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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EHDER SOTO, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC.,

Defendant.

HENEY SHIHAD, an individual on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC. and DOES 1
through 25, inclusive,

Defendants.

Case No. 5:15-cv-05082-BLF

Case No. 1:16-cv-01478-BLF

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 11, 2017
Time: 9:00 a.m.
Courtroom 3, 5th Floor

Judge: The Hon. Beth Labson Freeman

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on May 11, 2017 at 9:00 a.m., or as soon thereafter as the matter may be heard by the above-captioned Court, located at San Jose Courthouse, Courtroom 3 - 5th Floor, 280 South 1st Street, San Jose, CA 95113, in the courtroom of the Honorable Beth Labson Freeman, Plaintiffs will and hereby do move, pursuant to Fed. R. Civ. P. 23(e), for the Court to: (i) grant preliminary approval of the proposed Stipulation for Class Action Settlement ("Settlement Agreement"), (ii) provisionally certify the Settlement Class¹ for the purposes of preliminary approval, designate Plaintiffs Soto and Shihad as the Class Representatives, and appoint Bursor & Fisher, P.A., Nathan & Associates, APC and Law Offices of Ross Cornell, APC as Class Counsel for the Settlement Class, (iii) establish procedures for giving notice to members of the Settlement Class, (iv) approve forms of notice to Settlement Class Members, (v) mandate procedures and deadlines for exclusion requests and objections, and (vi) set a date, time, and place for a final approval hearing.

This motion is made on the grounds that preliminary approval of the proposed class action settlement is proper, given that each requirement of Rule 23(e) has been met.

This motion is based on the attached Memorandum of Points and Authorities, the accompanying Declarations of L. Timothy Fisher and Daniel Rosenthal, the pleadings and papers on file herein, and any other written and oral arguments that may be presented to the Court.

CIVIL RULE 7-4(a)(3) STATEMENT OF ISSUE TO BE DECIDED

Whether the Court should preliminarily approve the proposed class action settlement pursuant to Fed. R. Civ. P. 23(e).

¹ All capitalized terms herein that are not otherwise defined have the definitions set forth in the Settlement Agreement, filed concurrently herewith. *See* Fisher Decl. Ex. 1.

1 Dated: February 1, 2017

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4 William B. Rubenstein, Newberg on Class Actions § 12:35 (5th ed. 2014) 17

I. INTRODUCTION

Plaintiffs Ehder Soto and Heney Shihad (“Plaintiffs”), by and through their counsel, respectfully submit this memorandum of law in support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

The Settlement Agreement states that Defendant Wild Planet Foods, Inc. (hereinafter, “WP”) will pay \$1.7 million into a Settlement Fund in cash for the settlement of all claims in this action. See Settlement Agreement ¶ 2.1, Fisher Decl. Ex. 1. The Settlement Agreement defines the Settlement Class to include:

All residents of the United States of America who, from November 5, 2011 to the date of the order granting preliminary approval of this Settlement, purchased any can of branded tuna produced by, for, or on behalf WP, including cans sold under the “Wild Planet” brand and the “Sustainable Seas” brand.

The Settlement Agreement includes a \$29.00 per claim payout for Settlement Class Members, subject to pro rata dilution if the total amount of claims exceeds the available funds. Settlement Agreement ¶ 2.3(a), Fisher Decl. Ex. 1. This is an excellent result for Settlement Class Members compared to their likely recovery should they prevail at trial. That is, a recovery of \$29 cash is a substantial portion of the maximum recovery any Settlement Class Member could reasonably expect, considering the relatively low cost of a can of tuna, only a fraction of which is alleged to be underfilled. Fisher Decl. ¶¶ 6, 8.

As in any class action, the proposed Settlement is initially subject to preliminary approval and then to final approval by the Court after notice to the class and a hearing. Plaintiffs now request that this Court enter an order in the form of the accompanying [Proposed] Order Preliminarily Approving Class Action Settlement, which will:

- (1) Grant preliminary approval of the proposed Settlement;
- (2) Provisionally certify the Settlement Class on a nationwide basis for the purposes of preliminary approval, designate Plaintiffs Soto and Shihad as the Class Representatives, and Bursor & Fisher, P.A., Nathan & Associates, APC and Law Offices of Ross Cornell, APC as Class Counsel for the Settlement Class;
- (3) Establish procedures for giving notice to members of the Settlement Class;

- (4) Approve forms of notice to Settlement Class Members;
- (5) Mandate procedures and deadlines for exclusion requests and objections; and
- (6) Set a date, time and place for a final approval hearing.

The proposed Settlement is fair and reasonable and falls within the range of possible approval. It is the product of extended arm's-length negotiations between experienced attorneys familiar with the legal and factual issues of this case. Class Counsel has conducted an extensive investigation into the facts and law relating to this matter and has engaged in lengthy and detailed informal discovery to confirm critical facts regarding the scope of the class, the volume of product sales, the role of distributors, and the relative values of WP products sold during the class period. The investigation has included commissioning extensive pressed weight testing of WP tuna and reviewing dozens of pressed weight test reports in cooperation with qualified experts from the U.S. National Oceanic and Atmospheric Administration ("NOAA").

Additionally, Bursor & Fisher is singularly experienced with the issues particular to this action. In *Hendricks v. StarKist Co.*, No. 13-cv-00729-HSG (N.D. Cal.) (the "StarKist Action"), Bursor & Fisher successfully resolved virtually identical claims involving the alleged underfilling of StarKist-brand 5-ounce cans of tuna. See July 23, 2015 Order Granting Preliminary Approval, Ex. 2 to Fisher Decl.; see also Bursor & Fisher Firm Resume, Ex. 3 to Fisher Decl. In fact, Bursor & Fisher is the only law firm that has ever successfully litigated claims involving the underfilling of canned tuna to resolution. Fisher Decl. at ¶ 3. In the StarKist Action, the parties agreed to a settlement valued at \$12 million and received over 2.4 million claims, the largest number of submitted claims from class members in the history of class actions. *Id.* Since entering into the settlement in the StarKist Action, Bursor & Fisher brought this action and two other additional cases concerning the alleged underfilling of canned tuna: *Soto v. Safeway, Inc.*, 15-cv-05078-EMC (N.D. Cal.) (the "Safeway Action") and *Magier v. Trader Joe's Co., et al.*, 16-cv-00043 (S.D.N.Y.) (the "Trader Joe's Action"). *Id.* at ¶ 4. As a result of these efforts and the experience gained in litigating the StarKist Action, Safeway Action and Trader Joe's Action, Class Counsel is fully informed of the merits of the instant action and the proposed settlement, has substantial experience in consumer

litigation regarding underfilling of tuna cans and has, as a result, been efficient in substantially streamlining the fact gathering process so as to reach the proposed settlement promptly and without protracted litigation. *Id.* at ¶¶ 3-5.

The proposed Settlement Class meets every element of Rule 23(a) and (b)(3). The Settlement Class is so numerous that the joinder of all members is impracticable; there are questions of law or fact common to the proposed Settlement Class; the proposed Class Representatives' claims are typical of those of the Settlement Class; and the proposed Class Representatives will fairly and adequately protect the interests of the proposed Settlement Class. In addition, common issues of law and fact predominate over any questions affecting only individual class members, and a class action as proposed here is superior to other available methods for the fair and efficient adjudication of the controversy.

II. PROCEDURAL BACKGROUND

A. Pleadings And Motions

On November 5, 2015, Plaintiff Soto filed his Class Action Complaint, Case No. 5:15-cv-05082-BLF (the "Soto Action"). On March 25, 2016, Plaintiff Shihad filed his Class Action Complaint, Case No. 1:16-cv-01478-BLF (the "Shihad Action"). The complaints in the Soto Action and the Shihad Action both alleged that WP cheated customers by shorting cans of tuna, underfilling them in violation of federal law. Those allegations were based on pressed weight tests conducted in 2015 and 2016 by experts at NOAA, at the request of Class Counsel. Plaintiffs assert claims on behalf of themselves and a nationwide class of purchasers of WP Products, for breach of express warranty, breach of the implied warranty of merchantability, unjust enrichment, violation of the California Consumers Legal Remedies Act ("CLRA"), violation of the California Unfair Competition Law ("UCL"), violation of the California False Advertising Law ("FAL"), negligent misrepresentation, and fraud. Dkt. No. 36 at ¶¶ 17-70 (First Amended Class Action Complaint).

On April 5, 2016, the Court ordered the Soto Action and the Shihad Action to be related. Since that time, Class Counsel has engaged in lengthy substantive settlement discussions with counsel for WP, and has entered into a succession of stipulations continuing the time for WP to

1 respond to the Soto and Shihad complaints.

2 On December 23, 2016, the parties filed a written Stipulation for Class Action Settlement as
3 to the entirety of the Soto Action and the Shihad Action and now, accordingly, Plaintiffs hereby
4 move for conditional approval of the proposed Settlement.

5 **B. Discovery**

6 Plaintiffs engaged in informal factual discovery over a period of several months with WP,
7 exchanging detailed data and analytics regarding WP's pressed weight testing, as well as nationwide
8 wholesale and retail sales data regarding WP tuna products sold under the "Wild Planet" and
9 "Sustainable Seas" brands. Fisher Decl. at ¶ 5. Plaintiffs also commissioned the services of NOAA
10 for a series of pressed weight tests over a period of several months, which included consultations
11 with experts from NOAA regarding the test data and its reliability. *Id.* Because Plaintiffs had the
12 benefit of Class Counsel's experience in the StarKist Action, the Trader Joe's Action and the
13 Safeway Action, Plaintiffs were able to substantially streamline the informal fact gathering process,
14 which, in light of WP's cooperation and voluntary production of necessary documentation and the
15 test data obtained from NOAA, resulted in an efficient resolution without protracted litigation. *Id.*

16 **III. THE LEGAL STANDARD FOR PRELIMINARY APPROVAL**

17 Approval of class action settlements involves a two-step process. First, the Court must make
18 a preliminary determination whether the proposed settlement appears to be fair and is "within the
19 range of possible approval." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008); *In re*
20 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007); *Alaniz v. California*
21 *Processors, Inc.*, 73 F.R.D. 269, 273 (N.D. Cal. 1976), *cert. denied sub nom. Beaver v. Alaniz*, 439
22 U.S. 837 (1978). If so, notice can be sent to Settlement Class Members and the Court can schedule a
23 final approval hearing where a more in-depth review of the settlement terms will take place. *See*
24 *Manual for Complex Litigation, 3d Edition*, § 30.41 at 236-38 (hereafter, the "Manual").

25 The purpose of preliminary approval is for the Court to determine whether the parties should
26 notify the putative class members of the proposed settlement and proceed with a fairness hearing.
27 *See In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1079. Notice of a settlement should be
28

1 disseminated where “the proposed settlement appears to be the product of serious, informed,
2 non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential
3 treatment to class representatives or segments of the class, and falls within the range of possible
4 approval.” *Id.* (quoting NEWBERG ON CLASS ACTIONS § 11.25 (1992)). Preliminary approval does
5 not require an answer to the ultimate question of whether the proposed settlement is fair and
6 adequate, for that determination occurs only after notice of the settlement has been given to the
7 members of the settlement class. *See Dunk v. Ford Motor Company*, 48 Cal. App. 4th 1794, 1801
8 (1996).

9 Nevertheless, a review of the standards applied in determining whether a settlement should
10 be given *final* approval is helpful to the determination of preliminary approval. One such standard is
11 the strong judicial policy of encouraging compromises, particularly in class actions. *See In re*
12 *Syncor*, 516 F.3d at 1101 (citing *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615 (9th Cir.
13 1982), *cert. denied*, 459 U.S. 1217 (1983)).

14 While the district court has discretion regarding the approval of a proposed settlement, it
15 should give “proper deference to the private consensual decision of the parties.” *Hanlon v. Chrysler*
16 *Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). In fact, when a settlement is negotiated at arm’s-length
17 by experienced counsel, there is a presumption that it is fair and reasonable. *See In re Pac. Enters.*
18 *Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Ultimately, however, the Court’s role is to ensure that
19 the settlement is fundamentally fair, reasonable, and adequate. *See In re Syncor* 516 F.3d at 1100.

20 Beyond the public policy favoring settlements, the principal consideration in evaluating the
21 fairness and adequacy of a proposed settlement is the likelihood of recovery balanced against the
22 benefits of settlement. “[B]asic to this process in every instance, of course, is the need to compare
23 the terms of the compromise with the likely rewards of litigation.” *Protective Committee for*
24 *Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968).
25 That said, “the court’s intrusion upon what is otherwise a private consensual agreement negotiated
26 between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment
27 that the agreement is not the product of fraud or overreaching by, or collusion between, the
28

1 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
 2 concerned.” *Officers for Justice*, 688 F.2d at 625.

3 In evaluating preliminarily the adequacy of a proposed settlement, particular attention should
 4 be paid to the process of settlement negotiations. Here, the negotiations were conducted by
 5 experienced class action counsel. Thus, counsel’s assessment and judgment are entitled to a
 6 presumption of reasonableness, and the Court is entitled to rely heavily upon their opinion. *Boyd v.*
 7 *Bechtel Corp.*, 485 F. Supp. 610, 622-23 (N.D. Cal. 1979).

8 **IV. THE SETTLEMENT AGREEMENT IS FAIR, ADEQUATE, AND REASONABLE**

9 Rule 23(e)(2) provides that “the court may approve [a proposed class action settlement] only
 10 after a hearing and on finding that it is fair, reasonable, and adequate.” When making this
 11 determination, the Ninth Circuit has instructed district courts to balance several factors: (1) the
 12 strength of plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation;
 13 (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in
 14 settlement; (5) the extent of discovery completed and the stage of the proceedings; and (6) the
 15 experience and views of counsel. *Hanlon*, 150 F.3d at 1026;² *Churchill Village, L.L.C. v. Gen.*
 16 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). Here, the balance of these factors readily establishes that
 17 the proposed settlement should be preliminarily approved.

18 **A. Strength Of Plaintiffs’ Case**

19 In determining the likelihood of a plaintiff’s success on the merits of a class action, “the
 20 district court’s determination is nothing more than an amalgam of delicate balancing, gross
 21 approximations and rough justice.” *Officers for Justice*, 688 F.2d at 625 (internal quotations
 22 omitted). The court may “presume that through negotiation, the Parties, counsel, and mediator
 23 arrived at a reasonable range of settlement by considering Plaintiff’s likelihood of recovery.”
 24 *Garner v. State Farm. Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *9 (N.D. Cal. Apr. 22, 2010)
 25 (citing *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

26
 27 ² In *Hanlon*, the Ninth Circuit also instructed district courts to consider “the reaction of the class
 28 members to the proposed settlement.” *Hanlon*, 150 F.3d at 1026. This consideration is more
 germane to final approval, and will be addressed at the appropriate time.

1 Here, Plaintiffs' counsel engaged in lengthy arm's-length negotiations with WP's counsel,
2 and were thoroughly familiar with the applicable facts, legal theories, and defenses. Although
3 Plaintiffs and their counsel believe that Plaintiffs' claims have merit, they also recognize that they
4 will face risks at class certification, summary judgment, and trial. WP would no doubt present a
5 vigorous defense at trial, and there is no assurance that the class would prevail. Thus, in the eyes of
6 Plaintiffs' counsel, the proposed Settlement provides the Settlement Class with an outstanding
7 opportunity to obtain significant relief at this early stage in the litigation. The Settlement Agreement
8 also abrogates the risks that might prevent them from obtaining relief.

9 **B. Risk Of Continuing Litigation**

10 As referenced above, proceeding in this litigation in the absence of settlement poses various
11 risks such as failing to certify a class, having summary judgment granted against Plaintiffs, or losing
12 at trial. Such considerations have been found to weigh heavily in favor of settlement. *See*
13 *Rodriguez*, 563 F.3d at 966; *Curtis-Bauer v. Morgan Stanley & Co., Inc.*, 2008 WL 4667090, at *4
14 (N.D. Cal. Oct. 22, 2008) ("Settlement avoids the complexity, delay, risk and expense of continuing
15 with the litigation and will produce a prompt, certain, and substantial recovery for the Plaintiff
16 class."). Even assuming that Plaintiffs were to survive summary judgment, they would face the risk
17 of establishing liability at trial in light of conflicting expert testimony between their own expert
18 witnesses and WP's expert witnesses. In this "battle of experts," it is virtually impossible to predict
19 with any certainty which testimony would be credited, and ultimately, which expert version would
20 be accepted by the jury. The experience of Plaintiffs' counsel has taught them that these
21 considerations can make the ultimate outcome of a trial highly uncertain.

22 Moreover, even if Plaintiffs were to prevail at trial, the class would face additional risks if
23 WP appeals or moves for a new trial. For example, in *In re Apple Computer Sec. Litig.*, 1991 U.S.
24 Dist. LEXIS 15608 (N.D. Cal. Sept. 6, 1991), the jury rendered a verdict for plaintiffs after an
25 extended trial. Based on the jury's findings, recoverable damages would have exceeded \$100
26 million. However, weeks later, the trial judge overturned the verdict, entering judgment
27 notwithstanding the verdict for the individual defendants, and ordered a new trial with respect to the
28

1 corporate defendant. By settling, Plaintiffs and the Settlement Class avoid these risks, as well as the
2 delays and risks of the appellate process.

3 **C. Risk Of Maintaining Class Action Status**

4 In addition to the risks of continuing the litigation, Plaintiffs would also face risks in
5 certifying a class and maintaining that class status through trial. Even assuming that the Court were
6 to grant a motion for class certification, the class could still be decertified at any time. *See In re*
7 *Netflix Privacy Litig.*, 2013 WL 1120801, at *6 (N.D. Cal. Mar. 18, 2013) (“The notion that a district
8 court could decertify a class at any time is one that weighs in favor of settlement.”) (internal citations
9 omitted). From their prior experience, Plaintiffs’ counsel anticipates that WP would likely move for
10 reconsideration, attempt to appeal the Court’s decision pursuant to Rule 23(f), and/or move for
11 decertification at a later date. Here, the Settlement Agreement eliminates these risks by ensuring
12 Settlement Class Members a recovery that is “certain and immediate, eliminating the risk that class
13 members would be left without any recovery ... at all.” *Fulford v. Logitech, Inc.*, 2010 U.S. Dist.
14 LEXIS 29042, at *8 (N.D. Cal. Mar. 5, 2010).

15 **D. The Extent Of Discovery And Status Of Proceedings**

16 Under this factor, courts evaluate whether class counsel had sufficient information to make
17 an informed decision about the merits of the case. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
18 454, 459 (9th Cir. 2000). Here, this matter has progressed through fact discovery more than
19 sufficiently. Accordingly, as discussed above, Plaintiffs’ counsel has received, examined, and
20 analyzed information, documents, and materials that enabled them to assess the likelihood of success
21 on the merits. These efforts include extensive consultations with experts from NOAA, reviewing
22 and analyzing test results regarding hundreds of tuna cans, numerous interviews with members of
23 the putative class, and significant legal research, analysis of documents and evidence provided by
24 WP, and lengthy negotiations.

25 **E. Experience And Views Of Counsel**

26 “The recommendations of plaintiffs’ counsel should be given a presumption of
27 reasonableness.” *In re Omnivision Techns., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008).
28

Deference to Plaintiffs' counsel's evaluation of the Settlement is appropriate because "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *Rodriguez*, 563 F.3d at 967 (citing *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995)).

Here, the Settlement was negotiated by counsel with extensive experience in consumer class action litigation, including extensive experience litigating consumer claims regarding allegedly underfilled canned tuna. *See* Fisher Decl. Ex. 3 (firm resume of Bursor & Fisher, P.A.). Based on their collective experience, Class Counsel concluded that the Settlement Agreement provides exceptional results for the Settlement Class while sparing Settlement Class Members from the uncertainties of continued and protracted litigation.

V. THE COURT SHOULD PROVISIONALLY CERTIFY THE SETTLEMENT CLASS FOR THE PURPOSES OF PRELIMINARY APPROVAL

The Ninth Circuit has recognized that certifying a settlement class to resolve consumer lawsuits is a common occurrence. *Hanlon*, 150 F.3d at 1019. When presented with a proposed settlement, a court must first determine whether the proposed settlement class satisfies the requirements for class certification under Rule 23. In assessing those class certification requirements, a court may properly consider that there will be no trial. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems ... for the proposal is that there be no trial.")

The Settlement Class consists of "All residents of the United States of America who, from November 5, 2011 to the date of the order granting preliminary approval of this Settlement, purchased any can of branded tuna produced by, for, or on behalf WP, including cans sold under the 'Wild Planet' brand and the 'Sustainable Seas' brand." Excluded from this definition are (a) the Defendant and all of Defendant's past and present respective parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly under its or their control in the past or in the present, (b) Defendant's respective assignors, predecessors, successors, and assigns, (c) all past or present partners, shareholders, managers, members, directors, officers, employees, agents, attorneys,

1 insurers, accountants, and representatives of any and all of the foregoing, and (d) all persons who file
2 a timely Request for Exclusion from the Settlement Class. This Court has not yet certified this case
3 as a class action. For the reasons below, the Class meets the requirements of Rule 23(a) and (b). For
4 settlement purposes, the parties and their counsel request that this Court provisionally certify the
5 Settlement Class.

6 **A. The Class Satisfies Rule 23(a)**

7 *1. Numerosity*

8 Rule 23(a)(1) requires that “the class is so numerous that joinder of all members is
9 impracticable.” *See* Fed. R. Civ. P. 23(a)(1). “As a general matter, courts have found that numerosity
10 is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21.”
11 *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000). Here, the proposed Settlement Class
12 is comprised of millions of consumers who purchased the WP Products – a number that obviously
13 satisfies the numerosity requirement. Accordingly, the proposed Settlement Class is so numerous
14 that joinder of their claims is impracticable.

15 *2. Commonality*

16 Rule 23(a)(2) requires the existence of “questions of law or fact common to the class.” *See*
17 Fed R. Civ. P. 23(a)(2). Commonality is established if plaintiffs and class members’ claims “depend
18 on a common contention,” “capable of class-wide resolution ... meaning that determination of its
19 truth or falsity will resolve an issue that is central to the validity of each one of the claims in one
20 stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). Because the commonality
21 requirement may be satisfied by a single common issue, it is easily met. H. Newberg & Conte, 1
22 Newberg on Class Actions § 3.10, at 3-50 (1992).

