

Exhibit B

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PHILLIPS ADR

ARBITRATOR'S AWARD

CHICKEN OF THE SEA ATTORNEY
FEE DISPUTE ARBITRATION

1 The Arbitrator hereby issues this ruling regarding the dispute among the Direct Puchaser
2 Plaintiff (“DPP”) Class and Chicken of the Sea International (“COSI”) and Thai Union Group
3 (“TUG”) (collectively, “COSI Defendants”) with respect to an award of fees and costs to the DPPs,
4 pursuant to the Settlement Agreement (“SA”) among them, attached as Exhibit 6 to the initial
5 Declaration of Christopher Lebsock (“LD”) submitted in this proceeding.

6 **Background On The Underlying Litigation.** The underlying litigation (*In re Packaged*
7 *Seafood Prods. Antitrust Litig.*, No. 15-MD-2670 JLS (MDD) (S.D. Cal.) (“PSPs”)) was commenced
8 in August of 2015 after it was disclosed that the Antitrust Division of the United States Department
9 of Justice (“DOJ”) was investigating collusion among certain domestic producers of packaged tuna
10 products sold in the United States. It was prosecuted by the DPPs and two classes of indirect
11 purchasers, along with various members of the proposed DPP Class who filed individual suits; all of
12 these cases were coordinated before the Honorable Janis Sammartino as a multidistrict litigation in
13 the Southern District of California. The common Defendants were COSI, TUG, Bumble Bee Foods
14 LLC (“Bumble Bee”) (and its former foreign owner Lion Capital, as well as certain of the latter’s
15 affiliated entities), and StarKist Company (“StarKist”) (and its foreign owner Dongwon Industries).

16 COSI had made a leniency application to the DOJ and provided early cooperation in the form
17 of evidentiary proffers, production of documents, and other assistance to the various Plaintiffs in
18 *PSPs*. In doing so, it stated its intention was to receive the benefits available, pursuant to the Antitrust
19 Criminal Penalty Enhancement and Reform Act (Pub. L. No. 108-237, Tit. II, 118 Stat. 661 (June
20 22, 2004), extended by Pub. L. No. 111-190, 124 Stat. 275 (June 9, 2010), re-enacted, Pub. L. No.
21 116-169, 134 Stat. 709 (Oct. 1, 2020)) (“ACPERA”), in the form of detebling of any potential
22 damages under the antitrust laws and elimination of joint and several liability.

23 StarKist, Bumble Bee, and certain of their employees all pled guilty to criminal price-fixing
24 and were fined. Christopher Lischewski, the former CEO of Bumble Bee, was tried and found guilty
25 of price-fixing by a jury.

26 In 2019, Bumble Bee declared bankruptcy; its assets have been sold to a third party, and Lion
27 Capital, its former UK parent, was dismissed in *PSPs*, although a motion for reconsideration of that
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1 ruling is still pending. There is also no guarantee that StarKist will be able to satisfy any judgment
2 in this matter, and it has represented that it would be unable to do so during its criminal sentencing
3 if the Court ordered it to pay the large fine that the government sought. See the Supplemental
4 Declaration of Christopher Lebsock, Exh. 3, submitted in this proceeding

5 The civil litigation was hard fought. By April 29, 2021, there were 2576 docket entries. The
6 Ninth Circuit itself described the litigation as a “difficult case” with respect to the impact and
7 damages, questions that COSI and TUG continue to dispute. *Olean Wholesale Grocery Coop., Inc.*
8 *v. Bumble Bee Foods LLC*, 993 F.3d 774, 794 (9th Cir. 2021) (“*Olean*”). The successive complaints
9 in the litigation led the district court judge to issue voluminous opinions on various defense dismissal
10 motions.¹ Millions of documents were produced in discovery and depositions occurred in the United
11 States, Thailand, and South Korea. Class certification was hotly contested by all Defendants,
12 including COSI and TUG; there was a three-day evidentiary hearing and thousands of pages of
13 materials were presented to the district court. That court eventually certified all the Classes. *In re*
14 *Packaged Seafood Prods. Antitrust Litig.*, 332 F.R.D. 308 (S.D. Cal. 2019). The Ninth Circuit in
15 *Olean* vacated the district court’s opinion on a narrow ground, but has since sought further briefing
16 and has yet to issue its mandate. Both Plaintiffs and Defendants (including COSI and TUG) filed
17 extensive summary judgment motions supported by numerous expert declarations, most of which
18 remain undecided.

19 **Settlement Agreement Among The DPPs And The COSI Defendants.** COSI and TUG
20 settled with a number of major direct purchasers before settling with the DPP Class in March of
21 2021.

