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14 *Class Counsel for Direct Purchaser Plaintiffs*

15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 **IN RE: PACKAGED SEAFOOD**  
18 **PRODUCTS ANTITRUST**  
19 **LITIGATION**

20 Case No. 15-MD-2670 JLS (MDD)  
21 MDL No. 2670

22 This document relates to:  
23 DIRECT PURCHASER CLASS  
24 PLAINTIFFS TRACK

25 **SETTLEMENT AGREEMENT**  
26 **BETWEEN DIRECT PURCHASER**  
27 **PLAINTIFFS AND TRI-UNION**  
28 **SEAFOODS LLC D/B/A CHICKEN**  
**OF THE SEA AND THAI UNION**  
**GROUPPCL**

1 This Settlement Agreement (“Settlement Agreement”), dated March 11,  
2 2021 (“Execution Date”), is made and entered into by and among Defendants  
3 Tri-Union Seafoods LLC d/b/a Chicken of the Sea and Thai Union Group PCL  
4 (collectively “COSI”) and Direct Purchaser Plaintiffs Olean Wholesale Grocery  
5 Cooperative, Inc., Pacific Groservice Inc. d/b/a PITCO Foods, Piggly Wiggly  
6 Alabama Distributing Co., Inc., Howard Samuels as Trustee in Bankruptcy for  
7 Central Grocers, Inc., Trepcos Imports and Distribution Ltd., and Benjamin Foods  
8 LLC (together, the “Direct Purchaser Plaintiffs”), both individually and as  
9 representatives of the Settlement Class as defined herein.

10 WHEREAS, in the instant class action *In Re: Packaged Seafood Products*  
11 *Antitrust Litigation*, No. 15-MD-2670 JLS (MDD), MDL No. 2670, currently  
12 pending before the Honorable Janis L. Sammartino in the United States District  
13 Court for the Southern District of California, Direct Purchaser Plaintiffs have  
14 alleged that COSI participated in an unlawful conspiracy or conspiracies to  
15 restrain trade;

16 WHEREAS, COSI denies Direct Purchaser Plaintiffs’ allegations and has  
17 asserted a number of defenses to Direct Purchaser Plaintiffs’ claims;

18 WHEREAS, Settlement Class Counsel have concluded, after an  
19 investigation into the facts and the law, and after carefully considering the  
20 circumstances of claims made by Direct Purchaser Plaintiffs and the Settlement  
21 Class, and the possible legal and factual defenses thereto, that it is in the best  
22 interests of Direct Purchaser Plaintiffs and the Settlement Class to enter into this  
23 Settlement Agreement with COSI to avoid the uncertainties and risks of further  
24 litigation, and that the settlement set forth herein is fair, reasonable, adequate and  
25 in the best interests of the Settlement Class;

26 WHEREAS, COSI, having concluded that it has valid defenses to the  
27 claims alleged, has nevertheless agreed to enter into this Settlement Agreement to  
28

1 avoid the expense, inconvenience, and uncertainty of further protracted litigation;  
2 and

3 WHEREAS, Settlement Class Counsel and COSI have engaged in arm's-  
4 length settlement negotiations, assisted by a neutral mediator, and have reached  
5 this Settlement Agreement, which, subject to approval of the Court, embodies all  
6 of the terms and conditions of the settlement between Direct Purchaser Plaintiffs  
7 and COSI.

8 NOW, THEREFORE, in consideration of the promises, covenants,  
9 agreements, and releases set forth herein and for other good and valuable  
10 consideration, and incorporating the above recitals herein, subject to the approval  
11 of the Court, it is agreed by the undersigned, on behalf of COSI and the Direct  
12 Purchaser Plaintiffs, on behalf of themselves and the Settlement Class Members,  
13 that the claims of Direct Purchaser Plaintiffs and the Settlement Class Members  
14 that have been or could have been asserted in the Litigation be settled,  
15 compromised, and dismissed on the merits and with prejudice as to COSI, and,  
16 except as hereinafter provided, without costs as to Direct Purchaser Plaintiffs, the  
17 Settlement Class Members, or COSI, on the following terms and conditions:

18 **1. Definitions**

19 1.1. "Affiliates," with respect to a company, means all other entities which,  
20 prior to or as of the Execution Date, whether directly or indirectly, (1) are  
21 controlled by that company, (2) are under common control with that  
22 company, or (3) control that company. The term "control" as used in this  
23 definition means the power to direct or cause the direction of the  
24 management and the policies of an entity, whether through the ownership  
25 of a majority of the outstanding voting rights or otherwise.

26 1.2. Claims" shall mean any and all actions, suits, claims, rights, demands,  
27 assertions, allegations, causes of action, controversies, proceedings, losses,  
28



1 damages, injuries, attorneys' fees, costs, expenses, debts, liabilities,  
2 judgments, or remedies, whether equitable or legal.

3 1.3. "Complaint" means the Direct Purchaser Plaintiffs' Fourth Amended  
4 Consolidated Class Action Complaint filed in the Litigation [ECF No.  
5 1460].

6 1.4. "Contingent Legal Fees and Costs" shall mean a payment in addition to and  
7 separate from the Settlement Amount as described in Paragraph 11 below,  
8 to cover contingent legal fees and for the reimbursement of taxable and  
9 non-taxable costs advanced by the attorneys that worked on behalf of the  
10 class, including, but not limited to costs of stenographic and video  
11 deposition transcripts, reporter's fees, interpreter fees, room, board, and  
12 travel expenses, court costs, document hosting, exemplification and  
13 printing costs, document production costs, consultant and expert fees and  
14 costs, and expenses.

15 1.5. "COSI Sales" means the amount of net sales by COSI to Settlement Class  
16 Members during the Class Period. For purposes of this paragraph, net sales  
17 shall mean gross sales minus payment terms (net bill) discounts, off-  
18 invoice deductions, cash discounts, other adjustments and deductions, and  
19 actual promotional billback amounts. COSI Sales shall be calculated using  
20 the data produced in this case and relied upon Dr. Russell Mangum in his  
21 expert report submitted in this case.