23 There are ample issues of both law and fact that are common to the members of the
24 Settlement Class. Indeed, all of the Settlement Class Members’ claims arise from a common nucleus
25 of facts and are based on the same legal theories. By way of example, the Plaintiffs allege that the
26 Defendant (1) underfilled its tuna products, (2) falsely labeled its tuna products as containing “5 oz.”
27 or “two 2.5 oz. servings” of tuna, and (3) regularly failed to comply with the minimum federal
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1 pressed weight standards for 5 oz. cans of tuna. Commonality is satisfied by the existence of these
2 common factual issues. *See Arnold v. United Artists Theatre Circuit, Inc.* 158 F.R.D. 439, 448 (N.D.
3 Cal. 1994) (commonality requirement met by “the alleged existence of common ... practices”).

4 Second, Plaintiffs’ claims are brought under legal theories common to the Settlement Class
5 as a whole. Alleging a common legal theory alone is enough to establish commonality. *See Hanlon*,
6 150 F.3d at 1019 (“All questions of fact and law need not be common to satisfy the rule. The
7 existence of shared legal issues with divergent factual predicates is sufficient, as is a common core
8 of salient facts coupled with disparate legal remedies within the class.”). Here, all of the legal
9 theories asserted by Plaintiffs are common to all Settlement Class Members. Given that there are no
10 issues of law identified by either party which would tend to affect only individual members of the
11 Settlement Class, common issues of law clearly predominate over individual ones. Thus,
12 commonality is satisfied.

13 3. Typicality

14 Rule 23(a)(3) requires that the claims of the representative plaintiffs be “typical of the claims
15 ... of the class.” *See Fed. R. Civ. P. 23(a)(3)*. “Under the rule’s permissive standards, representative
16 claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they
17 need not be substantially identical.” *See Hanlon*, 150 F.3d at 1020. In short, to meet the typicality
18 requirement, the representative Plaintiffs simply must demonstrate that the members of the
19 Settlement Class have the same or similar grievances. *Gen. Tel. Co. of the Southwest v. Falcon*, 457
20 U.S. 147, 161 (1982).

21 The claims of the named Plaintiffs are typical of those of the Settlement Class. Like those of
22 the Settlement Class, their claims arise out of the purchase of the Defendant’s tuna products and the
23 alleged underfilling of those products. Each named Plaintiff purchased several of Defendant’s tuna
24 products and was directly impacted by the allegedly underfilled cans. The named Plaintiffs have
25 precisely the same claims as the Settlement Class, and must satisfy the same elements of each of
26 their claims, as must other Settlement Class Members. Supported by the same legal theories, the
27 named Plaintiffs and all Settlement Class Members share claims based on the same alleged course of
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1 conduct. The named Plaintiffs and all Settlement Class Members have been injured in the same
2 manner by this conduct. Therefore, Plaintiffs satisfy the typicality requirement.

3 4. Adequacy

4 The final requirement of Rule 23(a) is set forth in subsection (a)(4) which requires that the
5 representative parties “fairly and adequately protect the interests of the class.” *See* Fed. R. Civ. P.
6 23(a)(4). A plaintiff will adequately represent the interests of the class where: (1) plaintiffs and
7 their counsel do not have conflicts of interest with other class members, and (2) where plaintiffs and
8 their counsel prosecute the action vigorously on behalf of the class. *See Staton v. Boeing Co.*, 327
9 F.3d 938, 958 (9th Cir. 2003). Moreover, adequacy is presumed where a fair settlement was
10 negotiated at arm’s-length. *2 Newberg on Class Actions, supra*, § 11.28, at 11-59.

11 Class Counsel have vigorously and competently pursued the Settlement Class Members’
12 claims. The arm’s-length settlement negotiations that took place over several months and the
13 detailed and comprehensive investigation they undertook demonstrate that Class Counsel adequately
14 represent the Settlement Class. Moreover, the named Plaintiffs and Class Counsel have no conflicts
15 of interest with the Settlement Class. Rather, the named Plaintiffs, like each absent Settlement Class
16 Member, have a strong interest in proving Defendant’s course of conduct and in obtaining redress.
17 In pursuing this litigation, Class Counsel, as well as the named Plaintiffs, have advanced and will
18 continue to advance and fully protect the common interests of all members of the Settlement Class.
19 Class Counsel has demonstrated an extensive experience and expertise in prosecuting complex class
20 actions, consumer class actions, and specifically class actions involving underfilled cans of tuna.
21 Class Counsel are active practitioners who are highly experienced in class action, product liability
22 and consumer fraud litigation. *See* Fisher Decl. Ex. 3 (firm resume of Bursor & Fisher, P.A.).
23 Accordingly, Rule 23(a)(4) is satisfied.

24 **B. The Class Satisfies Rule 23(b)(3)**

25 In addition to meeting the prerequisites of Rule 23(a), Plaintiffs must also meet one of the
26 three requirements of Rule 23(b) to certify the proposed class. *See Zinser v. Accufix Research Inst.,*
27 *Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001). Under Rule 23(b), a class action may be maintained if
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1 “the court finds that the questions of law or fact common to the members of the class predominate
 2 over any questions affecting only individual members, and that a class action is superior to other
 3 available methods for fairly and efficiently adjudicating the controversy.” *See* Fed. R. Civ. P.
 4 23(b)(3). Certification under Rule 23(b)(3) is appropriate “whenever the actual interests of the
 5 parties can be served best by settling their differences in a single action.” *Hanlon*, 150 F.3d at 1022.

6 *1. Common Questions of Law and Fact Predominate*

7 The proposed Settlement Class is well-suited for certification under Rule 23(b)(3) because
 8 questions common to the Settlement Class Members predominate over questions affecting only
 9 individual Settlement Class Members. Predominance exists “[w]hen common questions present a
 10 significant aspect of the case and they can be resolved for all members of the class in a single
 11 adjudication.” *Hanlon*, 150 F.3d at 1022. As the U.S. Supreme Court has explained, when
 12 addressing the propriety of certification of a settlement class, courts take into account the fact that a
 13 trial will be unnecessary and that manageability, therefore, is not an issue. *Amchem*, 521 U.S. at 620

14 In this case, common questions of law and fact exist and predominate over any individual
 15 questions, including in addition to whether this Settlement is reasonable (*see Hanlon*, 150 F.3d at
 16 1026-27), *inter alia*: (1) whether Defendant’s representations regarding the WP Products were false
 17 and misleading or reasonably likely to deceive consumers; (2) whether the WP Products were
 18 underfilled; (3) whether Defendant violated the CLRA, UCL or the FAL; (4) whether Defendant
 19 breached an implied warranty; (5) whether Defendant had defrauded Plaintiffs and Settlement Class
 20 Members; (6) whether the Defendant engaged in negligent misrepresentations regarding the subject
 21 products, and (7) whether Plaintiffs and the Settlement Class have been injured by the wrongs
 22 complained of, and if so, whether Plaintiffs and the Settlement Class are entitled to damages,
 23 injunctive and/or other equitable relief, including restitution or disgorgement, and if so, the nature
 24 and amount of such relief.

25 *2. A Class Action is the Superior Mechanism for Adjudicating this Dispute*

26 The class mechanism is superior to other available means for the fair and efficient
 27 adjudication of the claims of the Settlement Class. Each individual Settlement Class Member may
 28

1 lack the resources to undergo the burden and expense of individual prosecution of the complex and
 2 extensive litigation necessary to establish Defendant's liability. Individualized litigation increases
 3 the delay and expense to all parties and multiplies the burden on the judicial system presented by the
 4 complex legal and factual issues of this case. Individualized litigation also presents a potential for
 5 inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
 6 management difficulties and provides the benefits of single adjudication, economy of scale, and
 7 comprehensive supervision by a single court.

8 Moreover, since this action will now settle, the Court need not consider issues of
 9 manageability relating to trial. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for
 10 settlement-only class certification, a district court need not inquire whether the case, if tried, would
 11 present intractable management problems, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is
 12 that there be no trial."). Accordingly, common questions predominate and a class action is the
 13 superior method of adjudicating this controversy.

14 **VI. THE PROPOSED NOTICE PROGRAM PROVIDES ADEQUATE NOTICE AND** 15 **SHOULD BE APPROVED**

16 Once preliminary approval of a class action settlement is granted, notice must be directed to
 17 class members. For class actions certified under Rule 23(b)(3), including settlement classes like this
 18 one, "the court must direct to class members the best notice that is practicable under the
 19 circumstances, including individual notice to all members who can be identified through reasonable
 20 effort." Fed. R. Civ. P. 23(c)(2)(B). In addition, Rule 23(e)(1) applies to any class settlement and
 21 requires the Court to "direct notice in a reasonable manner to all class members who would be bound
 22 by a proposal." Fed R. Civ. P. 23(e)(1).

23 When a court is presented with a class-wide settlement prior to the certification stage, the
 24 class certification notice and notice of settlement may be combined in the same notice. *Manual*,
 25 § 21.633 at 321-22 ("For economy, the notice under Rule 23(c)(2) and the Rule 23(e) notice are
 26 sometimes combined."). This notice allows the settlement class members to decide whether to opt
 27 out, participate in the class, or object to the settlement. *Id.*

The requirements for the content of class notices for (b)(3) classes are specified in Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii). Each of the proposed forms of notice, including the Long Form and Short Form notices, meet all of these requirements, as detailed in the following table:

Requirement	Long Form	Short Form
“The nature of the action.” Fed. R. Civ. P. 23(c)(2)(B)(i).	First introductory bullet; Q&A nos. 2 and 5.	Col. 1, ¶ 1.
“The definition of the class certified.” Fed. R. Civ. P. 23(c)(2)(B)(ii).	Second introductory bullet; Q&A no. 4.	Col. 1, ¶ 2.
“The class claims, issues, or defenses.” Fed. R. Civ. P. 23(c)(2)(B)(iii).	First introductory bullet; Q&A nos. 2, 5 and 6.	Col. 1, ¶ 1.
“That a class member may enter an appearance through an attorney if the member so desires.” Fed. R. Civ. P. 23(c)(2)(B)(iv).	Q&A nos. 16, 18, and 19.	Col. 2, ¶ 2.
“That the court will exclude from the class any member who requests exclusion.” Fed. R. Civ. P. 23(c)(2)(B)(v).	Table of “Your Legal Rights and Options”; Q&A nos. 11, 12 and 13.	Col. 2, ¶ 1.
“The time and manner for requesting exclusion.” Fed. R. Civ. P. 23(c)(2)(B)(vi).	Q&A no. 13.	Col. 2, ¶ 1.
“The binding effect of a class judgment on members under Rule 23(c)(3).” Fed. R. Civ. P. 23(c)(2)(B)(vii).	Table of “Your Legal Rights and Options”; Fourth introductory bullet; Q&A nos. 11, 12, and 24.	Col. 1, ¶ 5.

In addition to meeting the specific legal requirements of Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii), the proposed notices are based on the Federal Judicial Center’s (“FJC”) model forms for notice of pendency of a class action. FJC prepared these models at the request of the Subcommittee on Class Actions of the U.S. judicial branch’s Advisory Committee on the Federal Rules of Civil Procedure. See www.fjc.gov. The FJC models are designed to illustrate how attorneys and judges might comply

1 with Fed. R. Civ. P. 23(c)(2)(B)'s requirement that class action notices "must concisely and clearly
 2 state in plain, easily understood language" specific information about the nature and terms of a class
 3 action and how it might affect potential class members' rights. *See* www.fjc.gov. FJC explained its
 4 methodology for preparing these models as follows:

5 We began this project by studying empirical research and commentary
 6 on the plain language drafting of legal documents. We then tested
 7 several notices from recently closed class actions by presenting them
 8 to nonlawyers, asking them to point out any unclear terms, and testing
 9 their comprehension of various subjects. Through this process, we
 10 identified areas where reader comprehension was low. We found, for
 11 example, that nonlawyers were often confused at the outset by use of
 12 the terms "class" and "class action." Combining information from the
 13 pilot test with principles gleaned from psycholinguistic research, we
 14 drafted preliminary illustrative class action notices and forms. We
 15 then asked a lawyer-linguist to evaluate them for readability and
 16 redrafted the notices in light of his suggestions.

17 *Id.* FJC then tested the redrafted model notices "before focus groups composed of ordinary citizens
 18 from diverse backgrounds" and also through surveys "[u]sing objective comprehension measures."

19 *Id.*

20 Based on FJC's testing, the Plaintiffs and Class Counsel believe that each of the proposed
 21 class notices, which are very closely based on FJC models, with the format and content adopted
 22 almost verbatim in most instances, are accurate, balanced, and comprehensible.

23 These notices will be disseminated through a media plan developed by Kurtzman Carson
 24 Consultants ("KCC"), a firm with experience administering more than 2,000 settlements, which has
 25 been chosen by the parties as the Settlement Administrator. *See* Settlement Agreement ¶ 1.21,
 26 Fisher Decl. Ex. 1; Rosenthal Decl. ¶ 5 ("Since 1984, KCC has administered more than 6,000
 27 matters and distributed settlement payments totaling well over \$20 billion in assets."). KCC's
 28 proposed notice plan includes creation of a dedicated settlement website, an Internet banner ad
 campaign, and publication in the *San Francisco Examiner* that will reach "approximately 70% of
 likely Class Members." *Id.* ¶ 6. KCC advises that this notice plan is "consistent with the 70-95%
 reach guideline set forth in the Federal Judicial Center's *Judges' Class Action Notice and Claims*
Process Checklist and Plain Language Guide," and that plans with similar reach percentages have
 "withstood appellate scrutiny, other expert critiques, as well as collateral review." *Id.* ¶ 16. KCC

estimates that its services in providing notice and claims administration will cost \$350,000.00. *See* Settlement Agreement ¶ 4.5, Fisher Decl. ¶ 9.

This proposed method of giving notice was developed by KCC, in collaboration with Class Counsel, with the objective of ensuring that as much of the Settlement Fund as possible will be distributed to Settlement Class Members in the most simple and expedient manner. *See, e.g.*, William B. Rubenstein, Newberg on Class Actions § 12:35 (5th ed. 2014) (“[A] court’s goal in distributing class action damages is to get as much of the money to the class members in as simple a manner as possible.”); *see also id.* § 12:15 (“The goal of any distribution method is to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible.”). Class Counsel advised KCC that, with claim amounts at \$29, it will take approximately 28,000 Cash Claims to exhaust the Cash Settlement Fund, and asked KCC to design the notice and claims process to accomplish this objective. Fisher Decl. ¶ 9.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the Settlement Agreement, provisionally certify the Settlement Class for the purposes of preliminary approval, approve the proposed notice plan, and enter the [Proposed] Order Preliminarily Approving Class Action Settlement, submitted herewith.

Dated: February 1, 2017

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By: /s/ L. Timothy Fisher

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EHDER SOTO, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC.,

Defendant.

Case No. 5:15-cv-05082-BLF

Case No. 1:16-cv-01478-BLF

**DECLARATION OF L. TIMOTHY
FISHER IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: May 11, 2017

Time: 9:00 a.m.

Courtroom: Courtroom 3- 5th Floor

Honorable Beth Labson Freeman

HENEY SHIHAD, an individual on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC. and DOES 1
through 25, inclusive,

Defendants.

1 I, L. Timothy Fisher, declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California. I am a
3 member of the bar of this Court, and I am a partner at Bursor & Fisher, P.A., counsel for Plaintiffs
4 in this action. I make this declaration in support of Plaintiffs' Motion for Preliminary Approval of
5 Class Action Settlement. I have personal knowledge of the facts set forth in this declaration, and, if
6 called as a witness, could and would competently testify thereto under oath.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of the Stipulation for Class
8 Action Settlement.

9 **Class Counsel's Investigation and Experience**

10 3. My firm was Class Counsel in *Hendricks v. StarKist Co.*, No. 13-cv-00729-HSG
11 (N.D. Cal.) (the "StarKist Action"), which concerned similar allegations that certain varieties of
12 StarKist-brand canned tuna were underfilled when measured precisely according to the methods
13 specified by 21 C.F.R. § 161.190(c). In the StarKist Action, the parties agreed to a settlement
14 valued at \$12 million and received over 2.4 million claims, the largest number of submitted claims
15 from class members in the history of class actions. The settlement in the StarKist Action was the
16 first of its kind. In fact, my firm is the only law firm that has ever successfully litigated claims
17 involving the underfilling of canned tuna to resolution. Attached hereto as Exhibit 2 is a true and
18 correct copy of the July 23, 2015 Order Granting Preliminary Approval to the settlement in the
19 StarKist Action.¹

20 4. Since entering into the StarKist settlement, my firm has brought this action and two
21 other additional cases concerning the alleged underfilling of canned tuna: *Soto v. Safeway, Inc.*, 15-
22 cv-05078-EMC (N.D. Cal.) (the "Safeway Action") and *Magier v. Trader Joe's Co., et al*, 16-cv-
23 00043 (S.D.N.Y.) (the "Trader Joe's Action"). Attached hereto as Exhibits 3-5 are true and correct

24 ¹ In fact, based on the firm's performance in the StarKist Action, Judge Haywood S. Gilliam, Jr.
25 found that an award of attorneys' fees of "30% of the total recovery, or \$3.6 million, [wa]s
26 appropriate" for Bursor & Fisher. When making this award, the StarKist court acknowledged that
27 it was "an upward departure from the 25% benchmark" set by the Ninth Circuit as a "starting
28 point" for attorneys' fees in common fund settlements. *See Powers v. Eichen*, 229 F.3d 1249, 1256
(9th Cir. 2000) ("We have also established twenty-five percent of the recovery as a 'benchmark'
for attorneys' fees calculations under the percentage-of-recovery approach."). That said, the
StarKist court concluded that such a departure was warranted given the "favorable" terms of the
settlement, the risks of litigation, and the financial burden carried by Bursor & Fisher.

1 copies of the firm resumes of Bursor & Fisher, P.A., the Law Offices of Ross Cornell, APC and
2 Nathan & Associates, APC.

3 5. In this case, Plaintiffs engaged in informal factual discovery over a period of several
4 months with Defendant Wild Planet (“WP”), including exchanging detailed data and analytics
5 regarding WP’s pressed weight testing, as well as nationwide wholesale and retail sales data
6 regarding WP tuna products sold under the “Wild Planet” and “Sustainable Seas” brands.
7 Plaintiffs also commissioned the services of the National Oceanic and Atmospheric Administration
8 (“NOAA”) for a series of pressed weight tests over a period of several months, which included
9 consultations with experts from NOAA regarding the test data and its reliability. Because
10 Plaintiffs had the benefit of Class Counsel’s experience in the StarKist Action, the Trader Joe’s
11 Action and the Safeway Action, Plaintiffs were able to substantially streamline the informal fact
12 gathering process, which, in light of WP’s cooperation and voluntary production of necessary
13 documentation and the test data obtained from NOAA, resulted in an efficient resolution without
14 protracted litigation.

15 **The \$29 Claim Amount**

16 6. Based on my experience and review of dozens of class action settlements involving
17 relatively low dollar value products, I have observed that claim rates are often too low to fully
18 exhaust the settlement funds made available to class members. Thus, in the judgment of Class
19 Counsel, it is critical that the individual claim amount be high enough to convince Settlement Class
20 Members that it is worth their time and effort to file a claim. Accordingly, we set the claim amount
21 at \$29 in cash because that amount is within the range of recoverable damages for most Settlement
22 Class Members and is sufficiently high to incentivize Settlement Class Members to take the time to
23 actually submit a claim.

24 7. Based on my experience, I have observed that claim rates are higher where the
25 claim procedures are simpler and lower where the claim procedures are more complex. With this
26 in mind, Class Counsel opted for the simplest payout formula: a flat amount.
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1 8. Class Counsel agreed to the \$29 claim amount based on information we learned
2 while engaged in the informal discovery process. Specifically, we estimate that the average class
3 member purchased approximately five WP cans per month over the four-year class period. Based
4 on a weighted average price per can, which we determined by evaluating WP's data, and the
5 average underfilling, which was determined by NOAA's independent pressed weight testing, the
6 deprivation/loss in value over the class period was approximately \$0.12 per can. Accordingly,
7 Class Counsel calculated the total average loss per class member as \$28.80.

8 **The Proposed Notice Plan and Claim Procedure**

9 9. Recognizing that people ordinarily do not save grocery store receipts, Class Counsel
10 insisted on a claims procedure that did not require proof of purchase other than by affidavit under
11 penalty of perjury. In evaluating notice and claims administration proposals from Settlement
12 Administrators, Class Counsel insisted on robust notice programs, relying heavily on Internet and
13 social media advertising, with links to a dedicated settlement website to accommodate online claim
14 filing. In Class Counsel's experience, an online claims process is essential, and when it is
15 available, roughly 99% of claims are filed online rather than in paper form. KCC was selected as
16 the Settlement Administrator because, in the judgment of Class Counsel, KCC provided an
17 effective strategy to facilitate online claims filing – prompted by Internet and social media
18 advertising – that was most likely to accomplish our goals, at a reasonable price. KCC also
19 handled claims administration in the StarKist action. We anticipate that it will take approximately
20 28,000 claims to exhaust the Cash Settlement Fund and asked KCC to design the notice and claims
21 process to accomplish this objective. KCC estimates that its services in providing notice and
22 claims administration will cost \$350,000.00. If the costs of notice and claims administration
23 exceed \$350,000, the claim amount may be subject to pro rata dilution.

24 10. Attached hereto as Exhibits 6-7 are true and correct copies of the proposed Long
25 Form and Short Form notices.

26 11. Attached hereto as Exhibit 8 are true and correct copies of the proposed Internet
27 banner ads to be displayed in connection with the notice plan.

1 I declare under the penalty of perjury under the laws of the State of California and the
2 United States that the foregoing is true and correct and that this declaration was executed at Walnut
3 Creek, California this 1st day of February, 2017.

4 /s/ L. Timothy Fisher

5 L. Timothy Fisher
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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10

11 EHDER SOTO, individually and on behalf of
12 all others similarly situated,

13 **Plaintiff**

14 vs.

15 WILD PLANET FOODS, INC.,
16

17 **Defendant.**
18

19 HENEY SHIHAD, an individual on behalf of
20 himself and all others similarly situated,

21 **Plaintiff**

22 vs.

