *& Prods. Liab. Litig.*, 895 F.3d 597, 611 & n.19 (9th Cir. 2018) (citing *In re Bluetooth*,
23 654 F.3d at 947); *Procedural Guidance for Class Action Settlements* §1(g). Here,
24 quite simply there is **no** agreement with the Settling Defendants as to fees. *See* §III.B.
25 above. Under both Settlement Agreements, the allowance or disallowance of any fee
26 award is **not** part of the Settlement Agreement, should be considered separately by
27 the Court, and any decision by the Court does **not** terminate, cancel or delay the
28 finality of Judgment. *See* ECF No. 3286-2 at 40, ¶14.1 and at 68, ¶14.1.

1 *Third*, a settlement result of a 68% recovery of single damages is meaningful
2 and exceeds the usual 30-40% (or less) which is fairly typical. *See Rodriguez.*, 563
3 F.3d at 954 (finding a settlement that was about 30% of the estimated single damages
4 as fair, adequate, and reasonable); *accord Edwards*, 2017 WL 3616638, at *3 (finding
5 a settlement representing about 30% of the total estimated single damages as fair and
6 reasonable).

7 *Fourth*, the distribution of the proposed Settlement Fund treats all Settlement
8 Class Members equally and distribution will be made to Authorized Claimants on a
9 *pro rata* basis. ECF No. 3313-1, Ex. F at 54. *See also* ECF 2552-6, Ex. I. This Court
10 previously found “the Settlement treats all Class members equitably, providing *pro*
11 *rata* distribution of the Settlement Fund after deduction of any Court-ordered awards.”
12 ECF No. 3302 at 12. *See also* ECF No. 2734 at 13. The StarKist and Lion Companies
13 Settlement thus satisfies Rule 23(e).

14 **B. The Claims Process Is Efficient and Reasonable**

15 The Court must also assess the effectiveness of the method of distributing relief
16 to the class including the method of processing class member claims to determine if
17 the relief is adequate. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii).

18 JND has extensive experience in processing claims, especially for millions of
19 claimants. JND also has the capacity to distribute monies efficiently to millions of
20 Authorized Claimants once the Court grants final approval, the judgment is final and
21 all appeals exhausted, and the Court orders distribution. As discussed in detail above,
22 JND described its proposed methodologies for claims processing and distribution of
23 funds. *See* ECF No. 3286-3 at 11-15, ¶¶ 24-40 and § IV.D.-E., *supra*. The proposed
24 claims processing methodologies are convenient for and generally favored by
25 Settlement Class Members (simple online claim submission), which provides faster
26 claim processing with fewer deficiencies. *Id.* ¶ 32. Distribution of relief is equally
27 efficient and based on the claimant’s preferred method of payment (PayPal or check).
28 *Id.* The effectiveness of JND’s claim processing methodologies favor final approval.

1 The Class Notice posted on the Settlement Website also informs Settlement Class
2 Members that no cash distribution will be made if a claim is under \$5.00. ECF No.
3 3286-3 at 14, ¶ 33.⁹

4 **C. The Proposed Plan of Allocation Is Fair, Reasonable, and**
5 **Adequate**

6 “Approval of a plan for the allocation of a class settlement fund is governed by
7 the same legal standards that are applicable to approval of the settlement: the
8 distribution plan must be ‘fair, reasonable and adequate.’” *In re Citric Acid Antitrust*
9 *Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001) (citations omitted). When
10 allocating funds, “[i]t is reasonable to allocate the settlement funds to class members
11 based on the extent of their injuries or the strength of their claims on the merits.” *In*
12 *re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2007) (citations
13 omitted) (approving securities class action settlement allocation on a “per-share
14 basis”); *Four in One Co. v. S.K. Foods, L.P.*, 2014 U.S. Dist. LEXIS 113084, at *44
15 (E.D. Cal. Aug. 14, 2014) (approving “plan of allocation providing for a *pro rata*
16 distribution of the net settlement fund based on verified claimants’ volume of
17 qualifying purchases” as “fair, adequate, and reasonable”).

18 All Settlement Class Members are eligible to make claims for cash from the
19 settlement monies. Settlement Class Members must submit a Claim Form (either
20 online, via telephone, or through the mail) to receive funds. ECF No. 3286-3 at ¶¶ 24-
21 29. The Claim Form is simple and easy to complete. *Id.*, Ex. F (Claim Form). Class
22 members will be asked for their names, mailing address, email, and to provide any

23 ⁹ It is typical to provide for a *de minimis* threshold so that the costs of
24 administration are not out of proportion to the size of the claim payment. A claims
25 threshold provides an incentive for Settlement Class members to cash small checks.
26 In JND’s experience, it is not unusual to see even higher *de minimis* thresholds. Courts
27 routinely approve *de minimis* thresholds for claims processing and distribution and
28 consider threshold payments to be “accepted as a feature of class action distributions.”
In re Dynamic Random Access Memory (DRAM) Antitrust Litig., No. C 06-4333 PJH,
2013 WL 12333442, at *81 (N.D. Cal. Jan. 8, 2013).

1 documentation (if available) and an attestation demonstrating that they are a
2 Settlement Class Member. *Id.*, Ex. F. The Settlement Administrator JND will
3 administer the entire process, including validating the claims and calculating the
4 Settlement Payment amounts in accordance with the Settlement Agreement. *Id.*

5 **D. The Court-Approved Notice Program Satisfies Due Process and**
6 **Adequately Provided Notice to Class Members**

7 Before final approval of a class action settlement, the Court must find that class
8 members were notified in a reasonable manner. Fed. R. Civ. P. 23(e)(1). When a
9 settlement class is certified under Rule 23(b)(3), class members must receive “the best
10 notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(b)(3). The
11 notice program cannot “systematically leave any group without notice.” *Officers for*
12 *Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 624 (9th
13 Cir. 1982). Settlement notice must describe “the terms of the settlement in sufficient
14 detail to alert those with adverse viewpoints to investigate and to come forward and
15 be heard.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012) (internal
16 quotation omitted). The notice plan must ultimately comport with due process
17 requirements. *Rodriguez*, 563 F.3d at 963. Here, the Court-approved Notice Plan
18 implemented by the Parties and the Settlement Administrator comports with due
19 process and was the best practicable means under the circumstances. *See* ECF No.
20 2734 at 12-13.

21 The Notice reached over 70% of potential class members via notice placements
22 with the leading digital network (Google Display Network), the top social media site
23 (Facebook), and a highly read consumer magazine (People). Notice Decl., ¶ 30.

24 The Settlement Notice explained the objection process to Settlement Class
25 Members and informed them that they may appear at the Fairness Hearing or retain
26 counsel to represent their interests. ECF No. 3286-3, Ex G (Long Form Notice) at ¶¶
27 12-17; ECF 3313-1 at 6, ¶20 (posted on Settlement Website). Class members may
28 appear at the Fairness Hearing or submit a timely and appropriate written statement
through counsel. *Id.* at ¶¶ 16-18.

1 There is no secondary right to opt out or exclusion from the StarKist and Lion
2 Companies' Settlement Agreements. The Court previously certified this class action
3 under Rule 23(b)(3) and notice was provided, a partial settlement was reached with
4 COSI and second opportunity to opt out was provided. As a result, the EPPs have not
5 elected to afford individual Class Members a new opportunity to request exclusion if
6 they did not do so previously. *See* § IV. F., *supra*.

7 **E. Class Members' Positive Reaction Favors Final Approval**

8 The Court should consider the reaction of class members to the proposed
9 settlement when determining the Settlement's fairness. *Churchill Vill.*, 361 F.3d at
10 575. As discussed above, the absence of objections raises a presumption that the terms
11 of a proposed settlement are favorable to class members. The objection and exclusion
12 deadline is November 8, 2024. ***There is no objection to date.***

13

14

15 Dated: October 28, 2024

By: /s/ Betsy C. Manifold
BETSY C. MANIFOLD

16

17

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9 *Proposed Settlement 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
14 IN RE: PACKAGED SEAFOOD
PRODUCTS ANTITRUST
15 LITIGATION

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

) **DECLARATION OF BETSY C.**
) **MANIFOLD IN SUPPORT OF END**
) **PAYER PLAINTIFFS' MOTION**
) **FOR FINAL APPROVAL OF**
) **CLASS ACTION SETTLEMENTS**
) **AND MOTION FOR FEES AND**
) **COSTS**

16
17
18
19 _____
This Document Relates to:

20
21 End Payer Plaintiffs Class Track

)
) DATE: November 22, 2024
) 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 & Herz
4 LLP (“Wolf Haldenstein”), Class Counsel for End Payer Plaintiffs (“EPPs” or
5 “Consumers”). I submit this declaration in support of End Payer Plaintiffs’ Motion for
6 Final Approval of Class Action Settlements and Motion for Fees and Costs. I have
7 personal knowledge of the matters stated herein and, if called upon, I could and would
8 competently testify thereto.

9 **OVERVIEW**

10 2. To bring nearly a decade of hard-fought litigation to a close, Class
11 Counsel present the Court with two final settlements, which the Court preliminarily
12 approved on August 23, 2024. ECF No. 3302. The Settling Defendants are StarKist
13 Co. and its parent Dongwon Industries Co., Ltd. (“DWI”) (collectively “StarKist”)
14 and Lion Capital LLP, Lion Capital (Americas), Inc., and Big Catch Cayman LP)
15 (collectively “Lion” or the “Lion Companies”). Subject to the Court’s final approval,
16 these two proposed settlements, with a combined cash value of \$136 million, plus an
17 earlier partial settlement with Defendant Chicken of the Sea and its parent Thai Union
18 Group (“Partial COSI Settlement”) which adds another \$16.2 million, the total
19 settlement benefits are \$152.2 million.

20
21 3. The StarKist and Lion Companies Settlement Agreements were
22 extensively negotiated at arms’-length by counsel experienced in antitrust class
23 actions. Class Counsel were ready and willing to try this antitrust litigation to verdict.
24 It was only due to the extraordinary efforts of United States Magistrate Judge Michael
25 S. Berg, who oversaw multiple heated mediation sessions between the settling parties
26 in April, May, June, and July 2024, that these settlements were achieved – literally on
27 the eve of a trial set to start on July 16, 2024. The total settlement benefits of
28

1 \$152,200,000 represent over 68% of maximum single damages and 2.3 times StarKist
2 single damages (\$56 million) as calculated by the EPPs' expert, Professor David
3 Sunding. This is an excellent outcome for the previously certified Consumer Classes
4 (defined below).

5 4. As described below, the nine-year trajectory of this litigation includes a
6 hotly disputed class certification process, extensive discovery with tens of millions of
7 documents and over 200 depositions, ending with multiple summary judgment
8 motions and trial preparations. Trial preparation was substantially complete. It is the
9 view of experienced Settlement Class Counsel that the Settlement Agreements are
10 fair, adequate, and reasonable, are in the best interests of the Consumer Classes and
11 warrant final approval.

12 5. Separately, Class Counsel will move for an award of reasonable
13 attorneys' fees, reimbursement of litigation expenses, and modest incentive awards
14 (tiered in relation to their time and service in this case). Class Counsel devoted
15 significant time and substantial resources to this lengthy, complex, and highly
16 successful antitrust litigation. The exceptional recovery of \$152,200,000 arose from
17 Class Counsel's skillful and dedicated litigation of this complex case. A detailed
18 analysis of the time and expenses incurred in this litigation is set forth in the
19 Declaration of Mark C. Rifkin in Support of EPPs' Motion for Fees and Costs, filed
20 concurrently with the separate Fee Motion.

21 **PARTIAL COSI SETTLEMENT**

22 6. Incorporated by reference is the detailed History of the Litigation in the
23 EPPs' Motion for Final Approval (ECF No. 2552-1 at 7-14) which describes the
24 context and terms of the earlier Partial COSI Settlement. The key terms and conditions
25 of the COSI Settlement as to any Fee and Expense Award sought by the EPPs and
26 Class Counsel remain unchanged. *Jt. Stip.*, ¶8, citing ECF 2552-3 at 18 and 19.
27 ***However, the EPPs and Class Counsel elected unilaterally not to seek***
28

1 ***reimbursement of attorney fees solely from the COSI Defendants or the COSI***
2 ***Settlement Fund.*** Instead, EPPs moved for reimbursement of their reasonable and
3 necessary litigation costs and expenses in the amount of \$4,155,027.57. Settlement
4 Class Counsel reserved its rights to seek reimbursement of attorney fees from any
5 monies recovered from the Non-Settling Defendants whether by order, judgment,
6 settlement, or trial and to base any such request for fees on the total Settlement amount.
7 *Id.* Settlement Class Counsel now respectfully request that any Attorney Fee Award
8 be based on the Total Settlement Fund.

9
10 7. On July 15, 2022, the Court finally approved the Partial COSI Settlement.
11 ECF No. 2871. Under the Partial COSI Settlement Agreement, the Maximum
12 Settlement Amount was \$20 million. ECF No. 2552-3 at 8. Under Paragraphs 11(b)
13 and 18, up to \$5 million could be used to cover the reasonable costs of the Settlement
14 Notice and administration (“Administrative Costs Fund”) of the \$15 million
15 Settlement Fund. Under the COSI Settlement Agreement, since the reasonable costs
16 of Settlement Notice and administration were less than \$5 million, the difference is
17 now credited back to the COSI Defendants. *Id.* at 14 and 15. The Court also approved
18 an Expense Award for Class Counsel in the amount of \$4,155,027.67 for
19 reimbursement of specific, reasonable, and necessary out of pocket litigation costs
20 incurred as of May 2021.” ECF No. 2872 at 4:17-19.

21 8. As to the \$15 million Settlement Fund, the first distribution of \$5,000,000
22 was received on July 1, 2020 and the second distribution of \$5,000,000 was received
23 within 30 days after Final Approval in August 2022. The final \$5,000,000 “will be
24 paid within 30 days prior to the distribution of the Distribution Funds to the
25 Authorized Claimants.” ECF No. 2846-2 at 23. Based on the timing of the monies to
26 be paid under the StarKist Settlement Agreement, distribution is likely to occur in
27 early 2026.

28 9. In accordance with the Partial COSI Settlement, EPPs further request that

1 \$206,379.11 be distributed to COSI out of the Total Settlement Fund as a
2 reimbursement for 2024 administrative costs paid out of the \$5 million Administrative
3 Costs Fund. These costs were common to all of the settlements. As part of the Partial
4 COSI Settlement, the parties agreed that COSI would pay for the notice and
5 administration of its own settlements, but if subsequent settlements or judgments were
6 achieved, the costs of notice and administration would be borne by the later settling
7 parties. *See* ECF No. No.2552-3 at 14 and 15 (Partial COSI Agreement) at ¶18(b)(ii)
8 (“If, subsequent to the date of this Agreement, a settlement is made with any other
9 Defendant in the Action, or an amount for the Classes collected is from any judgment,
10 the Plaintiffs shall apply to the Court, after consultation with the COSI Defendants’
11 Counsel, for an award allocation for notice and administration from the amounts
12 available from the subsequent settlement or judgments”).

13
14 10. The \$206,379.11 reimbursement request reflects the amount that EPPs
15 have spent on claims and administration between April 2024 and July 2024. COSI
16 contends that this request understates the amount to which it is entitled, which COSI
17 believes is any expenditures that benefitted later settlements, such as setting up a
18 website, developing a plan, and creating accurate contact information for claimants
19 and would be greater than the amount requested. The amount requested is relatively
20 modest compared to the nearly \$1.4 million in notice and administration costs already
21 covered by the COSI Settlement.

22 11. COSI acknowledges that some expenditures—such as notice unique to its
23 settlement—do not overlap and COSI has not requested reimbursement of these
24 amounts. However, the requested reimbursement would most directly benefit the
25 proposed settlements, since they were made shortly before the settlements were
26 reached, and as a matter of expediency EPPs believe that this is a fair benchmark for
27 COSI’s reimbursement request. EPPs believe that this request is reasonable under the
28 terms of the COSI Settlement.

1 **THE STARKIST AND LION SETTLEMENT AGREEMENTS**

2 12. Complete copies of both the StarKist Settlement Agreement and the Lion
3 Companies Settlement Agreement are attached to the Declaration of Betsy C.
4 Manifold in Support of EPPs’ Motion for Preliminary (“Preliminary Approval
5 Motion”) as Exhibits 1 and 2, respectively. *See* ECF No. 3285-2 at 19-46 (“StarKist
6 Settlement Agreement”) and 47-72 (“Lion Settlement Agreement”). The Preliminary
7 Approval Motion provided a detailed summary of the key terms in both settlements
8 and is available (along with all the exhibits) on the Settlement Website. *See* ECF No.
9 3286-1 at 13-15.

10 13. Once the EPPs’ Motion for Final Approval of Class Action is filed on or
11 before November 15, 2024, the motion and all supporting papers will be posted on the
12 Settlement Website (<https://www.tunaendpurchasersettlement.com>) concurrently
13 with the filing. Similarly, once the Motion for Fees and Costs is filed on or before
14 October 25, 2024, the papers will also be posted on the Settlement Website.

