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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 IN RE: PACKAGED SEAFOOD) Case No.: 15-MD-2670 DMS (MDD)
14 PRODUCTS ANTITRUST)
LITIGATION) **END PAYER PLAINTIFFS'**
15) **MEMORANDUM OF POINTS**
16) **AND AUTHORITIES IN SUPPORT**
17) **OF THEIR MOTION FOR FINAL**
18) **APPROVAL OF PARTIAL CLASS**
19) **ACTION SETTLEMENT**

19 This Document Relates to:)
20 End Payer Plaintiffs Class Track) DATE: July 15, 2022
21) TIME: 1:30 p.m.
22) JUDGE: Hon. Dana M. Sabraw
23) COURT: 13A (13th Floor)
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1 **I. INTRODUCTION**

2 Amidst this lengthy and hard-fought litigation, the End Payer Plaintiffs
3 (“EPPs”) present an “icebreaker” settlement for the Court’s final approval. The EPPs
4 negotiated at arms’-length a settlement with the Chicken of the Sea Defendants (“the
5 COSI Defendants”)¹ *before* the District Court issued its decision certifying the Class.
6 The COSI Settlement includes up to \$20 million for the benefit of the Settlement Class
7 Members (“the COSI Settlement”).² The COSI Settlement also includes prosecution
8 cooperation by COSI that allows EPPs to pursue the other Non-settling Defendants.³

9 The COSI Settlement represents one-third of the \$60 million maximum
10 damages Dr. Sunding, the EPPs’ testifying economist, calculated to be COSI
11 Defendants’ exposure to the EPP class. As the ACPERA applicant, COSI is liable
12 only for single damages based on its own sales, whereas the other defendants are
13 jointly and severally liable and face treble damages.⁴

14 _____
15 ¹ Tri-Union Seafood LLC d/b/a Chicken of the Sea International (“COSI”) and Thai
16 Union Group (“TUG”) (collectively the “COSI Defendants”).

17 ² The Maximum Settlement Amount is twenty million (\$20,000,000) per COSI
18 Settlement Agreement, §1.a.xxvii. *See* Manifold Decl., Ex. 1 (“COSI Settlement
19 Agreement”), at 8. Under Paragraphs 11(b) and 18, up to five million (\$5,000,000)
20 out of the Maximum Settlement Amount shall be used to cover the reasonable costs
21 of Class and Settlement Notices and administration for distribution of the Settlement
22 Fund of fifteen million (\$15,000,000) (“Distribution Fund”). *Id.* at 13-14. If the
23 reasonable costs of Class and Settlement Notice is less than \$5,000,000, the difference
24 shall be refunded to the COSI Defendants under Paragraph 18(b) of the COSI
25 Settlement Agreement. *Id.* at 14-15.

26 ³ The Non-settling Defendants are StarKist Co. and its parent Dongwon Industries
27 Co., Ltd. (collectively “StarKist”) and various “Lion Capital” entities (Lion Capital
28 (Americas), Inc., Big Catch Cayman LP, and Lion Capital LLP).

⁴ *See* Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (“ACPERA”),
Pub. L. 108-237, § 201 et seq., 118 Stat. 661, 665 (2004), as amended. § 213(a).

1 At the time of the parties reached the agreement in principle (which ultimately
2 led to the formal COSI Settlement), EPP Class Counsel had diligently litigated this
3 matter, by: (i) conducting a wide-ranging investigation into the claims; (ii) filing
4 multiple amended consolidated complaints in this action; (iii) successfully opposing
5 numerous motions to dismiss and summary judgment motions as to key theories of
6 liability; (iv) engaging in comprehensive discovery, including motion practice before
7 Magistrate Judge Dembin; (v) consulting with experts; (vi) completed class
8 certification briefing; (vii) engaging in mediation, including the exchange of
9 significant information; (viii) review of over 420,000 documents; (ix) taking and
10 defending numerous depositions, including a dozen COSI witnesses; (x) subpoenaing
11 twenty (20) third parties for relevant data.⁵ As a result, EPPs and Class Counsel had
12 a thorough understanding of the relative strengths and weaknesses of the claims
13 asserted at the time the Settlement was reached and continued this assessment
14 (especially on the issue of class certification) until preliminary approval was finally
15 granted in January 2022.

