

Jonathan W. Cuneo
CUNEO GILBERT & LADUCA, LLP
4725 Wisconsin Ave. NW, Suite 200
Washington, DC 20016
Tel: 202.789.3960
jonc@cuneolaw.com

*Counsel for Commercial Food
Preparer Plaintiffs and Class*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PACKAGED SEAFOOD
PRODUCTS ANTITRUST LITIGATION

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

This Document Relates To:

All Commercial Food Preparer Plaintiff
Actions

**DECLARATION OF
JONATHAN W. CUNEO IN
SUPPORT OF COMMERCIAL
FOOD PREPARER
PLAINTIFFS' MOTION**

1 I, Jonathan W. Cuneo, declare as follows:

2 1. I am the founding partner of Cuneo Gilbert & LaDuca, LLP (“CGL”).
3 I founded the predecessor firm in 1986 and have continuously been in private
4 practice ever since. I am the court-appointed interim lead counsel for the
5 Commercial Food Preparer Plaintiffs (“Plaintiffs”) and putative Class in this case. I
6 and my team have reviewed the Court’s thoughtful order of January 17, 2020 (Dkt.
7 2263). We studied the Court’s criticisms, taken them to heart and very much
8 appreciate the opportunity to improve both the agreement and our presentation and
9 to amplify the record in support of the proposed settlement. I make this declaration
10 based on my personal knowledge and, if called, could testify to the following
11 information.

12 2. Along with Blaine Finley, I have led a group of law firms across the
13 country prosecuting the Commercial Food Preparer Plaintiffs’ claims in this Court.
14 Our team has devoted years of effort to this endeavor, expending over \$10 million
15 in attorney time and over \$2 million in out-of-pocket expenses. It is imperative that
16 I clarify that at no time did any proposed settlement contemplate that the majority of
17 proceeds would go to counsel fees, notice costs, and incentive awards. The
18 settlement proposes a \$3 million hard cap on the combined payment of past and
19 future expenses, notice and settlement and claims administration costs, legal fees,
20 and named plaintiff incentive awards; \$3.5 million would be distributed to the class.
21 Therefore, any attorneys’ fees that would be left over under the \$3 million would be
22 pennies on the dollar. It is likely that Plaintiffs will ask the Court to set aside any
23 relatively small remaining balance of the \$3 million Fee Award for use in paying
24 future expenses in this litigation. In addition, any grant of fees or expenses would be
25 reviewed at or after the time of final approval, based on a formal petition.

26 3. **The Proposed Settlement:** Plaintiffs’ counsel have investigated the
27 facts and laws at stake in the case and concluded that resolving the claims against
28 these Defendants, according to the terms set forth below, is fair, adequate,

1 reasonable, and in the best interests of Plaintiffs and the proposed class. Negotiations
2 in this case were conducted in good faith, at arm’s length, and in a fully adversarial
3 posture. Although the *Packaged Seafood* litigation has been pending since 2015,
4 settlement negotiations commenced in earnest only in January 2019, after the Court
5 had denied motions to dismiss, received full briefing, and heard argument on class
6 certification. At that time, settlement negotiations consisted of in-person meetings
7 between counsel, multiple phone calls, and email correspondence—all adversarial,
8 all conducted at arm’s length, in good faith, over a period of time, taking into account
9 our professional judgment about the risks and benefits of future litigation. At the
10 same time, there was civility and no posturing, and the parties were able to reach an
11 agreement in principle within a reasonable period of time. Many of the direct-action
12 purchasers reached settlements with the settling defendants in similar fashion and at
13 around the same time. Comparable settlements between COSI and the other putative
14 classes followed.

15 4. Following the Court’s Order denying preliminary approval (Dkt. 2263),
16 I met with counsel for COSI and TUG in person and telephonically about settling
17 the case again, also at arm’s length.

18 5. There are no undisclosed side agreements relating to this settlement.

19 6. **Escrow Account and Investment Loss:** This provision is standard in
20 my experience and has been approved by many courts. During the financial crisis
21 starting in 2008, I was the custodian of a settlement fund of approximately \$200
22 million. At that time, I extensively studied the safety of different banking
23 arrangements, and discussed safety issues with many bankers, academic experts, and
24 banking lawyers. Based on that experience, I have invested the settlement funds in
25 a highly conservative fashion. Settlement accounts are presently invested in an
26 account insured from loss by the FDIC by up to \$250,000. Amounts of the
27 settlement above \$250,000 are deposited into an ICS sweep account with other
28 banks, such that that those additional funds also receive FDIC protection.