15 **StarKist Settlement Agreement**

16 14. The StarKist Settlement Agreement provides that StarKist will pay \$130
17 million in cash over a period of time ranging from 30 days after preliminary approval
18 (September 19, 2024) to 500 days after preliminary approval (January 6, 2026). ECF
19 No. 3286-1 at 26, ¶ 1.24. The first payment of \$32 million was paid on September 19,
20 2024, within 30 days after preliminary approval on August 21, 2024. The second
21 payment of \$18 million from Starkist is due prior to the Fairness Hearing on
22 November 22, 2024. ECF No. 3286-1 at 26, ¶ 1.24. The remaining settlement
23 payments by Starkist are fixed on certain dates following preliminary approval. *Id.*
24 For the Court’s convenience, the payment schedule is set forth in Appendix A attached
25 to the EPPs’ Motion for Fees and Costs.

26 **Lion Settlement Agreement**

27 15. Under the terms of the Lion Settlement Agreement, the Lion Companies
28

1 have deposited \$3 million in the Settlement Fund Escrow. ECF No. 3286-1 (Lion SA)
2 at 55, ¶ 1.22). The final \$3 million will be deposited within 45 days after final approval
3 of the settlement. *Id.*, App'x A.
4

5 **SETTLEMENT NEGOTIATIONS CONDUCTED AT ARMS'-LENGTH**

6 16. The parties made notable attempts to settle throughout the litigation.
7 Since mid-2019, Class Counsel engaged in several informal settlement discussions
8 and many more formal settlement negotiations (most presided over with extreme care
9 and exceptional skill by Magistrate Judge Michael Berg) with counsel for the Settling
10 Defendants.
11

12 **Settlement Discussions with StarKist**

13 17. The EPPs and StarKist participated in multiple settlement conferences
14 with Magistrate Berg on October 4, 2023, April 25, 2024, May 22, May 23, 2024, and
15 June 3, 2024. With the oversight and guidance of Magistrate Berg, and with most pre-
16 trial proceedings complete and the July 16, 2024 trial looming, the EPPs and StarKist
17 finally reached a settlement-in-principle in the amount of \$130 million on June 3,
18 2024.

19 **Settlement discussions with the Lion Companies**

20 The EPPs and the Lion Companies also attended a joint settlement conference
21 before Magistrate Berg on August 7, 2023. ECF 3286-2 at ¶ 23. Counsel for the EPPs
22 and for the Lion Companies continued to conduct informal and formal settlement
23 negotiations, including a lengthy but unsuccessful formal mediation with Judge
24 Michael Weinstein (retired).

25 18. On June 17, 2024, nearly a year after beginning the settlement process
26 and with the trial imminent, the EPPs again met with the Lion Companies (and their
27 principals and insurers) in a day-long settlement conference with Magistrate Berg. The
28 settlement conference culminated in the parties reaching a \$6,000,000 settlement-in-

1 principle, but only after the Lion Companies’ and its founders’ financial condition
2 were carefully evaluated by Class Counsel and by Magistrate Berg.

3 **PRELIMINARY APPROVAL GRANTED**

4 19. Based on this ample record, the Court found that the proposed settlements
5 were the result of arms’ length negotiations. ECF No. 3302 at 4. After carefully
6 reviewing the monetary terms, the Settlement Class definitions, and the releases
7 provided for in both settlement agreements, the Court granted preliminary approval
8 “as each is likely to be finally approved after the Fairness Hearing.” *Id.* at 7.

9 **RELEVANT LITIGATION SUMMARY**

10 20. On August 24, 2015, the EPPs filed a class action complaint alleging an
11 antitrust conspiracy by the three domestic tuna brands and their parent companies.¹
12 Once the MDL was established, Wolf Haldenstein became instrumental in organizing
13 the indirect consumer cases and plaintiffs; and on behalf of fifty-four (54) EPPs, filed
14 a consolidated class action complaint in this Court alleging an antitrust conspiracy in
15 the packaged seafood industry. ECF No. 149. The consolidated complaint followed
16 the announcement by the Department of Justice (“DOJ”) of an investigation into the
17 packaged seafood industry. *See* ECF No. 2846-2 at ¶5.

18 21. As a result of the DOJ investigation, COSI admitted Sherman Act
19 violations, sought leniency (thereby admitting criminal liability), and cooperated with
20 both the DOJ and civil claimants by providing evidence against StarKist and Bumble
21 Bee. ECF No. 2846-2 at ¶5. Although the DOJ intervened and the MDL was stayed
22 temporarily [ECF No. 137], Wolf Haldenstein coordinated with the other Classes on
23 a Protective Order [ECF No. 167] and continued to investigate and advance the case
24 forward.
25

26
27
28

¹ *See Mathews v. Bumble Bee Foods*, 15-CV-01878 (JLB), filed August 24, 2015
(S.D. Cal.); ECF No. 1 (Transfer Order for MDL No. 2670).

1 **Appointment of Interim Lead Counsel**

2 22. On March 24, 2016, the Court appointed Wolf Haldenstein as the EPPs'
3 Interim Lead Counsel. ECF No. 119. Wolf Haldenstein was tasked with the following
4 responsibilities:

- 5 a. to brief and argue motions and file opposing briefs in proceedings
6 initiated by other parties, and to present (by a designee) to the Court
7 and opposing parties the position of all EPPs for all matters arising
8 during all pretrial and trial proceedings;
- 9 b. to designate attorneys to act as spokespersons at pretrial
10 conferences;
- 11 c. to conduct or coordinate discovery on behalf of the EPPs consistent
12 with the requirements of the Federal Rules of Civil Procedure,
13 including the preparation of joint interrogatories, requests for
14 production of documents, requests for admissions, and the
15 examination of witnesses in depositions;
- 16 d. to designate an attorney to enter into stipulations with opposing
17 counsel necessary for the conduct of the litigation;
- 18 e. to monitor the activities of co-counsel and to implement procedures
19 to ensure that schedules are met and unnecessary expenditures of
20 time and funds by counsel are avoided;
- 21 f. to collect time, lodestar, and expense reports from each of the law
22 firms working on behalf of the class of EPPs, including paralegals
23 and any other staff members whose time is expected to be included
24 in any fee petition;
- 25 g. to ensure that work assignments are not given to any firm that has
26 not promptly submitted its time and expense records or paid its
27 assessments;
- 28 h. to sign any consolidated complaint, motions, briefs, discovery
requests or objections, subpoenas, stipulations, or notices on behalf
of the class of EPPs or those EPPs filing particular papers;
- i. to conduct all pre-trial, trial, and post-trial proceedings on behalf of
the class of EPPs;
- j. to employ and consult with experts;
- k. to call meetings of the law firms representing the class of EPPs

1 when deemed appropriate and to assign work to these law firms;

2 l. to conduct settlement negotiations with defense counsel on behalf
3 of the class of EPPs;

4 m. to assure that all counsel for the EPPs are kept informed of the
5 progress of this litigation;

6 n. to appoint an executive committee to assist Interim Lead Counsel
7 in litigating the EPP actions; and

8 o. to allocate fees and expenses among all counsel for the EPPs.

9 ECF No. 119 (“Order Appointing Interim Lead Counsel”) at 7-8.

10 As directed by the Court, to avoid unnecessary expenditures of time and
11 expense, in submitting this fee request, Class Counsel exercised the necessary billing
12 discretion in reviewing records submitted by the EPPs’ counsel. Class Counsel deleted
13 any unproductive time and expenditures to ensure that all fees requested are fair and
14 reasonable. Rifkin Decl., ¶10. The time and expense records reviewed by Class
15 Counsel and the declarations submitted as part of this fee request show the significant
16 work performed in preparing this complex, often novel, antitrust case for trial – all for
17 the benefit of the Class.

18
19 **Substantial Discovery Was Conducted**

20 23. Once the DOJ stay was lifted, Lead Counsel pushed for the production
21 of DOJ documents from the related criminal convictions. ECF No. 2846-2 at ¶8.
22 Defendants produced over two million pages of documents as a result of these efforts.
23 *Id.* Wolf Haldenstein efficiently reviewed these critical documents in order to support
24 substantial and expanded new allegations in six successive amended consolidated
25 complaints. ECF Nos. 149, 337, 512, 888, 1208, and 1461.

26 24. Wolf Haldenstein efficiently coordinated with other plaintiffs’ counsel to
27 harmonize the pleading details as to the nature and scope of Defendants’ anti-
28 competitive conduct which resulted in successively stronger and more detailed

1 amended complaints and in opinions denying, in large part, Defendants' Motion(s) to
2 Dismiss. *See* ECF Nos. 283 and 295.

3 25. 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 Lead Counsel to pursue their
6 claims against all three manufacturers concurrently. As a result of this joint conduct,
7 Class Counsel vigorously pursued discovery against all three defendants, which as
8 discussed below, was instrumental in reaching an early ice-breaker settlement with
9 COSI. Lead Counsel effectively worked with other plaintiffs to take over 200
10 depositions and to serve more than twenty third-party subpoenas in order to collect
11 pricing data from market participants. ECF No. 2846-2 at ¶10. In total, millions of
12 pages of documents were produced and then reviewed by EPPs' counsel.

13 26. In addition to suing Bumble Bee, StarKist and COSI, EPPs also sued their
14 parent companies and affiliated entities. These entities were *not* prosecuted by the
15 DOJ. All denied any liability for the actions of their subsidiaries and affiliates. Having
16 served, received and reviewed new discovery from the Lion Companies, Class
17 Counsel uncovered new facts about these entities and their participation in the
18 conspiracy. Class Counsel immediately moved to amend the scheduling order in order
19 to add the Lion Companies (ECF No. 769) which the Court granted. *See* ECF No. 884
20 at 12. Class Counsel's efforts provided an opportunity for the EPP Class members to
21 recover \$6 million from the Lion Companies, since Bumble Bee sold its assets in the
22 bankruptcy proceedings. *See* ECF No. 2279 at ¶2, Ex. A (sale of assets).

23
24
25 **Multiple Motions to Dismiss Followed by An Answers**

26 27. After several rounds of motions to dismiss, each brought separately by
27 different Defendant groups against different plaintiff tracks, Defendants answered the
28 operative EPP Complaint [ECF No. 1461]. *See* Answers, ECF Nos. 1562, 1602, 1603,

1 1690, 1691 and 2639. All of the state law claims in the operative Complaint were
2 found to be timely or tolled by either the Discovery Rule or Fraudulent Concealment.
3 *See* ECF No. 295 at 99-101 citing the Court’s State Law Statute of Limitations
4 Compendium.

5 **Coordination of Plaintiff Tracks for Case Management**

6 28. Class Counsel also effectively coordinated with all plaintiff tracks on
7 case management related issues. Judge Sammartino requested that Wolf Haldenstein’s
8 San Diego-based partner, Betsy Manifold, act as the local liaison between the
9 Plaintiffs’ tracks and the Court with regard to communications as to dates, scheduling,
10 and other logistics. All time scheduling or organizational issues which have arisen in
11 the case, including coordinating, drafting, and preparing Status Reports, have been
12 coordinated among the Plaintiffs by Wolf Haldenstein.

13 **Monitoring of Criminal Case**

14 29. Class Counsel’s work also included monitoring the parallel criminal
15 litigation for guilty pleas, sentencing hearings, and criminal convictions. Defendants
16 Bumble Bee and StarKist pled guilty to a criminal conspiracy to violate federal
17 antitrust laws under the Sherman Act, 15 U.S.C. §1, on August 4, 2017, and November
18 14, 2017. *See* ECF No. 2654. Several executives of Defendant StarKist and Bumble
19 Bee pleaded guilty to participating in the conspiracy in 2017, and Bumble Bee’s Chief
20 Executive Officer was tried and convicted by jury on December 3, 2019 for his role
21 in the conspiracy. *Id.*

22 30. When StarKist challenged the fine owed to the government in connection
23 with the criminal sentencing in the case of *United States v. StarKist Co.*, No. 18-cr-
24 0513-EMC (N.D. Cal) (“*StarKist Criminal Case*”), arguing that it would not have the
25 funds to pay the civil plaintiffs if forced to pay the full \$100 million fine, the EPPs
26 moved with the DPPs to be heard under the Crime Victim’s Rights Act. Class Counsel
27 attended multiple hearings and submitted several briefs. Ultimately, the criminal court
28

1 found that StarKist had an ability to pay the criminal fine over a staged period of time.
2 Class Counsel’s participation in these proceedings provided a benefit to the Class
3 members.

4 **Challenges of Class Certification**

5 31. All three Classes filed motions for class certification in May of 2018. *See*
6 ECF No. 1130 (EPP Motion for Class Certification). Three respected economists from
7 different shops offered declarations in support of the Class motions: Dr. Russel
8 Mangum (“Mangum”) (DPPs), Dr. Michael Williams (“Williams”) (CFPs), and Dr.
9 David Sunding (“EPPs). Defendants countered with two experts, both from
10 Edgeworth Economics: Dr. John Johnson (“Johnson”) and Dr. Laila Haider (“Haider”)
11 (responding to Sunding and Williams). ECF No. 2846-2 at ¶12. As part of class
12 discovery, Class Counsel prepped and defended 16 individual EPP depositions. In
13 opposing class certification, not a single Class Representative was challenged on
14 standing or adequacy by Defendants. ECF No. 1931 (Class Order) at 47, 58 (adequacy
15 of Class Representatives uncontested).
16

17 32. On January 14-16, 2019, the parties participated in a three-day
18 evidentiary hearing re: class certification, which involved nine briefs, nine
19 declarations, five experts, hundreds of exhibits, and resulted in a 59-page Class Order
20 [ECF No. 1931]. *See* ECF Nos. 1128-30, 1411, 1702-04, 1749. The Court ultimately
21 certified a Cartwright Act Class consisting of all persons and entities who resided in
22 one of the states identified in the EPPs’ operative complaint, “who indirectly
23 purchased Packaged Tuna in cans or pouches, smaller than forty ounces for end
24 consumption and not for resale, produced by any Defendant” during the period June
25 1, 2011 through July 1, 2015 (the “Class Period”). ECF No. 1931 at 46. The Court
26 also certified a statewide damages class for each State identified in the operative
27 complaint. *Id.* The Court appointed Wolf Haldenstein as Class Counsel. *Id.* at 58-59.
28

1 33. In 2019, Defendants appealed the Class Order pursuant to Fed. R. Civ. P.
2 23(f). ECF No. 2246. On April 6, 2021, a Ninth Circuit panel vacated the Class Order
3 and remanded the case so that the trial court could decide which expert was more
4 persuasive on the issue of the number of uninjured class members in each class. *Olean*
5 *Wholesale Grocery Coop. Inc. v. Bumble Bee Foods, LLC*, 993 F.3d 774 (9th Cir.
6 2021) (“*Olean I*”). A rehearing *en banc* was granted on August 3, 2021. *Olean*
7 *Wholesale Grocery Coop. Inc. v. Bumble Bee Foods, LLC*, 5 F.4th 950 (9th Cir. 2021).
8 The *en banc* court affirmed the District Court’s Class Order in full. *Olean Wholesale*
9 *Grocery Coop. Inc. v. Bumble Bee Foods, LLC*, 31 F.4th 651 (9th Cir. 2022) (“*Olean*
10 *II*”). According to Westlaw Citing References, *Olean II* has been cited 994 times as
11 of October 21, 2024 and has become the leading antitrust class certification order in
12 district court proceedings throughout the United States.

13
14 **Expert Discovery**

15 34. In preparation for trial, EPPs engaged two experts: Dr. David Sunding
16 (economist) and Adoria Lim (forensic accountant). The Defendants hired seven
17 experts: Dr. Randal Heeb (economist), Dr. Michael Moore (economist), Gary
18 Kleinrichert (accountant), Andres Lerner (economist), Janusz Ordover (economist),
19 Robert Daines (law professor), and Ilya A. Strebulaev (private equity professor).
20 Extensive expert discovery concluded in February 23, 2023. ECF No. 2980.

21 **Dispositive Motions: Partial Summary Judgement Granted**

22 35. After the close of discovery, in September 2019, the seven Defendants,
23 three Plaintiff Classes, and 53 direct action plaintiffs who remained in the MDL filed
24 various dispositive motions and engaged in substantial briefing. Wolf Haldenstein
25 played a substantial and leading role in organizing, coordinating, drafting, and filing
26 the documents associated with over twenty (20) dispositive motions.

27 36. Out of the four motions for partial summary judgment [ECF Nos. 1976,
28 1993, 2009, 2035] and three *Daubert* motions [ECF Nos. 1970, 1987, 2034] filed by

1 the various Plaintiffs, the EPPs filed one summary judgment motion against StarKist,
2 which the Court granted on liability. ECF Nos. 1993, 2654. The Court found that
3 StarKist engaged in the price-fixing conspiracy from as early as November 2011 and
4 continuing to December 2023 and that “the conspiracy had an actual effect on the
5 market.” *See* ECF No. 2654 at 32 (Order); ECF No. 2750 at 32-33 (Amended Order).
6 Plaintiffs’ Motion for Summary Judgment as to Bumble Bee, which the EPPs joined,
7 was denied as moot because Bumble Bee filed for bankruptcy. ECF No. 2286.