16 The EPPs through the claims administrator provided notice of the proposed
17 settlement (“Class Notice”) to all Settlement Class Members in accordance with the
18 Preliminary Approval Order. The response of the Class is overwhelmingly positive
19 so far, with 246,436 claims received, only one request for exclusion (107 known
20 Direct Action Plaintiff entities), and no objection as of the filing of this Motion. The
21 EPPs thus believe the record, substantiated by the instant motion, provides ample
22 support for final approval of the COSI Settlement.

23 **II. BACKGROUND**

24 **A. Relevant Procedural History**

25 Before reaching the agreement in principle for the COSI Settlement, the Parties

26 _____
27 ⁵ See Declaration of Betsy C Manifold in Support of Motion for Final Approval of
28 Partial Settlement, filed concurrently herewith (“Manifold Decl.”), ¶¶ 5-21.

1 litigated this case for nearly three years, completing fact discovery, briefing and
2 argument on class certification and engaging in expert discovery. Manifold Decl., ¶¶
3 5-12. The EPPs hired two experts to focus on proving the existence and impact of a
4 single conspiracy among the defendants (including COSI). *Id.*, ¶ 12. The Court heard
5 oral argument and expert testimony regarding class certification on January 14-16,
6 2019, and, shortly thereafter, counsel for the EPPs and COSI began informal talks.
7 *Id.*, ¶ 13. After multiple exchanges over several months, including an all-day informal
8 mediation, on April 25, 2019, COSI signed a memorandum of understanding
9 (“MOU”) agreeing to settle the EPPs’ claims. *Id.*, ¶ 18. **After** the MOU was signed,
10 on July 30, 2019, the Court certified EPPs’ and the other Plaintiffs’ classes. *Id.*, ¶ 19;
11 *See* ECF No. 1931 (“Class Order”).

12 Although the parties finalized this early settlement, **just before** the District
13 Court issued its decision certifying the Class, preliminary approval of this partial
14 settlement was delayed until January 26, 2022.⁶ The delay was due, in part, to the
15 Defendants’ appeal of the Court’s Class Opinion (ECF No. 1931). As the Court is
16 well aware, the Class Opinion’s appellate journey in the Ninth Circuit ended with an
17 April 8, 2022 *en banc* decision of the Ninth Circuit upholding class certification. *See*
18 ECF No. 2828 (Order re Mandate Hearing).

19 As the ACPERA leniency applicant, COSI provided cooperation in assisting
20 plaintiffs’ counsel in understanding the scope and nature of the anticompetitive
21 agreements between the three manufacturers of packaged tuna. Manifold Decl., ¶ 11,
22 21, 22, 28; ECF 2734 at 4, 10. The parties only reached the COSI Settlement after
23 much in depth investigation, substantial discovery from all three defendants, expert
24 economist analyses of class-wide damages, and evaluation of the Court’s decisions

25 _____
26 ⁶ *See* Declaration of Betsy C. Manifold in Support of End Payer Plaintiffs’ Renewed
27 Motion for Preliminary Approval of Partial Class Action Settlement (ECF No. 2552-
28 2), ¶¶ 1, 12. *See also* ECF No. 1931 and 2734.

1 on the multiple motions to dismiss, directives on the conduct of discovery, and its pre-
2 trial rulings. Manifold Decl., ¶¶ 5-21.

3 **B. The COSI Settlement’s Context**

4 This “icebreaker” settlement with an ACPERA applicant will clear the decks
5 for further litigation and trial with the non-settling Defendants. In addition to COSI’s
6 continued cooperation, if approved by the Court, the COSI Settlement creates a
7 Distribution Fund of \$15 million for Settlement Class Members. Manifold Decl., ¶ 3,
8 Ex. 1, at 13 and 14. Settlement Class Counsel is not seeking a distribution of attorney
9 fees from the COSI Settlement Fund but will seek reimbursement of litigation
10 expenses in an amount of \$4,155,027.67. *Id.*, ¶ 13; *See* End Payer Plaintiffs’ Motion
11 For Costs (filed concurrently herewith) (“Costs Motion”). Separately, the COSI
12 Settlement provides for up to \$5 million for notice and administration costs, which if
13 not used, may revert back to COSI. Manifold Decl., ¶ 13, Ex. 1, ¶ 18(b). This structure
14 preserves a Distribution Fund of \$15 million for the Settlement Class Members and
15 facilitated the robust and effective Notice Plan undertaken by the Claims
16 Administrator. *See* ECF 2827, Declaration of Gina M. Intrepido-Bowden Re:
17 Implementation of COSI Settlement Notice on Behalf of the End Payer Plaintiffs
18 (“Notice Decl.”). The Claims Administrator conducted an extensive and robust media
19 campaign that exceeded the 85% reach goal. *See* Notice Decl., ¶¶ 4-17. The costs of
20 the class notice and administration are discussed separately in the Costs Motion.