22 1.6. "Court" means the United States District Court for the Southern District of  
23 California.

24 1.7. "Defendants" means COSI, as defined above, Bumble Bee Foods LLC,  
25 StarKist Company, Dongwon Industries Co. Ltd., and Lion Capital  
26 (Americas), Inc., Lion Capital LLP, and Big Catch Cayman Ltd.

27 1.8. "Direct Action Plaintiff(s)" means any Person that directly purchased  
28 Packaged Tuna Products during the Settlement Class Period from one or

1 more of the Defendants, and that has separately filed its own individual  
2 complaint in this Litigation.

3 1.9. "Direct Purchaser Plaintiffs" means the named class representatives defined  
4 above.

5 1.10. "Document" is defined to be synonymous in meaning and equal in scope  
6 to the usage of this term in Federal Rule of Civil Procedure ("Federal  
7 Rule") 34(a). A draft or non-identical copy is a separate document within  
8 the meaning of this term.

9 1.11. "Effective Date" means the earliest date on which all of the events and  
10 conditions specified in Paragraph 8 herein have occurred or have been met.

11 1.12. "Escrow Account" means an account to be established with Huntington  
12 Bank for the purpose of holding the Settlement Funds.

13 1.13. "Judgment" means the final order of judgment described in Paragraph 7.1  
14 herein.

15 1.14. "Litigation" means the multi-district litigation captioned In Re: Packaged  
16 Seafood Products Antitrust Litigation, No. 15-MD-2670 JLS (MDD),  
17 MDL No. 2670, currently pending before the Honorable Janis L.  
18 Sammartin on the United States District Court for the Southern District of  
19 California, including all actions relating to the claims alleged in "Direct  
20 Purchaser Plaintiffs' Fourth Amended Consolidated Class Action  
21 Complaint" and all actions that have been or are subsequently filed in or  
22 transferred for consolidation and/or coordinated pretrial proceedings to the  
23 Southern District of California by the Judicial Panel on Multidistrict  
24 Litigation as part of MDL No. 2670.

25 1.15. "Packaged Tuna Products" means shelf-stable tuna sold for human  
26 consumption and packaged in either cans or pouches, and excludes tuna  
27 cups, tuna salad kits, and salvage sales.  
28

1 1.16. "Parties" means Direct Purchaser Plaintiffs, Settlement Class Members,  
2 and COSI.

3 1.17. "Person" means an individual or an entity.

4 1.18. "Preliminary Approval Order" means an order preliminarily approving the  
5 settlement to be rendered by the Court.

6 1.19. "Released Claims" means any and all Claims, whether class, individual,  
7 or otherwise, that the Releasing Parties or any of them ever had, now has,  
8 or hereafter can, shall, or may have, directly, representatively, derivatively,  
9 or in any other capacity, against the Released Parties or any of them,  
10 whether such Claims are based on federal, state, local, statutory, or  
11 common law, or any other law, code, rule, or regulation of any country or  
12 other jurisdiction worldwide, whether such claims are known or unknown,  
13 suspected or unsuspected, asserted or unasserted, foreseen or unforeseen,  
14 actual or contingent, liquidated or unliquidated, regardless of legal theory,  
15 and regardless of the type or amount of relief or damages claimed, or  
16 Claims that have been, could have been, or in the future might have been,  
17 claimed in law or in equity, on account of, arising out of, resulting from, or  
18 in any way related to any conduct concerning the pricing, selling,  
19 discounting, promotion, or marketing of Packaged Tuna during the period  
20 from June 1, 2011 to July 31, 2015 that could have been brought based in  
21 whole or in part on the facts, occurrences, transactions, or other matters  
22 that were alleged in the Complaint.

23 1.20. "Released Parties" means, jointly and severally, individually and  
24 collectively: COSI, its present and former parents, subsidiaries, divisions,  
25 affiliates, and departments, its respective past and present officers,  
26 directors, employees, agents, attorneys, servants, representatives of each of  
27 the aforesaid entities, and the predecessors, successors, heirs, executors,  
28 administrators, and assigns of each of the foregoing.

1 1.21. "Releasing Parties" means, jointly and severally, and individually and  
2 collectively: Direct Purchaser Plaintiffs and all Settlement Class Members,  
3 their predecessors, successors, present and former parents, subsidiaries,  
4 divisions, Affiliates, and departments, each of their respective past and  
5 present officers, directors, employees, agents, attorneys, servants, and  
6 representatives, and the predecessors, successors, heirs, executors,  
7 administrators, and assigns of each of the foregoing.

8 1.22. "Settlement Amount" means the payment defined in Paragraph 11.1.

9 1.23. "Settlement Class Counsel" means Hausfeld LLP, 600 Montgomery  
10 Street, Suite 3200, San Francisco, CA, 94111.

11 1.24. "Settlement Class Member" mean each person or entity that made at least  
12 one qualifying purchase within the terms of the class definition set forth in  
13 Paragraph 3 herein excluding those Persons who timely and validly elect to  
14 be excluded from the Settlement Class.

15 1.25. "Settlement Class Period" means the period between June 1, 2011 and  
16 July 31, 2015.

17 1.26. "Settlement Fund" shall mean those monies representing the consideration  
18 to be paid by COSI to the Direct Purchaser Plaintiffs and the Settlement  
19 Class Members, including the Settlement Amount and the Contingent  
20 Legal Fees and Costs pursuant to Paragraph 11 of this Settlement  
21 Agreement and any income earned on that amount.

## 22 **2. Effectuation Of This Settlement Agreement**

23 Direct Purchaser Plaintiffs and COSI shall use all reasonable efforts to  
24 effectuate this Settlement Agreement, including cooperating in Direct Purchaser  
25 Plaintiffs' efforts to obtain the Court's approval of procedures (including the  
26 giving of class notice under Federal Rules 23(c) and 23(e)) and to secure  
27 certification of the Settlement Class for settlement purposes and the complete and  
28 final dismissal with prejudice of the Litigation as to COSI. Prior to the filing of



1 any motions or other papers in connection with the settlement, including, without  
2 limitation, the motion for preliminary approval of the settlement (as contemplated  
3 in Paragraph 4.1 of this Settlement Agreement) and for final approval of the  
4 settlement (as contemplated in Paragraph 7.1 of this Settlement Agreement),  
5 Direct Purchaser Plaintiffs will send those papers to COSI at least 14 days prior to  
6 their filing, and will use reasonable best efforts to incorporate COSI's comments  
7 into any draft. The text of any proposed form of order approving this Settlement  
8 Agreement shall be agreed upon by Direct Purchaser Plaintiffs and COSI before it  
9 is submitted to the Court.