8 37. At the same time, Defendants filed thirteen dispositive motions: ten joint
9 motions for summary judgment [ECF No. 1973, 1992, 1998, 1999, 2001, 2007, 2010,
10 2015, 2023, 2025] and three *Daubert* motions [1967, 1981, 1984]. As to the six
11 summary judgment motions opposed by the EPPs, all were largely denied or
12 withdrawn. Three summary judgment motions were denied completely. *See* ECF Nos.
13 2809 (gear claims), 2761 (fraudulent concealment), and 2873 (private label claims).
14 DWI’s summary judgment motion was withdrawn after it was fully briefed. As to the
15 Defendants’ Motion for Summary Judgment re: Certain State Law Claims [ECF No.
16 1992], the Court generally denied the motion but excised South Carolina claimants
17 from the Cartwright Act Class. ECF No. 2925 at 16. The Lion Companies’ earlier
18 motion for summary judgment [ECF No. 1992] was renewed (after discovery was re-
19 opened) and denied except as to Big Catch. *See* ECF Nos. 3036 (Motion), 3103
20 (Order). As to the *Daubert* motions directed to EPPs’ experts, Adoria Lim (forensic
21 accountant) and Dr. David Sunding (economist) [ECF Nos. 1969, 1984, 3037, 3066],
22 all were denied. ECF Nos. ECF Nos. 3134, 3146, 3154.

23
24 38. As to the *Daubert* motions directed to EPPs’ experts, Adoria Lim
25 (forensic accountant) and Dr. David Sunding (economist) [ECF Nos. 1969, 1984,
26 3037, 3066], all were denied. ECF Nos. ECF Nos. 3134, 3146, 3154.

27 **Preparations for Trial Substantially Complete**

28 39. Preparations for the trial scheduled to begin on July 16, 2024, were

1 substantially complete when the proposed settlements were reached. In May 2024, the
2 parties filed and served their motions in limine. ECF No. 3124, 3189-94, 3197, 3200-
3 3206. On May 22, 2024, the Court considered and ruled on those motions. ECF No.
4 3244. The parties held the Local Rule 16.1(f) meeting on June 3, 2024. Class Counsel
5 presented their joint jury instructions to the Court along with their respective
6 supplemental instructions and objections on May 31, 2024. ECF No. 3251-3255. On
7 June 14, 2024, Class Counsel lodged the proposed Pre-Trial Order with the Court in
8 anticipation of a final Pretrial Conference on June 21, 2024. ECF No. 3259.

9
10 40. As reflected in more than 3,300 docket entries filed by the parties and
11 entered by the Court over the last nine years, this MDL has been vigorously,
12 efficiently, and successfully litigated by Class Counsel at every stage of the
13 proceedings. The EPP Class has been extremely well represented by Class Counsel
14 and the other counsel for the Consumer Class throughout these proceedings.

15 **TRIAL AND APPEAL RISKS FACED BY CLASS COUNSEL**

16 41. Given the criminal convictions, guilty pleas, and admissions by COSI,
17 StarKist, and Bumble Bee, Class Counsel believed that liability as to the plea period
18 (November 2011 to December 2013) was strong. However, Bumble Bee was bankrupt
19 and the claims against the parent companies were vigorously disputed and not part of
20 the criminal investigation by the DOJ. Starkist and the Lion Companies vigorously
21 disputed the scope, duration, and effect of the conspiracy.

22 42. The EPPs faced added complexities and risks at trial because, as
23 consumers, they needed to prove liability for a multistate Cartwright Act Class claim
24 and multiple individual state law claims as well as proving a pass-through of the
25 overcharge to consumers. Those risks rise the longer litigation progresses.

26 **The Risk of Expert Testimony at Trial and On Appeal**

27 43. Another substantial risk was proving damages at trial through an expert
28 economist, an inherently uncertain process fraught with conflicting expert testimony.

1 Achieving maximum damages was based on two key assumptions: the jury would
2 believe the EPPs' expert (not the Defendants' expert) and would award full damages
3 for the entire Class Period and for all the repealer act states. The reaction of a jury, or
4 even a judge, to such complex and disputed expert testimony is highly unpredictable,
5 and in a battle of the experts a jury could find either no damages or just a fraction of
6 the damages sought.

7 44. Even a jury verdict is no assurance of success. Antitrust cases with
8 complex expert econometric modeling and treble damages face the very real risks of
9 reversal at trial, after verdict and on appeal, and this case was no exception. Even if
10 successful at trial, Class Counsel was concerned that post-trial events would threaten
11 any verdict they obtained. In addition to post-trial motions, the EPPs faced a
12 significant risk that they would be unable to collect or enforce their judgment against
13 either Dongwon or the Lion Companies, all foreign defendants who might not have
14 sufficient assets in the United States to satisfy the judgment, and that Starkist might
15 not have sufficient assets itself to satisfy the judgment.
16

17 **SKILL AND REPUTATION OF CLASS COUNSEL**

18 45. Wolf Haldenstein Adler Freeman & Herz ("Wolf Haldenstein") is a
19 nationally recognized antitrust and class action law firm with considerable expertise
20 representing indirect purchaser plaintiff classes in antitrust matters. *See* Wolf
21 Haldenstein Resume, attached as Exhibit 1. Such qualifications should also be taken
22 into account when evaluating an appropriate fee award. Wolf Haldenstein has
23 extensive experience in similar class actions litigation.

24 **SERVICE AWARDS ARE WARRENTED HERE**

25 46. The individual EPPs played a vital role in this litigation, including
26 providing answers to interrogatories, appearing for deposition, providing declarations
27 re: class standing, and preparing to appear at trial this July. Each of them has been
28 personally involved throughout this nine-year litigation, and they all support the

1 proposed Settlements.

2 47. These individual plaintiffs remained devoted to their duties as Class
 3 Representatives and available to participate in this case for over nine years. This
 4 devotion to duty warrants specific service awards in amounts that reflect their specific
 5 contributions to the case.

6 48. The total service awards requested will be \$294,000 which is
 7 insignificant (0.19%) in light of the substantial total settlement amount (\$152.2
 8 million). The Service Award tiers for the Class Representatives break down as
 9 follows: \$3,000 (Tier 1); \$6,000 (Tier 2); and \$9,000 (Tier 3). As the chart below
 10 reflects, there are 45 Tier 1 EPPs with an award of \$3,000 each resulting in a total of
 11 \$135,000. There are 14 Tier 2 EPPs with an award of \$6,000 each resulting in a total
 12 of \$84,000. There are 8 Tier 3 EPPs with an award of \$9,000 each, totaling \$72,000.
 13

	Tier 1	Tier 2	Tier 3
# of Plaintiffs	45	14	8
Individual Award	\$3,000	\$6,000	\$9,000
Total Award	\$135,000	\$84,000	\$72,000
List of Plaintiffs in Each Tier	Adams, Louise Alidad, Nay Bartling, Jessica Blumstein, Barbara Buenning, Barbara Caldwell, Scott Canterbury, Jade Christensen, Casey Cooper, Jody Daniels, Sundé Depperschmidt, Brian Dravid, Vivek Etten, Rob Felix Garcia, Ana Gabriela Frick, John Garner, Kathleen Gipson, Stephanie Grant, Tina Hughes, Tya	Bowman, Melissa Buff, Michael Durand (f/k/a Gore), Kathy Eason (f/k/a Craig), Kim Emery, Gloria Gutierrez, Edgardo Lown, Carla Musgrave, Rick Norris, Corey Pels, John Skaff, Rob Stearns, Greg Vander Laan, Bonnie Wiese, Julie	Birnbaum, Gay Childs, Laura Gorman, Andrew Hall, Lisa Hudson, Mary Nelson, Jennifer Olson, Barbara Twitchell, Elizabeth

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	Tier 1	Tier 2	Tier 3
	Jackson, Amy Jacobus, Marissa Johnson, Danielle Johnston, Zenda Juetten, Michael Kratky, Steven Lingnofski, Kathy McMahon, Katherine Mey, Diana Milliner, Liza Montoya, Laura Peck, Kirsten Perron, Elizabeth Peters, Valerie Peychal, John Rickman, Audra Rodriguez, Erica San Agustin, Joelyna A Sartori, Amber Simoens, Rebecca Lee Stiller, Nancy Todd, Christopher Trent, John Warren, Nigel Willoughby III, Thomas E. Zwirlein, Dan		

49. The total amount for all three tiers is \$291,000. All of the Class Representatives who participated in discovery and provided multiple class standing declarations will receive a service award of \$3,000 (Tier 1). For the Class Representatives who sat for deposition as part of the class certification process, the EPPs request a higher award of \$6,000 (Tier 2). For the Class Representatives who were deposed more than once (EPP Drew Gorman), acted as the plaintiff representation in the Bumble Bee bankruptcy proceeding, or were prepared to appear at trial in July, the EPPs will seek an award of \$9,000 in recognition of the more significant time, effort and expense devoted to this litigation.

50. Claims were also filed on behalf of three individual Illinois plaintiffs

1 Sally Bredberg, Elizabeth Davis-Berg, and Amy Joseph (the “Illinois Plaintiffs”). The
2 Illinois Plaintiffs participated in discovery and were available throughout the litigation
3 and remained available in the event that class claims might be permitted under Illinois
4 law. To date, Illinois does not permit class recovery for antitrust claims under state
5 law, so any recovery is individual. To compensate them for their services, the EPPs
6 recommend a service award of \$1,000 each for a total of \$3,000. With the addition of
7 the Illinois Plaintiffs’ Service Awards, the total request is \$294,000.
8

9
10 **AGREEMENTS REQUIRED TO BE IDENTIFIED (FED. R. CIV. P. 23(e)(3))**

11 51. All the terms of the proposed Settlement Agreements are contained
12 within the respective Settlement Agreements attached as Exhibits 1 (StarKist
13 Settlement Agreement) and Exhibit 2 (the Lion Companies Settlement Agreement) to
14 the Declaration of the Betsy C. Manifold in Support of EPPs’ Motion for Preliminary
15 Approval of Class Actions Settlements. ECF No. 3286-2 at 19-72. There have been
16 *no* changes since Preliminary Approval.

17 **PROPOSED NOTICE AND CLAIMS DISTRIBUTION PROCESS**

18 52. EPPs also retained JND to handle the settlement claim process and
19 administration. JND is a nationally recognized claim administration firm that has
20 successfully handled processing millions of claims for large consumer classes in
21 complex class actions. *See* ECF No. 2552-6 (reciting JND’s background and class
22 action claims administration experience).

23 **Notice Plan Reached 70% of the Settlement Class Members**

24 53. JND’s robust Notice Plan had a reach of 70% of the likely Settlement
25 Class Members and more based on Mailed Notice. This is a remarkable reach
26 considering the following challenges: the Settlement Class consists of over 100
27 million consumers who purchased mostly 5 ounce cans of Tuna; the earliest of the
28 purchases took place over 10 years ago, from June 1, 2011 through July 1, 2015;

1 records of purchases from retailers have long become stale, if they exist at all, and
2 most consumers do not have records of grocery purchases that long ago; and some
3 Class Members have moved or aged or passed away.

4
5 **Distribution Plan**

6 54. Each Authorized Claimant in the Total Settlement Class shall receive a
7 *pro rata* share of the Distribution Funds as described in the Settlement Class Notice.
8 Distribution Funds refers to the Total Settlement Fund (\$152.2 million), less notice
9 and administration costs, and any attorneys' fees, cost and litigation expense and
10 Service Awards awarded by the Court. Payments to Authorized Claimants will not be
11 immediately distributed but held until all of the following occur: final approval of the
12 settlements, all monies paid by the Settling Defendants as required by the Settlement
13 Agreements; and, finally, all appeals are exhausted. Based on Class Counsel's best
14 estimates, distribution is likely to occur in early 2026 for the reasons described below.

15
16 55. Distribution cannot begin until more than eighteen months after
17 preliminary approval is granted based on the StarKist payment schedule. So, the last
18 settlement monies will be paid in about January 2026. If there are no appeals or any
19 and all appeals are exhausted, it is estimated that distribution could begin as soon as
20 practicable in early 2026. The Settlement Class Notice asks the Settlement Class
21 Members to "please be patient." With the costs of claims administration, it is more
22 efficient to delay distribution until all of the steps described above are completed. A
23 partial distribution is cost prohibitive in this case.

24 56. JND will distribute payments as specified on the claimant's Claim Form.
25 ECF No. *See*, Ex. H (Claim Form). When mailing or e-mailing a payment (such as a
26 check or PayPal), JND will send the distribution to the address or email provided by
27 the claimant on the Claim Form. *Id.* As noted in the Claim Form (and Settlement Class
28 Notices), if the total final payment of a particular claim is less than \$5.00, no

1 distribution will be made to the Authorized Claimant. *See* Ex. H, ¶ 8 (“**What can I**
2 **get from the StarKist and Lion Companies Settlements?**”). It is typical to provide
3 for such a *de minimis* claim threshold so that the costs of administration are not out of
4 proportion to the size of the claim payment.

5 57. If the proposed settlements are finally approved, the Settlement Class
6 Members are expected to receive approximately \$24.50 for every 200 cans purchased
7 (approximate number of cans if you purchased packaged tuna weekly during the
8 Settlement Class Period).

9 **Claims Process: Access To Online Filing For Claim Forms**

10 58. The digital ads included an embedded link and the print ad a QR code,
11 both of which allow Settlement Class Members to receive more information about the
12 StarKist and Lion Companies Settlements as well as complete and file an on-line
13 Claim Form. The same Claim Process was approved by the Court in the COSI
14 Settlement. *See* ECF No. 2781. The Settlement Notice documents also provide a toll-
15 free number to contact JND with any questions. *Id.* If a Settlement Class Member is
16 either unable or unwilling to file a claim on-line, she may request a printed claim form
17 and either return it via United States Mail (post-marked before the Claims Cut-off
18 date) or create a pdf of the completed Claim Form and e-mail it (before the Claims
19 Cut-off Date) to JND.

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

21 59. The cost of a robust notice program to a large consumer class is
22 substantial. For this reason, StarKist agreed to advance \$1,000,000 and the Lion
23 Companies agreed to pay up to \$200,000 to cover the costs of notice administration.
24 When it granted preliminary approval of the settlements, the Court found that
25 agreement to be appropriate, and approved the advancement of these costs to the
26 Claims Administrator under the terms of both Agreements. ECF No. 3302 at 15 (“an
27 interim distribution of \$1.2 million for notice costs prior to the Fairness Hearing is
28

1 appropriate and is approved under the terms provided in the Settlement Agreements”).
2 As of October 18, 2024, JND Legal Administration LLC (“JND”) has incurred
3 reasonable expenses in the amount of \$726,702.30, slightly below the estimates
4 provided to the Court. As permitted by the terms of proposed Settlements Agreements,
5 Class Counsel will advance JND for these reasonable costs of notice administration.
6 ECF No. 3302 at 15; ECF No. 3286-2 at 29, ¶5.3 and at 58, ¶ 5.3 (advanced Notice
7 Costs not recoverable by the Settling Defendants). Defendants’ remaining payments
8 into the Settlement Fund will be made as provided by their respective Settlement
9 Agreements, as discussed *infra*.

10 **ESTIMATED CLAIMS ADMINISTRATION COST**

11 60. Due to the potential volume of claims to be processed and monies to be
12 distributed, the costs of the Distribution Plan are significant. The Distribution Plan
13 includes a case-site website and a contact center. Distribution costs include Claims
14 Processing, Deficiency Notices, Distribution Services via PayPal, and U.S. Mail
15 including the necessary follow up for any undeliverable items, Project Management
16 Time (distribution reports, tax return preparation). Even the estimated postage could
17 be almost \$800,000 if over one million claims need to be mailed. The costs will vary
18 significantly based on the number of claims received and the percentage of fraudulent
19 claims to be rejected. For example, the estimated range of processing from 500,000 to
20 2,000,000 claims could range from \$1.3 million to over \$5 million. Due to the
21 substantial cost of this process, if the StarKist and Lion Companies Settlement
22 Agreements are finally approved, Settlement Class Counsel will periodically petition
23 the Court for permission to pay the periodic costs and expense of the claims processing
24 and distribution out of the Total Settlement Fund.

25 **EXHIBITS**

26 61. Attached hereto is the following:

27 **Exhibit 1** Resume of the Wolf Haldenstein Adler Freeman & Herz LLP
28

1 **Exhibit 2** Statement in Support of Settlement Agreements Between the
2 Direct Purchaser Plaintiffs and the End Purchaser Plaintiffs and
3 StarKist Co., Dongwon Industries Co., Ltd, Lion Capital LLP, and
4 Lion Capital (Americas), Inc. dated July 12, 2024 by the
5 Honorable Michael S. Berg, United States Magistrate.

6
7 I declare under penalty of perjury under the laws of the United States of
8 America that the foregoing is true and correct. Executed this 25th day of October,
9 2024 at San Diego, California.

10 /s/ Betsy C. Manifold
11 BETSY C. MANIFOLD

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EXHIBIT 1



PROVIDING EXEMPLARY LEGAL SERVICES SINCE 1888

FIRM RESUME

Founded in 1888, Wolf Haldenstein Adler Freeman & Herz LLP is a full service law firm specializing in complex litigation in federal and state courts nationwide. The firm's practice includes litigation, both hourly and contingent, in securities, antitrust, wage & hour, consumer fraud, false marketing, ERISA, and general and commercial matters, whistleblower, false claim, trust & estate, corporate investigation, and white collar matters, and FINRA arbitration. The Firm has a particular specialty in complex class action and other representative litigation – including investor, shareholder, antitrust, ERISA, consumer, employee, and biotechnology matters – under both federal and state law.

Wolf Haldenstein's total practice approach distinguishes it from other firms. Our longstanding tradition of a close attorney/client relationship ensures that each one of our clients receives prompt, individual attention and does not become lost in an institutional bureaucracy. Our team approach is at the very heart of Wolf Haldenstein's practice. All of our lawyers are readily available to all of our clients and to each other. The result of this approach is that we provide our clients with an efficient legal team having the broad perspective, expertise and experience required for any matter at hand. We are thus able to provide our clients with cost effective and thorough counsel focused on our clients' overall goals.