21 **C. COSI Settled Early as an “Icebreaker”**

22 This is a conspiracy matter involving collusion and price-fixing. Defendants
23 began explicitly colluding no later than June 2011, and continued through revelation
24 of the DOJ’s investigation in July 2015. *See* ECF No. 1461, ¶¶ 2, 360. Incorporated
25 by reference is the detailed description of litigation against COSI contained in the
26 EPPs’ Motion for Preliminary Approval (ECF No. 2552-1 at 7-14), which also
27 describes the context and terms of the COSI Settlement.

1 **D. The COSI Settlement Agreement**

2 The COSI Settlement Agreement was the result of months of extensive arm’s
3 length negotiations. Manifold Decl., ¶¶ 18-20. The process required more than a
4 dozen settlement discussions, numerous emails, and several in-person meetings. *Id.*
5 Finally, after several failed face-to-face discussions, a TUG executive from Asia came
6 to California for a negotiating session that resulted in an agreement in principle. *Id.*,
7 ¶ 18. The parties only reached resolution when Settlement Class Counsel sat across
8 the table from a member of TUG’s global leadership team and directly discussed the
9 risks of continued litigation. *Id.*

10 **1. The Settlement’s Terms and Benefits**

11 The Settlement Agreement requires the COSI Defendants to make payments
12 totaling \$20 million into a Settlement Fund. Manifold Decl., Ex. 1, §11. Up to \$5
13 million will be used to cover the costs of notice to the COSI Settlement Class and for
14 claims administration. *Id.*, Ex. 1 §§ 11(b)-(c) & 18. The remaining \$15 million will
15 be distributed to Authorized Claimants on a pro rata basis. *Id.*, Ex. 1, §§ 1(b)(xiv) &
16 16. The Settlement Agreement also requires the COSI Defendants to continue to
17 cooperate fully with EPPs’ case. Manifold Decl., Ex. 1 § 10. COSI’s cooperation will
18 be a benefit to EPPs as they pursue their case against the other Defendants.

19 **2. The Settlement Class**

20 The COSI Settlement Classes are identical to that previously certified by the
21 Court and affirmed *en banc* by the Ninth Circuit Court of Appeals:

22 All persons and entities who reside in one of the States described in
23 paragraphs 113(b) to 113(gg) of the Fourth Consolidated Amended
24 Complaint, specifically Arizona, Arkansas, California, the District of
25 Columbia, Florida, Guam, Hawaii, Iowa, Kansas, Maine, Massachusetts,
26 Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New
27 Hampshire, New Mexico, New York, North Carolina, North Dakota,
28 Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah,
Vermont, Virginia, West Virginia, and Wisconsin, who indirectly
purchased Packaged Tuna in cans or pouches smaller than forty ounces

1 for end consumption and not for resale, produced by any Defendant or
2 any current or former subsidiary or affiliate thereof, or any co-
conspirator during the period from June 1, 2011 to July 1, 2015.

3 And

4 All persons and entities who resided in [State, District, or Territory], who
5 indirectly purchased Packaged Tuna in cans or pouches smaller than
6 forty ounces for end consumption and not for resale, produced by any
7 Defendant or any current or former subsidiary or affiliate thereof, or any
8 co-conspirator, during the period June 1, 2011 through July 1, 2015. The
class excludes purchases of meal kits. Also excluded from the Class is
the Court.

9
10 Manifold Decl., Ex. 1 § 1(a) (defining Settlement Class Members).

11 **E. Class Notice and Settlement Distribution**

12 The EPPs retained JND Legal Administration LLC (“JND”), an experienced
13 and well-respected claims administrator. JND administered a comprehensive notice
14 plan from February 17, 2022 through April 13, 2022 to alert Settlement Class
15 Members of the COSI Settlement and will continue to handle class notice and claims
16 administration. Notice Decl., ¶¶ 2-3, 6, 20, 29. The Notice Plan consisted of digital
17 placements with the leading digital network (Google Display Network – “GDN”) and
18 the top social media platform (Facebook); a print placement in a highly read consumer
19 magazine (People); and audio placements through a top radio syndicator
20 (iHeartMedia); digital “look-a-like” targeting on GDN, Facebook, and Instagram; an
21 internet search campaign; and the distribution of a national press release. *Id.*, ¶ 4. JND
22 also established and has maintained a Settlement Website, mailing address, email, and
23 toll-free telephone number. *Id.*, ¶ 5.