23 WILD PLANET FOODS, INC. and DOES 1
24 through 25, inclusive.

25 **Defendants.**
26

Case No. 5:15-cv-05082-BLF

**STIPULATION FOR CLASS
ACTION SETTLEMENT**

Judge: The Hon. Beth Labson Freeman

Complaint Filed: November 5, 2015

Trial Date: None Yet Set

Case No. 1:16-cv-01478-BLF

Judge: The Hon. Beth Labson Freeman

Complaint Filed: March 25, 2016

Trial Date: None Yet Set

27 **STIPULATION FOR CLASS ACTION SETTLEMENT**
28 **CASE NO. 5:15-cv-05082 and CASE NO. 1:16-cv-01478**

STIPULATION FOR CLASS ACTION SETTLEMENT

This Stipulation for Class Action Settlement (the “Settlement Agreement”) is made by and among EHDER SOTO and HENEY SHIHAD (the “Class Representatives”), on behalf of themselves and the Settlement Class (defined below), on the one hand, and Wild Planet Foods, Inc. (“WP” or the “Company”), on the other hand, subject to and conditioned upon Court approval of the terms and conditions hereof.

RECITALS

A. On November 5, 2015, Plaintiff EHDER SOTO commenced an action entitled *Soto v. Wild Planet Foods, Inc.* (United States District Court, Northern District of California, Case No. 5:15-cv-05082-BLF) (the “Soto Action”), as a proposed class action, asserting claims for breach of express warranty, breach of the implied warranty of merchantability, unjust enrichment, violation of California’s Consumers Legal Remedies Act (“CLRA”), violation of California’s Unfair Competition Law (“UCL”), violation of California’s False Advertising Law (“FAL”), negligent misrepresentation, breach of the implied warranty of fitness for a particular purpose, and fraud.

B. On September 16, 2016, a First Amended Complaint was filed in the Soto Action that removed the claim for breach of the implied warranty of fitness for a particular purpose and that added a damages claim under the CLRA.

C. WP is the Defendant in the Soto Action and is a party to this Settlement Agreement.

D. On March 25, 2016, Plaintiff HENEY SHIHAD commenced an action entitled *Shihad v. Wild Planet Foods, Inc.* (United States District Court, Northern District of California, Case No. 1:16-cv-01478-BLF) (the “Shihad Action”), as a

1 proposed class action, asserting claims for violation of California’s UCL, violation of
2 California’s FAL, breach of express warranty, breach of the implied warranty of
3 merchantability, fraud, and negligent misrepresentation.

4 E. WP is the Defendant in the Shihad Action and is a party to this Settlement
5 Agreement.

6 F. The Soto Action and the Shihad Action are referred to herein collectively
7 as the “Actions.” Ehder Soto and Heney Shihad are referred to collectively herein as
8 the “Class Representatives.”

9 G. The Class Representatives allege in the Actions, *inter alia*, that the
10 Company deceived customers by under-filling the WP Products (defined below) in
11 violation of 21 C.F.R. § 161.190(c) (the “press weight regulation”).

12 H. WP denies the material allegations made in the Actions, and denies any
13 and all liability with respect to all facts and claims alleged therein, and further denies
14 that any of the Settlement Class Members (defined below) or anyone has suffered any
15 harm or damage or is entitled to any monetary or other relief whatsoever in connection
16 with the Actions.

17 I. Class Counsel (defined below) conducted a detailed and thorough
18 examination and investigation of the facts and law relating to the matters in the Actions,
19 including, but not limited to, informal discovery, review and analysis of WP’s data, and
20 testing of the WP Products. The Class Representatives and Class Counsel, after taking
21 into account the foregoing, along with the risks and costs of further litigation, represent
22 that they are satisfied that the terms and conditions of this Settlement are fair,
23 reasonable, and adequate, and that this Settlement is in the best interest of the
24 Settlement Class Members.

1 J. WP, while continuing to deny all allegations of wrongdoing and
2 disclaiming all liability with respect to all claims, considers it desirable to resolve the
3 Actions on the terms stated herein in order to avoid further expense, inconvenience, and
4 burden and, therefore, has determined that this Settlement on the terms set forth herein
5 is in WP's best interests.

6 K. This Settlement Agreement reflects a compromise between the parties
7 and shall in no event be construed as or be deemed an admission or concession by any
8 party of the truth of any allegation or the validity of any purported claim or defense
9 asserted in any of the pleadings in the Action, or of any fault on the part of WP, and all
10 such allegations expressly are denied.

11 L. Substantial settlement negotiations have taken place over more than six months
12 between the Parties, including multiple telephonic and written communications between
13 the Parties, including exchanging legal theories and discovery. As a result, this
14 Settlement Agreement has been reached, subject to the Court approval process set forth
15 herein.

16 In consideration of the covenants and agreements set forth herein, and of the
17 releases and dismissals of claims as described below, and other good and valuable
18 consideration, the receipt and sufficiency of which hereby is acknowledged by each of
19 the Parties, the Class Representatives, on behalf of themselves and the Settlement Class
20 Members, Class Counsel and WP agree to the Settlement described herein, subject to
21 Court approval, under the following terms and conditions:

22 23 **I. DEFINITIONS**

24 1.1 "Cash Claim" has the meaning set forth at paragraph 2.4(a) below.
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1 1.2 “Cash Settlement Fund” has the meaning set forth at paragraph 1.24(a)
2 below.

3 1.3 “Claim Form” means the document to be submitted by Settlement Class
4 Members seeking cash pursuant to this Settlement Agreement. The Claim Form will be
5 available online at the Settlement Website (defined at paragraph 1.26 below) and the
6 contents of the Claim Form will be approved by the Court in connection with the Court-
7 Ordered Allocation Plan (defined below).

8 1.4 “Claimant” means a Settlement Class Member who submits a claim for
9 cash payment as described in Section II of this Settlement Agreement.

10 1.5 “Class Counsel” means the law firms of Nathan & Associates, APC, Law
11 Offices of Ross Cornell, APC, and Bursor & Fisher, P.A.

12 1.6 “Class Notice” means the Court-approved “Notice of Class Action
13 Settlement.”

14 1.7 “Class Representatives” means Ehder Soto and Heney Shihad.

15 1.8 “Court” means the United States District Court, Northern District of
16 California.

17 1.9 “Court-Ordered Allocation Plan” has the meaning set forth at paragraph
18 2.4 below.

19 1.10 “Defendant’s Counsel” means the law firm of Shartsis Friese LLP.

20 1.11 “District Court Final Approval Date” means the day on which the Court’s
21 Settlement Approval Order and Final Judgment (defined at paragraph 1.25 below) is
22 entered.

23 1.12 “Fee and Expense Award” means the amount awarded to Class Counsel by
24 the Court for attorneys’ fees, costs, and expenses.
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1 1.13 “Final Settlement Approval Date” means the date which is thirty (35) days
2 after service of notice of entry of the Settlement Approval Order and Final Judgment on
3 the parties and all objectors to the Settlement Agreement, if any, without any appeal
4 being taken, or if an appeal or request for review has been taken, the date on which the
5 Settlement Approval Order and Final Judgment has been affirmed by the court of last
6 resort to which an appeal or request for review has been taken and such affirmance is no
7 longer subject to further appeal or review, or the date of denial of review after
8 exhaustion of all appellate remedies.

9 1.14 “Incentive Award” means any award sought by application to and
10 approved by the Court that is payable to the Class Representatives from the Cash
11 Settlement Fund.

12 1.15 “Media Plan” means the Settlement Administrator’s plan to disseminate
13 Class Notice to Settlement Class Members.

14 1.16 “Notice and Other Administrative Costs” means all costs and expenses
15 actually incurred by the Settlement Administrator (defined below) in the publication of
16 Class Notice, establishment of the Settlement Website (defined below) and the
17 processing, handling, reviewing, and paying of claims made by Claimants, which have
18 been estimated by the Settlement Administrator to be no more than \$350,000.00.

19 1.17 “Parties” means Ehder Soto, Heney Shihad, and Wild Planet Foods, Inc.

20 1.18 “Preliminary Approval” means that the Court has entered an order
21 preliminarily approving the terms and conditions of this Settlement Agreement,
22 including the manner of providing and content of notice to Settlement Class Members.

23 1.19 “Preliminary Approval Date” means the date on which the Court enters an
24 Order granting Preliminary Approval.

1 1.20 “Released Persons” means WP; all of WP’s past and present respective
2 parents, subsidiaries, divisions, affiliates, persons and entities directly or indirectly
3 under its or their control in the past or in the present; WP’s respective assignors,
4 predecessors, successors, and assigns; and all past or present partners, shareholders,
5 managers, members, directors, officers, employees, agents, attorneys, insurers,
6 accountants, and representatives of any and all of the foregoing.

7 1.21 “Settlement Administrator” means KCC Class Action Services, LLC (or
8 KCC) and its successors and assigns.

9 1.22 “Settlement Class Members” or “Settlement Class” means: “All residents
10 of the United States of America who, from November 5, 2011 to the date of the order
11 granting preliminary approval of this Settlement, purchased any can of branded tuna
12 produced by, for, or on behalf WP, including cans sold under the ‘Wild Planet’ brand
13 and the ‘Sustainable Seas’ brand.”

14 Excluded from this definition are the Released Persons. Settlement Class
15 Members who exclude themselves from the Settlement, pursuant to the procedures set
16 forth in Section V of the Settlement Agreement, shall no longer thereafter be Settlement
17 Class Members and shall not be bound by this Settlement Agreement and shall not be
18 eligible to make a claim for any benefit under the terms of this Settlement Agreement.

19 1.23 “Settlement Class Period” means the period of time from November 5,
20 2011 through the date of the order granting preliminary approval of this Settlement.

21 1.24 “Settlement Fund” means the total cash commitment of WP
22 for purposes of this settlement, as described in Section II of this Settlement Agreement,
23 with a total value of one million seven hundred thousand dollars (\$1,700,000.00).

24 1.25 “Settlement Approval Order and Final Judgment” means an order and
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1 judgment issued and entered by the Court, substantially in the form as that attached
2 hereto and made a part hereof as Exhibit A, approving this Settlement Agreement as
3 binding upon the Parties and the Settlement Class Members and dismissing the Actions
4 with prejudice, and setting the amount for an award of attorneys' fees to be paid from
5 the Settlement Fund, not to exceed one-third of the total \$1.7 million value of the
6 Settlement Fund, plus any award of costs and expenses, also to be paid from the
7 Settlement Fund, to Class Counsel by the Court. The Settlement Approval Order and
8 Final Judgment shall constitute a judgment within the meaning and for purposes of Rule
9 54 of the Federal Rules of Civil Procedure. The Parties jointly shall request the Court to
10 enter the proposed Settlement Approval Order and Final Judgment substantially in the
11 form attached hereto and made a part hereof as Exhibit A.

12 1.26 "Settlement Website" means a website operated and maintained by the
13 Settlement Administrator solely for purposes of making available to the Settlement
14 Class Members the documents, information, and online claims submission process
15 referenced in paragraphs 2.3 through 2.5, below.

16 1.27 "Short Form Notice" means the Court-approved form of notice for
17 publication to Settlement Class Members, pursuant to the Media Plan.

18 1.28 "WP Products" means cans of tuna produced by, for, or on behalf of WP,
19 including but not limited to cans sold under the 'Wild Planet' brand and the 'Sustainable
20 Seas' brand, purchased during the Settlement Class Period.

21 1.29 As used herein, the plural of any defined term includes the singular thereof
22 and the singular of any defined term includes the plural thereof, as the case may be.
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II. SETTLEMENT CONSIDERATION

2.1 Benefit to Settlement Class Members from the Settlement Fund. The Settlement Fund will be used to provide benefits to or on behalf of the Settlement Class as follows:

WP will pay \$1.7 million in cash as part of the Settlement Fund for payment of the following: (i) valid claims for cash benefits submitted by Settlement Class Members pursuant to paragraph 2.4 below; (ii) the Notice and Other Administrative Costs actually incurred by the Settlement Administrator, which will not exceed \$350,000.00, as described in paragraph 4.5 below; (iii) check distribution costs; (iv) the Fee and Expense Award, as described in paragraph 3.1 below, and (v) any Incentive Awards to the Class Representatives, not to exceed \$5,000.00 per individual as may be ordered by the Court and as described in paragraph 3.2 below.

2.2 Total Financial Commitment. WP's total financial commitment and obligation under this Settlement Agreement, including but not limited to paragraphs 2.1, shall not exceed the \$1.7 million Settlement Fund. WP shall make scheduled payments pursuant to this Settlement Agreement as follows: 1) One-fourth (1/4) of the Cash Settlement Fund shall be made five (5) days after the Court grants final approval of the settlement, and 2) WP shall continue to make payments of one-fourth (1/4) of the Cash Settlement Fund every sixty (60) days until WP has funded the Cash Settlement Fund. In the event any scheduled payments are not paid in full, or not paid timely according to the schedule, then remaining payments will be accelerated and due immediately.

2.3 Claims Process. Each Settlement Class Member shall be entitled to submit a claim for cash payment consistent with this paragraph and as approved by the Court.

a. *Cash Payment.* Each Settlement Class Member may file a claim that

1 will, if valid, entitle him or her to a cash payment. A Settlement Class
2 Member's claim for cash payment pursuant to this paragraph 2.4(a) shall
3 be considered a "Cash Claim." The amount of cash payable to each
4 Settlement Class Member making a valid Cash Claim shall be \$29.00.
5 If, pursuant to the Court-Ordered Allocation Plan, the amount of cash
6 available for the Cash Settlement Fund is insufficient to pay all valid
7 Settlement Class Member Cash Claims, individual payment amounts for
8 Cash Claims shall be reduced on a pro-rata basis as described in
9 paragraph 2.6 below.

10 b. *Cash Payment from Fund.* Cash Claims will be paid, after the Claim
11 Period Close Date (as defined in paragraph 2.5) and after the Final
12 Settlement Approval Date, from the Cash Settlement Fund.

13 2.4 Proof of Claim. A maximum of one claim, submitted on a single Claim
14 Form, may be submitted by each Settlement Class Member. A Claimant must include
15 information in the Claim Form – completed online or in hard copy mailed to the
16 Settlement Administrator – confirming under penalty of perjury the following: (i) the
17 specific WP Product(s) purchased and (ii) that the purchase or purchases were made
18 within the Settlement Class Period. No Claimant is required to submit a receipt for
19 proof of purchase of any WP Product(s) to the Settlement Administrator in order to
20 make a Claim.

21 2.5 Review of Claims. The Settlement Administrator shall be responsible for
22 reviewing all claims to determine their validity. The Settlement Administrator shall
23 reject any claim that does not comply in any material respect with the instructions on the
24 Claim Form or the terms of paragraphs 2.4 and 2.5, above, or is submitted after the
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1 close of the claim period set by the Court (“Claim Period Close Date”).

2 2.6 Pro-Rata Reduction of Benefits. If the dollar value of valid Settlement
3 Class Member claims, determined in accordance with paragraphs 2.4 and 2.5 above,
4 exceeds the respective amounts available in the Settlement Fund available to satisfy
5 those claims, awards to Settlement Class Members from the Settlement Fund shall be
6 reduced as follows:

7 a. *Cash Benefit*. If, as of the Final Settlement Approval Date, the
8 cash amount available for the Settlement Fund to satisfy valid Cash Claims
9 is less than the total cash value of valid Cash Claims, cash payments will
10 be reduced on a pro-rata basis, such that the total available cash will satisfy
11 all Cash Claims.

12 2.7 Cash Benefit – Uncleared Checks. Those Settlement Class Members
13 whose cash benefit checks are not cleared within one hundred eighty (180) days after
14 issuance shall be ineligible to receive a cash settlement benefit, and WP shall have no
15 further obligation to make any payment pursuant to this Settlement Agreement or
16 otherwise to such Settlement Class Members. All unpaid funds from uncleared checks
17 shall be donated to a charity agreed upon by Class Counsel, Defendant’s Counsel, and
18 the Settlement Administrator.

19 2.8 Distribution of Unclaimed Settlement Class Benefits After Payment of
20 Valid Claims. WP shall have no obligation under this Settlement Agreement to make
21 cash payments to the Settlement Fund after payment of all valid Cash Claims, Notice
22 and Other Administrative Costs, Incentive Awards, and the Fee and Expense Award,
23 and in no event shall have to pay more than \$1.7 million cash to satisfy the terms of this
24 Settlement. Any cash remaining in the Settlement Fund after payments of valid Cash
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1 Claims shall increase the amount of each Class Claim *pro rata*, by dividing the amount
2 of the funds remaining in the Settlement Fund by the number of valid Cash Claims as
3 calculated by the Settlement Administrator.

4 2.9 Notice to Attorneys General. Not later than ten (10) days after the
5 Motion for Preliminary Approval of the Settlement is filed in court (i.e., by May 26,
6 2015), the Settlement Administrator shall in consultation with WP's counsel provide
7 notice of the proposed class action settlement to the appropriate state officials (i.e., each
8 state attorney general) pursuant to 28 U.S.C. § 1715, and the costs of such notice shall
9 be paid from the Settlement Fund.

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11 **III. CLASS COUNSEL ATTORNEYS' FEES AND EXPENSES AND CLASS**
12 **REPRESENTATIVE INCENTIVE AWARDS**

13 3.1 Attorneys' Fees, Costs and Expenses. Class Counsel will petition the Court
14 for an award of attorneys' fees in an amount not to exceed one third (1/3) of the total
15 \$1.7 million value of the Settlement Fund, plus reimbursement of Class Counsel's costs
16 and expenses. The Class Administrator shall pay the Class Counsel's Fee and Expense
17 Award for the Settlement Fund in accordance with the Court's approval and award.

18 3.2 Incentive Awards. Class Counsel will petition the Court for approval of
19 Incentive Awards payable to the Class Representatives in amounts not to exceed
20 \$5,000.00 apiece. The Class Administrator shall pay such award in accordance with the
21 approval and award, subject to the prior delivery to WP of tax I.D. number(s) for each
22 individual receiving such award.

IV. NOTICE TO CLASS AND ADMINISTRATION OF SETTLEMENT

4.1 Class Notice. The Class Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and shall otherwise be in the manner and form approved by the Court.

4.2 General Notice Terms. The Class Notice shall:

- a. Inform Settlement Class Members that, if they do not exclude themselves from the Class, they may be eligible to receive the relief under the proposed settlement;
- b. contain a short, plain statement of the background of the Action, the Class certification and the proposed settlement;
- c. describe the proposed settlement relief outlined in this Stipulation;
- d. state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed settlement.

4.3 Notice of Exclusion and Objection Rights. The Class Notice shall inform Settlement Class Members of their rights to exclude themselves from the Class or object to the proposed settlement, as described in paragraph 5.3 below.

4.4 Time and Manner of Notice. Class Notice shall be provided as set forth in the Media Plan; media delivery of Class Notice shall be completed within forty-five (45) days after the Preliminary Approval Date.

4.5. Responsibilities of Settlement Administrator. Class Counsel will retain one or more Settlement Administrators (including subcontractors) to help implement the terms of the proposed Settlement Agreement. The Settlement Administrator(s) shall be responsible for administrative tasks, including, without limitation, (a) notifying the

1 appropriate state officials about the settlement, (b) arranging, as set forth in the Media
2 Plan, for distribution of the Class Notice (in the form approved by the Court) and Claim
3 Forms (in a form ordered by the Court) to Settlement Class Members, (c) answering
4 inquiries from Settlement Class Members and/or forwarding such written inquiries to
5 Class Counsel or their designee, (d) receiving and maintaining on behalf of the Court
6 and the Parties any Settlement Class Member correspondence regarding requests for
7 exclusion to the settlement, (e) establishing the Settlement Website that posts notices,
8 Claim Forms and other related documents, (f) receiving and processing claims and
9 distributing payments of cash to Settlement Class Members, and (g) otherwise assisting
10 with implementation and administration of the Settlement Agreement terms. The actual
11 costs and expenses of the Settlement Administrator, which the Settlement Administrator
12 has agreed shall be no more than \$350,000.00, will be paid from the Settlement Fund.

13 4.6. Performance Standards of Settlement Administrator. The contract
14 with the Settlement Administrator shall obligate the Settlement Administrator to abide
15 by the following performance standards:

- 16 a. The Settlement Administrator shall accurately and neutrally describe,
17 and shall train and instruct its employees and agents to accurately
18 and objectively describe, the provisions of this Stipulation in
19 communications with Settlement Class Members;
- 20 b. The Settlement Administrator shall provide prompt, accurate and
21 objective responses to inquiries from Class Counsel or their
22 designee, Defendant and/or Defendant's Counsel, and shall
23 periodically report on claims, objectors, etc.
- 24 c. The Settlement Administrator shall seek clarification, instruction or
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1 authorization for performance of its duties and expenditure or
2 disposition of cash from both Class Counsel and their designee and
3 from Defendant and/or Defendant's Counsel or their designee.
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5 **V. CLASS SETTLEMENT PROCEDURES**

6 5.1 Settlement Approval. As soon as practical after the signing of this
7 Settlement Agreement, the Class Representatives shall move for a Conditional Class
8 Certification and Preliminary Approval Order, conditionally certifying the Settlement
9 Class, preliminarily approving the terms and conditions of this Settlement Agreement as
10 fair, reasonable, and adequate, and in the best interests of the Settlement Class
11 Members, approving notice to the Settlement Class Members as described in Section IV
12 above, and setting a hearing to consider final approval of the Settlement and any
13 objections thereto. WP will not oppose the motion for Conditional Class Certification.

14 5.2 Settlement Approval Order and Final Judgment. At or before the final
15 approval hearing, the Class Representatives shall move for entry of a Settlement
16 Approval Order and Final Judgment substantially in the form as that attached hereto and
17 made a part hereof as Exhibit A, granting final approval of this Settlement and holding
18 this Settlement Agreement to be fair, reasonable, and adequate, and in the best interests
19 of the Settlement Class Members, and binding (as of the Final Settlement Approval
20 Date) on all Settlement Class Members who have not excluded themselves as provided
21 below, and ordering that the Settlement relief be provided as set forth in this Settlement
22 Agreement, ordering the releases as set forth in Section VI below to be effective on the
23 Final Settlement Approval Date, and entering judgment in the Action.