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TELECOPIER: 312-214-3110



THE FIRM

Wolf Haldenstein has been recognized by state and federal courts throughout the country as being highly experienced in complex litigation, particularly with respect to securities, consumer, ERISA, FLSA and state overtime and expense deductions, and antitrust class actions and shareholder rights litigation.

Among its colleagues in the plaintiffs' bar, as well as among its adversaries in the defense bar, Wolf Haldenstein is known for the high ability of its attorneys, and the exceptionally high quality of its written and oral advocacy.

The nature of the Firm's activities in both individual and representative litigation is extremely broad. In addition to a large case load of securities fraud and other investor class actions, Wolf Haldenstein has represented classes of corn and rice farmers in connection with the devaluation of their crops; canned tuna consumers for tuna companies' violations of antitrust laws; merchants compelled to accept certain types of debit cards; insurance policyholders for insurance companies' deceptive sales practices; victims of unlawful strip searches under the civil rights laws; and various cases involving violations of Internet users' on-line privacy rights.

The Firm's experience in class action securities litigation, in particular public shareholder rights under state law and securities fraud claims arising under the federal securities laws and regulations is particularly extensive. The Firm was one of the lead or other primary counsel in securities class action cases that have recouped billions of dollars on behalf of investor classes, in stockholder rights class actions that have resulted in billions of dollars in increased merger consideration to shareholder classes, and in derivative litigation that has recovered billions of dollars for corporations.

Its pioneering efforts in difficult or unusual areas of securities or investor protection laws include: groundbreaking claims that have been successfully brought under the Investment Company Act of 1940 regarding fiduciary responsibilities of investment companies and their advisors toward their shareholders; claims under ERISA involving fiduciary duties of ERISA trustees who are also insiders in possession of adverse information regarding their fund's primary stockholdings; the fiduciary duties of the directors of Delaware corporations in connection with change of control transactions; the early application of the fraud-on-the-market theory to claims against public accounting firms in connection with their audits of publicly traded corporations; and the application of federal securities class certification standards to state law claims often thought to be beyond the reach of class action treatment.



JUDICIAL COMMENDATIONS

Wolf Haldenstein has repeatedly received favorable judicial recognition. The following representative judicial comments over the past decade indicate the high regard in which the Firm is held:

- *In re Empire State Realty Trust, Inc. Investor Litig.*, No. 650607/2012 (Sup. Ct. N.Y. Co.) – On May 2, 2013, Justice O. Peter Sherwood praised the Firm in its role as chair of the committee of co-lead counsel as follows: "It is apparent to me, having presided over this case, that class counsel has performed in an excellent manner, and you have represented your clients quite well. You should be complimented for that." In awarding attorneys' fees, the Court stated that the fee was "intended to reward class counsel handsomely for the very good result achieved for the Class, assumption of the high risk of Plaintiffs prevailing and the efficiency of effort that resulted in the settlement of the case at an early stage without protracted motion practice." May 17, 2013 slip. op. at 5 (citations omitted).
- *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) – On April 9, 2013, Justice Richard B. Lowe III praised the Firm's efforts as follows: "[W]hen you have challenging cases, the one thing you like to ask for is that the legal representation on both sides rise to that level. Because when you have lawyers who are professionals, who are confident, who are experienced, each of you know that each side has a job to do [. . .] I want to tell you that I am very satisfied with your performance and with your, quite frankly, tenacity on both sides. And it took six years, but look at the history of the litigation. There were two appeals all of the way to the Court of Appeals [. . .] And then look at the results. I mean, there are dissents in the Court of Appeals, so that shows you the complexity of the issues that were presented in this litigation [. . .] [I]t shows you effort that went into this and the professionalism that was exhibited [. . .] So let me just again express my appreciation to both sides."
- *K.J. Egleston L.P. v. Heartland Industrial Partners, et al.*, 2:06-13555 (E.D. Mich.) – where the Firm was Lead Counsel, Judge Rosen, at the June 7, 2010 final approval hearing, praised the Firm for doing "an outstanding job of representing [its] clients," and further commented that "the conduct of all counsel in this case and the result they have achieved for all of the parties confirms that they deserve the national recognition they enjoy."



- *Klein, et al. v. Ryan Beck Holdings, Inc., et al.*, 06-cv-3460 (DAB) (S.D.N.Y. 2010) – where the Firm was Lead Counsel, Judge Deborah A. Batts described the Firm’s successful establishment of a settlement fund as follows: “[a] miracle that there is a settlement fund at all.” Judge Batts continued: “As I said earlier, there is no question that the litigation is complex and of a large and, if you will, *pioneering magnitude* . . .” (Emphasis added).
- *Parker Friedland v. Iridium World Communications, Ltd.*, 99-1002 (D.D.C.) – where the Firm was co-lead counsel, Judge Laughrey said (on October 16, 2008), “[a]ll of the attorneys in this case have done an outstanding job, and I really appreciate the quality of work that we had in our chambers as a result of this case.”
- *In re Dynamic Random Access Memory Antitrust Litigation*, MDL-02-1486 (N.D. Cal.) – where the Firm was co-lead counsel, Judge Hamilton said (on August 15, 2007), “I think I can conclude on the basis with my five years with you all, watching this litigation progress and seeing it wind to a conclusion, that the results are exceptional. The percentages, as you have outlined them, do put this [case] in one of the upper categories of results of this kind of [antitrust] class action. I am aware of the complexity . . . I thought that you all did an exceptionally good job of bringing to me only those matters that really required the Court’s attention. You did an exceptionally good job at organizing and managing the case, assisting me in management of the case. There was excellent coordination between all the various different plaintiffs’ counsel with your group and the other groups that are part of this litigation. . . . So my conclusion is the case was well litigated by both sides, well managed as well by both sides.”
- *In re Comdisco Sec. Litigation*, 01 C 2110 (N.D. Ill. July 14, 2005) – Judge Milton Shadur observed: “It has to be said . . . that the efforts that have been extended [by Wolf Haldenstein] on behalf of the plaintiff class in the face of these obstacles have been exemplary. And in my view [Wolf Haldenstein] reflected the kind of professionalism that the critics of class actions . . . are never willing to recognize. . . . I really cannot speak too highly of the services rendered by class counsel in an extraordinary difficult situation.”
- *Good Morning to You Productions Corp. v. Warner/Chappell Music, Inc.*, No. CV 13-04460-GHK (MRWx) (C.D. Cal., Aug. 16, 2016) – Judge George H. King



stated: "Not all, or perhaps even most, plaintiffs' class counsel could have litigated this case as successfully as did class counsel against such a fierce and exceptionally accomplished opponent."

- *Bokelman et al. v. FCH Enterprises, Inc.*, (Case No. 1:18-cv-209, D. Haw., May 3, 2019): Judge Robert J. Bryan said, "I've been impressed by the quality of the work you've done throughout here, and that is reflected, I think, in the fact that no one has objected to the settlement."

RECENT NOTEWORTHY RESULTS

Wolf Haldenstein's performance in representative litigation has repeatedly resulted in favorable results for its clients. The Firm has helped recover ***billions of dollars*** on behalf of its clients in the cases listed below. Recent examples include the following:

- On May 13, 2019, in *Apple Inc. v. Pepper*, No. 17-204, the Supreme Court affirmed a decision by the Ninth Circuit Court of Appeals holding that iPhone purchasers have standing to sue Apple for monopolizing the market for iPhone apps in this longstanding antitrust class action. Wolf Haldenstein has been Lead Counsel for the plaintiffs since 2007. The case was commenced in federal district court in Oakland. The Supreme Court's decision clears the way for the plaintiffs to proceed on the merits of their claim.
- On June 11, 2018, the United States Supreme Court issued a highly anticipated decision in *China Agritech, Inc. v. Michael H. Resh, et al.* Wolf Haldenstein represented the plaintiffs/respondents, having commenced the action on behalf of aggrieved shareholders of *China Agritech* after two prior cases had failed at the class certification stage.
- *In re Genetically Modified Rice Litigation*, MDL 1811 (E.D. Mo.) - Wolf Haldenstein represented U.S. rice farmers in this landmark action against Bayer A.G. and its global affiliates, achieving a global recovery of \$750 million. The case arose from the contamination of the nation's long grain rice crop by Bayer's experimental and unapproved genetically modified Liberty Link rice.
- *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) - a class action brought on behalf of over 27,500 current and former tenants of New York City's iconic Stuyvesant Town and Peter Cooper Village housing complexes. On April 9, 2013, Justice Richard B. Lowe III of the New York Supreme Court finally



approved settlement of the action, which totals over \$173 million, sets aside \$68.75 million in damages, re-regulates the apartments at issue, and sets preferential rents for the units that will save tenants significant monies in the future. The settlement also enables the tenants to retain an estimated \$105 million in rent savings they enjoyed between 2009 and 2012. **The settlement is by many magnitudes the largest tenant settlement in United States history.**

- *In re Empire State Realty Trust, Inc. Investor Litig.*, Index No. 650607/2012 – The firm served as Chair of the Executive Committee of Co-Lead Counsel for the Plaintiffs in a class action settlement finally approved on May 2, 2013 that provides for the establishment of a \$55 million settlement fund for investors, in addition to substantial tax deferral benefits estimated to be in excess of \$100 million.
- *American International Group Consolidated Derivative Litigation*, Civil Action No. 769-VCS (Del. Ch.) The Firm acted as co-lead counsel and the settlement addressed claims alleging that the D&O Defendants breached their fiduciary duties to the Company and otherwise committed wrongdoing to the detriment of AIG in connection with various allegedly fraudulent schemes during the 1999-2005 time period.
- *In re Bank of America Corp. Securities, Derivative, and Employee Retirement Income Security Act (ERISA) Litigation*, Master File No. 09 MD 2058 (S.D.N.Y.) (firm was co-lead counsel in parallel derivative action pending in Delaware (*In Re Bank of America Stockholder Derivative Litigation*, C.A. No. 4307-CS (Del. Ch.)) (increase of settlement cash recovery from \$20 million to \$62.5 million).
- *The Investment Committee of the Manhattan and Bronx Service Transit Operating Authority Pension Plan v. JPMorgan Chase Bank, N.A.*, 1:09-cv-04408-SAS (S.D.N.Y.) (class recovered \$150 million).
- *In re Tremont Sec. Law, State Law and Insurance Litig.*, No. 08-civ-11117 (TPG) (SDNY) (class recovered \$100 million). The firm was court-appointed co-lead counsel in the Insurance Action, 08 Civ. 557, and represented a class of persons who purchased or otherwise acquired Variable Universal Life (“VUL”) insurance policies or Deferred Variable Annuity (“DVA”) policies issued by Tremont International Insurance Limited or Argus International Life Bermuda Limited from May 10, 1994 - December 11, 2008 to the extent the investment



accounts of those policies were exposed to the massive Ponzi scheme orchestrated by Bernard L. Madoff through one or more Rye funds.

- *In re Initial Public Offering Securities Litigation*, 21 MC 92 (SAS) (S.D.N.Y.) (class recovered \$586 million). Wolf Haldenstein served as Co-Lead Counsel of one of the largest securities fraud cases in history. Despite the United States Court of Appeals for the Second Circuit's decision to vacate the district court's class certification decision, on remand, counsel for plaintiffs were able to press on to a settlement on April 1, 2009, ultimately recovering in excess of a half-billion dollars.



FIRM PRACTICE AREAS

CLASS ACTION LITIGATION

Wolf Haldenstein is a leader in class and derivative action litigation and is currently or has been the court-appointed lead counsel, co-lead counsel, or executive committee member in some of the largest and most significant class action and derivative action lawsuits in the United States. For example, the class action *Roberts v. Tishman Speyer*, 13 N.Y.3d 270 (N.Y. 2009) was recently described by a sitting member of the U.S. House of Representatives as the greatest legal victory for tenants in her lifetime. In *Roberts*, the Firm obtained a victory in the New York Court of Appeals requiring the reregulation of thousands of apartment units in the Stuyvesant Town complex in Manhattan, New York. Many of the firm's other successful results are summarized within.

PRIVATE ACTIONS FOR INSTITUTIONAL INVESTORS

In addition to its vast class action practice, the Firm also regularly represents institutional clients such as public funds, investment funds, limited partnerships, and qualified institutional buyers in private actions. The Firm has represented institutional clients in non-class federal and state actions concerning a variety of matters, including private placements, disputes with investment advisors, and disputes with corporate management.

The Firm has also acted as special counsel to investors' committees in efforts to assert and advance the investors' interests without resorting to litigation. For example, the Firm served as Counsel to the Courtyard by Marriott Limited Partners Committee for several years in its dealings with Host Marriott Corporation, and as Special Counsel to the Windsor Park Properties 7 and 8 limited partners to insure the fairness of their liquidation transactions.

ANTITRUST LITIGATION

Wolf Haldenstein is a leader in antitrust and competition litigation. The Firm actively seeks to enforce the federal and state antitrust laws to protect and strengthen the rights and claims of businesses, organizations, Taft-Hartley funds, and consumers throughout the United States. To that end, Wolf Haldenstein commences large, often complex, antitrust and trade regulation class actions and other cases that target some of the most powerful and well-funded corporate interests in the world. Many of these interests exert strong influence over enforcement policy that is in the hands of elected officials, so that private enforcement provides the only true assurance that unfair and



anticompetitive conduct will be duly scrutinized for compliance with the law. These cases frequently bring to light concealed, unlawful behavior such as price fixing, monopolization, market allocation, monopoly leveraging, essential facilities, tying arrangements, vertical restraints, exclusive dealing, and refusals to deal. Wolf Haldenstein's Antitrust Practice Group has successfully prosecuted numerous antitrust cases and aggressively advocates remedies and restitution for businesses and investors wronged by violations of the antitrust laws. For example, in *In re DRAM Antitrust Litigation*, No. 02-cv-1486 (PJH) (N.D. Cal.) the firm successfully prosecuted an antitrust case resulting in a \$315 million recovery. Many of the firm's successful results are summarized within.

Wolf Haldenstein attorneys currently serve as lead counsel, co-lead counsel, or as executive committee members in some of the largest and most significant antitrust class action lawsuits. The firm was most recently appointed lead counsel in the Salmon Antitrust Indirect Litigation pending in the U.S. District Court for the Southern District of Florida.

OVERTIME AND COMPENSATION CLASS ACTIONS

Wolf Haldenstein is a leader class action litigation on behalf of employees who have not been paid overtime or other compensation they are entitled to receive, or have had improper deductions taken from their compensation. These claims under the federal Fair Labor Standards Act and state labor laws allege improper failure to pay overtime and other wages, and improper deductions from compensation for various company expenses. Wolf Haldenstein has served as lead or co-lead counsel, or other similar lead role, in some of the most significant overtime class actions pending in the United States, and has recovered hundreds of millions of dollars in recovered wages for its clients. For example, in *LaVoice v. Citigroup Global Markets, Inc.*, Case No. C 07-801 (CW) (N.D. Cal.) a \$108 million settlement was secured for the class. Many of the firm's other successful wage and hour results are summarized within.

SUBSTANTIAL RECOVERIES IN CLASS ACTION AND DERIVATIVE CASES IN WHICH WOLF HALDENSTEIN WAS LEAD COUNSEL OR HAD ANOTHER SIGNIFICANT ROLE

- *In re Beacon Associates Litigation*, Master File No. 09 Civ. 0777 (LBS) (S.D.N.Y.) (**\$219 million** settlement in this and related action).
- *Roberts v. Tishman Speyer*, No. 100956/2007 (Sup. Ct. N.Y. Cty.) (**\$173 Million** settlement).



- *In re Mutual Fund Investment Litigation*, MDL No. 1586 (D. Md.) (derivative counsel in consolidated cases against numerous mutual fund companies involved in market timing resulting in class/derivative settlements totaling more than **\$300 million**).
- *Inland Western Securities Litigation*, Case No. 07 C 6174 (N.D. Ill.) (settlement value of shares valued between **\$61.5 million** and **\$90 million**).
- *In re Direxion Shares ETF Trust*, No. 09-Civ-8011 (KBF) (S.D.N.Y.) (class recovered **\$8 million**).
- *In re BankAmerica Corp. Securities Litigation*, MDL Docket No. 1264 (JFN) (E.D. Mo.) (class recovered **\$490 million**).
- *In re Dynamic Random Access Memory Antitrust Litigation*, (MD-02 1486 (N.D. Cal.) (class recovered **\$325 million**).
- *In re MicroStrategy, Inc. Securities Litigation*, Civ. No. 00-473-A (E.D. Va.) (class recovered **\$160 million** in cash and securities).
- *Kurzweil v. Philip Morris Cos.*, 94 Civ. 2373, 94 Civ. 2546 (S.D.N.Y.) (securities fraud) (class recovered **\$116.5 million** in cash).
- *In re Starlink Corn Products Liability Litigation*, (N.D. Ill.) (class recovered **\$110 million**).
- *In Computer Associates 2002 Class Action Sec. Litigation*, 2:02-CV-1226 (E.D.N.Y.) (**\$130 million** settlement in this and two related actions).
- *In re Sepracor Inc. Securities Litigation*, Civ. No. 02-12338 (MEL) (D. Mass.) (classes recovered **\$52.5 million**).
- *In re Transkaryotic Therapies, Inc., Securities Litigation*, C.A. No. 03-10165-RWZ (D. Mass) (class recovered **\$50 million**).
- *In re Iridium Securities Litigation*, C.A. No. 99-1002 (D.D.C.) (class recovered **\$43 million**).