24 **1. Notice Program**

25 Digital impressions targeted adults 18 years of age or older in the U.S. and
26 Guam. *Id.*, ¶ 7. The digital activity was served across all common devices (desktop,
27 laptop, tablet, and mobile). *See Id.*, ¶ 8. As of May 16, 2022, the notice program
28

1 reached over 761 million consumers by digital impression, resulting in 1,760,053
2 page views, by 518,086 unique visitors to the settlement website. Manifold Decl., ¶
3 32. Print and Radio efforts were also successful, with publication in *People* magazine
4 to an estimated 3.4 million, and 8,642 30-second radio spots broadcast through
5 iHeartMedia – National Syndicated Radio. Notice Decl., ¶¶ 9-12. This generated
6 285,383 digital media clicks on the website, 1,142 telephone calls, and 349 emails
7 related to the notice. Manifold Decl., ¶ 32. Far surpassing the 85% reach goal. Notice
8 Decl., ¶¶ 6, 30. Notably, only a single request for exclusion was received and no
9 objection to the Settlement was made. *Id.*, ¶¶ 23-26.

10 2. Claims Process

11 The digital ads include an embedded link and the print ad a QR code, both
12 allowing Settlement Class Members to receive more information about the COSI
13 Settlement as well as complete and file an on-line Claim Form. Notice Decl., ¶¶ 8-9,
14 19. The notice documents also provide a toll free number to contact JND with any
15 questions. *Id.*, ¶ 21. According to Ms. Gina Intrepido-Bowden, Vice President at JND
16 Legal Administration and a judicially recognized legal notice expert, claimants
17 “generally favor online claims forms” because the process is user-friendly and
18 convenient. *See* ECF 2673-9, ¶¶ 1, 12, 13 (“Claims Process Decl.”). Online claim
19 processing is faster, easier, more efficient, and results in fewer deficiencies. *Id.* If a
20 Settlement Class Member is either unable or unwilling to file a claim on-line, she may
21 request a printed claim form and either return it via United States Mail (post-marked
22 before the Claims Cut-off date) or create a pdf of the completed Claim Form and e-
23 mail it (before the Claims Cut-off Date) to JND. *Id.*, ¶ 14.

24 As of May 16, 2022, JND reported it received 245,909 online claims and 527
25 paper claims, for a total of **246,436** claims. Manifold Decl. ¶ 32. Next, JND will
26 review, determine the validity of, process and hold on to all Claim Forms submitted
27 by claimants. Claims Process Decl., ¶ 18. JND undertakes steps to flag any issues
28

1 (such as failure to sign a paper or pdf Claim Form or failure to provide purchase
2 information) and to follow up with the claimant as necessary. *Id.* JND also reviews
3 Claim Forms to ensure a single claim per claimant (avoiding doctored documentation
4 and multiple payments to a single recipient). *Id.*

5 **3. Proposed Distribution Plan Once All Claims Resolved**

6 Under the proposed distribution plan, each Authorized Claimant in the
7 Settlement Class will receive a *pro rata* share of the Distribution Funds.⁷ *Id.*, ¶ 16.
8 Payments to Authorized Claimants will not be immediately distributed but held until
9 the claims against all non-Settling Defendants have been resolved by settlement,
10 judgment, order or trial including any appeals and in accordance with any subsequent
11 Court orders. *Id.*, ¶¶ 16-21. There is potential for additional funds from settlement or
12 judgment against the Non-settling Defendants, which could then be distributed. With
13 the costs of claims administration, it is more efficient to delay distribution of this
14 partial settlement until the remaining claims are resolved.⁸

15 Upon final approval of the COSI Settlement, after all remaining claims against
16 the Non-settling Defendants are resolved by judgment, order, settlement or trial, and
17 all appeals are resolved, JND will distribute payments as specified on the claimant’s
18 Claim Form. Notice Decl., Ex. F (Claim Form). When mailing or e-mailing a payment
19 (such as a check or PayPal), JND will send the distribution to the address or email
20 provided by the claimant on the Claim Form. *Id.* As noted in the Class Notices, if the
21 total final payment of a particular claim is less than \$5.00, no distribution will be
22 made to the Authorized Claimant. *Id.* It is typical to provide for such a *de minimis*

23 _____
24 ⁷ “Distribution Funds” refers to the Settlement Fund (\$15 million) less any Expense
Award approved by the Court upon final approval of the COSI Settlement.