### 10 **3. Settlement Class Certification**

11 The parties to this Settlement Agreement hereby stipulate for purposes of  
12 this settlement only that the requirements of Rule 23(a) and 23(b)(3) of the  
13 Federal Rules are satisfied, and, subject to Court approval, the following class (the  
14 "Settlement Class") shall be certified for settlement purposes:

15 All persons and entities that directly purchased Packaged Tuna  
16 Products (excluding tuna salad kits and cups and salvage purchases)  
17 within the United States, its territories and the District of Columbia  
18 from any Defendant at any time between June 1, 2011 and July 31,  
19 2015. Excluded from the class are all governmental entities; Defendants  
20 and any parent, subsidiary or affiliate thereof; Defendants' officers,  
21 directors, employees, and immediate families; and any federal judges  
or their staffs.

22 The Parties' agreement as to certification of the Settlement Class is only for  
23 purposes of effectuating the settlement set forth in this Settlement Agreement as to  
24 COSI, and for no other purpose. COSI retains all of its objections, arguments, and  
25 defenses, and reserves all rights to contest class certification if the settlement set  
26 forth in this Settlement Agreement does not receive the Court's final approval, if  
27 the Court's approval is reversed or vacated on appeal, if this Settlement  
28 Agreement is terminated as provided herein, or if the settlement set forth in this



1 Settlement Agreement otherwise fails to proceed for any other reason. The Parties  
2 acknowledge that there has been no stipulation to a class or certification of a class  
3 for any purpose other than effectuating the settlement set forth in this Settlement  
4 Agreement, and that, if the settlement set forth in this Settlement Agreement does  
5 not receive the Court's final approval, if the Court's approval is reversed or  
6 vacated on appeal, if this Settlement Agreement is terminated as provided herein,  
7 or if the settlement set forth in this Settlement Agreement otherwise fails to close  
8 for any other reason, then this agreement as to certification of the Settlement Class  
9 becomes null and void *ab initio*, and neither this Settlement Agreement nor any  
10 other settlement-related statement may be cited in support of an argument for  
11 certifying a class related to this proceeding.

#### 12 **4. Motion For Preliminary Approval**

13 4.1. At an appropriate time after the execution of this Settlement Agreement,  
14 and after consultation as to timing with counsel for COSI, Direct Purchaser  
15 Plaintiffs shall file with the Court a motion requesting entry of a  
16 Preliminary Approval Order, *inter alia*:

17 4.1.1. finding the proposed settlement in the Settlement Agreement has been  
18 negotiated at arm's length, and preliminarily approving the proposed  
19 settlement as fair, reasonable, and adequate, and in the best interests of  
20 the Settlement Class; scheduling a hearing ("Fairness Hearing") to  
21 consider (i) whether the proposed settlement should be approved as fair,  
22 reasonable, and adequate to Settlement Class Members, and whether the  
23 Judgment should be entered dismissing the Claims of Direct Purchaser  
24 Plaintiffs and all Settlement Class Members against COSI on the merits  
25 and with prejudice; and (ii) whether to approve any application by  
26 Settlement Class Counsel for an award of attorneys' fees and payment of  
27 costs and expenses ("Fairness Hearing");  
28

1 4.1.2. certifying the Settlement Class for settlement purposes, designating  
2 class representatives and Settlement Class Counsel as defined herein, and  
3 finding that each element for certification of the Settlement Class  
4 pursuant to Federal Rule 23 is met;

5 4.1.3. enjoining initiation, commencement, or prosecution of any action or  
6 proceeding asserting any Released Claims by any Releasing Party.

7 4.1.4. setting a deadline (the "Opt Out Deadline") for persons to seek  
8 exclusion from the Settlement Class, as set forth in Paragraph 6.

9 4.2. Direct Purchaser Plaintiffs shall seek, and COSI shall not oppose,  
10 certification of the Settlement Class and appointment of Settlement Class  
11 Counsel as lead counsel for purposes of this settlement.

## 12 **5. Notice to Settlement Class Members**

13 5.1. After preliminary approval of this Settlement Agreement and submission to  
14 the Court and approval of a program to provide notice to the Settlement  
15 Class in accordance with the requirements of the Federal Rules of Civil  
16 Procedure and due process, Settlement Class Counsel shall provide those  
17 Settlement Class Members identified with notice of the settlement and the  
18 date of the Fairness Hearing in a manner to be approved by the Court.

19 5.2. Except as provided in Paragraph 11.4 herein, the costs and expenses  
20 associated with providing notice of the settlement to Settlement Class  
21 Members pursuant to the Court-approved notification plan shall be paid  
22 from the Settlement Fund, and COSI shall have no obligation to pay for the  
23 costs and expenses of providing notice of the settlement to Settlement  
24 Class Members. COSI agrees that Settlement Class Counsel may withdraw  
25 funds as necessary from the Settlement Fund for the purpose of out-of-  
26 pocket expenses incurred in providing notice to Settlement Class Members  
27 of the settlement as described herein, which expenses shall be non-  
28 refundable up to five-hundred thousand U.S. dollars (\$500,000.00). In the

1 event that the Settlement Agreement is not finally approved, COSI shall  
2 not be entitled to any such out-of-pocket sums spent or owing for purposes  
3 of disseminating notice and/or administering the notice program, except  
4 that funds for out-of-pocket expenses exceeding the five-hundred thousand  
5 dollar limit would be reimbursable to COSI.

