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**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:  
The Commercial Food Preparer Actions

**ORDER GRANTING  
COMMERCIAL FOOD  
PREPARER PLAINTIFFS'  
MOTION FOR COSTS IN  
CONJUNCTION WITH COSI  
SETTLEMENT**

1 **I. INTRODUCTION**

2 Pending before the Court is the Commercial Food Preparer Plaintiffs  
3 (“CFPs”) motion for costs and expenses in conjunction with final approval of their  
4 “ice-breaker” settlement with Defendant Chicken of the Sea International (“COSI”)  
5 and its parent company, Defendant Thai Union Group PCL (“TUG”) (collectively  
6 “COSI”). In a separate motion pending before the Court, the CFPs ask the Court for  
7 final approval of the COSI Settlement.

8 In accordance with the Court’s Preliminary Approval Order dated January 26,  
9 2022 (ECF No. 2735), the Court held a Final Approval Hearing on August 12, 2022.  
10 After a robust notice plan to the settlement class members advising them of the  
11 August 12, 2022 Final Approval Hearing Date and of their rights to object, no  
12 objections were received by the parties as to the settlement or as to the requested  
13 costs and expenses.<sup>1</sup> See ECF No. 2841 (Notice Regarding Dissemination of  
14 Settlement Notice with Accompanying Declaration of Jeanne Finegan), Cuneo  
15 Decl., ¶ 5. [No objectors appeared at the August 12, 2022 hearing.]

16 As to cost and expenses, the Court notes that the Class Notice advised COSI  
17 Settlement Class Members a portion of the Settlement Fund would be used by the  
18 Claims Administrator to administer notice and claims and detailed the specific cap  
19 of \$3,000,000 for the sum of past expense reimbursement, notice and settlement  
20 administration costs, and class representative service awards from the settlement  
21 fund. See ECF No. 2841-1, Ex. A. Of significance, with regard to the litigation  
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27 <sup>1</sup> Although Class Counsel does not request an award of attorneys’ fees out of the  
28 Settlement Fund, Class Counsel reserves the right to do so out of any recoveries from  
the non-settling Defendants.

1 expenses requested, Class Counsel does not seek an award of attorney fees, but only  
2 requests reasonable out of pocket litigation costs.<sup>2</sup>

3 The key monetary terms of the Settlement are as follows: (1) the settlement  
4 amount is \$6,500,0000; and (2) up to \$500,000 out of the settlement amount shall  
5 be used to cover the reasonable costs of Class and Settlement Notices and  
6 administration for distribution of the Settlement

7 This “icebreaker” settlement was the first settlement between CFPs and any  
8 Defendant. Although the parties finalized this early settlement before the District  
9 Court issued its decision certifying the Class, preliminary approval of this partial  
10 settlement was delayed until January 26, 2022.<sup>3</sup> The delay was due, in part, to the  
11 Defendants’ appeal of the Court’s Class Certification Opinion (ECF No. 1931). The  
12 Class Certification Opinion’s appellate journey in the Ninth Circuit ended with an  
13 April 8, 2022 *en banc* decision of the Ninth Circuit upholding class certification. *See*  
14 ECF No. 2828 (Order re Mandate Hearing). While claims remain against StarKist  
15 Co. and Bumble Bee Foods LLC’s parent companies (“Non-settling Defendants”),  
16 this initial settlement provides substantial relief including prosecution cooperation  
17 by the COSI Defendants to assist the CFPs in pursuing the other Non-settling  
18 Defendants.

19 In light of this substantial initial \$6.5 million settlement, and for the reasons  
20 discussed below, the Court will approve certain specific costs and expenses, along  
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24 <sup>2</sup> The Class Notice advised the settlement class members that Class Counsel reserves  
25 the right to request an award of attorney fees out of any recoveries from the Non-  
26 settling Defendants and to base that request upon the benefits conferred by the COSI  
Settlement. ECF 2827, Ex. F (Class Notice) at 48, 52.

27 <sup>3</sup> *See* ECF No. 1931 (July 30, 2019 Class Certification Opinion) and ECF No. 2735  
28 (January 26, 2022 Order Granting Commercial Food Preparer Plaintiffs’ Renewed  
Motion for Preliminary Approval of Partial Settlement).

1 with settlement class representative service awards.