25 ⁸ If no further monies are recovered, Settlement Class Members are expected to
26 receive approximately \$10.50 for every 200 cans purchased (approximate number of
27 cans if you purchased packaged tuna weekly during the Settlement Class Period).
Claims Process Decl., ¶ 16.

1 threshold so that the costs of administration are not out of proportion to the size of the
2 claim payment. Claims Process Decl., ¶ 20.

3 **4. Long Form Class Notice and Claim Form**

4 In plain English, the Class Notice outlines the benefit of the COSI Settlement
5 and explains how to get payment, how to be excluded from settlement, and how to
6 object to the settlement. The Class Notice also explains what happens if the settlement
7 class member does nothing. The Class Notice clearly explains the objection process
8 to Settlement Class Members and informs them that they may appear at the fairness
9 hearing or retain counsel to represent their interests.

10 **5. Exclusion and Objection Rights**

11 Settlement Class Members were given ample opportunity to exclude
12 themselves by filing an appropriate and timely written statement of the grounds for
13 objection by May 13, 2022. Notice Decl., ¶¶ 23-24, Ex. F. They may also appear at
14 the Fairness Hearing. *Id. No objections to the settlement have been received to date*
15 and only a single request for exclusion was received. Notice Decl., at ¶¶ 23-26. The
16 request for exclusion was expected and made out of an abundance of caution by the
17 Direct Action Plaintiff entities (107 entities who filed their actions in the MDL).⁹

18 **III. LEGAL STANDARDS FOR FINAL APPROVAL**

19 Final approval is a multi-step inquiry: first, the Court must certify the proposed
20 settlement class; second, it must determine that the settlement proposal is “fair,
21 reasonable, and adequate;” and third, it must assess whether notice has been provided
22 in a manner consistent with Rule 23 and due process. Fed. R. Civ. P. 23(e)(2); *Adoma*
23 *v. Univ. of Phoenix Inc.*, 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012). These procedures

24
25 ⁹ These entities include 107 businesses identified in the letter, including: The Kroger
26 Co. (“Kroger”), Albertsons Companies, Inc. (“Albertsons”), Hy-Vee Inc. (“Hy-Vee”),
27 H.E. Butt Grocery Company (“HEB”), Ahold U.S.A., Inc. (“Ahold”), Delhaize
28 America, LLC (“Delhaize”) (collectively the “Opt-Out Entities”).

1 safeguard class members’ due process rights and enable the Court to fulfill its role as
2 the guardian of class interests.¹⁰ The Settlement satisfies each of these requirements.

3 **A. The Court Should Certify the Settlement Class**

4 The Court previously certified a contested EPP Class for trial under the
5 requirements of Rule 23(a) and (b)(3). ECF No. 1931. The Court also appointed Wolf
6 Haldenstein as Class Counsel for the EPP Class and the named plaintiffs as the Class
7 Representatives in this case. *Id.* The Ninth Circuit *En Banc* Opinion affirmed the Class
8 Order and did not alter the Court’s previous findings that the proposed EPP Class
9 otherwise satisfied the requirements of Rule 23.

10 Nonetheless, at the recent mandate hearing, Non-settling Defendants expressed
11 an intention to appeal the Ninth Circuit *En Banc* Opinion. Thus, out of an abundance
12 of caution, the EPPS separately set forth herein that both Federal Rule of Civil
13 Procedure 23(a) and 23(b)(3) were satisfied and warrant certification of a settlement
14 class. Incorporated by reference is the detailed argument and case law the proposed
15 Settlement Class satisfies the remaining requirements Rules 23(a) and (b) contained
16 in the EPPs’ Motion for Preliminary Approval. (ECF No. 2552-1 at 15-20).

17 The *numerosity* prerequisite is satisfied if the class is so numerous that joinder
18 of all its members is “impracticable.” Fed. R. Civ. P. 23(a)(1). Here, the combined
19 Class includes over 100 million Class Members and joining all Class Members would
20 undoubtedly be impracticable. *See* ECF No. 1931 at 47 (finding numerosity).