## 6 **6. Requests For Exclusion**

7 6.1. Any Person that wishes to seek exclusion from the Settlement Class must  
8 timely submit a written request for exclusion as provided in this Paragraph  
9 (“Request for Exclusion”). Any Person who timely submits a Request for  
10 Exclusion (an “Opt Out”) shall be excluded from the Settlement Class,  
11 shall have no rights with respect to this Settlement Agreement, and shall  
12 receive no benefits as provided in this Settlement Agreement. A Request  
13 for Exclusion must be in writing and state the name, address, and  
14 telephone number of the Person(s) seeking exclusion. Each request must  
15 also contain a signed statement that “I/we hereby request that I/we be  
16 excluded from the proposed Direct Purchaser Settlement Class in the In Re  
17 Packaged Seafood Products Antitrust Litigation.” The name of the  
18 Person(s) seeking exclusion shall be as specific as possible, including any  
19 formerly known as names, doing business as names, etc. Only the specific  
20 Person(s) identified may be excluded from the settlement. A Request for  
21 Exclusion that does not include all of the foregoing information, that does  
22 not contain a proper signature, that is sent to an address other than the one  
23 designated in the notice to Settlement Class Members, or that is not sent  
24 within the time specified, shall be invalid, and the Person(s) serving such  
25 an invalid request shall be Settlement Class Members and shall be bound  
26 by this Settlement Agreement, if approved.



1 6.2. Settlement Class Counsel shall forward a list of all Requests for Exclusion  
2 to COSI's counsel within five (5) days of receipt, and in no event later than  
3 ten (10) business days prior to the Fairness Hearing.

4 **7. Fairness Hearing**

5 7.1. At the Fairness Hearing, Direct Purchaser Plaintiffs shall seek entry of a  
6 Judgment, the text of which shall be agreed upon by Direct Purchaser  
7 Plaintiffs and COSI before submission to the Court, *inter alia*:

8 7.1.1. approving the Settlement Agreement and its terms as being fair,  
9 reasonable, and adequate as to the Settlement Class, within the meaning  
10 of Federal Rule 23, and directing its consummation according to its  
11 terms;

12 7.1.2. determining that the notices to Settlement Class Members constituted,  
13 under the circumstances, the best practicable notice of this Settlement  
14 Agreement and the Fairness Hearing, and constituted due and sufficient  
15 notice for all other purposes to all Persons entitled to receive notice;

16 7.1.3. dismissing the Claims against COSI set forth in the Complaint with  
17 prejudice, without costs (except as provided herein); and releasing the  
18 Released Claims;

19 7.1.4. providing that any Settlement Class Member who fails to object in the  
20 manner prescribed in the Settlement Agreement shall be deemed to have  
21 waived any objections to the settlement and the Settlement Agreement  
22 and will forever be barred from making any such objections to the  
23 settlement or the Settlement Agreement;

24 7.1.5. requiring Settlement Class Counsel to file with the Clerk of the Court  
25 a record of potential members of the Settlement Class who timely and  
26 validly excluded themselves from the Settlement Class;

1 7.1.6. retaining exclusive jurisdiction over the settlement and this Settlement  
2 Agreement, including the administration and consummation of the  
3 settlement; and

4 7.1.7. determining under Federal Rule 54(b) that there is no just reason for  
5 delay and directing that the Judgment of dismissal as to COSI shall be  
6 final and entered forthwith.

7 7.2. Any Person who has not requested exclusion from the Settlement Class and  
8 who objects to the Settlement Agreement may appear, at that Person's own  
9 expense, at the Fairness Hearing in person or through counsel, to present  
10 any evidence or argument with respect to the Settlement Agreement, to the  
11 extent permitted by the Court. However, no such Person shall be heard,  
12 and no papers, briefs, pleadings, or other documents shall be received and  
13 considered by the Court unless such Person properly submits a written  
14 objection that includes (a) notice of intention to appear, (b) proof of  
15 membership in the Settlement Class, and (c) the specific grounds for the  
16 objection and any reasons why such Person desires to appear and be heard,  
17 as well as all documents or writings that such Person desires the Court to  
18 consider. Such a written objection must be both filed with the Court no  
19 later than thirty-five (35) days prior to the date set for the Fairness Hearing,  
20 and also mailed to Settlement Class Counsel and COSI's counsel at the  
21 addresses provided in the notice to the Settlement Class Members,  
22 postmarked (or mailed by overnight delivery) no later than thirty-five (35)  
23 days prior to the date of the Fairness Hearing. Any Person who fails to  
24 object in the manner prescribed herein shall be deemed to have waived any  
25 objections to the Settlement Agreement and will forever be barred from  
26 making any such objections to the Settlement Agreement in the Litigation  
27 or in any other action or proceeding, unless otherwise permitted for good  
28 cause shown as determined by the Court.

1 **8. Effective Date Of Agreement**

2 This Settlement Agreement shall become final and effective on the earliest  
3 date on which all of the following events and conditions have occurred or have  
4 been met (“Effective Date”): (a) the Court has entered the Judgment; and (b) the  
5 time for appeal or to seek permission to appeal from the Court’s approval of the  
6 Settlement Agreement and entry of the Judgment has expired or, if appealed,  
7 approval of this Settlement Agreement and the Judgment has been affirmed in its  
8 entirety by the court of last resort to which such appeal has been taken and such  
9 affirmance has become no longer subject to further appeal or review. Neither the  
10 provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C.  
11 § 1651, shall be taken into account in determining the above-stated times.

12 **9. Release And Covenant Not To Sue**

13 9.1. Upon the occurrence of the Effective Date, and in consideration of the  
14 payment by COSI of the Settlement Amount set forth in Paragraph 11.1  
15 herein, the sufficiency of which is hereby acknowledged, each of the  
16 Releasing Parties shall be deemed to have, and by operation of the  
17 Judgment shall have, fully, finally, and forever released, relinquished, and  
18 discharged all Released Claims against the Released Parties, shall have  
19 covenanted not to sue or otherwise seek to establish liability against any of  
20 the Released Parties based, in whole or in part, upon any of the Released  
21 Claims or any conduct concerning the pricing, selling, discounting,  
22 promotion or marketing of Packaged Tuna Products during the period from  
23 June 1, 2011 to July 31, 2015 that could have been brought, in whole or in  
24 part, on the facts, occurrences, transactions or other matters that were  
25 alleged in the Complaint, and shall be permanently barred and enjoined  
26 from instituting, commencing, prosecuting, or asserting any such Released  
27 Claim against any of the Released Parties.