22 The SA, which has not yet received preliminary or final approval by the district court,
23 provides for no fixed dollar amount payable to the Class because the DPPs believed that any such
24 amount would depend upon which DPPs would ultimately end up opting out of the Class and settling

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26 ¹ See *In re Packaged Seafood Prods. Antitrust Litig.*, No. 15-MD-2670 JLS (MDD), 2017 WL 35571
27 (S.D. Cal. Jan. 3, 2017); *In re Packaged Seafood Prods. Antitrust Litig.*, 242 F. Supp. 3d 1033 (S.D.
28 Cal. 2017); *In re Packaged Seafood Prods. Antitrust Litig.*, 277 F. Supp. 3d 1167 (S.D. Cal. 2017);
In re Packaged Seafood Prods. Antitrust Litig., 338 F. Supp. 3d 1118 (S.D. Cal. 2018).

1 with COSI separately. In previously filed motions for preliminary approval, the parties estimated
2 that the settlement value will be fixed at approximately \$13 million. If there are fewer opt-outs than
3 predicted, the settlement amount will be fixed at a higher level.

4 Pursuant to the SA, fees and costs are determined separately from the amount payable to the
5 DPP Class. DPPs’ counsel are entitled to a reasonable fee as a prevailing party. SA ¶ 11.2.1. COSI
6 and TUG agreed to pay “Contingent Legal Fees and Costs” defined as follows:

7 “Contingent Legal Fees and Costs” shall mean a payment in addition to and separate
8 from the Settlement Amount as described in Paragraph 11 below, to cover contingent
9 legal fees and for the reimbursement of taxable and non-taxable costs advanced by the
10 attorneys that worked on behalf of the class, including, but not limited to costs of
11 stenographic and video deposition transcripts, reporter’s fees, interpreter fees, room,
board, and travel expenses, court costs, document hosting, exemplification and printing
costs, document production costs, consultant and expert fees and costs, and expenses.

12 *Id.* ¶ 1.4. This sum is capped at \$7 million. There is no exception for costs or fees incurred in one
13 aspect of the litigation or another, or limiting language requiring a reduction in the lodestar or in the
14 amount of costs incurred by these counsel based on the number of other Defendants in the litigation.
15 Nor is the amount up to \$7 million defined so that a certain portion of any arbitral award is allocated
16 to fees, as opposed to costs.

17 **Respective Positions of the Parties.** The parties briefed the award of fees and costs
18 extensively, oral argument was held on June 22, 2021, and the parties have each presented respective
19 proposed decisions for the Arbitrator to consider.

20 The DPPs asked for an order requiring the COSI Defendants to contribute \$7 million to the
21 DPPs’ Litigation Fund to be used as follows: (a) \$4,734,464.50 to pay past litigation expenses; (b)
22 \$2,265,535.50 to defray future litigation expenses; and (c) if the latter sum is not exhausted,
23 attorneys’ fees in the amount of any surplus. The DPPs supported this claim by offering: the LD,
24 which showed that: (a) \$4,425,879.71 was paid out of the DPP Litigation Fund to cover common
25 costs in the underlying class action (mostly accounted for by payments to the DPPs’ three experts)
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1 (*id.* Ex. 1);² (b) other out-of-pocket costs by DPP counsel totalling \$308,584.79; and (c) the total
2 lodestar for the Hausfeld firm (through March of 2021) and other firms (primarily firms who were
3 members of the Court-appointed Steering Committee (through December of 2020) totaled
4 \$20,384,332.39. The sums for the other DPP counsel were supported by sworn declarations by
5 partners at each of the respective firms.

6 The COSI Defendants' response was that the DPPs should be awarded only \$2,582,015.44
7 in attorneys' fees and \$1,549,118.77 in costs. The difference between the DPPs' original proposal
8 and the COSI Defendants' proposal was \$2,868,865.79.

9 The COSI Defendants did not dispute the accuracy of the claimed cost disbursements or
10 accrued fees by the DPPs' counsel. Instead, they asserted that the foregoing difference reflects fees
11 and costs that were either unnecessary, unrelated to COSI, or conferred insufficient benefit upon the
12 Class. Their arguments were that: (a) because of COSI's ACPERA status, the baseline of DPPs' fees
13 should be equivalent to COSI's market share percentage, or about one-third of the amount expended;
14 and (b) the DPPs' litigation expenditures were higher than necessary, as to COSI, because COSI
15 provided cooperation to the Class plaintiffs. The COSI Defendants therefore proposed that any fees
16 be reduced by an additional 62%.

17 **The Arbitrator's Award And The Rationale Underlying It.** Having carefully considered
18 the entire record, the Arbitrator awards the DPP counsel \$5.95 million in costs and in fees. The
19 portion of this award allocated to past cost disbursements from the DPP Litigation Fund and other
20 past out-of-pocket costs paid by DPP counsel is \$4,410,636.71, which reflects the elimination of the
21 payments to the Fox Rothschild firm described in footnote 2 above. No future litigation expenses
22 are being awarded. The portion of the award allocated to attorneys' fees is \$1,539,363.29. The award
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25 ² The total for past litigation expenses includes \$15,243 in payments to the Fox Rothschild firm from
26 the DPP Litigation Fund in connection with consultations with the DPP counsel regarding the
27 bankruptcy of Bumble Bee"). At page 20 of their reply brief submitted to the Arbitrator, the DPPs
28 offered to withdraw that sum from the past expenses for which compensation is sought. The
Arbitrator accepts that offer and will reduce the figure for claimed past expenses paid out of the DPP
Litigation Fund to \$4,410,636.71.