24 5.3 Exclusions, Objections, and Requests to Intervene. The Class Notice shall
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1 advise all Settlement Class Members of their right: (a) to be excluded from the
2 Settlement, (b) to object to the Settlement and (c) to request the opportunity to intervene
3 in this Action. If, within such time as is ordered by the Court and contained in the Class
4 Notice, any Settlement Class Member wishes to be excluded from the Settlement, he or
5 she must do so by timely mailing a valid opt-out notice, as described in the Class
6 Notice. Any Settlement Class Member who timely elects to opt out of the Settlement
7 shall not be permitted to object to the Settlement or to intervene in the Action. Persons
8 falling within the definition of the Settlement Class who validly and timely request
9 exclusion from the Settlement effected by this Settlement Agreement, pursuant to the
10 procedures set forth in the Class Notice, shall not be Settlement Class Members, shall
11 not be bound by this Settlement Agreement and shall not be eligible to make a claim for
12 any benefit under the terms of this Settlement Agreement.

- 13 a. At least seven (7) calendar days prior to the final approval hearing,
14 Class Counsel shall prepare or cause the Settlement Administrator to
15 prepare a list of the persons who have excluded themselves in a valid
16 and timely manner from the Settlement Class (the “Opt-Outs”), and
17 Class Counsel shall file that list with the Court. If, within such time
18 as is ordered by the Court and contained in the Class Notice, any
19 Settlement Class Member wishes to object to the Settlement and/or
20 to be heard, he or she must, on or before the deadlines established by
21 the Court, submit to the Settlement Administrator a written notice of
22 objection and/or request to be heard. Such communication shall
23 state the name and address of the Settlement Class Member, shall
24 include information sufficient to demonstrate membership in the
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1 Settlement Class, and state the grounds for each objection asserted.

2 b. If, within such time as is ordered by the Court and contained in the
3 Class Notice, any Settlement Class Member wishes to intervene in
4 this Action, such Settlement Class Member shall file with the Court
5 and serve upon Defendant's Counsel and Class Counsel, his or her
6 Motion to Intervene and all accompanying arguments and documents
7 in support thereof. The proposed order granting Preliminary
8 Approval will provide that any Settlement Class Member wishing to
9 object, appear, or intervene who fails to follow the procedures set
10 forth above may, in the discretion of the Court, be precluded from
11 doing so.

12 5.4 Stay of the Action. The Parties shall request that the Court, in connection
13 with Preliminary Approval, issue an immediate stay of the Action.

14 5.5 Effect If Settlement Not Approved. This Settlement Agreement was
15 entered into only for purposes of settlement, subject to and without waiver of the
16 Parties' respective rights. If the Court fails to enter the order granting Preliminary
17 Approval or fails to grant final approval, or if the Final Settlement Approval Date does
18 not occur, Class Counsel and Defendant's Counsel shall endeavor, consistent with the
19 Settlement Agreement, to cure any defect identified by the Court. In the event that the
20 Settlement Agreement is terminated for any reason, final approval does not occur for
21 any reason, or the Final Settlement Approval Date does not occur, then no term or
22 condition of the Settlement Agreement, or any draft thereof, or any discussion,
23 negotiation, documentation, or other part or aspect of the Parties' settlement discussions
24 shall have any effect, nor shall any such matter be admissible in evidence for any
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1 purpose in the Action, or in any other proceeding, the Parties shall be restored to their
2 respective positions immediately preceding execution of this Settlement Agreement.
3 The Parties agree that all drafts, discussions, negotiations, documentation, or other
4 information prepared in relation to the Settlement Agreement and the Parties' settlement
5 discussions shall be treated as strictly confidential and may not be disclosed to any
6 person other than the Parties' counsel, and only for purposes of the Action.

7 5.6 Termination. The Settlement Agreement shall have no effect unless and
8 until this Settlement Agreement is fully executed by all Parties.

10 **VI. RELEASES**

11 6.1 Release by Settlement Class Members. Effective as of the Final Settlement
12 Approval Date, each and all of the Settlement Class Members and their respective
13 spouses, heirs, executors, and successors (except any such person who has filed a proper
14 and timely request for exclusion) shall release and forever discharge, and shall be
15 forever barred from asserting, instituting, or maintaining against any or all of the
16 Released Persons, any and all claims, demands, actions, causes of action, lawsuits,
17 arbitrations, damages, or liabilities whether legal, equitable, or otherwise, arising from
18 the factual allegations and/or legal claims made in the Action, or arising from similar or
19 related allegations, claims, or causes of action, including without limitation any
20 allegations of false, misleading, or deceptive advertising or violation of the Consumer
21 Legal Remedies Act, allegations of under-filling of the WP Products and/or any
22 allegations of damages arising from the purchase of any of the WP Products at any time
23 on or after November 5, 2011 and prior to the time the Class is notified (collectively, the
24 "Claims"). Excluded from the released Claims are (a) any and all claims for personal
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1 injury, wrongful death, and/or emotional distress arising from personal injury, (b) any
2 claims of any person or entity that purchased WP Products for purposes of resale or
3 commercial food preparation and not for his/her/its own consumption (i.e., “Resellers”),
4 and (c) any antitrust claim arising from a conspiracy among, or collusive agreement
5 between, WP and one or more of its competitors. With respect to the Claims released
6 pursuant to this paragraph, each Settlement Class Member shall be deemed to have
7 waived and relinquished, to the fullest extent permitted by law, the provisions, rights
8 and benefits of California Civil Code section 1542 (and equivalent, comparable, or
9 analogous provisions of the laws of the United States of America or any state or
10 territory thereof, or of the common law or civil law). Section 1542 provides that:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
12 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
13 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
14 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
15 **SETTLEMENT WITH THE DEBTOR.**

16 Each and every term of this paragraph shall inure to the benefit of each and all of
17 the Released Persons, and each and all of their respective successors and personal
18 representatives, which persons and entities are intended to be beneficiaries of this
19 paragraph.

20 6.2 Effectuation of Settlement. None of the above releases include releases of
21 claims or otherwise affects rights to enforce the terms of the Settlement Agreement.

22 6.3 No Admission of Liability. This Settlement Agreement reflects, among
23 other things, the compromise and settlement of disputed claims among the parties, and
24 neither this Settlement Agreement nor the releases given herein, nor any consideration
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1 therefor, nor any actions taken to carry out this Settlement Agreement, are intended to
2 be, nor may they be deemed or construed to be, an admission or concession of liability,
3 or the validity of any claim, defense, or of any point of fact or law on the part of any
4 party. WP denies the material allegations of the complaint filed in this Action. Neither
5 this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings,
6 nor the settlement negotiations, nor any related document, shall be used as an admission
7 of any fault or omission by any or all of the Released Persons, or be offered or received
8 in evidence as an admission, concession, presumption or inference of any wrongdoing
9 or liability by any or all of the Released Persons in any proceeding, other than such
10 proceedings as may be necessary to consummate, interpret or enforce this Settlement
11 Agreement.

12 13 **VII. CERTIFICATION OF SETTLEMENT CLASS**

14 7.1 The Parties agree, for settlement purposes only, that this Action shall be
15 certified and proceed as a class action under Federal Rule of Civil Procedure 23(b)(3),
16 with a class consisting of all Settlement Class Members, and with Ehder Soto and
17 Heney Shihad as Class Representatives and with Class Counsel as counsel for the
18 Settlement Class Members.

19 7.2 Any certification of a conditional, preliminary, or final settlement class
20 pursuant to the terms of this Settlement shall not constitute, and shall not be construed
21 as, an admission on the part of WP that this Action, or any other proposed or certified
22 class action, is appropriate for class certification or treatment pursuant to Federal Rule
23 of Civil Procedure or any similar state or federal class action statute or rule, except for
24 the purposes of settlement. This Settlement Agreement shall be without prejudice to the
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1 rights of WP to: (a) move to dismiss or stay this Action on any applicable basis; (b)
2 oppose certification in this Action should this Settlement Agreement not be approved or
3 implemented for any reason; or (c) oppose certification in any other proposed or
4 certified class action. Neither the fact of this settlement nor this Settlement Agreement
5 shall be used in connection with efforts in any proceeding to seek certification of any
6 claims asserted against WP.

8 **VIII. MISCELLANEOUS PROVISIONS**

9 8.1 Change of Time Periods. The time periods and/or dates described in this
10 Settlement Agreement with respect to the giving of notices and hearings are subject to
11 approval and change by the Court or by the written agreement of Class Counsel and
12 Defendant's Counsel, without notice to Settlement Class Members. The Parties reserve
13 the right, by agreement and subject to the Court's approval, to grant any reasonable
14 extension of time that might be needed to carry out any of the provisions of this
15 Settlement Agreement.

16 8.2 Time for Compliance. If the date for performance of any act required by
17 or under this Settlement Agreement falls on a Saturday, Sunday, or court holiday, that
18 act may be performed on the next business day with the same effect as if it had been
19 performed on the day or within the period of time specified by or under this Settlement
20 Agreement.

21 8.3 Governing Law. This Settlement Agreement is intended to and shall be
22 governed by the laws of the State of California without giving effect to principles of
23 conflicts of laws.

24 8.4 Entire Agreement. The terms and conditions set forth in this Settlement
25

1 Agreement constitute the complete and exclusive statement of the agreement between
2 the parties relating to the subject matter of this Settlement Agreement, superseding all
3 previous negotiations and understandings, and may not be contradicted by evidence of
4 any prior or contemporaneous agreement. The Parties further intend that this Settlement
5 Agreement constitutes the complete and exclusive statement of its terms as between the
6 parties, and that no extrinsic evidence whatsoever may be introduced in any agency or
7 judicial proceeding, if any, involving this Settlement Agreement. Any modification of
8 the Settlement Agreement must be in writing signed by Class Counsel and WP.

9 8.5 Advice of Counsel. The determination of the terms and the drafting of this
10 Settlement Agreement have been by mutual agreement after negotiation, with
11 consideration by and participation of all parties and their counsel. The presumption
12 found in California Civil Code section 1654 (and equivalent, comparable, or analogous
13 provisions of the laws of the United States of America or any state or territory thereof,
14 or of the common law or civil law) that uncertainties in a contract are interpreted against
15 the party causing an uncertainty to exist is waived by all parties.

16 8.6 Binding Agreement. This Settlement Agreement shall be binding upon
17 and inure to the benefit of the respective heirs, successors, and assigns of the Parties, the
18 Settlement Class Members and the other Released Persons.

19 8.7 No Waiver. The waiver by any party of any provision or breach of this
20 Settlement Agreement shall not be deemed a waiver of any other provision or breach of
21 this Settlement Agreement.

22 8.8 Execution in Counterparts. This Settlement Agreement shall become
23 effective upon its execution by all of the undersigned. The parties may execute this
24 Settlement Agreement in counterparts, and execution of counterparts shall have the
25

1 same force and effect as if all parties had signed the same instrument. The parties
2 further agree that signatures provided by portable document format (PDF) or other
3 electronic transmission shall have the same force and effect as original signatures.

4 8.9 Publicity. Except for the notice provisions set forth in the Order of
5 Preliminary Approval and except as required by WP in accordance with applicable law,
6 rule, or regulation (e.g. securities laws, rules, or regulations), each of the Class
7 Representatives, Class Counsel, WP, and Defendant's Counsel agrees that there will be
8 no campaigning (including on the Internet) regarding the Settlement. There will be no
9 press release regarding the Settlement, and neither side will initiate contacts with the
10 media nor issue any public statement, comment, or promotional material that references
11 the existence or terms of the Settlement or litigation against WP, provided, however,
12 that Class Counsel and Defendant's Counsel are permitted, in connection with their law
13 firm websites, biographies, brochures, and firm marketing materials, future declarations
14 regarding counsel's experience, and/or in speaker biographies, to state that they served
15 as counsel in this Action. Any party can respond to inquiries initiated by the media, and
16 in doing so may decline to comment, but otherwise shall only refer to the Class Notice
17 and/or defer to the court file in this Action, but shall not provide any further comment.

18 8.10 Enforcement of this Settlement Agreement. The Court shall retain
19 jurisdiction, and shall have exclusive jurisdiction, to enforce, interpret, and implement
20 this Settlement Agreement, including any alleged violation of paragraph 8.9 above, and
21 the terms of any order entered pursuant to this Settlement Agreement.

22 8.11 Notices. All notices to the Parties or counsel required by this
23 Settlement Agreement shall be made in writing and communicated by email and mail to
24 the following addresses:
25

If to the Class Representatives, Settlement Class Members, or Class Counsel:

Reuben D. Nathan
NATHAN & ASSOCIATES, APC
600 W. Broadway, Suite 700
San Diego, California 92101
Tel: (619)272-7014
Email: rnathan@nathanlawpractice.com
To WP or Defendant's Counsel:

Joseph V. Mauch
SHARTSIS FRIESE LLP
One Maritime Plaza, Eighteenth Floor
San Francisco, CA 94111
Tel: (415) 421-6500
Email: jmauch@sflaw.com

IN WITNESS HEREOF the undersigned, being duly authorized and intending to be legally bound hereby, have caused this Settlement Agreement to be executed on the dates shown below and agree that it shall take effect on the date it is executed by all of the undersigned.

APPROVED AND AGREED:

DATED: December 22, 2016



Plaintiff, Ehder Soto

DATED: December __, 2016

Plaintiff, Heney Shihad

DATED: December __, 2016

President, Wild Planet Foods, Inc.

1 If to the Class Representatives, Settlement Class Members, or Class Counsel:

2 Reuben D. Nathan
3 NATHAN & ASSOCIATES, APC
4 600 W. Broadway, Suite 700
5 San Diego, California 92101
6 Tel: (619)272-7014
7 Email: rnathan@nathanlawpractice.com
8 To WP or Defendant's Counsel:

9 Joseph V. Mauch
10 SHARTSIS FRIESE LLP
11 One Maritime Plaza, Eighteenth Floor
12 San Francisco, CA 94111
13 Tel: (415) 421-6500
14 Email: jmauch@sflaw.com

15 IN WITNESS HEREOF the undersigned, being duly authorized and intending to
16 be legally bound hereby, have caused this Settlement Agreement to be executed on the
17 dates shown below and agree that it shall take effect on the date it is executed by all of
18 the undersigned.

19 **APPROVED AND AGREED:**

20 DATED: December __, 2016 _____
21 Plaintiff, Ehder Soto

22 DATED: December 21, 2016 _____
23 Plaintiff, Heney Shihad

24 DATED: December 21, 2016 _____
25 CEO, Wild Planet Foods, Inc.

1 APPROVED AS TO FORM:

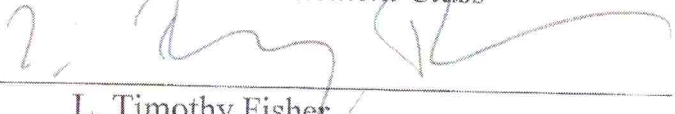
2
3 DATED: December 21, 2016


Reuben D. Nathan

NATHAN & ASSOCIATES, APC

Attorneys for Ehder Soto and Heney Shihad and
the Putative Settlement Class

4
5
6
7 DATED: December 21, 2016


L. Timothy Fisher

BURSOR & FISHER, PA

Attorneys for Ehder Soto and Heney Shihad and
the Putative Settlement Class

8
9
10
11 DATED: December 21, 2016


Joseph V. Mauch

SHARTSIS FRIESE LLP

Attorneys for Wild Planet Foods, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICK HENDRICKS,
Plaintiff,
v.
STARKIST CO,
Defendant.

Case No. 13-cv-00729-HSG

**ORDER GRANTING PRELIMINARY
APPROVAL**

Re: Dkt. Nos. 184, 187

Before the Court are Plaintiff Patrick Hendrick's motions for preliminary approval of the class action settlement, *see* Dkt. Nos. 187 (the "Prelim. Mot."), and the settlement plan of allocation, *see* Dkt. No. 184 (the "Allocation Mot."). Defendant StarKist has filed what it characterizes as a "joinder" to Plaintiff's motion for preliminary approval of the class action settlement as well as an opposition to Plaintiff's proposed plan of allocation. *See* Dkt. No. 188 ("StarKist Resp."). The point of disagreement concerning the proposed allocation concerns whether payments to individual class members should consist of a flat amount or vary based on how many cans of StarKist tuna each class member purchased during the class period.

Having considered the parties' arguments in their moving papers and at oral argument, the Court **GRANTS** Plaintiff's motion for preliminary approval of the class action settlement and plan of allocation.

I. BACKGROUND

A. Litigation History

This action began on February 19, 2013, when Plaintiff filed this action in the Northern District of California. *See* Dkt. No. 1 (the "Complaint"). The Complaint asserted claims under California Civil Code § 1750 *et seq.* (Consumers Legal Remedies Act or "CLRA"), California Business and Professions Code § 17200 *et seq.* (Unfair Competition Law or "UCL"), California

Business and Professions Code § 17500 *et seq.* (False Advertising Law or “FAL”), and for Breach of Express Warranty, Breach of Implied Warranty of Merchantability, Breach of Implied Warranty of Fitness for a Particular Purpose, Negligent Misrepresentation, Fraud, and Unjust Enrichment. *Id.* The Court dismissed Plaintiff’s Unjust Enrichment claim on March 25, 2013. *See* Dkt. No. 57.

The parties participated in two settlement conferences before Judge Corley, the first on May 21, 2014 and the second on March 20, 2015. *See* Dkt. Nos. 67 and 126. While no settlement was reached during those conferences, the case ultimately settled shortly after the second settlement conference and just prior to the hearing on Plaintiff’s motion for class certification on April 16, 2015. *See* Prelim. Mot. at 5. Plaintiff moved for preliminary approval of the Settlement Agreement on May 14, 2015. *Id.*

B. Overview of the Proposed Settlement

Following the settlement in principle, the parties executed a Stipulation of Settlement Agreement (the “Settlement Agreement”). *See* Declaration of Scott A. Bursor (“Bursor Dec.”), Ex. 1. The key provisions of the Settlement Agreement are as follows.

Payment Terms: In full settlement of the claims asserted in this lawsuit, StarKist agrees to pay \$8,000,000 in cash and \$4,000,000 in vouchers for StarKist products. *Id.* at 5. This amount includes payments to claimants for release of their claims, any award of attorneys’ fees and costs, claims administrator costs, and any incentive awards to Hendricks and other “interested parties.” *Id.* at 7. Plaintiff proposes that claimants be permitted to elect either a \$25 payment from the cash settlement fund or a \$50 payment in StarKist vouchers from the voucher settlement fund. *See* Allocation Mot. at 1. Plaintiff’s counsel estimates that—after attorneys’ fees and costs, claim administrator costs, and incentive awards are deducted from the cash portion of the settlement fund—the claims administrator would need to receive approximately 120,000 “cash claims” (a total value of \$3,000,000) and 80,000 “voucher claims” (a total value of \$4,000,000) to exhaust the entire settlement fund. *See* Bursor Dec. ¶ 2.

Attorneys’ Fees and Costs: The Settlement Agreement authorizes Plaintiff’s counsel to apply to the Court for an award of attorneys’ fees and costs incurred in litigating this case.

Settlement Agreement at 11-12. Plaintiff's counsel request an amount no greater than one third of the total \$12,000,000 settlement amount, plus reimbursement of costs and expenses, which Plaintiff's counsel has not yet identified. *Id.*

Incentive Payment: The Settlement Agreement provides that Plaintiff's counsel will petition the Court for approval of payments of no more than \$5,000 to Hendricks and "interested parties" identified as Laury Smith, Ben Hall, Brian Andcacky, Joseph Vallillo, Joeseph Ebin, Kelly Maucieri, Monica Rodriguez, and Jayme Kaczmarek. *Id.* at 4, 12.

Releases: The Settlement Agreement provides that all class members other than those who opted-out:

shall release and forever discharge, and shall be forever barred from asserting, instituting, or maintaining against any or all of the Released Persons, any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages, or liabilities whether legal, equitable, or otherwise, relating in any way to the claims asserted or the factual allegations made in the Action, including without limitation the alleged under-filling of the StarKist Products and/or the purchase of any of the StarKist Products at any time on or after February 19, 2009 and prior to November 1, 2014 (collectively, the "Claims").

Id. at 17. Further, the Settlement Agreement provides that settling class members be "deemed to have waived and relinquished . . . [the] rights and benefits of California Civil Code section 1542." *Id.*

Procedure for Claims and Settlement: Plaintiff's counsel is required to move for preliminary and final Court approval of the Settlement Agreement. *Id.* at 14. Class notice will inform potential settlement class members of the settlement agreement, the background of the action and settlement, the settlement relief available, that they have a right to object to or exclude themselves from the settlement, the process for submitting a claim, and that the settlement is conditioned on the Court's final approval. *Id.* at 13. The settlement administrator's actual costs and expenses in carrying out its duties are capped at \$675,000.

Unclaimed Settlement Funds: The Settlement Agreement provides that Plaintiff's counsel may petition the Court to seek approval for proposed disposition of any remaining cash and/or vouchers remaining after distribution of claims. *Id.* at 11.

1 *Objections:* Any Class Member who has not opted out may file an objection to the
 2 Settlement Agreement (or any of its terms). *Id.* at 15.

3 **II. CONDITIONAL CLASS CERTIFICATION**

4 Class certification under Rule 23 is a two-step process. First, a plaintiff must demonstrate
 5 that the four requirements of Rule 23(a) are met: numerosity, commonality, typicality, and
 6 adequacy. “Class certification is proper only if the trial court has concluded, after a ‘rigorous
 7 analysis,’ that Rule 23(a) has been satisfied.” *Wang v. Chinese Daily News, Inc.*, 709 F.3d 829,
 8 833 (9th Cir. 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011)).
 9 Second, a plaintiff must establish that one of the bases for certification in Rule 23(b) is met. Here,
 10 by invoking Rule 23(b)(3), Plaintiff must establish that “questions of law or fact common to class
 11 members predominate over any questions affecting only individual members, and . . . [that] a class
 12 action is superior to other available methods for fairly and efficiently adjudicating the
 13 controversy.” Fed. R. Civ. P. 23(b)(3). The party seeking class certification bears the burden of
 14 demonstrating by a preponderance of the evidence that all four requirements of Rule 23(a) and at
 15 least one of the three requirements under Rule 23(b) are met. *See Wal-Mart*, 131 S. Ct. at 2551.