1 9.2. With respect to any and all Released Claims, the Parties stipulate and agree  
2 that, upon the Effective Date, Direct Purchaser Plaintiffs shall expressly  
3 waive and, upon the Effective Date, each of the Releasing Parties shall be  
4 deemed to have waived, and by operation of the Judgment shall have  
5 waived, the provisions, rights, and benefits of California Civil Code  
6 Section 1542 and South Dakota Codified Laws Section 20-7-11 (to the  
7 extent either or both of them apply), each of which provides that “[a]  
8 general release does not extend to claims which the creditor does not know  
9 or suspect to exist in his favor at the time of executing the release, which if  
10 known by him must have materially affected his settlement with the  
11 debtor,” and of any similar provision, statute, regulation, rule, or principle  
12 of law or equity of any other state or territory of the United States or any  
13 other applicable jurisdiction. Releasing Parties expressly acknowledge that  
14 they may hereafter discover facts in addition to or different from those  
15 facts that any of them or their counsel now knows or believes to be true  
16 with respect to the subject matter of the Settlement Agreement, but upon  
17 the Effective Date each Plaintiff shall expressly have, and, upon the  
18 Effective Date, each Releasing Party shall be deemed to have, and by  
19 operation of the Judgment shall have, fully, finally, and forever settled and  
20 released any and all Released Claims, known or unknown, suspected or  
21 unsuspected, contingent or non-contingent, whether or not concealed or  
22 hidden, that now exist or heretofore have existed, upon any theory of law  
23 or equity now existing or coming into existence in the future, including,  
24 but not limited to, conduct that is negligent, reckless, intentional, with or  
25 without malice, or a breach of any duty, law, or rule, without regard to the  
26 subsequent discovery of existence of such different or additional facts.  
27 Direct Purchaser Plaintiffs acknowledge, and the Releasing Parties shall be  
28 deemed to have acknowledged, and by operation of the Judgment shall

1 have acknowledged, that the foregoing waiver was separately bargained for  
2 and a key element of the settlement of which this release is a part.

### 3 **10. Reservation Of Settlement Class Members' Rights**

4 All rights of any Settlement Class Member against any alleged co-  
5 conspirator or any other Person other than the Released Parties are specifically  
6 reserved by Direct Purchaser Plaintiffs and the Settlement Class Members.

### 7 **11. Settlement Consideration**

8 11.1. The Settlement Amount shall be calculated as 3.20% of the combined  
9 COSI sales of Packaged Tuna Products to Settlement Class Members  
10 between June 1, 2011 and July 31, 2015 (the "sales period"). For the  
11 avoidance of doubt, when calculating the Settlement Amount: (a) sales to  
12 Persons that timely exclude themselves from the Settlement Class shall not  
13 be included, and (b) a Person shall be deemed to have timely excluded  
14 itself from the Settlement Class if it (i) files a complaint against COSI  
15 arising out of the same facts and circumstances as the Complaint; or  
16 (ii) provides a letter to Settlement Class Counsel at any time prior to the  
17 Opt Out Deadline stating that it requests to be excluded from the  
18 Settlement Class.

19 11.2. In addition to and separate from the Settlement Amount, COSI shall pay  
20 reasonable Contingent Legal Fees and Costs as set forth below.

21 11.2.1. The determination of what amount the reasonable Contingent Legal  
22 Fees and Costs shall be will be made through a separate, binding, and  
23 contested arbitration process held in San Francisco, California or via  
24 video or web-conferencing, or in another location pursuant to the  
25 agreement of the parties. "Reasonable" fees shall mean those fees that are  
26 available to Direct Purchaser Plaintiffs as the prevailing party.

27 11.2.2. The parties shall agree upon an arbitrator to determine the  
28 Contingent Legal Fees and Costs, or, if the parties cannot agree on an

1 arbitrator, the arbitrator shall be a retired federal judge selected by the  
2 Hon. Jan Adler.

3 11.2.3. The arbitration shall be scheduled so that it will be completed prior  
4 to notice of the Settlement being disseminated to the Class.

5 11.2.4. COSI and the Direct Purchaser Plaintiffs shall each have the  
6 opportunity to raise any argument for or against Settlement Class  
7 Counsel's request for attorneys' fees and costs, including providing  
8 witness testimony.

9 11.2.5. Regardless of any award in arbitration, the Contingent Legal Fees  
10 and Costs shall be capped at seven million U.S. dollars (\$7,000,0000)  
11 and the Direct Purchaser Plaintiffs may not seek payment of Contingent  
12 Legal Fees and Costs in an amount greater than \$7,000,0000 from COSI.

13 11.3. COSI will not, directly or indirectly, cause any Person that has not  
14 reached an agreement to settle with COSI or filed a complaint against  
15 COSI prior to December 10, 2020 ("a Potential Settlement Class  
16 Member") to opt out of the Settlement Class. If COSI learns that a  
17 Potential Settlement Class Member intends to opt out of the Settlement  
18 Class, COSI will inform Settlement Class Counsel and will cooperate in  
19 the Direct Purchaser Plaintiffs' efforts to convince the Potential Settlement  
20 Class Member not to opt out of the Settlement Class. If, between  
21 December 10, 2020 and the Effective Date, COSI reaches an agreement to  
22 settle with any Potential Settlement Class Member, COSI shall allocate  
23 25% of the total monetary value for such settlement or other resolution  
24 obtained with an Opt-out in the manner described in Direct Purchaser  
25 Plaintiffs' pending set aside motion, ECF No. 2446, and stipulates to the  
26 entry an order substantially in the form as the one proposed by the Direct  
27 Purchaser Plaintiffs in that motion (the "additional fee and cost amount").  
28 The additional fee and cost amount described in this paragraph is



1 independent of the Contingent Legal Fees and Costs and shall be excluded  
2 from the \$7,000,000.00 cap for Contingent Legal Fee and Costs, and shall  
3 be payable to Settlement Class Counsel in the manner established by the  
4 Court regardless of the outcome of any arbitration described in paragraph  
5 11.2 above.