2 First, to cover the past and expected future costs of class notice and  
3 administration, the Court approves the request to pay up to \$361,000 as past and  
4 future reasonable and necessary costs for notice and claims administration given the  
5 depth of the reach of the robust notice plan undertaken by the Claims Administrator.  
6 *See* ECF No. 2827 (Notice Declaration by Claims Administrator).

7 Second, the Court approves an Expense Award of \$2,507,500.25 to reimburse  
8 Class Counsel for specific, reasonable, and necessary out of pocket litigation costs  
9 that they have incurred.

10 Finally, the Court approves settlement class representative service awards in  
11 the amount of \$5,000 per settlement class representative, totaling \$90,000, in  
12 recognition of the service performed by the settlement class members in prosecuting  
13 this action.

14 **II. DISCUSSION**

15 Under FRCP Rule 23(h), “[i]n a certified class action, the court may award  
16 reasonable attorney’s fees and nontaxable costs that are authorized by law or the  
17 parties’ agreement.” This rule is equitable in nature and “rests on the perception that  
18 persons who obtain the benefit of a lawsuit without contributing to its cost are  
19 unjustly enriched at the successful litigant’s expense.” *Boeing Co. v. Van Gemert*,  
20 444 U.S. 472, 478 (1980). Here, Class Counsel is not requesting an award of  
21 attorneys’ fee. The Court finds when considering an equitable analysis based on the  
22 financial burden incurred by plaintiffs in achieving a substantial financial benefit to  
23 the settlement class (\$6,500,000) after surviving multiple motions to dismiss and  
24 completing substantive and class discovery, an award of reasonable costs is  
25 appropriate.

26 As an initial crosscheck to the reasonableness of Class Counsel’s request for  
27 expense reimbursement of \$2,507,500.25 to, the Court considers the DPPs’ request  
28 for out of pocket costs of \$4,410,636.71. *See* Memorandum of Points and

1 Authorities in Support of Direct Purchaser Plaintiffs’ Motion for Attorneys’ Fees  
2 and Costs and Service Awards for the Class Representatives in Conjunction with  
3 COSI/TUG Settlement, ECF No. 2785-1 at 19-20. The DPPs’ expense request arises  
4 out of a contested fee dispute decided by a well-respected arbitrator and includes an  
5 award of similar expert costs as well as litigation expenses. The comparison is  
6 appropriate because the various MDL tracks (including the classes) coordinated and  
7 equally shared litigation expenses for document hosting, translations, and discovery  
8 costs to create efficiencies and engaged similar econometric experts to model the  
9 relevant market for their respective class. As a result, the Court finds that the  
10 contested DPP expense request is good crosscheck on the reasonableness and  
11 fairness of Settlement Class Counsel’s request.

12 **A. Notice and Administration Costs Are Reasonable**

13 The claims administrator expended substantial efforts and incurred  
14 significant expenses in providing a robust and expansive class notice. Ferruzzi  
15 Decl., ¶ 4. Kroll has delivered over 55 million display, search, and social media  
16 impressions *See* 2841-1, Second Supplemental Notice Decl., ¶¶ 5-29. The Court  
17 finds that these are standard expenses incurred by a claims administrator in creating  
18 and implementing a robust notice plan in a complex action with antitrust and other  
19 claims. After reviewing these submissions, the Court finds that the requested costs  
20 of class notice and administration are reasonable in light of the robust notice plan  
21 reaching thousands of settlement class members and warrants approval by the Court  
22 under the terms of the Settlement Agreement.

23 **B. An Award of Class Counsel’s Reasonable Expenses Is Warranted**

24 “Reasonable costs and expenses incurred by an attorney who creates or  
25 preserves a common fund are reimbursed proportionately by those class members  
26 who benefit by the settlement.” *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp.  
27 1362, 1366 (N.D. Cal. 1995) (citation omitted). Such expense awards comport with  
28 the notion that the district court may “spread the costs of the litigation among the

1 recipients of the common benefit.” *Wininger v. SIMgmt. L.P.*, 301 F.3d 1115, 1121  
2 (9th Cir. 2002).