- *In re J.P. Morgan Chase Securities Litigation*, MDL No. 1783 (N.D. Ill.) (settlement providing for adoption of corporate governance principles relating to potential corporate transactions requiring shareholder approval).
- *LaVoice v. Citigroup Global Markets, Inc.*, Case No. C 07-801 (CW) (N.D. Cal.) (**\$108 million** settlement).
- *Steinberg v. Morgan Stanley & Co., Inc.*, Case No. 06-cv-2628 (BEN) (S.D. Cal.) (**\$50 million** settlement).
- *Poole v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, Case No. CV-06-1657 (D. Or.) (**\$43.5 million** settlement).
- *In re Wachovia Securities, LLC Wage and Hour Litigation*, MDL No. 07-1807 DOC (C.D. Cal.) (**\$39 million** settlement).
- *In re Wachovia Securities, LLC Wage and Hour Litigation (Prudential)*, MDL No. 07-1807 DOC (C.D. Cal.) (**\$11 million** settlement).
- *Basile v. A.G. Edwards, Inc.*, 08-CV-00338-JAH-RBB (S.D. Cal.) (**\$12 million** settlement).
- *Miguel Garcia, et al. v. Lowe's Home Center, Inc. et al.* – Case No. GIC 841120 (Barton) (Cal. Sup. Ct, San Diego) (co-lead, **\$1.65 million** settlement w/ average class member recovery of \$5,500, attorney fees and cost awarded separately).
- *Neil Weinstein, et al. v. MetLife, Inc., et al.* – Case No. 3:06-cv-04444-SI (N.D.Cal) (co-lead, **\$7.4 million** settlement).
- *Creighton v. Oppenheimer*, Index No. 1:06 - cv - 04607 - BSJ - DCF (S.D.N.Y.) (**\$2.3 million** settlement).
- *Klein v. Ryan Beck*, 06-CV-3460 (DAB)(S.D.N.Y.) (**\$1.3 million** settlement).
- *In re American Pharmaceutical Partners, Inc. Shareholder Litigation*, Consolidated C.A. No. 1823-N (Del. Ch. Ct.) (**\$14.3 million** settlement).
- *Egleston v. Collins and Aikman Corp.*, 06-cv-13555 (E.D. Mich.) (class recovered **\$12 million**).



- *In re Merrill Lynch & Co., Inc. Global Technology Fund Securities Litigation*, 02 CV 7854 (JFK) (SDNY); and *In re Merrill Lynch & Co., Inc. Focus Twenty Fund Securities Litigation*, 02 CV 10221 (JFK) (SDNY) (class recovered **\$39 million** in combined cases).
- *In re CNL Hotels & Resorts, Inc. Securities Litigation*, No. 6:04-cv-1231 (Orl-31) (class recovered **\$35 million**, and lawsuit also instrumental in **\$225 million** benefit to corporation).
- *In re Cablevision Systems Corp. Shareholder Derivative Litigation*, Master File No. 06-CV-4130-DGT-AKT (**\$34.4 million** recovery).
- *In re Monster Worldwide, Inc. Stock Option Derivative Litigation*, Master File No. 06cv4622 (S.D.N.Y.) (**\$32 million** recovery and corporate governance reforms).
- *Berger v. Compaq Computer Corp.*, Docket No. 98-1148 (S.D. Tex.) (class recovered **\$29 million**).
- *In re Arakis Energy Corporation Securities Litigation*, 95 CV 3431 (E.D.N.Y.) (class recovered **\$24 million**).
- *In re E.W. Blanche Holdings, Inc. Securities Litigation*, Civ. No. 01-258 (D. Minn.) (class recovered **\$20 million**).
- *In re Globalstar Securities Litigation*, Case No. 01-CV-1748 (SHS) (S.D.N.Y.) (class recovered **\$20 million**).
- *In re Luxottica Group S.p.A. Securities Litigation*, No. CV 01-3285 (E.D.N.Y.) (class recovered **\$18.25 million**).
- *In re Musicmaker.com Securities Litigation*, CV-00-2018 (C.D. Cal.) (class recovered **\$13.75 million**).
- *In re Comdisco Securities Litigation*, No. 01 C 2110 (MIS) (N.D. Ill.) (class recovered **\$13.75 million**).
- *In re Acclaim Entertainment, Inc., Securities Litigation*, C.A. No. 03-CV-1270 (E.D.N.Y.) (class recovered **\$13.65 million**).



- *In re Concord EFS, Inc. Securities Litigation*, No. 02-2097 (MA) (W.D. Tenn) (class recovered **\$13.25 million**).
- *In re Bausch & Lomb, Inc. Securities Litigation*, 01 Civ. 6190 (CJS) (W.D.N.Y.) (class recovered **\$12.5 million**).
- *In re Allaire Corp. Securities Litigation*, 00-11972 (D. Mass.) (class recovered **\$12 million**).
- *Bamboo Partners LLC v. Robert Mondavi Corp.*, No. 26-27170 (Cal. Sup. Ct.) (class recovered **\$10.8 million**).
- *Curative Health Services Securities Litigation*, 99-2074 (E.D.N.Y.) (class recovered **\$10.5 million**).
- *City Partnership Co. v. Jones Intercable*, 99 WM-1051 (D. Colo.) (class recovered **\$10.5 million**).
- *In re Aquila, Inc.*, (ERISA Litigation), 04-865 (W.D. Mo.) (**\$10.5 million** recovery for the class).
- *In re Tenfold Corporation Securities Litigation*, 2:00-CV-652 (D. Utah) (class recovered **\$5.9 million**).
- *In re Industrial Gas Antitrust Litigation*, 80 C 3479 and related cases (N.D. Ill.) (class recovered **\$50 million**).
- *In re Chor-Alkalai and Caustic Soda Antitrust Litigation*, 86-5428 and related cases (E.D. Pa.) (class recovered **\$55 million**).
- *In re Infant Formula Antitrust Litigation*, MDL No. 878 (N.D. Fla.) (class recovered **\$126 million**).
- *In re Brand Name Prescription Drugs Antitrust Litigation*, No. 1:94-cv-00897, M.D.L. 997 (N.D. Ill.) (class recovered **\$715 million**).
- *Landon v. Freel*, M.D.L. No. 592 (S.D. Tex.) (class recovered **\$12 million**).
- *Holloway v. Peat, Marwick, Mitchell & Co.*, No. 84 C 814 EU (N.D. Okla.) (class recovered **\$38 million**).



- *In re The Chubb Corp. Drought Insurance Litigation*, C-1-88-644 (S.D. Ohio) (class recovered **\$100 million**).
- *Wong v. Megafoods*, Civ-94-1702 (D. Ariz.) (securities fraud) (class recovered **\$12.25 million**).
- *In re Del Val Financial Corp. Securities Litigation*, 92 Civ 4854 (S.D.N.Y.) (class recovered **\$11.5 million**).
- *In re Home Shopping Network Shareholders Litigation*, Consolidated Civil Action No. 12868, (Del. Ch. 1995) (class recovered **\$13 million**).
- *In re Paine Webber Limited Partnerships Litigation*, 94 Civ 8547 (S.D.N.Y.) (class recovered **\$200 million**).
- *In re Bristol-Meyers Squibb Co. Securities Litigation*, 92 Civ 4007 (S.D.N.Y.) (class recovered **\$19 million**).
- *In re Spectrum Information Technologies Securities Litigation*, CV 93-2245 (E.D.N.Y.) (class recovered **\$13 million**).
- *In re Chase Manhattan Securities Litigation*, 90 Civ. 6092 (LJF) (S.D.N.Y.) (class recovered **\$17.5 million**).
- *Prostic v. Xerox Corp.*, No. B-90-113 (EBB) (D. Conn.) (class recovered **\$9 million**).
- *Steiner v. Hercules*, Civil Action No. 90-442-RRM (D. Del.) (class recovered **\$18 million**).
- *In re Ambase Securities Litigation*, 90 Civ 2011 (S.D.N.Y.) (class recovered **\$14.6 million**).
- *In re Southmark Securities Litigation*, CA No. 3-89-1402-D (N.D. Tex.) (class recovered **\$70 million**).
- *Steiner v. Ideal Basic Industries, Inc.*, No. 86-M 456 (D. Colo. 1989) (securities fraud) (class recovered **\$18 million**).
- *Tucson Electric Power Derivative Litigation*, 2:89 Civ. 01274 TUC. ACM (corporation recovered **\$30 million**).



- *Alleco Stockholders Litigation*, (Md. Cir. Ct. Pr. Georges County) (class recovered **\$16 million**).
- *In re Revlon Group, Inc. Shareholders Litigation*, No. 8362 (Del. Ch.) (class recovered **\$30 million**).
- *In re Taft Broadcasting Company Shareholders Litigation*, No. 8897 (Del. Ch.) (class recovered **\$20 million**).
- *In re Southland Corp. Securities Litigation*, No. 87-8834-K (N.D.Tex.) (class recovered **\$20 million**).
- *In re Crocker Bank Securities Litigation*, CA No. 7405 (Del. Ch.) (class recovered **\$30 million**).
- *In re Warner Communications Securities Litigation*, No. 82 Civ. 8288 (JFK) (S.D.N.Y.) (class recovered **\$17.5 million**).
- *Joseph v. Shell Oil*, CA No. 7450 (Del. Ch.) (securities fraud) (class recovered **\$200 million**).
- *In re Flight Transportation Corp. Securities Litigation*, Master Docket No. 4-82-874, MDL No. 517 (D. Minn.) (recovery of over **\$50 million**).
- *In re Whittaker Corporation Securities Litigation*, CA000817 (Cal. Super. Ct., Los Angeles County) (class recovered **\$18 million**).
- *Naevus International, Inc. v. AT&T Corp.*, C.A. No. 602191/99 (N.Y. Sup. Ct.) (consumer fraud) (class recovered **\$40 million**).
- *Sewell v. Sprint PCS Limited Partnership*, C.A. No. 97-188027/CC 3879 (Cir. Ct. for Baltimore City) (consumer fraud) (class recovered **\$45.2 million**).
- *In re Vytorin/Zetia Marketing, Sales Practices and Products Liability Litigation*, 2:08-cv-285 (D.N.J.) (class recovered **\$41.5 million**).
- *Egleston v. Verizon*, No. 104784/2011 (N.Y. Sup. Ct.) – Wolf Haldenstein represented a class of New York Verizon Centrex customers in an action against Verizon stemming from overbilling of certain charges. The Firm secured a settlement with a total value to the Class of over **\$5 million**, which



provided, among other things, each class member with full refunds of certain disputed charges, plus interest.

- *Zelouf Int'l Corp. v. Nahal Zelouf*, Index No. 653652/2014 (Sup. Ct. N.Y. Co. 2015). In an important trial decision following an appraisal proceeding triggered by the freeze-out merger of a closely-held corporation, which also included shareholder derivative claims, Justice Kornreich of the New York Supreme Court refused to apply a discount for lack of marketability to the minority interest in the former corporation and found that the insiders stole more than \$14 million dollars; the minority shareholder recovered over **\$9 million**.
- *Zelouf Int'l Corp. v. Zelouf*, 45 Misc.3d 1205(A) (Sup. Ct. N.Y. Co., 2014). The Court rejected application of a discount for lack of marketability and awarded a **\$10,031,438.28** judgment following an eleven day bench trial in the Commercial Division of the Supreme Court of the State of New York (New York County) on the value of a minority interest in a closely held corporation.
- *Thompson et al. v. Bethpage Federal Credit Union et al.*, No. 2:17-cv-00921-GRB (E.D.N.Y.) (**\$3.6 million** settlement)



REPRESENTATIVE REPORTED OPINIONS SINCE 1990 IN WHICH WOLF
HALDENSTEIN WAS LEAD COUNSEL OR HAD ANOTHER SIGNIFICANT ROLE

FEDERAL APPELLATE AND DISTRICT COURT OPINIONS

- *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019)
- *Hymes v. Bank of America*, 408 F. Supp. 3d 171 (E.D.N.Y. 2019)
- *In re Packaged Seafood Prods. Antitrust Litig.*, 332 F.R.D. 308 (S.D. Cal. 2019)
- *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800 (2018)
- *In re Packaged Seafood Prods. Antitrust Litig.*, 242 F. Supp. 3d 1033 (S.D. Cal. 2017)
- *DeFrees v. Kirkland*, 2012 U.S. Dist. LEXIS 52780 (C.D. Cal. Apr. 11, 2012).
- *In re Beacon Associates Litig.*, 282 F.R.D. 315 (S.D.N.Y. 2012).
- *Messner v. Northshore University HealthSystem*, 669 F.3d 802, No. 10-2514 (7th Cir. Jan. 13, 2012).
- *In re Text Message Antitrust Litigation*, 630 F.3d, 622 (7th Cir. 2010).
- *In re Apple & ATTM Antitrust Litig.*, 2010 U.S. Dist. LEXIS 98270 (N.D. Cal. July 8, 2010).
- *In re Beacon Associates Litig.*, 745 F. Supp. 2d 386 (S.D.N.Y. 2010)
- *Freeland v. Iridium World Communications Ltd.*, 545 F. Supp. 2d 59 (D.D.C. 2008).
- *In re Apple & AT&TM Antitrust Litig.*, 596 F. Supp. 2d 1288 (N.D. Cal. 2008).
- *Harzewski v. Guidant Corp.*, 489 F.3d 799 (7th Cir. 2007).
- *In re JP Morgan Chase & Co. Securities Litigation*, No. 06 C 4674, 2007 U.S. Dist. LEXIS 93877 (N.D. Ill. Dec. 18, 2007).
- *Schoenbaum v. E.I. Dupont De Nemours and Co.*, 2007 WL 2768383 (E.D. Mo. Sept. 20, 2007).



- *Jeffries v. Pension Trust Fund*, 99 Civ. 4174 (LMM), 2007 U.S. Dist. LEXIS 61454 (S.D.N.Y. Aug. 20, 2007).
- *Klein v. Ryan Beck*, 06-Civ. 3460 (WCC), 2007 U.S. Dist. LEXIS 51465 (S.D.N.Y. July 13, 2007).
- *Cannon v. MBNA Corp.* No. 05-429 GMS, 2007 U.S. Dist. LEXIS 48901 (D. Del. 2007).
- *In re Aquila ERISA Litig.*, 237 F.R.D. 202 (W.D. Mo. 2006).
- *Smith v. Aon Corp.*, 238 F.R.D. 609 (N.D. Ill. 2006).
- *In re Sepracor Inc. Securities Litigation*, 233 F.R.D. 52 (D. Mass. 2005).
- *In re Transkaryotic Therapies, Inc. Securities Litigation*, No. 03-10165, 2005 U.S. Dist. LEXIS 29656 (D. Mass. Nov. 28, 2005).
- *In re Luxottica Group, S.p.A. Securities Litigation*, 2005 U.S. Dist. LEXIS 9071 (E.D.N.Y. May 12, 2005).
- *In re CNL Hotels & Resorts, Inc. Securities Litigation*, 2005 U.S. Dist. LEXIS 38876, No. 6:04-cv-1231-Orl-31KRS (M.D. Fla. May 9, 2005).
- *Johnson v. Aegon USA, Inc.*, 355 F. Supp. 2d 1337 (N.D. Ga. 2004).
- *Freeland v. Iridium World Communications, Ltd.*, 99-1002, 2004 U.S. Dist. LEXIS 33018 (D.D.C. Aug. 31, 2004).
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ATTORNEY BIOGRAPHIES

The qualifications of the attorneys in the Wolf Haldenstein Litigation Group are set forth below and are followed by descriptions of some of the Firm's attorneys who normally practice outside the Litigation Group who contribute significantly to the class action practice from time to time.

PARTNERS

MARK C. RIFKIN: *admitted:* New York; Pennsylvania; New Jersey; U.S. Supreme Court; U.S. Courts of Appeals for the Second, Third, Fifth, and D.C. Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, the Eastern and Western Districts of Pennsylvania, the District of New Jersey, the Eastern District of Wisconsin and the Western District of Michigan. *Education:* Princeton University (A.B. 1982); Villanova University School of Law (J.D. 1985). Contributor, Packel & Poulin, *Pennsylvania Evidence* (1987).

A highly experienced securities class action and shareholder rights litigator, Mr. Rifkin has recovered hundreds of millions of dollars for victims of corporate fraud and abuse in federal and state litigation across the country. Since 1990, Mr. Rifkin has served as lead counsel, co-lead counsel, or trial counsel in many class and derivative actions in securities, intellectual property, antitrust, insurance, consumer and mass tort litigation throughout the country.

Unique among his peers in the class action practice, Mr. Rifkin has extensive trial experience. Over the past thirty years, Mr. Rifkin has tried many complex commercial actions in federal and state courts across the country in class and derivative actions, including *In re National Media Corp. Derivative Litig.*, C.A. 90-7574 (E.D. Pa.), *Upp v. Mellon Bank, N.A.*, C.A. No. 91-5229 (E.D. Pa.), where the verdict awarded more than \$60 million in damages to the Class (later reversed on appeal, 997 F.2d 1039 (3d Cir. 1993)), and *In re AST Research Securities Litigation*, No. 94-1370 SVW (C.D. Cal.), as well as a number of commercial matters for individual clients, including *Zelouf Int'l Corp. v. Zelouf*, Index No. 653652/2013 (N.Y. Sup. Ct. 2015), in which he obtained a \$10 million judgment for his client.