6 11.4. COSI shall advance up to \$75,000.00 that will be credited against  
7 Settlement Fund, to pay for the reasonable costs for class notice and related  
8 administration following preliminary approval of this settlement, which  
9 sum shall not be reimbursable in the event that final approval is not  
10 granted. COSI will deposit this amount an escrow account established by  
11 the Direct Purchaser Plaintiffs within five business days after Preliminary  
12 Approval of the Settlement is granted by the Court.

13 11.5. The total Settlement Amount and Contingent Legal Fees and Costs  
14 payable by COSI (comprising class damages, and attorneys' fees and costs  
15 as described in paragraphs 11.1-11.3 above) in settlement of all claims  
16 relating to the Claims set forth in the Complaint and all Released Claims,  
17 is the Settlement Amount described Paragraph 1.22, and the Contingent  
18 Legal Fees and Costs described in Paragraph 1.4. COSI will deposit the  
19 full Settlement Amount in an escrow account established by the Direct  
20 Purchaser Plaintiffs within thirty (30) calendar days after the total dollar  
21 value of the settlement is determined following the Opt Out Deadline  
22 pursuant to Paragraph 11.1. The deposited sums shall be held in the  
23 Escrow Account until there is an order from the District Court concerning  
24 distribution or use of the Settlement Amount. The Escrow Account agent  
25 shall be subject to escrow instructions mutually acceptable to Settlement  
26 Class Counsel and COSI, such escrow to be administered under the  
27 Court's continuing supervision and control.  
28

1 11.6. The funds deposited in the Escrow Account may be invested in  
2 instruments backed by the full faith and credit of the United States  
3 Government or fully insured by the United States Government or an  
4 agency thereof, or money market funds invested substantially in such  
5 instruments, and shall reinvest any income from these instruments and the  
6 proceeds of these instruments as they mature in similar instruments at their  
7 then-current market rates.

8 11.7. All funds held in the Escrow Account shall be deemed and considered to  
9 be in *custodia legis* of the Court and shall remain subject to the jurisdiction  
10 of the Court, until such time as such funds shall be distributed pursuant to  
11 this Settlement Agreement and/or further order(s) of the Court.

12 11.8. Direct Purchaser Plaintiffs and COSI intend for the Settlement Fund to be  
13 treated as being at all times a “qualified settlement fund” within the  
14 meaning of Treas. Reg. § 1.468B-1. In addition, the escrow agent shall  
15 timely make such elections as necessary or advisable to carry out the  
16 provisions of Paragraph 11, including the “relation-back election” (as  
17 defined in Treas. Reg. § 1.468B-1) so as to enable the Settlement Fund to  
18 be treated as a “qualified settlement fund” from the earliest date possible.  
19 Such elections shall be made in compliance with the procedures and  
20 requirements contained in such regulations. It shall be the responsibility of  
21 the escrow agent to timely and properly prepare and deliver the necessary  
22 documentation for signature by all necessary parties, and thereafter to  
23 cause the appropriate filing to occur.

24 11.9. For the purpose of § 468B of the Internal Revenue Code of 1986, as  
25 amended, and the regulations promulgated thereunder, the “administrator”  
26 shall be the escrow agent. The escrow agent or other Person designated by  
27 Settlement Class Counsel shall timely and properly file all information and  
28 other tax returns necessary or advisable with respect to the Settlement

1 Fund (including without limitation the returns described in Treas. Reg. §  
2 1.468B-2(k)(1)). Such returns (as well as the elections described in  
3 Paragraph 11.8) shall be consistent with Paragraph 11.11.

4 11.10. All (i) taxes (including any estimated taxes, interest, or penalties) arising  
5 with respect to the income earned by the Settlement Fund, including any  
6 taxes or tax detriments that may be imposed upon COSI or any other  
7 Released Party with respect to any income earned by the Settlement Fund  
8 for any period during which the Settlement Fund does not qualify as a  
9 “qualified settlement fund” for federal or state income tax purposes  
10 (“Taxes”); and (ii) expenses and costs incurred in connection with the  
11 operation and implementation of Paragraphs 11.10 through 11.13  
12 (including, without limitation, expenses of tax attorneys and/or accountants  
13 and mailing and distribution costs and expenses relating to filing (or failing  
14 to file) the returns described in Paragraph 11.9 (“Tax Expenses”)), shall be  
15 paid out of the Settlement Fund.

16 11.11. Neither COSI nor any other Released Party nor their respective counsel  
17 shall have any liability or responsibility, including filing responsibility, for  
18 the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be  
19 treated as, and considered to be, a cost of administration of the Settlement  
20 Fund and shall be timely paid by the escrow agent out of the Settlement  
21 Fund. The escrow agent shall be obligated (notwithstanding anything  
22 herein to the contrary) to withhold from distribution to any claimants  
23 authorized by the Court any funds necessary to pay such amounts  
24 including the establishment of adequate reserves for any Taxes and Tax  
25 Expenses (as well as any amounts that may be required to be withheld  
26 under Treas. Reg. § 1.468B-2(1)(2)). Direct Purchaser Plaintiffs and COSI  
27 agree to cooperate with the escrow agent, each other, and their tax  
28 attorneys and accountants to the extent reasonably necessary to carry out



1 the provisions of Paragraphs 11.6 through 11.13. The costs of  
2 administering Taxes and Tax Expenses from the Settlement Fund shall be  
3 reimbursable to COSI.