16 **A. Rule 23(a)(1)—Numerosity**

17 Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is
 18 impracticable.” Numerosity is satisfied here because the proposed settlement class includes
 19 millions of potential members. Joinder of millions of individuals would be impracticable in this
 20 action.

21 **B. Rule 23(a)(2)—Commonality**

22 A Rule 23 class is certifiable only if “there are questions of law or fact common to the
 23 class.” Fed. R. Civ. P. 23(a)(2). For the purposes of Rule 23(a)(2), even a single common
 24 question is sufficient. *Wal-Mart*, 131 S. Ct. at 2556. The common contention, however, “must be
 25 of such a nature that it is capable of classwide resolution—which means that determination of its
 26 truth or falsity will resolve an issue that is central to the validity of each one of the claims in one
 27 stroke.” *Id.* at 2551. “What matters to class certification . . . is not the raising of common
 28 ‘questions’ – even in droves – but rather the capacity of a classwide proceeding to generate

common *answers* apt to drive the resolution of the litigation.” *Id.* (emphasis in original) (citation omitted).

The Court finds that the proposed class satisfies the commonality requirement because, at a minimum, the issue of Defendant’s alleged under-filling of tuna cans and its defenses apply to the class as a whole.

C. Rule 23(a)(3)—Typicality

In certifying a class, courts must find that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed R. Civ. P. 23(a)(3). “The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). “The test of typicality ‘is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.’” *Id.* (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)).

The Court finds that class representative Hendricks is typical of the class he seeks to represent. Like the rest of the settlement class, Hendricks alleges that he purchased cans of StarKist tuna during the time period when StarKist allegedly underfilled its product.

D. Rule 23(a)(4)—Adequacy of Representation

“The adequacy of representation requirement . . . requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000). The requirement “‘tend[s] to merge’ with the commonality and typicality criteria of Rule 23(a).” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 158 n.13 (1982)). Among other purposes, these requirements determine whether “the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Falcon*, 457 U.S. at 158 n.13. Adequacy of representation requires two legal determinations: “(1) do the named plaintiffs and their counsel have any conflicts of

1 interest with other class members and (2) will the named plaintiffs and their counsel prosecute the
2 action vigorously on behalf of the class?” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir.
3 1998)

4 No evidence in the record suggests that the class representative or class counsel have a conflict
5 of interest with other class members. Plaintiff’s counsel has experience prosecuting large consumer
6 class actions. *See* Bursor Dec., Ex. 3. The Court finds that proposed class counsel and the named
7 Plaintiff have prosecuted this action vigorously on behalf of the class, and will continue to do so. The
8 adequacy requirement is therefore satisfied.

9 **E. Rule 23(b)(3)—Predominance and Superiority**

10 To certify a Rule 23 damages class, the Court must find that “questions of law or fact common
11 to class members predominate over any questions affecting only individual members, and . . . [that] a
12 class action is superior to other available methods for fairly and efficiently adjudicating the
13 controversy.” Fed. R. Civ. P. 23(b)(3). The predominance inquiry “tests whether proposed classes are
14 sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. “When
15 common questions present a significant aspect of the case and they can be resolved for all members of
16 the class in a single adjudication, there is clear justification for handling the dispute on a representative
17 rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022 (citation omitted).

18 Here, the Court finds that—for the purposes of settlement—the common questions raised by
19 Plaintiff’s claims predominate over questions affecting only individual members of the proposed class.
20 In particular, Plaintiffs allege that StarKist’s Samoa facility systematically underfilled certain types of
21 5 oz. cans of StarKist tuna, and that its press weight testing procedures systematically overrepresented
22 the pressed weight readings of StarKist products. Whether these alleged systematic deficiencies have
23 a basis in fact is a common question that would largely resolve the claims of all class members. The
24 predominance requirement is therefore satisfied.

25 Next, “[t]he superiority inquiry under Rule 23(b)(3) requires the Court to determine whether
26 the objectives of the particular class action procedure will be achieved in the particular case.” *Id.* at
27 1023. Here, because common legal and factual questions predominate over individual ones, and
28 taking into account the sheer size of the proposed class, the Court finds that the judicial economy

achieved through common adjudication makes a class action a superior method for adjudicating the claims of the proposed class.

Finally, while not enumerated in Rule 23, “courts have recognized that ‘in order to maintain a class action, the class sought to be represented must be adequately defined and clearly ascertainable.’” *Vietnam Veterans of Am. v. C.I.A.*, 288 F.R.D. 192, 211 (N.D. Cal. 2012) (quoting *DeBremaecker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970)); see also *Berger v. Home Depot USA, Inc.*, 741 F.3d 1061, 1071, n.4 (9th Cir. 2014) (referring, in dicta, to the “threshold ascertainability test”). “[A] class definition is sufficient if the description of the class is ‘definite enough so that it is administratively feasible for the court to ascertain whether an individual is a member.’” *Vietnam Veterans*, 288 F.R.D. at 211 (quoting *O’Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998)).

Courts have considered at least three types of “ascertainability” concerns when determining whether class certification is appropriate: (1) whether the class can be ascertained by reference to objective criteria; (2) whether the class includes members who are not entitled to recovery; and (3) whether the putative named plaintiff can show that he will be able to locate absent class members once a class is certified. See *Lilly v. Jamba Juice Co.*, 2014 WL 4652283, at *3-4 (N.D. Cal. Sept. 18, 2014). As the Court discussed during the April 16, 2015 Case Management Conference, the proposed settlement class definition suffers, to various degrees, from the uncertainties that drive these concerns. However, the Court agrees with the parties that, at least at the preliminary approval stage, the methods proposed to identify and compensate injured class members render the class definition sufficiently ascertainable.

F. Appointment of Class Representatives and Class Counsel

Because the Court finds that Hendricks meets the commonality, typicality, and adequacy requirements of Rule 23(a), the Court appoints Plaintiff as class representative. When a court certifies a class, the court must appoint class counsel and must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A). Additionally, a court “may consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B).

Plaintiffs’ counsel have prosecuted this action by: (1) investigating class members’ potential claims; (2) propounding and reviewing discovery; (3) analyzing data Defendant provided in discovery; (4) participating in two mediations; (5) negotiating this settlement agreement; and (6) briefing the instant motion for preliminary approval. Plaintiffs’ counsel has substantial prior experience prosecuting class actions. For these reasons, the Court will appoint Scott Bursor of Bursor and Fisher P.A. as lead class counsel pursuant to Federal Rule of Civil Procedure 23(g).

III. PRELIMINARY APPROVAL OF THE CLASS SETTLEMENT

Pursuant to Federal Rule of Civil Procedure 23(e), “[t]he claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” The Ninth Circuit maintains a “strong judicial policy” that favors the settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). “The purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). Accordingly, before a court approves a settlement it must conclude that the settlement is “fundamentally fair, adequate and reasonable.” *In re Heritage Bond Litig.*, 546 F.3d 667, 674-75 (9th Cir. 2008). Generally, the district court’s review of a class action settlement is “extremely limited.” *Hanlon*, 150 F.3d at 1026. However, where the parties reach a class action settlement prior to class certification, courts apply “a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e).” *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012) (citation and internal quotations omitted). Courts “must be particularly vigilant not only for explicit collusion, but also for more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011).

At the preliminary approval stage, the Court may grant preliminary approval of a

1 settlement and direct notice to the class if the settlement: (1) appears to be the product of serious,
 2 informed, non-collusive negotiations; (2) has no obvious deficiencies; (3) does not improperly
 3 grant preferential treatment to class representatives or segments of the class; and (4) falls within
 4 the range of possible approval. *See* Joseph M. McLaughlin, *McLaughlin on Class Actions: Law*
 5 *and Practice* § 6.6 (7th ed. 2011) (“Preliminary approval is an initial evaluation by the court of the
 6 fairness of the proposed settlement, including a determination that there are no obvious
 7 deficiencies such as indications of a collusive negotiation, unduly preferential treatment of class
 8 representatives or segments of the class, or excessive compensation of attorneys . . .”). The
 9 Court considers the settlement as a whole, rather than its components, and lacks the authority to
 10 “delete, modify or substitute certain provision.” *Id.* (quoting *Officers for Justice v. Civil Serv.*
 11 *Comm’n of San Francisco*, 688 F.2d 615, 630 (9th Cir.1982)). Rather, “[t]he settlement must
 12 stand or fall in its entirety.” *Id.*

13 **A. The Settlement Process**

14 The first factor the Court examines is the means by which the parties arrived at the
 15 settlement. “An initial presumption of fairness is usually involved if the settlement is
 16 recommended by class counsel after arm’s-length bargaining.” *Harris v. Vector Mktg. Corp.*, No.
 17 08-cv-5198 EMC, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 29, 2011) (citation omitted). Here,
 18 the parties reached their settlement after two settlement conferences with Judge Corley, which
 19 strongly suggests the absence of collusion or bad faith by the parties or counsel. *See Chun-Hoon*
 20 *v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010); *see also Satchell v. Fed. Exp.*
 21 *Corp.*, No. 03-cv-2659 SI, 2007 WL 1114010, at *4 (N.D. Cal. Apr. 13, 2007) (“The assistance of
 22 an experienced mediator in the settlement process confirms that the settlement is non-collusive.”).

23 **B. The Presence of Obvious Deficiencies**

24 The second factor the Court considers is whether there are obvious deficiencies in the
 25 Settlement Agreement. The Court has found no obvious deficiencies.

26 **C. Preferential Treatment**

27 Under the third factor, the Court examines whether the Settlement Agreement provides
 28 preferential treatment to any class member. Under the terms of the plan of allocation adopted by

the Court below, each class member receives an equal share of the recovery—either \$25 in cash or \$50 in vouchers for StarKist products.

While the Settlement Agreement authorizes Hendricks to seek an incentive award of \$5,000 for his role as named plaintiff in this lawsuit, the Court will ultimately determine whether Hendricks is entitled to such an award and the reasonableness of the amount requested. The Ninth Circuit has recognized that service awards to named plaintiffs in a class action are permissible and do not render a settlement unfair or unreasonable. *See Stanton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003); *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-69 (9th Cir. 2009). The Court is extremely skeptical that the Settlement Agreement's proposed payment of \$5,000 to "interested parties," who do not appear to have been deposed in this action, is warranted. Even so, Plaintiff will be afforded the opportunity to justify each award.

D. Whether the Settlement Falls Within the Range of Possible Approval

Finally, the Court must consider whether the Settlement Agreement falls within the range of possible approval. "To evaluate the range of possible approval criterion, which focuses on substantive fairness and adequacy, courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer." *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1125 (E.D. Cal. 2009) (citing *In re Tableware Antitrust Litig.*, 484 F. Supp.2d at 1080) (internal quotations omitted). Additionally, to determine whether a settlement is fundamentally fair, adequate, and reasonable, the Court may preview the factors that ultimately inform final approval: (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of class members to the proposed settlement. *See Churchill Village v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citing *Hanlon*, 150 F.3d at 1026). Although the Court undertakes a more in-depth investigation of the foregoing factors at the final approval stage, these factors inform whether the Settlement Agreement falls within the "range of possible approval."

1 The Court first considers the class' expected recovery balanced against the value of the
2 settlement offer, taking into account the strength of the plaintiff's case. The settlement provides
3 \$12,000,000 as a gross settlement amount, \$8,000,000 to be paid in cash and \$4,000,000 in
4 StarKist vouchers. Plaintiff's counsel represents that this "is an excellent result for class members
5 compared to their likely recovery should they prevail at trial" given that Plaintiff's expert
6 calculated "recoverable damages on an individual basis at \$10.57 under a price premium theory, or
7 \$63.63 on a full refund theory." Allocation Mot. at 1. As the Court observed during the April 16,
8 2015 Case Management Conference, the pressed-weight testing results for StarKist cans of tuna
9 presented a significant hurdle to establishing substantial numbers of "underweight" cans were sold
10 to the public. The relative weakness of Plaintiff's case on the merits mitigates in favor of
11 settlement.

12 Second, the settlement amount is adequate given the expense, complexity, and duration of
13 further litigation. In order to prevail in this action, Plaintiff would be required to successfully move
14 for class certification, survive summary judgment, and receive a favorable verdict capable of
15 withstanding a potential appeal. The risk and costs associated with class action litigation weighs
16 strongly in favor of settlement.

17 The third factor concerning whether class certification can be maintained through trial also
18 weighs in favor of settlement. Certifying a class of tens of millions of consumers who purchased
19 some, but not all, varieties of StarKist's tuna products over half a decade presents complex and
20 substantial issues that could undermine certification at many different stages of the litigation.

21 Fourth, the \$12,000,000 settlement amount, while constituting only a single-digit
22 percentage of the maximum potential exposure, is reasonable given the stage of the proceedings
23 and the defenses asserted in this action.

24 Fifth, the parties have undertaken sufficient discovery to inform their view of the
25 reasonableness of the Settlement Agreement. In addition to formal written discovery, the parties
26 performed independent testing on numerous cans of tuna manufactured during the class period and
27 have reviewed tens of thousands of StarKist's internal testing results.

28 The sixth factor takes into account counsel's experience and their respective views of the

Settlement Agreement. The Court has previously evaluated class counsel's qualifications and experience and concluded that counsel is qualified to represent the class' interests in this action. The Court notes, however, that courts have taken divergent views as to the weight to accord counsel's opinions. *Compare Carter v. Anderson Merch., LP*, 2010 WL 1946784, at *8 (C.D. Cal. May 11, 2010) ("Counsel's opinion is accorded considerable weight.") with *Chun-Hoon*, 716 F. Supp. 2d at 852 ("[T]his court is reluctant to put much stock in counsel's pronouncements, as parties to class actions and their counsel often have pecuniary interests in seeing the settlement approved."). The Court finds that this factor tilts in favor of approval, even though the Court affords only modest weight to the views of counsel.

The seventh factor is inapplicable because there is no governmental participant in this case.

Eighth, because the class has not yet been formally notified of the settlement, the Court cannot undertake any evaluation of class members' reaction to the settlement, including the number and substance of any objections.

Having weighed these eight factors, the Court finds that the Settlement Agreement falls within the range appropriate for preliminary approval.

IV. PLAN OF ALLOCATION

A plan for allocation of a settlement fund is governed by the same legal standards that apply to the approval of a settlement: the plan must be fair, reasonable, and adequate. *See In re Citric Acid Antitrust Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001). This means that, to the extent feasible, the plan should provide class members who suffered greater harm and who have stronger claims a larger share of the distributable settlement amount. *See, e.g., Rieckborn v. Velti PLC*, No. 13-cv-03889-WHO, 2015 WL 468329, at *8 (N.D. Cal. Feb. 3, 2015); *In re Omnivision Technologies, Inc.*, No. 04-cv-2297-SC, 2007 WL 4293467, at *7 (N.D. Cal. Dec. 6, 2007); *In re Oracle Sec. Litig.*, No. 90-cv-0931-VRW, 1994 WL 502054, at *1 (N.D. Cal. June 18, 1994). However, some "courts recognize that an allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel." *Vinh Nguyen v. Radiant Pharm. Corp.*, No. 11-cv-00406, 2014 WL 1802293, at *5 (C.D. Cal. May 6, 2014).

Plaintiff proposes a plan of distribution that would provide a flat \$25 in cash or \$50 in

1 vouchers to each class member regardless of how many cans of StarKist tuna they purchased
 2 during the class period. StarKist opposes this approach, arguing that it does not sufficiently
 3 distinguish between class members who purchased varying quantities of StarKist tuna and thus
 4 does not “bear a reasonable relationship to the damages Plaintiff has asserted with respect to
 5 individual class members.” StarKist Resp. at 5. Instead of Plaintiff’s static disbursement, StarKist
 6 proposes a tiered system whereby individual settlement payments range from \$1 for class
 7 members who purchased 1-10 cans of tuna during the class period up to \$37.50 for class members
 8 who purchased 241 or more cans of tuna. *See id.*, App’x A.

9 The Court is faced with two competing concerns. On the one hand, the Court recognizes
 10 that Plaintiff’s proposed plan of allocation does not distinguish between occasional tuna eaters—
 11 who were only slightly harmed by StarKist’s alleged misconduct—and class members who
 12 routinely purchased StarKist tuna. On the other hand, the Court is sensitive to the concern that
 13 creating additional hurdles to recovery may significantly reduce the number of class members who
 14 participate, especially in cases, like this one, where individual payouts are relatively small. *See*
 15 Newberg on Class Actions § 12:15 (5th ed. 2014) (“The goal of any distribution method is to get
 16 as much of the available damages remedy to class members as possible and in as simple and
 17 expedient a manner as possible.”). Although the parties have taken turns alternatively advancing
 18 and disputing the argument in different phases of this action, *see* Dkt. No. 184 at 3; Dkt. No. 111-3
 19 at 16, the Court agrees that many class members will have difficulty providing even rough
 20 estimates of how many cans of StarKist tuna they purchased during the class period. Asking class
 21 members to search back years in their memories and then attest, under penalty of perjury, to the
 22 number of StarKist tuna cans they purchased may dissuade many from claiming the \$5, \$10, or
 23 \$25 to which their particular level of purchasing would entitle them. At some point, the
 24 paperwork overwhelms the benefit. Where the settlement payout is relatively modest, that point
 25 comes quickly.

26 After weighing these concerns, the Court finds that Plaintiff’s plan of allocation is in the
 27 best interests of the class. Although the flat payout disbursement plan will necessarily
 28 overcompensate infrequent tuna purchasers, the modest payment amounts at issue in this case

1 makes this outcome less problematic than in cases where hundreds or even thousands of dollars
 2 are at stake. The fact that class members will receive a few dollars more or a few dollars less than
 3 their strict (self-estimated) proportional share of the recovery is outweighed by the benefits of a
 4 streamlined claims process that encourages maximum participation.

5 **V. PROPOSED CLASS NOTICE AND NOTIFICATION PROCEDURES**

6 The class notice in a Rule 23(b)(3) class action must comport with the requirements of due
 7 process. “[T]he plaintiff must receive notice plus an opportunity to be heard and participate in
 8 litigation, whether in person or through counsel.” The notice must be “the best practicable,”
 9 “reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the
 10 action and afford them an opportunity to present their objections.” *Philips Petroleum Co. v. Shutts*,
 11 472 U.S. 797, 812 (1985) (citations omitted). “The notice should describe the action and the plaintiffs’
 12 rights in it.” *Id.* Rule 23(c)(2)(B) provides, in relevant part:

13 The notice must clearly and concisely state in plain, easily
 14 understood language: (i) the nature of the action; (ii) the definition
 15 of the class certified; (iii) the class claims, issues, or defenses; (iv)
 16 that a class member may enter an appearance through an attorney if
 17 the member so desires; (v) that the court will exclude from the class
 any member who requests exclusion; (vi) the time and manner for
 requesting exclusion; and (vii) the binding effect of a class judgment
 on members under Rule 23(c)(3).

18 Additionally, “an absent plaintiff [must] be provided with an opportunity to remove himself from
 19 the class by executing and returning an ‘opt out’ or ‘request for exclusion’ form to the court.” *Id.*

20 The parties propose to use KCC Class Action Services, LLC as the claims administrator
 21 for the class. The Court finds that KCC is qualified to perform the tasks associated with
 22 administering the notice and claims procedures outlined in the Settlement Agreement and
 23 therefore approves KCC as claims administrator. KCC will, among other tasks, provide notice,
 24 calculate awards, process requests for exclusion and objections, and mail class members their
 25 settlement awards. The proposed notice contains all the information required under the Federal
 26 Rules and, accordingly, the Court finds notice plan comports with due process requirements.

27 **VI. NOTICE OF MOTION AND AWARD OF ATTORNEYS’ FEES AND COSTS**

28 Item 20 of the settlement notice informs class members that class counsel will file a motion

seeking an award of attorneys' fees in the amount of one-third of the \$12 million settlement amount, plus their out-of-pocket expenses. Bursor Decl., Ex. 5 at 8. To enable class members to review class counsel's motion, class counsel shall include language in the Settlement Notice indicating the deadline for filing the attorneys' fees motion, specifically stating the deadline for any class member objections to the fees motion, and informing class members that the motion and supporting materials will be available for viewing on class counsel's website. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-94 (9th Cir. 2010) (holding that under Rule 23(h), class members must be given a full and fair opportunity to examine and object to attorneys' fees motion). That motion shall be filed with the Court and posted on class counsel's website not later than 20 days before class members' objections are due.

VII. SETTLEMENT APPROVAL SCHEDULE

The parties shall stipulate to a schedule for each event below and submit such stipulation and proposed order to the Court within seven days of this Order.

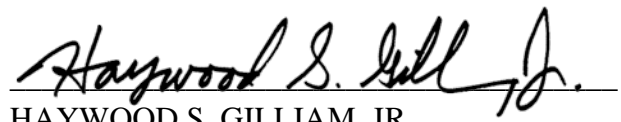
Event	Date
Deadline for completion of notice dissemination	
Filing deadline for attorneys' fees and costs motion	
Filing deadline for incentive payment motion	
Last date to file objections	
Last date to submit claims	
Filing deadline for final approval motion	
Final Fairness hearing and hearing on motions	

VIII. CONCLUSION

The Court **GRANTS** Plaintiff's Motion for Preliminary Approval of Class Action Settlement and Plan of Allocation. The parties are directed to comply with the instructions provided above.

IT IS SO ORDERED.