3 Class Counsel has incurred expenses of \$2,507,500.25 in the prosecution of  
4 this Action.<sup>4</sup> Cuneo Decl., ¶ 3,4, **Ex. 2**. Class Counsel provides a breakdown of  
5 the unreimbursed expenses necessarily incurred by counsel in this case. *Id.*, **Ex. 2**.  
6 For example, Class Counsel seeks reimbursement for expert fees (\$2,134,918.87)  
7 along with reimbursement various other expenditures, including filing fees, service  
8 of process, legal research, document storage, photocopying, court reporters, and  
9 translation fees. *Id.* The Court finds that these costs were reasonable and necessary  
10 to achieve this early ‘ice breaker’ settlement in a complex antitrust conspiracy  
11 between the three dominant manufacturers of packaged tuna. This figure represents  
12 the amount of specific costs incurred by Interim Lead and Class Counsel in  
13 prosecuting this action. Cuneo Decl., ¶¶ 3, 12, Ex. 2.

14 These are standard expenses incurred in prosecuting a civil lawsuit of this  
15 kind, and are the type of expenses typically billed by attorneys to paying clients in  
16 the marketplace. These expenses are in line with those approved by courts in this  
17 District and are all the type of expenses routinely charged to hourly paying clients.  
18 *See, e.g., In re LendingClub Sec. Litig.*, 2018 U.S. Dist. LEXIS 163500, at \*15  
19 (N.D. Cal. 2018) (expenses such as expert and consultant fees, court fees, travel and  
20 lodging costs, legal research fees, and copying expenses were reasonable and  
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24 <sup>4</sup> In March 2016, the Court appointed Cuneo Gilbert & LaDuca, LLP as interim lead  
25 counsel for the CFP Class. ECF No. 119. Interim lead counsels’ responsibilities  
26 included procedures to monitor expenditures, maintain expense reports, employ  
27 experts, and generally conduct all pre-trial, trial and post-trial proceedings, Class  
28 Counsel has affirmed to the Court they diligently performed these tasks and have  
incurred reasonable and necessary expenses in doing so.

1 recoverable); *In re High-Tech Empl. Antitrust Litig.*, 2015 U.S. Dist. LEXIS  
2 118052, at \*58-59 (N.D. Cal. 2015).

3 The Court finds an expense reimbursement award of \$2,507,500.25 to be fair  
4 and reasonable.

5 **C. Class Representative Service Awards are Warranted**

6 CFPs request and have noticed settlement class representative service awards  
7 in the amount of \$5,000 per settlement class representative, totaling \$90,000. *See*  
8 2841-1, Second Supplemental Notice Decl.

9 The incentive awards for the class representatives contemplated by the  
10 Settlement Agreement reflect the work they undertook on behalf of the Class. Class  
11 representatives have had an opportunity to review the complaints, communicated  
12 with counsel, reviewed their records, engaged in discovery, and many have sat for  
13 depositions. Cuneo Decl. at ¶ 26.

14 The requested Settlement Class Representative Awards are reasonable and  
15 warranted here. *See Lloyd v. Navy Fed. Credit Union*, 2019 WL 2269958, at \*15  
16 (S.D. Cal. May 28, 2019) (granting in party motion for final approval of settlement  
17 proposing \$5,000 service award) *see also In re Chrysler-Dodge-Jeep Ecodiesel®*  
18 *Mktg., Sales Pracs., & Prod. Liab. Litig.*, No. 17-MD-02777-EMC, 2019 WL  
19 2554232, at \*2 (N.D. Cal. May 3, 2019) (Granting motion for final approval of  
20 settlement proposing \$5,000 service award); *Harris v. Vector Mktg. Corp.*, No. C-  
21 08-5198 EMC, 2012 WL 381202, at \*7 (N.D. Cal. Feb. 6, 2012) (observing that “as  
22 a general matter, \$5,000 is a reasonable amount”). Therefore, the requested awards  
23 of \$5,000 per class member are granted.

24 **III. CONCLUSION**

25 The Court finds that the requested costs and expenses are reasonable,  
26 necessary, and fair and warrant final approval. The Court hereby ORDERS as  
27 follows:

- 28 (i) The costs of class notice and settlement administration of \$361,000 may

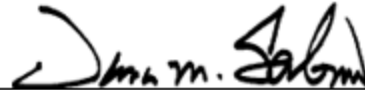
1 be paid;

2 (ii) Expense reimbursement in the amount of \$2,507,500.25 is approved to  
3 be paid; and

4 (iii) Class representative service awards in the amount of \$5,000 per  
5 settlement class representative, totaling \$90,000, may be paid.

6 **IT IS SO ORDERED.**

7 Dated: August 19, 2022



8  
9 Hon. Dana M. Sabraw, Chief Judge  
United States District Court

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