4 11.12. If this Settlement Agreement does not receive final Court approval, or if  
5 the Settlement Class is not certified for settlement purposes, or if this  
6 Settlement Agreement is terminated or voided for any reason, then all  
7 amounts paid by COSI into the Settlement Fund (other than costs that may  
8 already have reasonably been incurred or expended in accordance with  
9 Paragraphs 5.2 and 11) shall be returned to COSI from the Escrow  
10 Account along with any interest accrued thereon, within ten (10) business  
11 days after such order becomes final and non-appealable.

12 11.13. If, after all costs (including notice costs), attorneys' fees, and any other  
13 expenses have been paid from the Settlement Fund, there are any  
14 remaining funds, they shall be distributed to Settlement Class Members, or  
15 in Settlement Class Counsel's reasonable judgment, be made the subject of  
16 an application to the Court by Direct Purchaser Plaintiffs for *cy pres*  
17 distribution.

## 18 **12. Administration Of The Settlement Fund**

19 12.1. The costs and expenses of administration of the settlement pursuant to the  
20 terms of this Settlement Agreement shall be paid out of the \$75,000 set  
21 aside for notice and administration in the Settlement Fund. The claims  
22 administrator(s) shall, on a monthly basis, submit invoices, with  
23 appropriate supporting documentation, to Settlement Class Counsel for  
24 payment from the Escrow Account.

25 12.2. COSI shall not have any other responsibility, financial obligation, or  
26 liability whatsoever with respect to the investment, distribution, or  
27 administration of the Settlement Fund, including, but not limited to, the  
28

1 costs and expenses of such investment, distribution, and administration,  
2 except as expressly otherwise provided in the Settlement Agreement.

3 **13. Withdrawal From Or Modification Of The Settlement**

4 13.1. If the Court declines to approve this Settlement Agreement or any  
5 material part hereof, or if such approval is materially modified or set aside  
6 on appeal, or if the Court does not enter the Judgment, or if the Court  
7 enters the Judgment and appellate review is sought and, on such review,  
8 such Judgment is not affirmed or is materially modified, then COSI and  
9 Direct Purchaser Plaintiffs shall each, in their respective sole discretion,  
10 have the option to rescind this Settlement Agreement in its entirety.

11 13.2. If COSI chooses to exercise the option to rescind pursuant to Paragraph  
12 13.1, any and all amounts then constituting the Settlement Fund, including  
13 all income earned thereon, shall be returned forthwith to COSI.

14 Notwithstanding the above, reasonable out-of-pocket expenses that have  
15 been paid or incurred associated with providing notice to Settlement Class  
16 Members, administering the Settlement Fund, incurred or paid under  
17 Paragraph 11 of this Settlement Agreement, and/or any Taxes already paid  
18 on such income shall not be returned. A modification or reversal on appeal  
19 of any amount of Settlement Class Counsel's fees and/or expenses  
20 awarded by the Court or any plan of allocation or distribution of the  
21 Settlement Fund shall not be deemed a modification of all or a part of the  
22 terms of this Settlement Agreement or the Judgment.

23 13.3. COSI and Direct Purchaser Plaintiffs expressly reserve all of their rights if  
24 this Settlement Agreement does not become effective or if it is rescinded  
25 pursuant to Paragraph 13.1 of this Settlement Agreement. In addition, if for  
26 any reason (including a party's exercise of a valid right to rescind this  
27 Settlement Agreement), the Settlement Agreement does not become final  
28 and effective, then the certification of the Settlement Class shall become

1 null and void without further Court action and shall not be used or referred  
2 to for any further purpose by the Direct Purchaser Plaintiffs, and shall not  
3 prejudice any party in arguing for or against contested certification of the  
4 Claims in the Complaint. Further, this Agreement, whether or not it is  
5 finally approved and whether or not COSI or Direct Purchaser Plaintiffs  
6 elect to rescind it under Paragraph 13 of the Settlement Agreement, and  
7 any and all negotiations, documents, and discussions associated with it,  
8 shall not be deemed or construed to be an admission or evidence of any  
9 violation of any statute or law, or of any liability or wrongdoing by COSI  
10 or any Defendant, or of the truth of any of the claims or allegations  
11 contained in the Complaint or any other pleading filed by Direct Purchaser  
12 Plaintiffs in the Litigation, or waiver or invalidity of any defense, and  
13 evidence thereof shall neither be discoverable nor used directly or  
14 indirectly except in a proceeding to enforce or interpret the Settlement  
15 Agreement.

16 **14. No Admissions**

17 The Parties intend the settlement as described herein to be a final and  
18 complete resolution of all disputes between them with respect to the Claims made  
19 in the Complaint and the Released Claims, and it shall not be deemed an admission  
20 by any party as to the merits of any claim or defense of any allegation made in the  
21 Complaint.

22 **15. Settlement Class Counsel's Attorneys' Fees and Expenses**

23 15.1. Any order or proceeding relating to any application for, or approval of,  
24 attorneys' fees and expenses, the pendency of any such application, or any  
25 appeal or review of an order relating thereto or reversal or modification  
26 thereof, shall not operate to terminate or cancel this Settlement Agreement,  
27 or affect or delay the finality of the Judgment. Attorneys' fees and  
28 expenses authorized by the Court to be paid from the Settlement Fund shall



1 be payable notwithstanding the existence of any timely filed objections to  
2 the Settlement Agreement, to any payment of fees, expenses, or incentives  
3 or potential for appeal therefrom, or collateral attack on the Settlement  
4 Agreement or any part thereof, subject to Settlement Class Counsel's  
5 obligation to make appropriate refunds or repayments to the Settlement  
6 Fund, if the Effective Date does not occur, or the Settlement Agreement is  
7 subject to successful collateral attack, or the fee or cost amount is reduced  
8 or reversed.

9 15.2. COSI shall have no responsibility for, and no liability whatsoever with  
10 respect to, the division of attorneys' fees and expenses among counsel  
11 representing the Direct Purchaser Plaintiffs, and any negotiation or dispute  
12 among counsel representing the Direct Purchaser Plaintiffs in that regard  
13 shall not operate to terminate or cancel this Settlement Agreement, or  
14 affect or delay the finality of the Judgment.

15 15.3. Except as otherwise provided herein, Direct Purchaser Plaintiffs and COSI  
16 shall each be responsible for bearing their own costs and fees incurred in  
17 this Litigation.