Mr. Rifkin also has extensive appellate experience. Over thirty years, Mr. Rifkin has argued dozens of appeals on behalf of appellants and appellees in several federal appellate courts, and in the highest appellate courts in New York, Pennsylvania, New Jersey, and Delaware.



Mr. Rifkin has earned the AV®-Preeminent rating by Martindale-Hubbell® for more than 20 years, and has been selected for inclusion in the New York Metro SuperLawyers® listing since 2010. In 2014, Mr. Rifkin was named a “Titan of the Plaintiff’s Bar” by Law360®.

In 2015, Mr. Rifkin received worldwide acclaim for his role as lead counsel for the class in *Good Morning To You Productions Corp. v. Warner/Chappell Music, Inc.*, No. CV 13-04460-GHK (MRWx), in federal court in Los Angeles, successfully challenging the copyright to “Happy Birthday to You,” the world’s most famous song. In recognition of his historic victory, Mr. Rifkin was named a Trailblazer in Intellectual Property by the National Law Journal in 2016. In 2018, Mr. Rifkin led a team of lawyers from Wolf Haldenstein who represented the plaintiffs in *We Shall Overcome Foundation, et al. v. The Richmond Organization, Inc., et al.*, No. 16-cv-02725-DLC (S.D.N.Y.), which successfully challenged the copyright to “We Shall Overcome,” called the “most powerful song of the 20th century” by the Librarian of Congress.

Mr. Rifkin lectures frequently to business and professional organizations on a variety of securities, shareholder, intellectual property, and corporate governance matters. Mr. Rifkin is a guest lecturer to graduate and undergraduate economics and finance students on corporate governance and financial disclosure topics. He also serves as a moot court judge for the A.B.A. and New York University Law School. Mr. Rifkin appears frequently in print and broadcast media on diverse law-related topics in corporate, securities, intellectual property, antitrust, regulatory, and enforcement matters.

BETSY C. MANIFOLD: *admitted:* Wisconsin; New York; California; U.S. District Courts for the Western District of Wisconsin, Eastern and Southern Districts of New York, and Northern, Central and Southern Districts of California. *Education:* Elmira College; Middlebury College (B.A., *cum laude*, 1980); Marquette University (J.D., 1986); New York University. Thomas More Scholar. Recipient, American Jurisprudence Award in Agency. Member: The Association of the Bar of the City of New York. Languages: French.

Ms. Manifold served as co-lead counsel in the following cases to recovery on behalf of employees: *Miguel Garcia, et al. v. Lowe’s Home Center, Inc. et al.* – Case No. GIC 841120 (Barton) (Cal. Sup. Ct, San Diego) (\$1.65 million settlement w/ average class member recovery of \$5,500, attorney fees and cost awarded separately) and *Neil Weinstein, et al.*



v. MetLife, Inc., et al. – Case No. 3:06-cv-04444-SI (N.D. Cal) (\$7.4 million settlement). Ms. Manifold also served as co-lead counsel in the following derivative actions: *In re Atmel Corporation Derivative Litigation*, Master File No. CV 06-4592-JF (N.D. Cal.) (\$9.65 million payment to Atmel) and *In re Silicon Storage Technology Inc. Derivative Litig.*, Case No. C 06-04310 JF (N.D. Cal.) (cash payment and re-pricing of options with a total value of \$5.45 million). Ms. Manifold also worked as lead counsel on the following class action: *Lewis v. American Spectrum Realty*, Case No. 01 CC 00394, Cal. Sup. Ct (Orange County) (\$6.5 million settlement).

BENJAMIN Y. KAUFMAN: *admitted:* New York, United States Supreme Court, United States Court of Appeals for the Fourth Circuit, Southern, Northern and Eastern Districts of New York, District of New Jersey; and District of Colorado. *Education:* Yeshiva University, B.A.; Benjamin N. Cardozo School of Law, Yeshiva University, J.D; New York University, Stern School of Business, M.B.A. Mr. Kaufman focuses on class actions on behalf of defrauded shareholders, investors, and consumers. Mr. Kaufman has extensive experience in complex class actions representing clients including institutional investors such as public and labor pension funds, labor health and welfare benefit funds, as well as private individuals and funds who suffered losses due to corporate fraud. Mr. Kaufman also has extensive experience litigating complex commercial cases in state and federal court.

Mr. Kaufman's successful securities litigations include *In re Deutsche Telekom AG Securities Litigation*, No. 00-9475 (S.D.N.Y.), a complex international securities litigation requiring evidentiary discovery in both the United States and Europe, which settled for \$120 million. Mr. Kaufman was also part of the team that recovered \$46 million for investors in *In re Asia Pulp & Paper Securities Litigation*, No. 01-7351 (S.D.N.Y.); and \$43.1 million in *Freeland v. Iridium World Communications, Ltd.*, No. 99-1002 (D.D.C.).

Mr. Kaufman's outstanding representative results in derivative and transactional litigations include: *In re Trump Hotels Shareholder Derivative Litigation*, No. 96-cv-7820 (S.D.N.Y.) (in settlement Trump personally contributed some of his holdings and the company adopted corporate reforms); *Southwest Airlines Derivative Litigation (Carbon County Employee Retirement System v. Kelly)* (Dist. Ct. Dallas Cnty., Tex.) (derivative matter that resulted in significant reforms to the air carrier's corporate governance and safety and maintenance practices and procedures for the benefit of the company and its shareholders); *Lynn v. Tennessee Commerce Bancorp, Inc., et al.*, No. 3:12-cv-01137 (M.D. Tenn.) (\$2.6 million settlement); *In re ClubCorp Holdings Shareholder Litigation*, No. A-17-758912-B (D. Nev.) (\$5 million settlement and corporate therapeutics). Mr. Kaufman



also argued the appeal in *In re Converse Technology, Inc. Derivative Litig.*, 56 A.D.3d 49 (1st Dep't 2008) which led to the seminal New York Appellate Division opinion clarifying the standards of demand futility in New York and *In re Topps Company, Inc. Shareholders Litigation* which resulted in a 2007 decision vindicating the rights of shareholders to pursue claims in the most relevant forum notwithstanding the state of incorporation. Mr. Kaufman has also lectured and taught in the subjects of corporate governance as well as transactional and derivative litigation.

In addition, Mr. Kaufman has represented many corporate clients in complex commercial matters, including complex copyright royalty class actions against music companies. *Puckett v. Sony Music Entertainment*, No. 108802/98 (Sup. Ct. N.Y. Cnty.); *Shropshire v. Sony Music Entertainment*, No. 06-3252 (S.D.N.Y.), and *The Youngbloods v. BMG Music*, No. 07-2394 (S.D.N.Y.). In *Mich II Holdings LLC v. Schron*, No. 600736/10 (Sup. Ct. N.Y. Cnty.), Mr. Kaufman represented certain prominent real estate investors and successfully moved to dismiss all claims against those defendants. Mr. Kaufman has also represented clients in arbitrations and litigations involving oppressed minority shareholders in closely held corporations.

Currently, Mr. Kaufman represents clients in a wide array of matters, including shareholders of a large cooperative complex alleging breach of fiduciary duty by the board of directors and property manager; purchasers of New York City taxi medallions in a class action pending in New York Supreme Court, Queens County; a New York art gallery in an action against several European insurers over insurance coverage for paintings seized while on exhibit; and shareholders of Saks, Inc. alleging that the board of directors and its investment advisor sold the company for inadequate consideration. *Cohen v. Saks*, 169 A.D.3d 51 (1st Dep't 2019).

Prior to joining Wolf Haldenstein, and prior to joining Milberg LLP in 1998, Mr. Kaufman was a Court Attorney for the New York State Supreme Court, New York County (1988-1990) and Principal Law Clerk to Justice Herman Cahn of the Commercial Division of the New York State Supreme Court, New York County (1990-1998).

Mr. Kaufman is an active member of the Commercial and Federal Litigation Section of the New York State Bar Association, the International Association of Jewish Lawyers and Jurists and the Jewish Lawyers Guild in which he serves as a Vice President. Mr. Kaufman was the Dinner Chair at the Jewish Lawyers Guild Annual Dinner in 2017, 2018, and 2019. Mr. Kaufman is a member of the Board of Trustees of Congregation



Beth Sholom in Lawrence, NY and was a member of the Board of Trustees of the Hebrew Academy of the Five Towns and Rockaways from 2015-2019.

Mr. Kaufman has been recognized by SuperLawyers® each year since 2012.

THOMAS H. BURT: *admitted:* New York; U.S. District Courts for the Southern and Eastern Districts of New York, Eastern District of Michigan. *Education:* American University (B.A. 1993); New York University (J.D. 1997). Articles Editor with New York University Review of Law and Social Change. Mr. Burt is a litigator with a practice concentrated in securities class actions and complex commercial litigation. After practicing criminal defense with noted defense lawyer Jack T. Litman for three years, he joined Wolf Haldenstein, where he has worked on such notable cases as *In re Initial Public Offering Securities Litigation*, No. 21 MC 92 (SAS) (S.D.N.Y.) (a novel and sweeping amalgamation of over 300 class actions which resulted in a recovery of \$586 million); *In re MicroStrategy Securities Litigation*, No. 00-473-A (E.D. Va.) (recovery of \$192 million); *In re DRAM Antitrust Litigation*, No. 02-cv-1486 (PJH) (N.D. Cal.) (antitrust case resulting in \$315 million recovery); *In re Computer Associates 2002 Class Action Securities Litigation*, No. 02-cv-1226 (TCP) (E.D.N.Y.) (settled, together with a related fraud case, for over \$133 million); *K.J. Egleston L.P. v. Heartland Industrial Partners, et al.*, 2:06-13555 (E.D. Mich.) (recovery included personal assets from former Reagan Administration budget director David A. Stockman); and *Parker Friedland v. Iridium World Communications, Ltd.*, 99-1002 (D.D.C.) (recovery of \$43.1 million). Mr. Burt has spoken on several occasions to investor and activist groups regarding the intersection of litigation and corporate social responsibility. Mr. Burt writes and speaks on both securities and antitrust litigation topics. He has served as a board member and officer of the St. Andrew's Society of the State of New York, New York's oldest charity.

RACHELE R. BYRD: *admitted:* California; U.S. District Courts for the Southern, Northern, Central and Eastern Districts of California, the Northern District of Illinois, and the Eastern District of Michigan; U.S. Court of Appeals for the Ninth Circuit; U.S. Supreme Court. *Education:* Point Loma Nazarene College (B.A., 1994); University of California, Hastings College of the Law (J.D. 1997). Member: State Bar of California. Ms. Byrd is located in the firm's San Diego office and practices corporate derivative and class action litigation including securities, consumer, privacy and security, antitrust, employment and general corporate and business litigation. Ms. Byrd has played a significant role in litigating numerous class and derivative actions, including *Engquist v. City of Los Angeles*, No. BC591331 (Los Angeles Super. Ct.) (gas tax refund action that recently settled for \$32.5 million and injunctive relief, valued at a minimum of \$24.5



million over 3 years and \$81.8 million over 10 years, following certification of the class and on the eve of a hearing on the parties' cross-motions for summary judgment); *Ardon v. City of Los Angeles*, 52 Cal.4th 241 (2011) (telephone tax refund action against the City of Los Angeles that settled for \$92.5 million after a successful appeal and a groundbreaking opinion from the California Supreme Court); *McWilliams v. City of Long Beach*, Cal. Supreme Ct. No. S202037, 2013 Cal. LEXIS 3510 (April 25, 2013) (telephone tax refund action that settled for \$16.6 million after a successful appeal and another groundbreaking opinion from the California Supreme Court); *Granados v. County of Los Angeles*, BC361470 (Los Angeles Super. Ct.) (telephone tax refund action that settled for \$16.9 million following class certification and a successful appeal); *In re: Zoom Video Communications, Inc. Privacy Litigation*, No. 5:20-cv-0291 (N.D. Cal.) (member of Plaintiffs' Steering Committee; settled for \$85 million); *In re Robinhood Outage Litigation*, No. 20-cv-01626-JD (N.D. Cal.) (member of Plaintiffs' Executive Committee); *In re Apple iPhone Antitrust Litigation*, No. 4:11-cv-06714-YGR (N.D. Cal.) (ongoing antitrust class action on behalf of consumers against Apple over its monopolization of the iOS applications aftermarket that secured a favorable opinion in the U.S. Supreme Court: *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019)); *Defrees v. Kirkland, et al.*, 11-04272 (JLS) (C.D. Cal.) (\$12.2 million settlement reached in derivative action on the eve of trial); *Bokelman et al. v. FCH Enterprises, Inc.*, No. 18-00209-RJB-RLP (D. Haw.) (settled data breach class action; final approval granted May 3, 2019); *Carrera Aguallo, et al. v. Kemper Corp., et al.*, No. 1:21-cv-01883 (N.D. Ill.) (settled data breach class action where Ms. Byrd was Interim Co-Lead Counsel; final approval granted March 18, 2022); *In re: Scripps Health Data Incident Litigation*, San Diego Super. Ct. No. 37-2021-00024103-CU-BT-CTL (ongoing data breach class action where Wolf Haldenstein is co-lead counsel); *Hinds v. Community Medical Centers, Inc.*, No. STK-CV-UNPI-2021-10404 (San Joaquin Super. Ct.) (ongoing data breach class action where Wolf Haldenstein is co-lead counsel); *Christofferson v. Creation Entertainment, Inc.*, No. 19STCV11000 (Los Angeles Super. Ct.) (settled data breach class action; final approval granted on June 29, 2021); *In re: Hanna Andersson and salesforce.com Data Breach Litig.*, No. 3:20-cv-00812-EMC (N.D. Cal.) (settled data breach class action; final approval granted on June 25, 2021); *Gaston v. FabFitFun, Inc.*, No. 2:20-cv-09534-RGK-E (C.D. Cal.) (settled data breach class action; final approval granted on December 6, 2021); *Rossi v. Claire's Stores*, No. 1:20-cv-05090 (N.D. Ill.) (settled data breach class action; preliminary approval granted March 28, 2022); *Riggs v. Kroto, Inc., D/B/A/ iCanvas*, No. 1:20-cv-5822 (N.D. Ill.) (settled data breach class action; final approval granted on October 29, 2021); *Thomas v. San Diego Family Care*, San Diego Super. Ct. No. 37-2021-00026758-CU-BT-CTL (settled data breach class action; preliminary approval granted April 13, 2022); *Miller v. CSI Financial, LLC*, No. 37-



2021-00030263-CU-BT-CT (San Diego Super. Ct.) (recently settled data breach class action); *Fields v. The Regents of the University of California*, Alameda Superior Court No. RG21107152 (ongoing data breach class action); *In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.) (ongoing); *In re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.) (settled data breach class action; preliminary approval granted March 3, 2022).

MATTHEW M. GUINEY: *admitted:* New York State; United States Supreme Court; United States Courts of Appeals for the Second, Third and Ninth Circuits; U.S. District Courts for the Southern and Eastern District of New York and numerous others. *Education:* The College of William & Mary (B.A. in Government and Economics 1998); Georgetown University Law Center (J.D. 2002). Mr. Guiney's primary areas of practice are securities class actions under the Securities Act of 1933 and the Exchange Act of 1934, complex commercial litigation, Employee Retirement Income Security Act (ERISA) actions on behalf of plan participants, Fair Labor Standards Act of 1938 actions concerning overtime payment, and fiduciary duty actions under various state laws. Mr. Guiney has helped recover hundreds of millions of dollars for victims of corporate fraud and abuse in federal and state litigation across the country. Mr. Guiney was on the merits briefs at the United States Supreme Court on behalf of the plaintiffs/respondents in *Apple Inc. v. Pepper*, No. 17-204, 587 U.S. ___ (2019) where the Court affirmed plaintiffs' antitrust standing under *Illinois Brick*. Mr. Guiney also represented plaintiffs/respondents at the United States Supreme Court in *China Agritech v. Resh*, 584 U.S. __ (2018), where the Court addressed tolling in the class action context. Mr. Guiney also initially served as counsel of record and briefed opposition to petition for writ of certiorari, and argued and achieved a precedential reversal of motion to dismiss in a published opinion at the United States Court of Appeals for the Ninth Circuit in *Resh v. China Agritech*, No. 15-5543, 2017 U.S. App. LEXIS 9029 (9th Cir. May 24, 2017).

Some of Mr. Guiney's notable results on behalf of investors include: *Mallozzi v. Industrial Enterprises of America, Inc., et al.*, 1:07-cv-10321-DLC (S.D.N.Y.) (\$3.4 million settlement on behalf of shareholders); *In re Luxottica Group S.p.A. Securities Litigation*, No. CV 01-3285 (JBW) (MDG) (E.D.N.Y.) (\$18.5 million settlement on behalf of shareholders); *In re MBNA Corp. ERISA Litigation*, Master Docket No. 05-429 (GMS), (D. Del) (\$4.5 million settlement on behalf of plan participants).