Dated: July 23, 2015


HAYWOOD S. GILLIAM, JR.
United States District Judge



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FIRM RESUME

With offices in New York and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million dollar verdicts or recoveries in five of five civil jury trials since 2008. Our most recent trial victory came in August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel and won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Verizon Wireless, AT&T Wireless, Cingular Wireless, Sprint, T-Mobile, General Electric, Haier America, and Michaels Stores as well as purchasers of Avacor™, Xenadrine™, and Sensa™ products. Since 2014, our lawyers have certified four consumer classes pursuant to contested class certification motions (*see Ebin, Forcellati, In re EZ Seed Litig.*, and *Dei Rossi infra*). Since December 2010, Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

- i. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
- ii. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
- iii. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
- iv. *Loreto v. Coast Cutlery Co.* (D.N.J. Sep. 8, 2011) to represent a certified nationwide class of purchasers of knives or tools made by Coast Cutlery,
- v. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,

- vi. *Avram v. Samsung Electronics America, Inc., et al.* (D.N.J. Jan. 3, 2012), to represent a proposed nationwide class of purchasers of mislabeled refrigerators from Samsung Electronics America, Inc. and Lowe's Companies, Inc.,
- vii. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012), to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
- viii. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012), to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
- ix. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012), to represent a certified nationwide class of purchasers of Sensa weight loss products,
- x. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers of Sinus Buster products,
- xi. *Scott v. JPMorgan Chase & Co., et al.* (S.D.N.Y. May 30, 2013) to represent a proposed nationwide class of Chase customers who were allegedly unilaterally enrolled into Chase's Overdraft Protection service and charged unauthorized fees,
- xii. *Podobedov v. Living Essentials, LLC* (C.D. Cal. Nov. 8, 2013) to represent a proposed nationwide class of purchasers of 5-hour Energy products,
- xiii. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
- xiv. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
- xv. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
- xvi. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015), to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
- xvii. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015), to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
- xviii. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
- xix. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015), to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards, and
- xx. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products.

SCOTT A. BORSOR

Mr. Borsor has an active civil trial practice, having won multi-million verdicts or recoveries in five of five civil jury trials since 2008. Mr. Borsor's most recent victory came in August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which he served as lead trial counsel and won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Borsor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Borsor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Borsor's perfect record of five wins in five class action jury trials, with recoveries ranging from \$21 million to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Borsor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Borsor was a litigation associate with Cravath, Swaine & Moore (1996-2000) and Chadbourne & Parke LLP (2001), where he represented large telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Borsor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second Circuit, United States Court of Appeals for the Third Circuit, United States Court of Appeals for the Fourth Circuit, United States Court of Appeals for the Sixth Circuit, United States Court of Appeals for the Ninth Circuit, United States Court of Appeals for the Eleventh Circuit, United States District Courts for the Southern and Eastern Districts of New York, United States District Courts for the Northern, Central, Southern and Eastern Districts of California, and the United States District Courts for the Southern and Middle Districts of Florida.

Representative Cases

Mr. Borsor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Borsor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Borsor's practice:

Mr. Borsor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members, and ensured that the class would recover in excess of \$275 million.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial, Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, provides for a \$20 million cash payment to provide

refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and includes an injunction that will reduce late fee charges by \$18.6 million over 28 months.

L. TIMOTHY FISHER

Mr. Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals. Prior to founding Bursor & Fisher, P.A. in 2011, Mr. Fisher was an associate with Bramson, Plutzik, Mahler & Birkhaeuser, LLP in Walnut Creek, California for 13 years. During his career, he has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried four class action jury trials, all of which produced successful results. In the initial phase of *Thomas v. Global Vision Products*, the jury awarded the plaintiff class more than \$36 million plus punitive damages, while the Court awarded a \$40 million recovery on separate legal claims. In a subsequent phase of the trial against individual defendants, Mr. Fisher and Mr. Bursor obtained a jury award of \$50,024,611 – the largest class action award in California in 2009 and the second-largest jury award of any kind.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern and Eastern Districts of California. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. Recently, Mr. Fisher contributed jury instructions, a verdict form, and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In 2014, Mr. Fisher was appointed to a four-year term as a member of the Standing Committee on Professional Conduct for the United States District Court for the Northern District of California.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first year moot court competition. In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

Representative Cases

- *Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court) - Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

- *In re Cellphone Termination Fee Cases* - Handset Locking Actions (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.
- *In re Cellphone Termination Fee Cases* - Early Termination Fee Cases (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Cases, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.
- *Guyette v. Viacom, Inc.* (Alameda County Superior Court) - Mr. Fisher was co-counsel for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers. A settlement was negotiated shortly before trial under which defendants paid the class \$13 million in cash.
- *In re Haier Freezer Consumer Litigation* (Northern District of California) - Mr. Fisher filed the case in June 2011 and alleged that Haier had misrepresented the energy consumption of its HNCM070E freezer on the ENERGYGUIDE labels attached to the freezers. After two years of litigation, District Judge Edward J. Davila approved a nationwide settlement valued at \$4 million, which provides for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

Selected Published Decisions

- *In re Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380 (2010)
- *In re Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110 (2009)
- *Gatton v. T-Mobile USA, Inc.*, 152 Cal.App.4th 571 (2007)

JOSEPH I. MARCHESE

Mr. Marchese is a Partner with Bursor & Fisher, P.A. Mr. Marchese focuses his practice on complex business litigation, consumer class actions, and employment law disputes. Prior to joining Bursor & Fisher, Mr. Marchese was an associate with DLA Piper and Shearman & Sterling where he litigated complex commercial matters on behalf of investment banks, pharmaceutical companies, insurance carriers, food manufacturers, and tobacco companies.

Mr. Marchese is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York and the Eastern District of New York, as well as the United States Court of Appeals for the Second Circuit.

Mr. Marchese graduated from Boston University School of Law in 2002 where he was a Member of The Public Interest Law Journal. In 1998, Mr. Marchese graduated with honors from Bucknell University where he earned a B.S.B.A.

Representative Cases

- *Rossi v. The Procter & Gamble Co.* (District of New Jersey) – Mr. Marchese filed the first nationwide consumer class action lawsuit alleging Crest Sensitivity Treatment & Protection toothpaste (“CSTP”) was not effective as advertised, and was essentially identical to an existing brand called Crest Pro-Health toothpaste, with only three differentiating features: (1) claims of rapid relief for tooth sensitivity on the product packaging; (2) a different coloring additive; and (3) a 75% price premium over Crest Pro-Health. The plaintiff defeated defendant’s motion to dismiss before negotiating a settlement with P&G. District Judge Jose L. Linares granted final approval of the nationwide class settlement which provides class members with a monetary refund of at least \$4.00 per tube of CSTP.
- *In Re Michaels Stores Pin Pad Litigation* (Northern District of Illinois) – Mr. Marchese filed the first nationwide consumer class action against Michaels Stores concerning a data breach that resulted in the unauthorized release of customers’ financial data. He actively litigated claims that Michaels failed to secure customer personal financial data appropriately, and failed to provide adequate notice to its customers whose information and funds were stolen as a result of the breach at 86 Michaels stores across the country. After two years of litigation, District Judge Thomas M. Durkin approved a nationwide settlement that required Michaels to create a monetary fund from which class members could receive full reimbursement for monetary losses arising from the data breach. Also, every settlement class member was entitled to credit monitoring services for early detection of identity theft and credit fraud. As part of the settlement Michaels also verified that it had implemented strict new security measures to protect its customers from similar data breaches in the future.
- *Cox et al. v. Clarus Marketing Group, LLC et al.* (Southern District of California) – Mr. Marchese actively litigated claims for a nationwide class of online shoppers who made purchases on Provide-Commerce websites and who were deceptively enrolled in an online service, Freeshipping.com, for which they were charged unauthorized membership fees. The plaintiffs alleged that they were secretly enrolled in a “Freeshipping” rewards program using the aggressive Internet marketing practice known as “data pass,” where Provide-Commerce engaged in the unauthorized sharing and charging of customers’ billing information with a third-party vendor. After more than two years of litigation, District Judge Marilyn L. Huff approved a nationwide settlement valued at over \$2.65 million, which included monetary reimbursement to settlement class members for their unauthorized membership charges.
- *Rodriguez v. Citimortgage, Inc.* (Southern District of New York) – Mr. Marchese filed a class action lawsuit on behalf of Sergeant Rodriguez and other active duty military servicemembers alleging the lender’s foreclosure practices violated the Servicemembers Civil

Relief Act, a federal law that protects military servicemembers against foreclosures while they're serving on active duty. After two years of litigation, Judge Paul G. Gardephe approved a nationwide \$38 million settlement. Under the settlement, each servicemember that suffered a foreclosure will recover \$116,785, plus the amount of any lost equity in the foreclosed property, plus interest accrued on such lost equity calculated from the date of the foreclosure sale.

Selected Published Decisions

- *In re Michaels Stores Pin Pad Litig.*, 830 F. Supp. 2d 518 (N.D. Ill. 2011) (denying motion to dismiss in data breach consumer class action)
- *Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014) (certifying nationwide class of purchasers of purported "100% Pure Olive Oil" in false advertising consumer class action against edible oil distributor)
- *In re Scotts EZ Seed Litig.*, 304 F.R.D. 397 (S.D.N.Y. 2015) (certifying New York and California classes in false advertising case against grass seed manufacturer)
- *Weisblum, et al. v. ProPhase Labs, Inc., et al.*, No. 14-cv-3587. --- F. Supp. 3d ---, 2015 WL 738112 (S.D.N.Y. Feb. 20, 2015) (denying motion to dismiss in false advertising consumer class action against manufacturer of homeopathic cold medicine)

JOSHUA D. ARISOHN

Joshua D. Arisohn is a partner with Bursor & Fisher, P.A. Mr. Arisohn focuses his practice on complex business litigation, consumer class actions, and terrorism-related matters. Prior to joining Bursor & Fisher, Mr. Arisohn was an associate at Dewey & LeBoeuf LLP and DLA Piper LLP where he litigated precedent-setting cases in the areas of mass torts, terrorism and commercial disputes. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism.

Mr. Arisohn is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York and the Eastern District of New York.

Mr. Arisohn received his Juris Doctor from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar. In 2002, Mr. Arisohn received his B.A. from Cornell University.

JOEL D. SMITH

Joel D. Smith is a partner with Bursor & Fisher, P.A. Mr. Smith's practice focuses on consumer class actions and complex litigation, and he has successfully handled appeals in state and federal courts across the nation. Prior to joining Bursor & Fisher, Mr. Smith practiced at Crowell & Moring in San Francisco, where he represented Fortune 500 companies, privately-held businesses, and public entities in commercial litigation and nationwide class actions. While

at Crowell & Moring, Mr. Smith litigated some of the firm's most high-profile matters, including several class actions alleging deceptive sales practices with respect to Apple iPhones and iPads, and a class action seeking to hold U.S. energy companies accountable for global warming.

Mr. Smith is admitted to the State Bar of California, as well as the United States Courts of Appeals for the Second, Third and Ninth Circuits, and the Northern, Central, Southern and Eastern Districts of California.

Mr. Smith received both his undergraduate and law degrees from the University of California at Berkeley. While at Berkeley School of Law, he was a member of the California Law Review, received several academic honors, externed for the California Attorney General's office and published an article on climate change policy and litigation.

SARAH N. WESTCOT

Sarah N. Westcot is an Associate with Bursor & Fisher, P.A. Ms. Westcot focuses her practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Ms. Westcot litigated civil actions as an attorney with Bay Area Legal Aid in San Jose, CA.

Ms. Westcot served as trial counsel with Mr. Bursor in *Ayyad v. Sprint Spectrum L.P.*, and helped to win a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Ms. Westcot is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California.

Ms. Westcot received her Juris Doctor from the University of Notre Dame Law School in 2009. During her third year of law school, Ms. Westcot worked as a law clerk with the local public defender's office representing juvenile clients in criminal hearings. She graduated with honors from the University of Florida in 2005.

NEAL J. DECKANT

Neal J. Deckant is an Associate with Bursor & Fisher, P.A. Mr. Deckant focuses his practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Mr. Deckant counseled low-income homeowners facing foreclosure in East Boston.

Mr. Deckant is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York and the Eastern District of New York.

Mr. Deckant received his Juris Doctor from Boston University School of Law in 2011, graduating *cum laude* with two Dean's Awards. During law school, Mr. Deckant served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two

published articles about securitization reforms. In 2007, Mr. Deckant graduated with Honors from Brown University with a B.A. in East Asian Studies and Philosophy.

YITZCHAK KOPEL

Yitzchak Kopel is an Associate with Bursor & Fisher, P.A. Mr. Kopel focuses his practice on complex business litigation and consumer class actions.

Mr. Kopel is admitted to the State Bars of New York and New Jersey and is a member of the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, and District of New Jersey.

Mr. Kopel received his Juris Doctor from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Mr. Kopel served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Mr. Kopel graduated *cum laude* from Queens College with a B.A. in Accounting.

ANNICK M. PERSINGER

Annick M. Persinger is an Associate with Bursor & Fisher, P.A. Ms. Persinger focuses her practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Ms. Persinger worked as a legal research attorney for Judge John E. Munter in Complex Litigation at the San Francisco Superior Court.

Ms. Persinger is admitted to the State Bar of California and the bars of the United States District Courts for the Northern District of California, Central District of California, Southern District of California, and Eastern District of California.

Ms. Persinger received her Juris Doctor from University of California, Hastings College of the Law in 2010, graduating *magna cum laude*. During law school, Ms. Persinger served as a member of Hastings Women's Law Journal, and authored two published articles. In 2008, Ms. Persinger received an award for Best Oral Argument in the first year moot court competition. In 2007, Ms. Persinger graduated *cum laude* from University of California, San Diego with a B.A. in Sociology, and minors in Law & Society and Psychology.

FREDERICK J. KLORCZYK III

Frederick J. Klorczyk III is an Associate with Bursor & Fisher, P.A. Mr. Klorczyk focuses his practice on complex business litigation and consumer class actions.

Mr. Klorczyk is admitted to the State Bars of New York and New Jersey and is a member of the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, and District of New Jersey, and the United States Court of Appeals for the Second Circuit.

Mr. Klorczyk received his Juris Doctor from Brooklyn Law School in 2013, graduating *magna cum laude* with two CALI Awards for the highest grade in his classes on criminal law

and conflict of laws. During law school, Mr. Klorczyk served as an Associate Managing Editor for the Brooklyn Journal of Corporate, Financial and Commercial Law and as an intern to the Honorable Alison J. Nathan of the United States District Court for the Southern District of New York and the Honorable Janet Bond Arterton of the United States District Court for the District of Connecticut. In 2010, Mr. Klorczyk graduated from the University of Connecticut with a B.S. in Finance.

YEREMEY O. KRIVOSHEY

Yeremey O. Krivoshey is an Associate with Bursor & Fisher, P.A. Mr. Krivoshey focuses his practice on complex business litigation and consumer class actions.

Mr. Krivoshey is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern and Eastern Districts of California.

Mr. Krivoshey received his Juris Doctor from New York University School of Law in 2013, where he was a Samuel A. Herzog Scholar. During law school, Mr. Krivoshey worked as a Law Clerk at Vladeck, Waldman, Elias & Engelhard, P.C. Mr. Krivoshey also interned at the United States Department of Justice and the American Civil Liberties Union. In 2010, Mr. Krivoshey graduated *cum laude* from Vanderbilt University.

PHILIP L. FRAIETTA

Philip L. Fraietta is an Associate with Bursor & Fisher, P.A. Mr. Fraietta focuses his practice on complex business litigation, consumer class actions, and employment law disputes.

Mr. Fraietta is admitted to the State Bars of New York and New Jersey, the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, the District of New Jersey, and the United States Court of Appeals for the Second Circuit. Mr. Fraietta was a Summer Associate with Bursor & Fisher prior to joining the firm.

Mr. Fraietta received his Juris Doctor from Fordham University School of Law in 2014, graduating *cum laude*. During law school, Mr. Fraietta served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In addition, Mr. Fraietta received the Addison M. Metcalf Labor Law Prize for the highest grade in his graduating class in the Labor Law course, and received the highest grade in his Anti-Discrimination Law & Policy course. In 2011, Mr. Fraietta graduated *cum laude* from Fordham University with a B.A. in Economics.

NATHAN & ASSOCIATES, APC

600 W. Broadway, Suite 700, San Diego, California 9210

Tel: (619)272-7014 ▪ Fax: (619)330-1819

FIRM RESUME

REUBEN D. NATHAN:

Reuben D. Nathan received in formal education in England and obtained his Juris Doctor from Western State in 1999. Reuben D. Nathan was admitted to the State Bar of California in 2000. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California. Reuben D. Nathan has an active practice in consumer class actions and complex business litigation. Prior to founding Nathan & Associates, APC in 2012, Reuben Nathan was the senior partner/managing partner of Azimy & Nathan, LLP a 9-person attorney firm located in Irvine, California. Reuben Nathan has actively been involved in numerous representative actions that resulted in multi-million dollar recoveries for both employees and consumers, including, but not limited to: In re Automobile Advertising Cases, J.C.C.P 4149; Reid v. Diedrich Coffee, Inc., Case No.: SACV06-888 AG; Scerca v. Town & Country, Case No.: SACV06-889 AG;; Griffin v. 725 Baker, LLC, Case No.: 30-2010-00397655; The Parking Concepts Wage and Hour Cases, Case No.: J.C.C.P 4531; Leon v. Allied Exhaust Systems, Case No.: BC438653; De Los Santos v. Lala's Argentine Grill, Case No.: BC472215; Duarte v. Heroes Restaurants, Inc., Case No.: 30- 2012-00581304; Brihn v. PJ Orange County One, L.P., Case No.: 30-2010-00386818; Gutierrez v. Umami Burger, et al., Case No. Case No.: BC476329; Torok v. Ameriquest, Case No.: SACV06-892 JVS; Strich v. Solstice Capital, Case No.: CV05-8757 SGL; Taylor v. Loandepot.com, llc, et al., Case No. 30-2015-008468925. Reuben D. Nathan has consistently been named a Super Lawyer in the area of class action since 2012, received the legal award Class Action Lawyer of the Year, other awards relating to his class action practice, and is a member of several legal organizations.

LAW OFFICES OF
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FIRM RESUME

Ross Cornell

Ross Cornell received a bachelors degree in Economics from the University of Mary Washington in Fredericksburg, Virginia and a Juris Doctorate from Western State University College of Law in Fullerton, California, where he received American Jurisprudence awards for achieving the highest scores in Contracts, Civil Procedure, Legal Writing, Torts, Constitutional Law and Criminal Law. Mr. Cornell was admitted to the State Bar of California in 2000 and is presently admitted to practice in the United States District Court for the Northern, Eastern, Central and Southern Districts of California.

Ross Cornell has been actively practicing law for 16 years with the majority of his practice in multi-party litigation, consumer law, class action, civil rights, employment litigation and complex business litigation. Mr. Cornell has been the president of the Law Office of Ross Cornell, APC since 2003.

Mr. Cornell acted as lead defense counsel in a statewide unfair business practice litigation that he coordinated on behalf of hundreds of defendants and dozens of law firms. He participated in the successful certification and prosecution of a class action on behalf of over a thousand California retail store managers for unpaid overtime. He acted as lead counsel on behalf of a class of homeowners in a successful action against a large homeowners association for unlawful business practices and unfair assessments. He obtained injunctive relief against over a dozen corporate defendants in a complex litigation matter for unfair business practices, fraud and fraudulent conveyance. He successfully prosecuted a claim on behalf of a PAGA class of employees against an investment brokerage in San Diego for wage and hour violations. He successfully defeated a wage and hour class action on behalf of television personality Boyd Coddington that resulted in a dismissal for costs. He successfully prosecuted an unfair business practice and fraud case on behalf of over a dozen clients that resulted in the issuance of injunctive relief against a publicly traded company.

LEGAL NOTICE

If You Purchased Wild Planet Or Sustainable Seas Tuna, You May Benefit From A Proposed Class Action Settlement

Soto v. Wild Planet Foods, Inc., Case No. 15-CV-05082-BLF

Shihad v. Wild Planet Foods, Inc., Case No. 16-CV-01478-BLF

WHAT IS THIS NOTICE ABOUT?

Two similar lawsuits are pending in the United States District Court, Northern District of California, (the “Action”) that may affect your rights. The Action claims that Wild Planet Foods, Inc. (“Wild Planet”) under-filled its canned tuna in violation of state and federal law. Wild Planet denies this claim. The Court has not ruled in favor of Plaintiffs or Wild Planet. Instead, the parties agreed to a Proposed Settlement to avoid the expense and risks of continuing the lawsuits.

AM I A MEMBER OF THE CLASS?

The class is defined as all residents of the United States of America who purchased one or more cans of tuna sold under the Wild Planet or Sustainable Seas brand names from November 5, 2011 through _____, 2017.

WHAT DOES THE SETTLEMENT PROVIDE?

Subject to Court approval, the parties have agreed to a Settlement under which Wild Planet will pay \$1.7 million in cash. You may submit a claim for a cash payment of \$29. The claim amount may be subject to pro rata dilution if the total amount of claims exceeds the available settlement funds or the cost of notice and claims administration exceeds \$350,000.

WHAT ARE MY RIGHTS?

You have a choice of whether to stay in the Class or not, and you must decide this now. If you stay in the Class, you will be legally bound by all orders and judgments of the Court, and you won’t be able to sue, or continue to sue, Wild Planet as part of any other lawsuit involving the same claims that are in these lawsuits. This is true even if you do nothing by not submitting a claim.

1. You Can Accept the Settlement. Class Members who wish to receive Settlement Benefits **must** submit claims by [DATE]. You can get a Claim Form on the Internet at <http://www.wildplanetsettlement.com>. Read the instructions carefully, fill out the form, and submit it online on or before [DATE]. Alternatively, you may also submit a Claim Form by mailing it to the following address: [ADDRESS]. It must be postmarked no later than [DATE]. If you fail to submit a timely Claim Form and do not exclude yourself from the Settlement, then you will be bound by the Settlement but will not receive any Settlement Benefits.

2. You Can Object to the Settlement. If you believe the Settlement is unsatisfactory, you may file a written objection with the Clerk of the Court for the Northern District of California and send copies to the following Counsel representing the Class and Wild Planet:

Plaintiff’s Counsel

L. Timothy Fisher
Bursor & Fisher, P.A.
1990 North California
Blvd., Suite 940
Walnut Creek, CA 94596

Wild Planet’s Counsel

Joseph V. Mauch
Shartsis Friese LLP
One Maritime Plaza, 18th
Floor
San Francisco, CA 94111-3598

3. You Can “Opt Out” of the Settlement. If you exclude yourself from the Class – which is sometimes called “opting-out” of the Class – you won’t get any Settlement Benefits from the Proposed Settlement. You will also be responsible for any attorney’s fees and costs you incur if you choose to pursue your own lawsuit. Such notice shall include your name, current address, signature, and a statement that you want to be excluded from *Soto v. Wild Planet Foods, Inc.*, Case No. 15-CV-05082-BLF, no later than [DATE]. Send the written notice to [ADDRESS].