18 **16. ACPERA Obligations**

19 COSI agrees to provide the Direct Purchaser Plaintiffs all of the benefits  
20 afforded to them pursuant to the Antitrust Criminal Penalty Enhancement and  
21 Reform Act of 2004, Pub. L. No. 108-237, tit. II, 118 Stat. 661 (2004), and any  
22 subsequent amendments thereto ("ACPERA"), as if the Direct Purchaser Plaintiffs  
23 and COSI were still in litigation, including, without limitation:

24 (a) producing all relevant documents relating to the sale, marketing, and  
25 pricing of Packaged Tuna Products;

26 (b) making available appropriate employees and former employees of COSI  
27 at deposition and/or trial, including Michael White, Shue Wing Chan, and John  
28 Sawyer, and ensuring that these individuals are prepared to testify truthfully under

1 oath to the best of their recollection concerning the matters at issue in this  
2 Litigation; and

3 (c) producing at trial in person, by deposition or by affidavit, whichever is  
4 legally necessary, representatives to testify as to the genuineness, status as business  
5 records, and authenticity of documents produced by COSI in this Litigation.

6 **17. Miscellaneous Provisions**

7 17.1. COSI expressly represents that it has obtained all required approvals from  
8 its management for this Settlement Agreement.

9 17.2. This Settlement Agreement shall constitute the entire agreement between  
10 the Parties pertaining to the settlement of the Claims against COSI made in  
11 the Complaint and supersedes any and all prior and contemporaneous  
12 undertakings of the Parties in connection therewith. The terms of the  
13 Settlement Agreement are and shall be binding upon each of the Parties  
14 hereto, their heirs, executors, administrators, representatives, agents,  
15 attorneys, partners, successors, predecessors-in-interest, and assigns, and  
16 upon all other Persons claiming any interest in the subject matter hereto  
17 through any of the parties hereto including any Settlement Class Members.

18 17.3. This Settlement Agreement may be modified or amended only by a  
19 writing executed by Direct Purchaser Plaintiffs and COSI, subject (if after  
20 preliminary or final approval by any court) to approval by the Court.  
21 Amendments and modifications may be made without notice to the  
22 Settlement Class unless notice is required by law or by the Court.

23 17.4. None of the Parties hereto shall be considered to be the drafter of this  
24 Settlement Agreement or any its provisions hereof for the purpose of any  
25 statute, case law, or rule of interpretation or construction that would or  
26 might cause any provision to be construed against the drafters of this  
27 Settlement Agreement.  
28

1 17.5. This Settlement Agreement shall be construed and interpreted to  
2 effectuate the intent of the parties which is to provide, through this  
3 Settlement Agreement, for a complete resolution of the Released Claims  
4 with respect to the Released Parties.

5 17.6. Nothing expressed or implied in this Settlement Agreement is intended to  
6 or shall be construed to confer upon or give any person or entity other than  
7 Settlement Class Members, Releasing Parties, and Released Parties any  
8 right or remedy under or by reason of this Settlement Agreement.

9 17.7. This Settlement Agreement shall be binding upon, and inure to the benefit  
10 of, the Releasing Parties and the Released Parties.

11 17.8. Direct Purchaser Plaintiffs and COSI acknowledge that they have been  
12 represented by counsel and have made their own investigations of the  
13 matters covered by this Settlement Agreement to the extent they have  
14 deemed it necessary to do so. Therefore, Direct Purchaser Plaintiffs and  
15 COSI and their respective counsel agree that they will not seek to set aside  
16 any part of the Settlement Agreement on the grounds of mistake.

17 Moreover, Direct Purchaser Plaintiffs and COSI and their respective  
18 counsel understand, agree, and expressly assume the risk that any fact may  
19 turn out hereinafter to be other than, different from, or contrary to the facts  
20 now known to them or believed by them to be true, and further agree that  
21 the Settlement Agreement shall be effective in all respects and shall not be  
22 subject to termination, modification, or rescission by reason of any such  
23 difference in facts. If any provision of this Settlement Agreement is found  
24 by a court of competent jurisdiction to be illegal, invalid, or unenforceable  
25 for any reason, the remainder of this Settlement Agreement will not be  
26 affected and, in lieu of each provision that is found illegal, invalid, or  
27 unenforceable, a provision will be added as a part of this Settlement  
28



1 Agreement that is as similar to the illegal, invalid or unenforceable  
2 provision as may be legal, valid, and enforceable.

3 17.9. All terms of this Settlement Agreement shall be governed by, and  
4 interpreted according to, the substantive laws of the State of California  
5 without regard to its choice of law or conflicts of laws principles.

6 17.10. Except as expressly set forth herein, COSI, Direct Purchaser Plaintiffs,  
7 and all Settlement Class Members hereby irrevocably submit to the  
8 exclusive jurisdiction of the Court for any suit, action, proceeding, or  
9 dispute arising out of or relating to this Settlement Agreement or the  
10 applicability of this Settlement Agreement, including, without limitation,  
11 any suit, action, proceeding or dispute relating to the release provisions  
12 herein.

13 17.11. This Settlement Agreement may be executed in counterparts. Facsimile  
14 or Portable Document Format signatures shall be considered as valid  
15 signatures for purposes of execution of this Settlement Agreement, but  
16 original signature pages shall thereafter be collated for filing of this  
17 Settlement Agreement with the Court.

18 17.12. Each of the undersigned attorneys represents that he or she is fully  
19 authorized to enter into the terms and conditions of, and execute, this  
20 Settlement Agreement, subject to Court approval, and the undersigned  
21 Settlement Class Counsel represent that they are authorized to execute this  
22 Settlement Agreement on behalf of Direct Purchaser Plaintiffs and the  
23 Settlement Class.

24 IN WITNESS HEREOF, the Parties hereto through their fully authorized  
25 representatives have agreed to this Settlement Agreement as of the date  
26 first written above.

27 *[signature page follows]*


28

1 Dated: March 11, 2021

2  
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18 Dated: March 11, 2021

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