MALCOLM T. BROWN: *admitted:* United States District Courts for the Eastern, Northern, and Southern Districts of New York; District of New Jersey; and Eastern



District of Pennsylvania; United States Court of Appeals for the Second Circuit. **Education:** University of Pennsylvania (B.A., Political Science 1988) and Rutgers University School of Law (J.D. 1994). Mr. Brown's primary areas of practice are securities, derivative, M&A litigation and consumer class actions. Recent notable decisions include: *Siegmund v. Bian*, 2019 U.S. Dist. LEXIS 19349 (S.D. Fla. Feb. 6, 2019); *Siegmund v. Bian*, 2018 U.S. Dist. LEXIS 55724, 2018 U.S. Dist. LEXIS 55725 (April 2, 2018); *Johnson v. Ford Motor Co.*, 309 F.R.D. 226 (S.D. W. Va. 2015); *Thomas v. Ford Motor Co.*, 2014 U.S. Dist. LEXIS 43268 (D.S.C. Mar. 31, 2014); *In re Merkin Sec. Litig.*, 2015 U.S. Dist. LEXIS 178084 (S.D.N.Y. Aug. 24, 2015). Prior to joining Wolf Haldenstein, Mr. Brown was a business litigation attorney who represented financial institutions, corporations and partnerships and advised clients on business disputes, reorganizations, dissolutions and insurance coverage matters.

Mr. Brown is a member of the National Association of Pension Plan Attorneys and the National Black Lawyers, and a Fellow of the American Bar Foundation.

SPECIAL COUNSEL

JUSTICE HERMAN CAHN: *admitted:* New York. **Education:** Harvard Law School and a B.A. from City College of the City University of New York. Justice Herman Cahn was first elected as Judge of the Civil Court of the City of New York in 1976. He subsequently served as an Acting Justice of the Supreme Court from 1980 until 1992, when he was elected to the Supreme Court. Throughout his decades on the bench, he principally handled civil cases, with the exception of 1981 until 1987, when he presided over criminal matters. Justice Cahn was instrumental in the creation of, and a founding Justice in, the Commercial Division within the New York State Supreme Court. He served as a Justice of the Commercial Division from its inception in 1993.

Among his most notable recent cases are the consolidated cases stemming from the Bear Stearns merger with JP Morgan (*In re Bear Stearns Litigation*); litigation regarding the America's Cup Yacht Race (*Golden Gate Yacht Club v. Société Nautique de Genève*); litigation stemming from the attempt to enjoin the construction of the new Yankee Stadium (*Save Our Parks v. City of New York*); and the consolidated state cases regarding the rebuilding of the World Trade Center site (*World Trade Center Properties v. Alliance Insurance; Port Authority v. Alliance Insurance*).

Justice Cahn is a member of the Council on Judicial Administration of the Association of the Bar of the City of New York. He has also recently been appointed to the



Character and Fitness Committee of the Appellate Division, First Department. He is on the Register of Mediators for the United States Bankruptcy Court, Southern and Eastern Districts of New York.

Before ascending the bench, Justice Cahn practiced law in Manhattan. He was first admitted to the New York bar in 1956. He is admitted to practice in numerous courts, including the New York State courts, the Southern District of New York and the United States Supreme Court.

OF COUNSEL

DANIEL W. KRASNER: *admitted:* New York; Supreme Court of the United States; U.S. Courts of Appeals for the Second, Third, Fourth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits; U.S. District Courts for the Southern and Eastern Districts of New York, Central District of Illinois, and Northern District of Michigan. *Education:* Yale Law School (LL.B., 1965); Yeshiva College (B.A., 1962). Mr. Krasner is of counsel at Wolf Haldenstein. He began practicing law with Abraham L. Pomerantz, generally credited as the "Dean of the Class Action Bar." He founded the Class Litigation Group at Wolf Haldenstein in 1976.

Mr. Krasner received judicial praise for his class action acumen as early as 1978. *See, e.g., Shapiro v. Consolidated Edison Co.*, [1978 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 96,364 at 93,252 (S.D.N.Y. 1978) ("in the Court's opinion the reputation, skill and expertise of . . . [Mr.] Krasner, considerably enhanced the probability of obtaining as large a cash settlement as was obtained"); *Steiner v. BOC Financial Corp.*, [1980 Transfer Binder] Fed. Sec. L. Rep. (CCH) & 97,656, at 98,491.4, (S.D.N.Y. 1980) ("This Court has previously recognized the high quality of work of plaintiffs' lead counsel, Mr. Krasner"). The New York Law Journal referred to Mr. Krasner as one of the "top rank plaintiffs' counsel" in the securities and class action fields. In connection with a failed 1989 management buyout of United Airlines, Mr. Krasner testified before Congress.

More recently, Mr. Krasner has been one of the lead attorneys for plaintiffs in some of the leading Federal multidistrict cases in the United States, including the IPO Litigation in the Southern District of New York, the Mutual Fund Market Timing Litigation in the District of Maryland, and several Madoff-related litigations pending in the Southern District of New York. Mr. Krasner has also been lead attorney in several precedent-setting shareholder actions in Delaware Chancery Court and the New York Court of Appeals, including *American International Group, Inc. v. Greenberg*, 965 A.2d 763 (Del. Ch. 2009) and the companion certified appeal, *Kirschner v. KPMG LLP*, Nos. 151, 152, 2010



N.Y. LEXIS 2959 (N.Y. Oct. 21, 2010); *Teachers' Retirement System of Louisiana and City of New Orleans Employees' Retirement System, derivatively on behalf of nominal defendant American International Group, Inc., v. PricewaterhouseCoopers LLP*, No. 152 (New York, October 21, 2010); *In re CNX Gas Corp. S'holders Litig.*, C.A. No. 5377-VCL, 2010 Del. Ch. LEXIS 119 (Del. Ch., May 25, 2010); *In re CNX Gas Corp. S'holders Litig.*, C.A. No. 5377-VCL, 2010 Del. Ch. LEXIS 139, (Del. Ch. July 5, 2010), appeal refused, 2010 Del. LEXIS 324, 2010 WL 2690402 (Del. 2010).

Mr. Krasner has lectured at the Practicing Law Institute; Rutgers Graduate School of Business; Federal Bar Council; Association of the Bar of the City of New York; Rockland County, New York State, and American Bar Associations; Federal Bar Council, and before numerous other bar, industry, and investor groups.

PETER C. HARRAR: *admitted;* New York; United States Court of Appeals for the Fourth Circuit and the United States District Courts for the Southern and Eastern Districts of New York. *Education:* Columbia Law School (J.D. 1984); Princeton University, Phi Beta Kappa, *magna cum laude*. Mr. Harrar is of counsel at the firm and has extensive experience in complex securities and commercial litigation on behalf of individual and institutional clients.

He has represented investment funds, hedge funds, insurance companies and other institutional investors in a variety of individual actions, class actions and disputes involving mortgage-backed securities and derivative instruments. Examples include *In re EMAC Securities Litigation*, a fraud case concerning private placements of securitized loan pools, and *Steed Finance LDC v. LASER Advisors, Inc.*, a hybrid individual and class action concerning the mispricing of swaptions.

Over the years, Mr. Harrar has also served as lead or co-lead counsel in numerous securities class and derivative actions throughout the country, recovering hundreds of millions of dollars on behalf of aggrieved investors and corporations. Recent examples are some of the largest recoveries achieved in resolution of derivative actions, including *American International Group Consolidated Derivative Litigation* (\$90 million), and *Bank of America/Merrill Derivative Litigation* (\$62.5 million).

JEFFREY G. SMITH: *admitted:* New York; California; Supreme Court of the United States; U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Circuits; U.S. Tax Court; U.S. District Courts for the Southern and Eastern Districts of New York, Southern, Central and Northern Districts of California and the Districts of Colorado and Nebraska. *Education:* Woodrow Wilson School of



Public and International Affairs, Princeton University (M.P.A., 1977); Yale Law School (J.D., 1978); Vassar College (A.B., *cum laude generalis*, 1974). At Yale Law School, Mr. Smith was a teaching assistant for the Trial Practice course and a student supervisor in the Legal Services Organization, a clinical program. Member: The Association of the Bar of the City of New York; New York State and American (Section on Litigation) Bar Associations; State Bar of California (Member: Litigation Section); American Association for Justice. Mr. Smith has frequently lectured on corporate governance issues to professional groups of Fund trustees and investment advisors as well as to graduate and undergraduate business student groups, and has regularly served as a moot court judge for the A.B.A. and at New York University Law School. Mr. Smith has substantial experience in complex civil litigation, including class and derivative actions, tender offer, merger, and takeover litigation. Mr. Smith is rated "AV" by Martindale Hubble and, since its inception in 2006, has been selected as among the top 5% of attorneys in the New York City metropolitan area chosen to be included in the Super Lawyers Magazine.

ROBERT ALTCHILER: *Education:* State University of New York at Albany (B.S., Finance/Marketing, 1985); The George Washington University (JD, 1988).

Robert's practice focuses primarily in the areas of White Collar criminal investigations, corporate investigations, entertainment, litigation, and general corporate counseling. Robert's diverse practice had developed as a result of his extensive international business contacts and relationships in the entertainment world, in the United States and the United Kingdom. Robert had successfully defended cases and resolved matters spanning the most complex entertainment controversies, to virtually any imaginable complex criminal or corporate matter.

Robert has successfully defended individuals and corporations in a wide array of multifaceted investigations in areas such as mortgage fraud, securities fraud, tax fraud, prevailing wage, money laundering, Bank Secrecy Act, embezzlement, bank and wire fraud, theft of trade secrets, criminal copyright infringement, criminal anti-counterfeiting, Foreign Corrupt Practices Act (FCPA), International Traffic In Arms Regulations (ITAR), racketeering, continuing criminal enterprises, and circumvention of trade restrictions, among many others. Robert also specializes in non-criminal investigations relating to various topics, including finding money allegedly being hidden by individuals, ascertaining the identities of individuals actually involved in corporate matters (when a client believes those identities are being concealed), and



running undercover “sting” operations as part of civil and commercial litigation support.

Because of Robert's significant business contacts in the United Kingdom, and the United States, he is frequently called upon to assist clients in various forms of complex business matters, both domestic and international. Robert's clients look to him as a trusted, experienced, creative, fearless hand who has demonstrated an ability to navigate even the most difficult and desperate situations. Robert prides himself on his ability to develop aggressive creative winning strategies for his clients even when the clients believe their circumstances are hopeless.

In 1988, Robert started his legal career as a prosecutor in New York City, where he prosecuted a wide array of cases and headed up a variety of different investigations. As a prosecutor, he presented hundreds of cases to grand juries, and ran numerous investigations. In addition to trying several dozen serious cases, ranging from murder to fraud to narcotics violations, he also ran wiretap and grand jury investigations involving money laundering and other financial crimes, as well as a wiretap and investigation concerning a plot to assassinate a prominent NYC judge. Upon leaving the government, Robert began focusing on defending individuals and entities under government investigation and/or indictment. Early in private practice he defended numerous law enforcement officers under administrative and criminal scrutiny, in courts and administrative proceedings. His particular area of practice permitted Robert to further develop and strengthen his already close ties to law enforcement.

In addition to his practice, Robert has been an adjunct law professor at Pace University Law School since 1998, where he teaches trial advocacy, a course designed to teach law students how to be trial lawyers via a curriculum including the mock trial of a murder case. Robert is also a faculty member of the EATS Program run by Stetson Law School, an acclaimed program designed to teach law school trial advocacy professors creative and innovative pedagogical methods. Robert has also been a featured participant and lecturer at Cardozo Law School's acclaimed Intensive Trial Advocacy Program in New York City, and has also taught at Yale Law School. Robert's trial advocacy teaching requires him to constantly integrate new developments in communication theory and trial techniques into his teaching methods. Given the changing way students (and prospective jurors) communicate and digest information (via Twitter, Instagram and Snapchat, for example) Robert is a recognized leader at integrating neuroscientific principles into his teaching. By actively participating in the weekly trials his students



conduct in class, and by frequently demonstrating methods, he is able to continually adapt his own communication skills and integrate cutting-edge developments into his own practice.

Robert is Special Advisor to the Dean of the Mt. Sinai School of Nursing, an adjunct professor at the school, a member of the Board of Trustees and the Chair of the Board of Trustees Nominations Committee. In his role as Special Advisor, Robert is tasked with counselling the Dean on innovative pedagogical methods designed to facilitate teaching Narrative Care and other topics. Robert instructs faculty on various topics, and will be teaching courses at the school in the immediate future.

Robert graduated from the George Washington University Law School (formerly, The National Law Center), where he began his career as an advocate by conducting administrative hearings and trials during his second and third year. Prior to GW, Robert graduated with honors from the Business School at the State University of New York at Albany in 1985. He is also a 1996 graduate of the National Criminal Defense College and a 1997 graduate of the National Institute for Trial Advocacy's Harvard Teacher Training Program. Robert has also made dozens of television appearances on Fox, Court TV, and Tru TV, providing legal commentary on televised trials, and participating in discussions related to pertinent issues.

JENNY YOUNG DU PONT: *admitted:* New York; Massachusetts; District of Columbia; U.S. Supreme Court. *Education:* Princeton University (A.B. *cum laude*); Georgetown University Law Center/School of Foreign Service (J.D./M.S.F.S. *magna cum laude*); Order of the Coif; *Georgetown Law Journal*, Notes and Comments Editor.

Ms. du Pont has extensive experience representing domestic and international companies ranging in size from small privately-held firms to large public companies in a variety of corporate, investment, banking, insurance, finance, and employment matters. Ms. du Pont began her legal career at two AmLaw 100 firms in Washington, D.C. and London, U.K. and a decade later moved into in-house counsel roles, first with Plymouth Rock Assurance Corporation in Boston, MA, and later with Millennium Management, LLC in New York. Ms. du Pont also advises and presents on issues related to family businesses, family offices, and managing wealth transfer across generations.

In addition to her legal experience, Ms. du Pont has significant experience in the non-profit sector. Ms. du Pont was President and CEO of The Garden Conservancy in Cold



Spring, New York and Executive Director of Miracle House of New York, Inc., and has acted a legal and strategic advisor to a variety of for profit and non-profit entities in New York. For more than 20 years, Ms. du Pont also has been a director, trustee, and officer for a broad range of educational, cultural, scientific, and service non-profit entities. Ms. du Pont served for a number of years as a Trustee of Phillips Exeter Academy, in Exeter, NH, and as a member and Vice Chair of the Warrant Committee for the Town of Dover in Massachusetts. She is currently a Director of the American Friends of the British Museum and of the American Patrons of the National Galleries and Library of Scotland, serves as an Advisory Council member for the Untermyer Gardens Conservancy in Yonkers, NY and the Sing Sing Prison Museum Master Narrative Project, in Ossining, NY, and is chair of the Advisory Council for the Conservation Law Foundation in Boston, MA.

KATE MCGUIRE: *admitted:* New York; U.S. District Courts for the Southern and Eastern Districts of New York. *Education:* University of California at Santa Cruz (B.A. 1995), Georgetown University Law Center (J.D., 1998); Member: *Georgetown Immigration Law Journal*.

Ms. McGuire has extensive experience prosecuting complex litigation. Her work encompasses consumer and data protection class actions, securities class and derivative shareholder cases and nationwide antitrust suits.

She is a member of the Firm's Consumer Protection practice group and, in that context, has worked intensively to protect classes of consumers under a range of state and federal laws. Recently, she served as a member of the co-lead counsel team in *Simerlein et al. v. Toyota Motor Corporation et al.*, 3:17-CV-01021-VAB (D. Conn.), representing more than a million owners of Sienna minivans in litigation that settled for class-wide benefits valued at between \$30 and \$40 million. Presently, she serves on a team representing plaintiffs in multi-district litigation against Fisher-Price and Mattel, relating to Rock 'n Play infant sleepers which are alleged to be dangerous and misleadingly marketed. She has also served as a member of the firm's lead or co-counsel teams in other consumer protection cases, including litigation based upon allegations of misrepresentations and omissions concerning the purported safety of electronic cigarettes.

Ms. McGuire has also represented plaintiffs with respect to the protection of their civil rights. For example, she represented a blind plaintiff in a suit under the Americans with Disability Act against a major trading online trading company, and represented a



group of minority business owners in federal civil rights litigation concerning disparate treatment which settled for significant governance therapeutics.

CARL MALMSTROM: *admitted:* Illinois; Minnesota; United States Court of Appeals for the Seventh Circuit; Northern and Southern Districts of Illinois; Northern District of Indiana; District of Minnesota; Eastern District of Missouri; Western District of New York. *Education:* University of Chicago (A.B., Biological Sciences, 1999; A.M., Social Sciences, 2001); The University of Hawai'i at Manoa (M.A., Anthropology, 2004); Loyola University Chicago School of Law (J.D., 2007). Prior to joining the firm, Mr. Malmstrom worked for the City of Chicago Department of Law in the Municipal Prosecutions Division; he is a member of the Chicago Bar Association. Mr. Malmstrom has substantial experience litigating complex class actions in several practice areas, including antitrust, consumer fraud, and data security. Representative cases in which he has represented plaintiffs include *Bokelman et al. v. FCH Enterprises, Inc.*, Case No. 1:18-cv-209 (D. Haw.), involving customers of Zippy's Restaurants in Hawaii whose personal data was stolen by hackers, *In re: Experian Data Breach Litigation*, Case No. 8:15-cv-1592 (C.D. Cal.); *Freeman-Hargis v. Taxi Affiliation Services, LLC*, Case No. 2016-CH-02519 (Cir. Ct. Cook Cty.), involving customers of several taxi services in Chicago who were unlawfully charged fees for using credit cards in taxis.