1 will not become final until the DPPs’ settlement with the COSI Defendants is finally approved by
2 the district court in *PSPs*.

3 The Arbitrator will briefly explain the reasoning for this ruling.

4 The SA clearly permits recovery of past litigation expenses and does not differentiate among
5 the types of expenses or expenses that might relate to efforts by DPPs’ counsel directed at all
6 Defendants. The biggest category of expenses in this respect were costs incurred by: (1) Russell
7 Mangum, Ph.D (“Mangum”) an economist, and his former economic consulting firm Nathan
8 Associates, Inc., who served as an expert on both class certification and the merits; (2) Marianne
9 DeMario (“DeMario”), an accounting expert, and her firm Spectrum Consulting Partners LLC, who
10 served as a merits expert; and (3) Gary Hamilton, Ph.D (“Hamilton”), a sociologist with expertise in
11 Asian corporate business structures, who also served as a merits expert. The testimony of Mangum
12 at the class certification hearing was directed at all Defendants, including the COSI Defendants. LD
13 Exh. 7. The reports by DiMario and Hamilton both dealt in part with the relationship between TUG
14 and COSI. Indeed, they moved to exclude Hamilton’s report, a request that was denied by the district
15 court in *PSPs*. See *In re Packaged Seafood Prods. Antitrust Litig.*, No. 15-MD-2670 JLS (MDD),
16 2020 WL 5739316 (S.D. Cal. Sept. 24, 2020). As the foregoing exemplifies, an award of full past
17 litigation expenses is appropriate, taking into account that Bumble Bee will pay nothing in PSPs and
18 StarKist may not be able to pay much either. ACPERA does not dictate a contrary result. The COSI
19 Defendants’ counsel conceded at the hearing that he could point to no controlling caselaw that dictate
20 the result that he sought.³

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³ ACPERA does not limit the scope of fees or costs that are available to a prevailing plaintiff in any way. Instead, it limits the damages that are available to a qualifying ACPERA applicant. See ACPERA at § 213(a) (“the amount of damages . . . shall not exceed that portion of the actual damages sustained by such claimant which is attributable to the commerce done by the applicant in the goods or services affected by the violation.”). A prevailing plaintiff’s right to fees and costs is established by 15 U.S.C. § 15, and “[u]nder both federal and California law, liability among defendants for a successful plaintiff’s attorney fees is generally joint and several.” *Blackwell v. Foley*, 724 F. Supp. 2d 1068, 1075 (N.D. Cal. 2010); see *Costco Wholesale Corp. v. Hoen*, No. C04-360 MJP, 2009 WL 10714818, at *4 (W.D. Wash. June 23, 2009) (awarding fees to successful antitrust plaintiff on a joint and several basis).

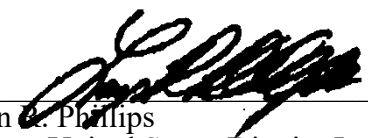
1 With respect to future expenses, the Arbitrator declines to award them. The DPPs point to
2 numerous instances where such awards have been made in other cases, but they involved allocations
3 from an award of a percentage of a common fund where there was no prospect that any unused
4 portion of the award would be utilized to pay attorneys' fees. Both factors distinguish this case from
5 those cases.

6 With respect to the COSI Defendants' contention that the DPPs expended unnecessary
7 effort on legal theories that did not pan out or was inefficient, neither argument precludes the fee
8 award issued by the Arbitrator. The total lodestar used as a reference in the DPPs' request was
9 \$20,384,332.39. The total amount of fees awarded is \$1,539,363.29, a small fraction of that. These
10 facts render the COSI Defendants' concerns about alleged excessive or duplicative work moot.
11 Even if the DPPs did not ultimately pursue certain legal theories, the COSI Defendants have not
12 shown that those efforts it did expend on such theories did not contribute to the case as a whole.
13 *See Cabrales v. Cty. of Los Angeles*, 935 F.2d 1050, 1052 (9th Cir. 1991). Likewise, even if there
14 was some duplication, that is unavoidable in a case that has gone on for nearly six years and
15 involves multiple Defendants and complex claims; the Ninth Circuit has said that "necessary
16 duplication—based on the vicissitudes of the litigation process—cannot be a legitimate basis for a
17 fee reduction." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1113 (9th Cir. 2008).

18 For all of the foregoing reasons, the Arbitrator rules that the DPPs are awarded \$5.95 million,
19 to be allocated in the manner described above.

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Dated: June 25, 2021

By: 
Layne C. Phillips
Former United States District Judge
PHILLIPS ADR