THE FAIRNESS HEARING

On [____], 2017, at [____], the Court will hold a hearing in the United States District Court for the Northern District of California to determine: (1) whether the Proposed Settlement is fair, reasonable, and adequate and should receive final approval; and (2) whether the application for Plaintiffs’ attorneys’ fees of up to one-third of the total \$1.7 million settlement fund, plus reimbursement of out-of-pocket expenses, should be granted. Objections to the Proposed Settlement by Class Members will be considered by the Court, but only if such objections are filed in writing with the Court and sent to Plaintiffs’ and Wild Planet’s counsel by [____], 2017] as explained above. Class Members who support the Proposed Settlement do not need to appear at the hearing or take any other action to indicate their approval. You may hire your own lawyer to appear in Court for you if you wish; however, if you do, you will be responsible for paying that lawyer on your behalf.

HOW CAN I GET MORE INFORMATION?

If you have questions or want a detailed notice or other documents about these lawsuits and your rights, visit <http://www.wildplanetsettlement.com>. You may also contact Class Counsel by email at info@bursor.com, or by writing to: [ADDRESS].

By order of the United States District Court for the Northern District.

United States District Court for the Northern District of California

If You Purchased Wild Planet Or Sustainable Seas Tuna, You May Benefit From A Proposed Class Action Settlement

A federal court authorized this notice. This is not a solicitation from a lawyer.

- A Proposed Settlement has been reached in two related class action lawsuits. The lawsuits claim that Wild Planet Foods, Inc. (“Wild Planet”) under-filled its tuna cans in violation of federal law. Wild Planet denies these claims. The Court did not rule in favor of Plaintiffs or Wild Planet. Instead, the parties agreed to a Proposed Settlement to avoid the expense and risks of continuing the lawsuits.
- You are a class member if you are a resident of the United States of America who purchased one or more cans of tuna sold under the Wild Planet or Sustainable Seas brand names from November 5, 2011 through _____, 2017.
- If you are eligible, you may submit a claim for a cash payment of \$29. The claim amount may be subject to pro rata dilution if the total amount of claims exceeds the available settlement funds or the cost of notice and claims administration exceeds \$350,000.

**Please read this Notice carefully and in its entirety.
Your rights may be affected by the Settlement of these lawsuits,
and you have a choice to make now about how to act:**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
WHAT IS THIS?	A Proposed Settlement has been reached in two similar class action lawsuits. The lawsuits allege that Wild Planet under-filled its canned tuna in violation of federal law.
SUBMIT A CLAIM POSTMARKED BY [DATE]	This is the only way to receive Settlement Benefits. By submitting a claim, you will give up any rights to sue Wild Planet separately about the same legal claims in these lawsuits.
EXCLUDE YOURSELF FROM THE CLASS BY [DATE]	If you opt out of the Settlement, you will not be eligible to receive the Settlement Benefits, but you will keep any rights to sue Wild Planet separately about the same legal claims in these lawsuits.
OBJECT OR COMMENT BY [DATE]	You may write to the Court about why you do, or do not, like the Settlement. You must remain in the class to comment in support of or in opposition to the Settlement.

**Questions? Visit <http://www.wildplanetsettlement.com>
or contact Class Counsel at info@bursor.com**

<p>APPEAR IN THE LAWSUITS OR ATTEND A HEARING ON [DATE]</p>	<p>You may ask to speak in Court about the fairness of the Settlement. You may enter your appearance in Court through an attorney if you so desire.</p>
<p>DO NOTHING</p>	<p>If you do nothing, you will receive no Settlement Benefits. You also give up your right to sue Wild Planet on your own regarding any claims that are part of the Settlement.</p>

- Your options – **and the deadlines to exercise them** – are further explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. The Settlement Benefits will be made available if the Court approves the Settlement and after any appeals are resolved.

BASIC INFORMATION

1. Why did I get this notice?

If you purchased one or more cans of Wild Planet or Sustainable Seas’ tuna (the “WP Products”) between November 5, 2011 and _____, 2017, you have a right to know about a Proposed Settlement of two related class action lawsuits and your options. You may have received this Notice because you requested more information after reading the Publication Notice.

The Court ordered that you be given this Notice because you have a right to know about a Proposed Settlement of two similar class action lawsuits, and about your options, before the Court decides whether to approve the Settlement. If the Court approves it, and after objections and appeals are resolved, an administrator appointed by the Court will oversee the Settlement Benefits that the Settlement allows. You will be informed of the progress of the Settlement.

This notice explains the lawsuits, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The Court in charge of the cases is the United States District Court for the Northern District of California, and the cases are known as *Soto v. Wild Planet Foods, Inc.*, Case No. 15-CV-05082-BLF and *Shihad v. Wild Planet Foods, Inc.*, Case No. 16-CV-01478 BLF. The people who sued are called the Plaintiffs, and the company they sued, Wild Planet, is called the Defendant.

2. What are these lawsuits about?

These lawsuits claimed that Wild Planet shorted the amount of tuna in its cans, under-filling them in violation of state and federal law.

Wild Planet denies that it did anything wrong, and the Court has not made any ruling on the

factual allegations in the lawsuits.

The Court hasn't decided whether the Defendant or the Plaintiffs are correct. Instead, the parties agreed to a Proposed Settlement to avoid the expense and risks of continuing the lawsuits.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representatives" (in these cases, Plaintiffs Ehder Soto and Heney Shihad) sue on behalf of other people who have similar claims. The people together are a "Class" or "Class Members." The named plaintiffs who sued – and all the Class Members like them – are called the Plaintiffs. The company they sued (in this case, Wild Planet) is called the Defendant. One court resolves the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class.

4. Am I part of this Class?

If you fit into the following description, you are a Class Member:

All residents of the United States of America who, from November 5, 2011 to _____, 2017, purchased any can of branded tuna produced by, for, or on behalf Wild Planet, including cans sold under the "Wild Planet" brand and the "Sustainable Seas" brand.

THE CLAIMS IN THE LAWSUITS

5. What do the lawsuits complain about?

Wild Planet manufactures and sells tuna products throughout the United States, including the Wild Planet and Sustainable Seas products in this case. Plaintiffs allege that Wild Planet shorted the amount of tuna in its cans, under-filling them in violation of state and federal law. You can read [Plaintiffs' Complaint](http://www.wildplanetsettlement.com) <link> at <http://www.wildplanetsettlement.com>.

6. How does Wild Planet answer?

Wild Planet denies any wrongdoing and denies the Plaintiffs' allegations.

7. Has the Court decided who is right?

The Court hasn't decided whether the Defendant or the Plaintiffs are correct. Instead, the parties agreed to a Proposed Settlement to avoid the expense and risks of continuing the lawsuits.

YOUR LEGAL RIGHTS AND OPTIONS

You have to decide now whether to submit a claim, do nothing at all, or ask to be excluded from the Proposed Settlement. You may also choose to object to the Proposed Settlement.

**Questions? Visit <http://www.wildplanetsettlement.com>
or contact Class Counsel at info@bursor.com**

8. What does the Proposed Settlement provide if I submit a claim?

The Settlement provides that Wild Planet will pay \$1.7 million in cash. You may submit a claim for a cash payment of \$29. The claim amount may be subject to pro rata dilution if the total amount of claims exceeds the available settlement funds or the cost of notice and claims administration exceeds \$350,000.

You do not need a receipt or other proof of purchase to submit a claim. You will, however, be required to submit a claim form confirming under penalty of perjury (i) the specific Wild Planet product(s) you purchased, and (ii) that the purchase or purchases were made within the Settlement Class Period.

9. How do I submit a claim form?

Class Members who wish to receive Settlement Benefits must submit claims.

To submit a claim, you must complete a Claim Form. You can get a Claim Form on the Internet at <http://www.wildplanetsettlement.com>. Read the instructions carefully, fill out the form, and submit it online on or before [DATE]. Alternatively, you may also submit your Claim Form by mailing it to the following address: [ADDRESS]. It must be postmarked no later than [DATE].

If you received this Notice in the mail or by email, a Claim Form is enclosed or attached.

10. How do I What if I didn't get a Claim Form in the mail or by email?

If you didn't receive a Claim Form in the mail or by e-mail, yYou can obtain the Claim Form in one of three ways:

- (1) **By Phone:** Call toll-free, 1-800-[_____]
- (2) **By Mail:** Write to Soto v. Wild Planet Foods, Inc. Settlement Administrator, PO Box 43034, Providence RI, 02940-3034. Be sure to include your name and mailing address.
- (3) **Online:** You can download the Claim Form at <http://www.wildplanetsettlement.com>. You can also submit a Claim Form online through the same website.

11. What happens if I do nothing at all?

By doing nothing, you are staying in the Class but will not receive any Settlement Benefits.

Keep in mind that if you do nothing now, you will not be able to separately sue, or continue to sue, Wild Planet – as part of any other lawsuit – for the same legal claims that are the subject of these lawsuits. You will also be legally bound by all of the Orders the Court issues and judgments the Court makes in this class action. You must exclude yourself to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Wild Planet about the subject matter of these lawsuits ever again.

12. Why would I ask to be excluded?

If you exclude yourself from the Class – which is sometimes called “opting-out” of the Class –

**Questions? Visit <http://www.wildplanetsettlement.com>
or contact Class Counsel at info@bursor.com**

you won't get any Settlement Benefits from the Proposed Settlement. However, you may then be able to separately sue or continue to sue Wild Planet for the legal claims that are the subject of these lawsuits. If you exclude yourself, you will not be legally bound by the Court's judgments in this Proposed Settlement.

If you bring your own lawsuit against Wild Planet after you exclude yourself, you will have to hire and pay your own lawyer for that lawsuit, and you will have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against Wild Planet, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations.

13. How do I exclude myself from the Class?

To exclude yourself from the Class, you must send a written request for exclusion *that is received no later than [Month 00, 0000]*, to:

Soto v. Wild Planet Foods, Inc. Settlement Administrator
PO Box 43034
Providence RI, 02940-3034

Your request for exclusion *must* contain: (1) the case name, "*Soto v. Wild Planet Foods, Inc.*, Case No. 15-CV-05082-BLF"; (2) your full name and current address; (3) a clear statement of intention to exclude yourself such as "I wish to be excluded from the Class"; and (4) your signature. You may also get an Exclusion Request form <link> at <http://www.wildplanetsettlement.com>.

14. How do I tell the Court I don't like the Proposed Settlement?

If you're a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views.

To object, you must send a letter that contains all the following:

- Your name and current address, and your lawyer's name and address if you are objecting through counsel;
- The case name, *Soto v. Wild Planet Foods, Inc.*, Case No. 15-CV-05082-BLF;
- A statement of your objections and the reasons for each objection you make;
- A list of the documents you are giving the Court to support your objections, if any;
- A list of any legal authorities you want the Court to consider;
- The names and addresses of any witnesses you want to call to testify, and a summary of the witnesses' expected testimony;
- If you (or your lawyer) want to appear and speak at the Fairness Hearing, a statement that you wish to appear and speak; *and*
- Your signature (or your lawyer's signature).

Your objection must be signed, mailed, and *postmarked by* [_____, 2017] to the Court at:

Clerk of the Court
United States District Court
Northern District of California
280 South 1st Street, Room 2112
San Jose, CA 95113

**Questions? Visit <http://www.wildplanetsettlement.com>
or contact Class Counsel at info@bursor.com**

Copies of your objection ***must also*** be signed, mailed, and ***postmarked by*** [_____, 2017] to the following addresses:

Counsel for the Class
L. Timothy Fisher
Bursor & Fisher, P.A.
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596

Counsel for Wild Planet
Joseph V. Mauch
Shartsis Frieze LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111-3598

If you object through a lawyer, you will have to pay for the lawyer yourself.

15. What's the difference between objecting and excluding?

Objecting is simply telling the Court you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

16. Can I appear or speak in these lawsuits and Proposed Settlement?

As long as you do not exclude yourself, you can (but do not have to) participate and speak for yourself in these lawsuits and Proposed Settlement. This is called making an appearance. You can also have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

17. How can I appear in these lawsuits?

If you want yourself or your own lawyer (instead of Class Counsel) to participate or speak for you in these lawsuits, you must give the Court a paper that is titled a "Notice of Appearance." The Notice of Appearance must contain the title of the case, a statement that you wish to appear at the Fairness Hearing, and the signature of you or your lawyer.

Your Notice of Appearance can also state that you or your lawyer would like to speak at the Court's Fairness Hearing on the Proposed Settlement. If you submit an objection (see question 14 above) and would like to speak about the objection at the Court's Fairness Hearing, both your Notice of Appearance and your objection should be included in that information.

Your Notice of Appearance must be signed, mailed, and ***postmarked by*** [_____, 2017] to the Court at:

Clerk of the Court
United States District Court
Northern District of California
280 South 1st Street, Room 2112
San Jose, CA 95113

Copies of your objection ***must also*** be signed, mailed, and ***postmarked by*** [_____, 2017] to the same two addresses appearing on pages 6-7 of this Notice, in question 14.

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

The law firms of Bursor & Fisher, P.A., Nathan & Associates, APC, and Law Offices of Ross Cornell (collectively “Class Counsel”) represent you and the other Class Members. You will not be charged for these lawyers.

19. Should I get my own lawyer?

If you choose to remain in the Class, you do not need to hire your own lawyer because Class Counsel are working on your behalf. But, if you want your own lawyer, you will be responsible for paying that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

20. How will the lawyers be paid?

From the inception of the litigation in November 2015 to the present, Class Counsel have not received any payment for their services in prosecuting the case or obtaining Settlement, nor have they been reimbursed for any out-of-pocket expenses they have incurred. When they ask the Court to approve the Settlement, Class Counsel will also make a motion to the Court for an award of attorney’s fees of up to one-third of the total \$1.7 million value of the Settlement Fund. The Court may award less than that. In addition to those attorneys’ fees, Class Counsel will also seek reimbursement of their out-of-pocket expenses from the Settlement Fund. No matter what the Court decides with regard to the requested attorneys’ fees, costs and expenses, Class Members will never have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the Settlement on behalf of all Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don’t have to attend or speak.

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at [TIME] on [DATE], at the United States District Court for the Northern District of California, 280 South 1st Street, San Jose, CA 95113, Courtroom 3, 5th Floor. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court will also consider Class Counsel’s request for an award of attorneys’ fees and reimbursement of costs. After the hearing, the Court will decide whether to approve the Proposed Settlement, and whether to grant Class Counsel’s request for attorneys’ fees and expenses. We do not know how long these decisions will take.

22. Do I have to come to the hearing?

No. Class Counsel is working on your behalf and will answer any questions the Court may

**Questions? Visit <http://www.wildplanetsettlement.com>
or contact Class Counsel at info@bursor.com**

have, but, you are welcome to attend the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must follow the steps listed in number 16 and 17 above. You cannot speak at the hearing if you excluded yourself.

FINAL SETTLEMENT APPROVAL

24. What is the effect of final Settlement approval?

If the Court grants final approval of the Settlement, all members of the Class will release and forever discharge any and all claims or causes of action that have been, might have been, are now, or could have been brought relating to the transactions, actions, conduct and events that are the subject of this action or Settlement, arising from or related to the underfilling of tuna in the WP Products, whether in law or equity, whether seeking damages or any other relief (including attorneys' fees), of any kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, based upon any federal or state statutory or common law, including, without limitation, claims sounding in tort, contract, and the consumer protection laws of the United States or of any state or other jurisdiction within the United States, as well as under the unfair or deceptive trade practices, trade regulation, consumer fraud, misrepresentation, and false advertising law of the United States or any state or other jurisdiction within the United States, including, but not limited to, any claims relating to the underfilling of tuna in the WP Products (the "Released Claims"). Excluded from the Released Claims are (a) any and all claims for personal injury, wrongful death, and/or emotional distress arising from personal injury, (b) any claims of any person or entity that purchased WP Products for purposes of resale or commercial food preparation and not for his/her/its own consumption (i.e., "Resellers"), and (c) any antitrust claim arising from a conspiracy among, or collusive agreement between, WP and one or more of its competitors.

If the Settlement is not approved, the case will proceed as if no Settlement had been attempted. There can be no assurance that if the Settlement is not approved and litigation resumes, the Class will recover more than is provided for under the Settlement, or will recover anything.

GETTING MORE INFORMATION

25. Are more details available?

This Notice is only intended to provide a summary of the proposed Settlement. You may obtain the complete text of the Settlement Agreement at <http://www.wildplanetsettlement.com>, by writing to the Settlement Administrator (at the address listed above), or from the court file, which is available for your inspection during regular business hours at the Office of the Clerk of the United States District Court for the Northern District of California, 280 South 1st Street, Room 2112, San Jose, CA 95113, under Case Nos. 15-CV-05082-BLF and 16-CV-01478 BLF.

**Questions? Visit <http://www.wildplanetsettlement.com>
or contact Class Counsel at info@bursor.com**

Visit the website, at <http://www.wildplanetsettlement.com>, where you will find the Plaintiffs' Complaint <link>, a Claim Form <link>, and an Exclusion Request Form <link>.

You may also contact Class Counsel by email at [EMAIL ADDRESS], or by writing to Soto v. Wild Planet Foods, Inc. Settlement Administrator, PO Box 43034, Providence RI, 02940-3034.

PLEASE DO NOT CALL OR WRITE TO THE COURT FOR INFORMATION OR ADVICE.

DATED: February __, 2017

**BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA**

**If You Purchased Wild
Planet Or Sustainable
Seas Tuna,
You May Benefit From
A Proposed Class
Action Settlement.**

Learn More

www.wildplanetsettlement.com

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Class Action
Settlement.**

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Learn More

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EHDER SOTO, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC.,

Defendant.

Case No. 5:15-cv-05082-BLF

Case No. 1:16-cv-01478-BLF

DECLARATION OF DANIEL
ROSENTHAL RE SETTLEMENT
NOTICE PLAN

HENEY SHIHAD, an individual on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC. and DOES 1
through 25, inclusive,

Defendants.

1 I, Daniel Rosenthal, declare as follows:

2
3 1. I am a Special Consultant to Kurtzman Carson Consultants (“KCC”), a class action
4 settlement administrator. KCC is located at 3301 Kerner Boulevard, San Rafael, California. I am
5 over 21 years of age and am not a party to this action. I have personal knowledge of all matters set
6 forth herein unless otherwise indicated, and would testify thereto if called as a witness in this
7 matter.

8 2. The purpose of this Declaration is to provide the Court with my and KCC’s
9 qualifications and experience regarding the development of Class Action Notice Plans and to
10 provide information regarding the proposed settlement notice plan (“Notice Plan”) for this case.

11 **EXPERIENCE**

12 3. I have more than 30 years of class action notice and administration experience, and
13 more than 45 years of advertising agency experience. Prior to 1986, I held positions in the
14 consumer products marketing field, including management positions with McCann-Erickson, a
15 leading international advertising agency. In 1986, I founded DANART Communications, the first
16 advertising agency to specialize in planning and placement of legal notices in all types of media. In
17 addition, from 1988 to 2000, I served as Managing Director of Gilardi & Co. LLC, where I
18 developed the methodology, computer systems and staff to manage the company’s consumer class
19 action administrations. In 2000, I founded Rosenthal & Company LLC (“Rosenthal”), a class
20 action administration company. In 2010, KCC acquired Rosenthal & Company and DANART
21 Communications. In 2013, I became Special Consultant to KCC, an advisory role in which I
22 provide expertise in developing class action notice and administration plans.

23 4. Some consumer case examples for which I have been involved in developing the
24 notice plan and notice documents include: *Verdejo v. Vanguard Piping Systems*, No. BC448383
25 (Sup. Ct. Cal.), a multi-state products liability settlement providing additional warranty coverage
26 and reimbursement of costs and expenses due to leaks and reduced water flow of affected
27 plumbing fittings; *In re Sony VAIO Computer Notebook Trackpad Litigation*, No. 9-cv-02109

(S.D. Cal.), a multi-state class action involving class members who purchased computers containing an allegedly defective trackpad pointing device; *Zeller v. E. & J. Gallo Winery*, No. BC432711 (Sup. Ct. Cal.), a national settlement involving class members who purchased wines that were allegedly mislabeled as pinot noir; *Credit/Debit Card Tying Cases*, J.C.C.P. No. 4335 (Sup. Ct. Cal.), a California state antitrust settlement involving consumers who made purchases with a Visa or Mastercard credit or debit card; *Williams v. Motricity, Inc.*, No. 2009CH19089 (Cir. Ct. Ill.) and *Walker v. Openmarket, Inc.*, No.08CH40592 (Cir. Ct. Ill.), national settlements involving cellular consumers who were allegedly billed for mobile content they did not purchase

5. KCC is a leading class action administrator that provides comprehensive class action administration services, including legal notification, email and postal mailing campaign implementation, website design, call center support, class member data management, claims processing, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related services critical to the effective administration of class action settlements. With more than thirty years of industry experience,¹ KCC has developed efficient, secure, and cost-effective methods to properly handle the voluminous data and mailings associated with the notice, claims processing, and disbursement requirements of these matters. Since 1984, KCC has administered more than 6,000 matters and distributed settlement payments totaling well over \$20 billion in assets.

OVERVIEW

6. KCC developed the Notice Plan to reach approximately 70% of likely Class Members through paid notices on many major websites that have significant audiences. In addition, to fulfill the California Consumers Legal Remedies Act (CLRA) notice requirement, four paid notices will appear in the *San Francisco Examiner*. The reach of the Notice Plan is consistent with other effective court-approved notice programs, and is designed to meet due process requirements. Further, the Federal Judicial Center's ("FJC") *Judges' Class Action Notice*

¹ KCC acquired Rosenthal & Company LLC in 2010 and Gilardi & Co. LLC in 2015. This declaration references the firms' combined class action notice and administration experience.

1 *and Claims Process Checklist and Plain Language Guide* (the “FJC Checklist”) considers 70-
2 95% reach among class members reasonable, and this plan is designed to meet that standard.

3 **NOTICE PLAN SUMMARY**

4 7. The media planning details are included in the attached Notice Plan that was
5 developed by the KCC Legal Notification team.