ASSOCIATES

PATRICK DONOVAN: *admitted:* New York; U.S. District Courts for the Southern and Eastern Districts of New York; United States Court of Appeals for the Second and Fourth Circuits. *Education:* Iona College (B.A., Business Management, 2007); St. John's University School of Law (J.D. 2011). Mr. Donovan's primary areas of focus are securities, derivative and M&A litigation.

LILLIAN GRINNELL: *admitted:* New York; United States District Courts for the Southern and Eastern Districts of New York; United States Court of Appeals for the Federal Circuit. *Education:* Bryn Mawr College (A.B., Philosophy and Political Science, 2016); New York University Law School (J.D. 2019). Prior to joining Wolf Haldenstein, Ms. Grinnell served as an Excelsior Service Fellow with the Consumer Protection and Financial Enforcement Division of the NYS Department of Financial Services.

ROURKE DONAHUE: *admitted:* New York. *Education:* University of North Carolina at Chapel Hill (B.A., Philosophy, 2017), Honors Program; Georgetown University Law Center (J.D. 2020). Prior to joining the firm, Mr. Donahue clerked for the Hon. Timothy P. Lydon, Presiding Judge of Equity, at the New Jersey Superior Court in Trenton, New



Jersey. In law school, Mr. Donahue interned at the Department of Justice's Civil Division, Christie's Auction House, and Manhattan Legal Services and served as the Administrative Editor of the *Georgetown Environmental Law Review*.

ALEX J. TRAMONTANO: *admitted:* California; U.S. District Courts for the Southern, Central and Eastern Districts of California; United States Court of Appeals for the Ninth Circuit. *Education:* University of Massachusetts, Amherst (B.A., Political Science and Legal Studies, *cum laude*, 2008); California Western School of Law (J.D., 2011). Mr. Tramontano's primary areas of focus are securities, anti-trust, unfair and deceptive practices, civil rights and data breach related class actions. Prior to joining Wolf Haldenstein, Mr. Tramontano worked as an associate at an AmLaw 100 firm, as well as other regional law firms in southern California. Mr. Tramontano has over a decade of litigation experience defending and prosecuting complex actions on behalf of individuals and businesses in both Federal and State courts. Mr. Tramontano began his legal career as a Police Cadet at the University of Massachusetts Amherst. He went on to law school and joined the San Diego District Attorney's Office as a Certified Legal Intern before transitioning to private practice.

FERDEZA ZEKIRI: *admitted:* California; U.S. District Court for the Central District of California. *Education:* Gonzaga University (B.A., Criminal Justice and Psychology, 2017); University of California, Los Angeles School of Law (J.D. 2020). In law school, Ms. Zekiri served as a Managing Editor of the UCLA School of *Law's Journal of Environmental Law & Policy*, and worked as a research assistant for the UCLA Law Library. Prior to joining Wolf Haldenstein, Ms. Zekiri was an associate attorney at Talkov Law where she primarily focused on real estate litigation.

PARAPROFESSIONALS

GREGORY STONE: *Education:* University of Pennsylvania (B.S., Economics, 1979); University of California, Los Angeles (MBA, 1983). Mr. Stone is the Firm's Director of Case and Financial Analysis. He assists partners and associates in identifying and researching potential federal class action securities, derivative litigation and merger & acquisition (M&A) litigation. Mr. Stone has worked with leading securities class action firms in an analytical and investigative role for over 18 year throughout the United States, and has an extensive professional background in the accounting and investment professions. He plays a key role in new case development, including performing investigations into potential securities fraud class actions, derivative and other



corporate governance related actions. By using a broad spectrum of financial news and legal industry research tools, Mr. Stone analyzes information that helps identify and support the theories behind the firm's litigation efforts.

NON-DISCRIMINATION POLICIES

Wolf Haldenstein does not discriminate or tolerate harassment against any employee or applicant because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or alienage or citizenship status and designs its hiring practices to ensure that minority group members and women are afforded equal employment opportunities without discrimination. The Firm is in compliance with all applicable Federal, State, County, and City equal employment opportunity laws.

Wolf Haldenstein is proud of its long history of support for the rights of, and employment opportunities for, women, the disadvantaged, and minority group persons, including the participation in civil rights and voter registration activities in the South in the early 1960s by partners of the Firm; the part-time employment of disadvantaged youth through various public school programs; the varied *pro bono* activities performed by many of the Firm's lawyers; the employment of many women and minority group persons in various capacities at the Firm, including at the partner level; the hiring of ex-offenders in supported job training programs; and the use of minority and women-owned businesses to provide services and supplies to the Firm.

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EXHIBIT 2

1
2 **UNITED STATES DISTRICT COURT**
3 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

4
5 **IN RE: PACKAGED SEAFOOD**
6 **PRODUCTS ANTITRUST**
7 **LITIGATION**

Case No. 15-MD-2670 DMS (MSB)
MDL No. 2670

8 This document relates to:
9
10 Direct Purchaser Plaintiff Class
11 End Purchaser Plaintiff Class
12
13

**STATEMENT IN SUPPORT OF
SETTLEMENT AGREEMENTS
BETWEEN DIRECT
PURCHASER PLAINTIFFS
AND END PURCHASER
PLAINTIFFS AND STARKIST
CO., DONGWON INDUSTRIES
CO., LTD., LION CAPITAL
LLP, AND LION CAPITAL
(AMERICAS), INC.**

1 In support of the settlement agreements between the certified classes of Direct
2 Purchaser Plaintiffs (“DPPs”) and End Purchaser Plaintiffs (“EPPs”) on the one hand
3 and Lion Capital LLP and Lion Capital (Americas), Inc. (collectively “Lion
4 Defendants¹”) and StarKist Co. and Dongwon Industries Co., Ltd. (collectively
5 “StarKist and DWI Defendants”) on the other hand,² I, Magistrate Judge Michael S.
6 Berg, state as follows:

7 1. One of my responsibilities on the bench is to oversee settlement
8 conferences in civil matters. I have overseen many settlement conferences, involving
9 many different types of legal disputes, and involving many different counsel. This
10 antitrust litigation (the “Action”) has turned out to be one of the most time-consuming
11 and interesting settlements that I have mediated to date. The legal issues involved in
12 this multidistrict antitrust litigation include the interplay of state and federal law, and
13 the settlement dynamic involved a complex interplay of multiple tracks of plaintiffs,
14 financial limitations, collectability of judgments in foreign nations, and the reality
15 that StarKist pled guilty to an antitrust violation, while its affiliated or parent
16 company, Dongwon Industries Co., Ltd., did not. The quality of the attorneys, and
17 their advocacy, was excellent.

18 2. DPPs and EPPs together participated in a mediation session with the Lion
19 Defendants before me on August 7, 2023. *See* ECF No. 3101. No settlement was
20 reached at that time, but I was able to assess the parties’ positions and I encouraged
21 them to keep an open mind to settlement as the case progressed.

22 3. Over time, I have held numerous settlement conferences with the various
23 parties in this Action, including settlement conferences between EPPs and the
24 StarKist and DWI Defendants on October 4, 2023, April 25, 2024, May 22, 2024,

25 ¹ Big Catch Cayman, L.P., a former Lion Defendant, was previously dismissed with prejudice
26 by the Court.

27 ² This statement incorporates the definitions of Direct Purchaser Plaintiffs, Settlement Class,
28 Defendants, and Settlement Amount from Direct Purchaser Plaintiffs’ Motion for Preliminary
Approval.

1 May 23, 2024, and May 29, 2024; between DPPs and StarKist on May 29, 2024 and
2 June 3, 2024; and between DPPs and EPPs together with the Lion Defendants on
3 August 22, 2023 and June 17, 2024. *See* ECF Nos. 3106, 3125, 3176, 3243, 3245,
4 3248, 3249, 3256, 3267.

5 4. On June 3, 2024, DPPs and the StarKist and DWI Defendants reached an
6 agreement in principle to settle the case during a mediation session that I oversaw.
7 Two agreements were reached during this session. First, with respect to the
8 Settlement Class, the parties agreed to resolve the claims in exchange for
9 \$58,750,000 in cash and product, comprising \$32,650,000 in cash and \$26,100,000
10 in product. The DPP Class will receive product over a three-year period. In exchange,
11 the DPP Class will release all claims that they did assert, or could have asserted, in
12 this Action. I find this to be an excellent settlement based on my understanding of
13 the legal and factual issues involved in the case, the StarKist and DWI Defendants'
14 financial situation, the difficulty of collecting a judgment in the courts of a foreign
15 nation, the claims of the DPP Class, the damages exposure involved, and the practical
16 benefits of settling the matter rather than continuing to litigate. The parties and their
17 counsel were unusually well prepared to present their positions given the proximity
18 of the trial, the nearly nine years of work that they had undertaken to prepare for it,
19 and the amount in dispute.

20 5. On June 3, 2024, EPPs and the StarKist and DWI Defendants also
21 reached an agreement in principle to settle the case during a mediation session that I
22 oversaw. The parties agreed to resolve the claims in exchange for \$130,000,000 in
23 cash. The EPP Class will receive payments over an 18-month period beginning with
24 the date of preliminary approval of the settlement. In exchange, the EPP Class will
25 release all claims that they did assert, or could have asserted, in this Action. I find
26 this to be an excellent settlement based on my understanding of the legal and factual
27 issues involved in the case, the StarKist and DWI Defendants' financial situation, the
28 legal and factual difficulties caused by bringing state antitrust and consumer law

1 claims under the laws of multiple states, the difficulty of collecting a judgment in the
2 courts of a foreign nation, the claims of the EPP Class, the damages exposure
3 involved, and the practical benefits of settling the matter rather than continuing to
4 litigate. The parties and their counsel were unusually well prepared to present their
5 positions given the proximity of the trial, the nearly nine years of work that they had
6 undertaken to prepare for it, and the amount in dispute.

7 6. In addition, the StarKist and DWI Defendants ultimately recognized the
8 benefits that counsel for the DPP and EPP Classes provided to the parties over the
9 course of the litigation. This included coordinating the various tracks of plaintiffs in
10 order to streamline the litigation and the settlement process, and I observed these
11 efforts firsthand over the past year as well. 15 U.S.C. § 15(a) provides a prevailing
12 plaintiff with a statutory right to recover attorneys' fees and costs. Separately, counsel
13 for the DPPs previously moved for a set-aside order recognizing their work on behalf
14 of parties that have since opted out of the DPP class. *See* ECF No. 2446. The StarKist
15 and DWI Defendants have separately agreed to compensate DPPs' Counsel at
16 Hausfeld LLP based on a percentage of the settlements that the StarKist Defendants
17 had achieved with the various Direct Action Plaintiffs that had opted-out of the DPP
18 Class and that had settled their claims separately. I oversaw these negotiations, and I
19 find them to be an appropriate and fair resolution of DPPs' Counsel's demands
20 pursuant to 15 U.S.C. § 15(a).

21 7. On June 17, 2024, DPPs and EPPs reached an agreement in principle
22 with the Lion Defendants to resolve the claims made in the Action during a mediation
23 session over which I presided. Counsel for the parties were again exceptionally well
24 prepared to conduct the mediation, which I understand followed similar mediation
25 attempts between the Lion Defendants, DPPs, and EPPs before two skilled, private
26 mediators, the Hon. Daniel Weinstein (Ret.) and Amb. David Carden (Ret.) of JAMS.
27 Principals for the Lion Defendants, including Lyndon Lea and Graham Tester, were
28 present and active during the mediation session over which I presided, as well as

1 during prior mediations. During the mediation, I fully evaluated Lion’s financial
2 condition, as did counsel for DPPs and EPPs. Proffers were made directly by the Lion
3 Defendants of their financial performance, and the audited financial statements of the
4 company were reviewed. Additional discussions about the financial capacity of the
5 Lion Defendants and their principal members were had. The nine-hour mediation
6 session concluded with an agreement that the Lion Defendants pay \$6 million to the
7 DPP Class and \$6 million to the EPP Class to resolve the claims against them. I was
8 fully involved in these settlement discussions, and I find the settlements to be an
9 excellent result for the parties involved, given the financial realities and serious
10 questions about the collectability of any judgment that might be obtained.

11 8. Over the course of the last year, I have found that Class Counsel for DPPs
12 and EPPs have been fully prepared to either litigate this case to conclusion, or to
13 settle it on fair and reasonable terms. I have evaluated their written and oral advocacy
14 and find it to be excellent. In addition, I have personally noted their ability to work
15 together constructively and with other tracks of plaintiffs’ counsel, and with counsel
16 for the various Defendants to find helpful ways forward within the complex
17 framework of direct and indirect recoveries under state and federal law, and in
18 situations where some or all direct purchaser class members have opted out of the
19 DPP Class as to one defendant or another. Under the unusual circumstances of this
20 case, it is my recommendation that the District Court consider an upward departure
21 from the presumptively reasonable benchmark fee of 25% in common fund cases.
22 *See Asner v. SAG-AFTRA Health Fund*, No. 220CV10914, 2023 WL 6984582, at *12
23 (C.D. Cal. Oct. 19, 2023), *reconsideration denied*, No. 220CV10914, 2023 WL
24 8529996 (C.D. Cal. Dec. 7, 2023) (“In the Ninth Circuit, 25% of a common fund is
25 considered a presumptively reasonable amount of attorneys’ fees when using the
26 percentage-of-recovery method.”). Many antitrust courts, in this circuit and others,
27 provide for an upward departure due to the inherent complexity of the legal issues
28 involved and the risk assumed by the attorneys’ involved. *See In re Lidoderm*

1 *Antitrust Litig.*, MDL No. 2521, 2018 WL 4620695, at *4 (N.D. Cal. Sept. 20, 2018)
2 (“As to the fifth factor, a fee award of one-third is within the range of awards in this
3 Circuit.”); *see also Larsen v. Trader Joe’s, Inc.*, No. 11-cv-05188, 2014 WL
4 3404531, at *9 (N.D. Cal. July 11, 2014) (citing multiple cases awarding fees of 32%
5 or greater); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming
6 award of 33%). For cases outside of this circuit, *see, e.g., In re Pork Antitrust Litig.*,
7 No. 18-1776, 2022 WL 4238416, at *7 (D. Minn. Sept. 14, 2022) (awarding 33% of
8 settlement fund as attorneys’ fees in consumer indirect purchaser action); *In re*
9 *Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, No. 14-md-02542, 2021
10 WL 2328431, at *1 (S.D.N.Y. June 7, 2021) (awarding 33 1/3% of a \$31 million
11 settlement fund as attorneys’ fees in indirect purchaser action); *In re Aggrenox*
12 *Antitrust Litig.*, No. 3:18-MD-00850, 2018 WL 10705542, at *5 (D. Conn. July 19,
13 2018) (awarding 33 1/3% of a settlement fund as attorneys’ fees in indirect purchaser
14 action); *In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 103 (E.D. Pa. 2013)
15 (“*Flonase*”) (awarding 33 1/3% of a settlement fund as attorneys’ fees indirect
16 action).

16 9. “[A] one-third fee award is standard in complex antitrust cases[,]”
17 *Flonase*, 291 F.R.D. at 104, and from my perspective as the mediator, Hausfeld LLP
18 achieved exceptional results for the class, and was burdened by litigating the Action
19 for nearly nine years. *See In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934,
20 954-55 (9th Cir. 2015) (explaining that the factors for assessing a request for
21 attorneys’ fees that was calculated using the percentage-of-recovery method are “the
22 extent to which class counsel achieved exceptional results for the class, whether the
23 case was risky for class counsel, whether counsel’s performance generated benefits
24 beyond the cash settlement fund, the market rate for the particular field of law (in
25 some circumstances), the burdens class counsel experienced while litigating the case
26 (e.g., cost, duration, foregoing other work), and whether the case was handled on a
27 contingency basis”). Here, an award at this level is warranted in light of the

1 complexity of the issues that have been litigated both in the District Court, where
2 approximately thirteen motions to dismiss were briefed and resolved, motions for
3 reconsideration and/or judgment under Fed. R. Civ. Proc. 54(b) were briefed and
4 decided favorably to plaintiffs, and approximately seventeen motions for summary
5 judgment were resolved in a manner that was largely favorable to the DPP Class.
6 Moreover, it is my view that DPP and EPP Class Counsel were fully prepared to try
7 this case prior to settlement, and that they had done the work necessary to maximize
8 the chances of success for the DPP and EPP Classes had it been necessary to litigate
9 it to conclusion. Finally, complex legal issues concerning class certification were
10 litigated in this Court and in the Ninth Circuit. In fact, DPP and EPP Class Counsel
11 obtained an *en banc* decision from the Ninth Circuit that clarifies the standard for
12 class certification in the context of antitrust cases, which is widely cited in this Circuit
13 and others. For all of these reasons, an award of 33.3% of the DPP Settlement
14 Amount is reasonable here.

15 10. Moreover, as to the separate payment of fees to DPP Class Counsel at
16 Hausfeld LLP in connection with claims that StarKist resolved with Direct Action
17 Plaintiffs that opted out of the DPP class, this case involved work by Class Counsel
18 beyond the common fund, and was undertaken within a statutory framework that
19 provides for the payment of fees to a successful plaintiff. I find this arms'-length
20 separate payment to be reasonable under the circumstances of this case.

21 Date: July 12, 2024

22 Respectfully submitted,

23 

24 Honorable Michael S. Berg
25 United States Magistrate Judge