6 ***Class Definition***

7 8. The Settlement Class consists of all residents of the United States of America who,
8 from November 5, 2011 to the date of preliminary approval, purchased any can of branded tuna
9 produced by, for, or on behalf of Wild Planet, including cans sold under the “Wild Planet” brand
10 and the “Sustainable Seas” brand.

11 ***Target Audience Definition***

12 9. Target audience consumer research does not measure the Wild Planet Foods brand
13 but it does measure usage among canned tuna consumers in general. Therefore, consumer usage
14 data was studied among adults who used canned tuna during the preceding six months (“Canned
15 Tuna Consumers”).

16 10. Demographically, Canned Tuna Consumers are represented broadly among all
17 demographic groups within the population.

18 ***Internet Banners***

19 11. Canned Tuna Consumers have internet access and usage similar to the general U.S.
20 population. Therefore, KCC recommends using the internet to generate awareness of the
21 settlement. KCC will cause approximately 172 million internet impressions to be distributed over
22 a variety of websites. The internet impressions will be targeted to adults who are 18 years of age or
23 older and will include an embedded link to the case website. Specifically, the internet banners may
24 appear on major websites such as FoodNetwork.com, HGTV.com, CNN.com, CBS.com,
25 NBC.com, Ancestry.com, EverydayHealth.com, AccuWeather.com, AllRecipes.com, Realtor.com,
26 and many others.

CLRA Notice

12. KCC will cause a quarter-page summary notice to appear in the *San Francisco Examiner* once a week for four consecutive weeks.

Website

13. KCC will implement a case-dedicated website that will allow Settlement Class Members to obtain general information about the settlement and file a claim online.

Phone Support

14. KCC will establish a toll-free number to allow Settlement Class Members to learn more about the settlement in the form of frequently asked questions. It will also allow Settlement Class Members to request more information that will be mailed directly to them.

Plan Delivery

15. The Notice Plan will reach approximately 70% of likely Class Members. Coverage will be further enhanced by the CLRA notice placements.

CONCLUSION

16. Based on my class action notice planning experience, the media tactics utilized in this Notice Program are consistent with other effective settlement notice plans. The Notice Plan provides the best notice practicable and meets the “desire to actually inform” due process communications standard of *Mullane*. It delivers the same target audience reach that Courts have approved and that has withstood appellate scrutiny, other expert critiques, as well as collateral review. The Notice Plan is also consistent with the 70-95% reach guideline set forth in the Federal Judicial Center’s *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*.

1 I declare under penalty of perjury under the laws of the United States that the
2 foregoing is true and correct.

3 Dated: January 31, 2017

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Daniel Rosenthal

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Attachment 1



Wild Planet Foods Inc. Tuna Settlement Highlights of Notice Program Recommendation

Case Analysis

The following known factors were considered when determining our recommendation:

1. Class Members are unknown consumers who must be reached through a consumer media campaign.
2. Class Members are located throughout the U.S., including large cities and rural areas.
3. It is our understanding that the class action complaint alleges violations of California's Consumer Legal Remedies Act (CLRA); therefore, CLRA notice requirements should be fulfilled.
4. Effective reach and notice content are vital to convey the importance of the information affecting Class Members' rights, as well as to withstand challenge and collateral review.

Objective

To design a notice program that will effectively reach Class Members and capture their attention with notice communicated in clear, concise, plain language. The Federal Judicial Center's *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* considers 70-95% reach among class members reasonable.

Target Audience

It is our understanding that Class Members consist of all residents of the United States of America who, from November 5, 2011 to the date of preliminary approval, purchased any can of branded tuna produced by, for, or on behalf of Wild Planet, including cans sold under the "Wild Planet" brand and the "Sustainable Seas" brand. GfK MediaMark Research & Intelligence, LLC (MRI)¹ does not measure the Wild Planet Foods brand; therefore, to verify the notice program's effectiveness, MRI data was studied among adults who have used canned tuna in the last six months ("Canned Tuna Consumers"), because this broad, over inclusive target group indicates and best represents the Class.

Knowing the characteristics, interests, and habits of a target group aids in the media selection process. Below is a summary of that information relevant to this matter.

- Demographic highlights of Canned Tuna Consumers include the following:
 - 97.5% speak English most often;
 - 88.7% are 25 years of age or older, 72.6% are 35 years of age or older, and 56.6% are 45 years of age or older;
 - 87.3% have graduated from high school and 56.7% have attended college or beyond;
 - 86.2% live in a household consisting of two or more people, 68.9% live in a household consisting of two to four people, and 54.0% live in a household consisting of three or more people;
 - 85.0% live in a Metropolitan CBSA;²

¹ GfK MRI is a nationally accredited research firm that provides consumer demographics, product and brand usage, and audience/exposure in all forms of advertising media. Established in 1979, MRI measures the usage of nearly 6,000 product and service brands across 550 categories, along with readership of hundreds of magazines and newspapers, internet usage, television viewership, national and local radio listening, yellow page usage, and out-of-home exposure. Based on a yearly face-to-face interview of 26,000 consumers in their homes, MRI's Survey of the American Consumer™ is the primary source of audience data for the U.S. consumer magazine industry and the most comprehensive and reliable source of multi-media audience data available.

² Core Based Statistical Areas (CBSAs) consist of the county or counties or equivalent entities associated with at least one core (urbanized area or urban cluster) of at least 10,000 population, plus adjacent counties having a high degree of social and economic



- 77.2% have a household income of \$30,000 or more, 67.7% have a household income of \$40,000 or more, and 58.7% have a household income of \$50,000 or more;
 - 76.0% are white;
 - 71.6% live in County Size A or B, with 42.3% living in County Size A;³
 - 67.9% own a home;
 - 60.3% own a home valued less than \$500,000;
 - 59.3% have lived at their current address for five or more years.
 - 54.2% are married; and
 - 52.6% are women.
- On average, Canned Tuna Consumers:⁴
 - are 48 years of age;
 - have a household income of \$77,289; and
 - own a home valued at \$258,167.
- Also important is the fact that, compared to the general adult population, Canned Tuna Consumers are:
 - 9.6% more likely to be 65 years of age or older, 7.8% more likely to be 55-64 years of age, and 2.7% more likely to be 45-54 years of age;
 - 5.8% more likely to speak Spanish most often;
 - 5.3% more likely to have a household income between \$40,000-\$49,999, 3.7% more likely to have a household income between \$30,000-\$39,999, and 2.8% more likely to have a household income between \$20,000-\$29,999;
 - 5.1% more likely to be of Spanish, Hispanic or Latino origin or descent and 1.0% more likely to be White;
 - 4.8% more likely to have lived at their current address for five years or more;
 - 4.8% more likely to live in a household consisting of two people;
 - 4.5% more likely to **not** be employed;
 - 3.6% more likely to own a home valued less than \$100,000, 2.5% more likely to own a home valued between \$200,000-\$499,999, and 1.7% more likely to own a home valued between \$100,000-\$199,999;
 - 3.4% more likely to have graduated from high school;
 - 2.1% more likely to own a home; and
 - 2.0% more likely to be married.

integration with the core as measured through commuting ties with the counties associated with the core. The general concept of a CBSA is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core. CBSAs are defined by the U.S. Office of Management and Budget to provide a nationally consistent set of geographic entities for the United States and Puerto Rico for use in tabulating and presenting statistical data. Metropolitan Statistical Areas are CBSAs associated with at least one urbanized area that has a population of at least 50,000. The metropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting. Micropolitan Statistical Areas are CBSAs associated with at least one urban cluster that has a population of at least 10,000 but less than 50,000. The micropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

³ Nielsen County Size classifications are based on Census household counts and metropolitan proximity. There are four county size classes, "A," "B," "C," and "D." "A" counties are highly urbanized areas and belong to the 21 largest Metropolitan Statistical Areas. The combined counties contain 40% of United States households. "B" counties are counties not defined as A counties that have more than 85,000 households. The combined counties contain 30% of United States households. "C" counties are counties not defined as A or B counties that have more than 20,000 households or are in Consolidated Metropolitan Areas or Metropolitan Statistical Areas with more than 20,000 households. The combined counties contain 15% of United States households. "D" counties are all counties not classified as A, B, or C counties. They are considered very rural. The combined counties contain 15% of United States households.

⁴ The average age for U.S. adults is 47, the average household income is \$78,940, and the average home value is \$259,873.



Proposed Notice Strategies

A schedule of online notices on a variety of websites will provide the necessary reach among the Class. To fulfill the CLRA notice requirement, a summary notice will appear once a week for four consecutive weeks in the *San Francisco Examiner* newspaper.

Plan Delivery

The proposed media effort will reach approximately 70% of likely Class Members. Coverage will be further enhanced by the CLRA notice placements.

Proposed Notice Tactics

The following notice tactics are recommended to reach the Class:

1. **Internet Banners:** According to MRI, 86.8% of Canned Tuna Consumers have access to the internet at home using a computer and 83.8% have looked at or used the internet in the last 30 days.

Based on our analysis, we recommend purchasing 172 million internet impressions to be distributed over a variety of websites. The internet impressions will be targeted to adults 18 years of age or older (Adults 18+) and will include an embedded link to the case website. The internet banners may appear on websites such as FoodNetwork.com, HGTV.com, CNN.com, CBS.com, NBC.com, Ancestry.com, EverydayHealth.com, AccuWeather.com, AllRecipes.com, Realtor.com, and many others.

2. **CLRA Notice Requirement:** If the case claims allege violations of CLRA, CLRA notice requirements should be fulfilled. Provided that the court is located in San Francisco, the CLRA notice requirement would be fulfilled by placing a quarter-page notice once a week for four consecutive weeks in the *San Francisco Examiner*.⁵



Response Mechanisms

KCC advocates the utilization of a website and toll-free number to allow the Class opportunities to solicit information and communicate about the case.

1. **Case Website:** KCC will publish a case-dedicated website that will allow Settlement Class Members to obtain general information about the settlement and file a claim online.
2. **Toll-Free Number:** KCC will establish a toll-free number to allow Settlement Class Members to learn more about the settlement in the form of frequently asked questions. It will also allow Settlement Class Members to request to have more information mailed directly to them.

⁵ The *San Francisco Examiner* is a tabloid-size newspaper. A quarter-page ad unit is roughly equivalent to an eighth-page ad unit in standard broadsheet newspapers.

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EHDER SOTO, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC.,

Defendant.

Case No. 5:15-cv-05082-BLF

Case No. 1:16-cv-01478-BLF

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 11, 2017

Time: 9:00 a.m.

Courtroom: Courtroom 3 – 5th Floor

Honorable Beth Labson Freeman

HENEY SHIHAD, an individual on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WILD PLANET FOODS, INC. and DOES 1
through 25, inclusive,

Defendants.

1 Upon review and consideration of the Stipulation for Class Action Settlement, and the
2 attachments thereto which have been filed with the Court, and having been fully advised in the
3 premises, it is HEREBY ORDERED, ADJUDGED, and DECREED as follows:

4 1. The parties have agreed to settle this matter upon the terms and conditions set
5 forth in the Stipulation for Class Action Settlement (the “Settlement Agreement” or the
6 “Settlement”), which has been filed with the Court.

7 2. The Court has carefully reviewed the Settlement Agreement, as well as the files,
8 records, and proceedings to date in this matter. The definitions in the Settlement Agreement are
9 hereby incorporated as though fully set forth in this Order, and capitalized terms shall have the
10 meanings attributed to them in the Settlement Agreement.

11 3. Based upon preliminary examination, it appears to the Court that the Settlement
12 substantially fulfills the purposes and objectives of this class action, and provides substantial
13 relief to the Settlement Class without the risk, cost, or delay associated with continued litigation,
14 trial, and/or appeal; the Settlement Agreement appears fair, reasonable, and adequate; the
15 Settlement Class should be certified for settlement purposes, subject to Paragraphs 5-6, 17
16 below; and a final approval hearing (a “Fairness Hearing”) should be held, after notice has been
17 sent to the Settlement Class, to determine whether the proposed Settlement is fair, reasonable,
18 and adequate and whether a Settlement Approval Order and Final Judgment should be entered in
19 this action based upon the Settlement Agreement.

20 4. The Settlement Agreement, including all exhibits thereto, is preliminarily
21 approved as fair, reasonable, and adequate. The Court finds that: (a) the Settlement Agreement
22 is the result of intensive, arm’s-length negotiations between experienced attorneys familiar with
23 the legal and factual issues of this case; all Settlement Class Members are treated fairly under the
24 Settlement; (b) the provisions in the Settlement regarding payment of Class Counsel’s attorneys’
25 fees and costs appear reasonable under the circumstances; and (c) the Settlement Agreement is
26 sufficient to warrant notice thereof to members of the Settlement Class and the Fairness Hearing
27 described below.

1 5. The Court conditionally certifies, for settlement purposes only, a Settlement Class
2 defined as: “All residents of the United States of America who, from November 5, 2011 to the
3 date of this order, purchased any can of branded tuna produced by, for, or on behalf WP,
4 including cans sold under the ‘Wild Planet’ brand and the ‘Sustainable Seas’ brand.” Excluded
5 from this definition are the Released Persons. Settlement Class Members who exclude
6 themselves from the Settlement shall no longer thereafter be Settlement Class Members and shall
7 not be bound by the Settlement Agreement and shall not be eligible to make a claim for any
8 benefit under the terms of the Settlement Agreement.

9 6. In connection with the conditional certification, the Court makes the following
10 findings pursuant to Rule 23 of the Federal Rules of Civil Procedure:

- 11 a. The Settlement Class is so numerous that joinder of all members is
12 impracticable;
- 13 b. There are questions of law or fact common to the Settlement Class;
- 14 c. The claims of the named plaintiffs are typical of the claims being resolved
15 through the proposed Settlement;
- 16 d. The named plaintiffs are capable of fairly and adequately protecting the
17 interests of the Settlement Class in connection with the proposed
18 Settlement;
- 19 e. For purposes of determining whether the Settlement is fair, adequate, and
20 reasonable, common questions of law and fact predominate over questions
21 affecting only individual Settlement Class Members. Accordingly, the
22 Settlement Class is sufficiently cohesive to warrant adjudication through
23 settlement by representation; and
- 24 f. For purposes of Settlement, a settlement with the Settlement Class is
25 superior to other available methods for the fair and efficient resolution of
26 the claims of the Settlement Class.
- 27
- 28

1 7. In making the findings set forth in Paragraph 6, the Court has exercised its
2 discretion in conditionally certifying the Settlement Class on a nationwide basis. Plaintiffs Ehder
3 Soto and Heney Shihad are designated as Class Representatives.

4 8. The Court appoints Bursor & Fisher, P.A., Nathan & Associates, APC and the
5 Law Offices of Ross Cornell as Class Counsel for the Settlement Class. For purposes of these
6 settlement approval proceedings, the Court finds that Bursor & Fisher, P.A., Nathan &
7 Associates, APC and the Law Offices of Ross Cornell, APC are competent and capable of
8 exercising their responsibilities as Class Counsel.

9 9. A final approval hearing shall be held before this Court at least ninety (90) days
10 after notice is sent in accordance with 28 U.S.C. § 1715(b), i.e., on [], 2017 at 9:00
11 a.m., to determine whether the Settlement is fair, reasonable, and adequate and should be
12 approved. The Court shall also rule on Class Counsel's fee and expense application and the
13 Class Representatives and the Interested Parties' application for incentive awards (the "Fee
14 Application") at that time. The Fairness Hearing may be postponed, adjourned, or continued by
15 order of the Court without further notice to the Settlement Class. After the Fairness Hearing, the
16 Court may enter a Settlement Approval Order and Final Judgment in accordance with the
17 Settlement Agreement that will adjudicate the rights of the Settlement Class Members with
18 respect to the claims being settled.

19 10. As soon as possible after the entry of this Order, Class Counsel shall cause the
20 Class Notice substantially in the form attached as Exhibits 6-7 to the accompanying Fisher
21 Declaration, to be promulgated, on or before [], according to the Notice Plan
22 designed by KCC Class Action Services LLC ("KCC"), which has been chosen by the parties as
23 the Settlement Administrator. Specifically, KCC's proposed Notice Plan includes creation of a
24 dedicated settlement website and an Internet banner ad and social media campaign. The
25 settlement website shall be accessible on or before Internet banner ad and social media campaign
26 commences and shall remain accessible until the expiration of the claims period.

27 11. The Court finds that the contents of the proposed class notices, and the manner of
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1 their dissemination described in KCC's Notice Plan, is the best practicable notice under the
2 circumstances and is reasonably calculated, under all the circumstances, to apprise the Settlement
3 Class Members of the pendency of this action, the terms of the Settlement, and their right to
4 object to the Settlement or exclude themselves from the Settlement Class. The Court further
5 finds that the proposed class notices are reasonable, that they constitute due, adequate, and
6 sufficient notice to all persons entitled to receive notice, and that they meet the requirements of
7 due process. Finally, the Court finds that Settlement Class Members will have until
8 [], 2017 to submit their proofs of claim, which is due, adequate, and sufficient time.

9 12. Each Settlement Class Member who wishes to be excluded from the Settlement
10 Class and follows the procedures set forth in this Paragraph shall be excluded. Any potential
11 member of the Settlement Class may mail a written request for exclusion, postmarked no later
12 than [], in the form specified in the Notice, to: Soto v. Wild Planet Foods, Inc.
13 Settlement Administrator, PO Box 43034, Providence RI, 02940-3034. All persons or entities
14 who properly make a request for exclusion from the Settlement Class shall not be Settlement
15 Class Members and shall have no rights under the Settlement, should it be approved. At least
16 seven (7) calendar days prior to the final approval hearing, Class Counsel shall prepare or cause
17 the Settlement Administrator to prepare a list of the persons who have excluded themselves in a
18 valid and timely manner from the Settlement Class, and Class Counsel shall file that list with the
19 Court.

20 13. Any Settlement Class Member who has not timely submitted a written request for
21 exclusion from the Settlement Class, and thus is a Settlement Class Member, may object to the
22 fairness, reasonableness or adequacy of the proposed Settlement, or the Fee Application, or both.
23 Settlement Class Members may do so either on their own or through counsel hired at their
24 expense. Any Settlement Class Member who wishes to object to the proposed Settlement must,
25 on or before [], 2017, file an objection with this Court. The objection must contain
26 the following: (i) a notice of the objector's intention to appear at the Fairness Hearing, if the
27 objector so intends; (ii) the name and address of the objector and the objector's counsel (if the
28

objector intends to appear through counsel); (iii) a statement of the basis for each objection asserted; (iv) any legal authorities that the objector wishes the Court to consider; (v) a list of documents and things the objector wishes the Court to consider and is providing to the Court to support their objection; (vi) a list of documents and things the objector may offer as evidence or exhibits; and (vii) the names and addresses of any witnesses the objector may call to testify and a summary of each such witness's expected testimony. On or before that same date, any such objecting Settlement Class Members shall serve a copy of such papers by first-class mail on each of the following counsel:

For the Settlement Class:

L. Timothy Fisher
Bursor & Fisher, P.A.
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596

For Defendant:

Joseph V. Mauch
Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111-3598

14. Settlement Class Members who fail to object to the proposed Settlement in the manner specified above will: (1) be deemed to have waived their right to object to the Settlement; (2) be foreclosed from objecting (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement; and (3) not be entitled to speak at the Fairness Hearing.

15. Papers in support of final approval of the Settlement and the Fee Application shall be filed with the Court on or before [], 2017. Any responses to objections to the proposed Settlement or the Fee Application, and any further papers in support of the Fee Application or final approval, shall be filed with the Court on or before [], 2017.

16. In summary, the dates of performance are as follows:

- a. The Notices required to be sent to Settlement Class Members per the Settlement Agreement shall be sent as soon as possible after the entry of this Order, in accordance with the KCC Notice Plan;
- b. Settlement Class Members who desire to be excluded shall mail requests for exclusion postmarked no later than [], 2017;
- c. All objections to the proposed Settlement or Fee Application shall be filed and served by [], 2017;
- d. Papers in response to objections, if any, and in further support of the Fee Application shall be filed and served by [], 2017;
- e. Supplemental papers, if any, in support of final approval, shall be filed and served by [], 2017; and
- f. The Fairness Hearing shall be held on [], 2017, at [].

17. In the event the Settlement is not approved by the Court, or for any reason the parties fail to obtain a Settlement Approval Order and Final Judgment as contemplated in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its terms for any reason, then the following shall apply:

- a. All orders and findings entered in connection with the Settlement Agreement shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;
- b. The conditional certification of a nationwide Settlement Class pursuant to this Order shall be vacated automatically, the actions underlying this matter shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and the matter shall return to the *status quo ante* before entry of this Order;

1 c. Nothing contained in this Order is, or may be construed as, any admission
2 or concession by or against the Defendant or Plaintiffs on any point of fact
3 or law, including, but not limited to, factual or legal matters relating to any
4 effort to certify this case as a class action;

5 d. Nothing in this Order or pertaining to the Settlement Agreement shall be
6 used as evidence in any further proceeding in this case, including, but not
7 limited to, motions or proceedings seeking treatment of this case as a class
8 action; and

9 e. All of the Court's prior Orders having nothing whatsoever to do with class
10 certification shall, subject to this Order, remain in force and effect.

11 18. Pending final determination of whether the proposed Settlement should be
12 approved, no Settlement Class Member directly, derivatively, in a representative capacity, or in
13 any other capacity, shall commence any action against any of the Released Persons in any court
14 or tribunal asserting any of the claims at issue in this matter.

15 19. The firm of KCC is hereby appointed as Settlement Administrator for this
16 proposed Settlement and shall perform all of the duties of the Settlement Administrator set forth
17 in the Settlement Agreement.

18 20. All discovery and pretrial proceedings and deadlines, are stayed and suspended
19 until further notice from the Court, except for such actions as are necessary to implement the
20 Settlement Agreement and this Order.

21 21. Counsel are hereby authorized to use all reasonable procedures in connection with
22 approval and administration of the proposed Settlement that are not materially inconsistent with
23 this Order or the Settlement Agreement, including making, without further approval of the Court,
24 minor changes to the form or content of the Notice, Summary Notice, and other exhibits that they
25 jointly agree are reasonable or necessary.

1 **IT IS SO ORDERED.**

2
3 Dated: _____

Honorable Beth Labson Freeman
United States District Court Judge