21 The *commonality* requirement is satisfied if there are questions of law or fact
22 common to the class. Fed. R. Civ. P. 23(a)(2). The *typicality* requirement is satisfied
23 if the class members have the same or similar injury, defendants’ conduct is not
24 unique to the named plaintiffs, and the same course of conduct injured other class
25 members. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011); *see*

26 _____
27 ¹⁰ *See* 4 Albert Conte & Herbert Newberg, *Newberg On Class Actions* §§ 11.22, et
28 seq. 4th ed. 2002).

1 also Fed. R. Civ. P. 23(a)(3). The named plaintiffs and EPP Class Members’ claims
2 all “arise from the same conduct: the purchase of Defendants’ products at prices
3 elevated above competitive levels as a result of Defendants’ alleged price fixing
4 conduct.” ECF No. 1931 at 47. The claims of the named Plaintiffs are therefore
5 common and typical of the Class.

6 The *adequacy* prerequisite is satisfied if it is determined that the named
7 plaintiffs will fairly and adequately protect the class’ interests by prosecuting the
8 matter vigorously and by being free of any conflict of interest with other class
9 members. *See Ellis*, 657 F.3d at 985; Fed. R. Civ. P. 23(a)(4). “EPP Class
10 Representatives and Class counsel do not have any conflicts of interest with other
11 Class members and the EPP Class Representatives, and [that] Class [C]ounsel have
12 shown they have prosecuted, and will continue to prosecute this action vigorously.”
13 ECF No. 1931 at 47.

14 Regarding *manageability*, the Court need not determine whether the proposed
15 class would present such concerns. *In re Hyundai and Kia Fuel Econ. Litig.*, 926 F.3d
16 539, 556-57 (9th Cir. 2019) (*en banc*) (“*In re Hyundai*”) (citing *Amchem Prods., Inc.*
17 *v. Windsor*, 521 U.S. 591, 620 (1997) (“*Amchem*”).

18 The *predominance* component of Rule 23(b)(3) “focuses on whether the
19 common questions present a significant aspect of the case and [whether] they can be
20 resolved for all members of the class in a single adjudication; if so, there is clear
21 justification for handling the dispute on a representative rather than on an individual
22 basis.” *In re Hyundai*, 926 F.3d at 557 (quotations omitted). Here, common questions
23 of law and fact predominate over any individual member questions. Class members
24 share common evidence of the COSI Defendants’ antitrust violations, including guilty
25 pleas, written communications, and contemporaneous price and packaging
26 announcements. They also share common questions regarding the antitrust impact of
27 Defendants’ conduct.

28

1 The class action is also *superior* to any other method for resolving this matter
2 “where the likely recovery is too small to incentivize individual lawsuits, and the
3 realistic alternative to class litigation will be no adjudication at all.” *Briseno v.*
4 *ConAgra Foods, Inc.*, 674 Fed. App’x. 654, 657 (9th Cir. 2017) (“*Briseno I*”)
5 (affirming class certification); *See* Fed. R. Civ. P. 23(b)(3). Here, the Settlement
6 resolves the claims of more than 100 million people in a single action. The likely
7 recovery, while fair, reasonable and appropriate under the circumstances and in light
8 of the outer limits of the COSI Defendants’ potential liability, is nonetheless too small
9 an incentive for Settlement Class Members to pursue their own claims. The COSI
10 Settlement Agreement more than satisfies Rule 23(b)(3). Thus, the Court should
11 certify the Settlement Class.

12 **B. The Court Should Grant Final Approval of the Settlement**

13 Rule 23(e) requires the district court to determine whether a proposed
14 settlement is “fair, reasonable, and adequate.” *In re Online DVD-Rental Antitrust*
15 *Litig.*, 779 F.3d 934, 944 (9th Cir. 2015). To assess the fairness of a class settlement,
16 Ninth Circuit courts consider a number of factors, including: (1) the strength of the
17 plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of future
18 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the
19 amount offered in settlement; (5) the extent of discovery completed and the stage of
20 the proceedings; (6) the experience and views of counsel; (7) the presence of a
21 governmental participant; and (8) the reaction of class members to the proposed
22 settlement. *Id.* (quoting *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir.
23 2004)). Rule 23(e)(2) also requires courts to consider whether (1) class representatives
24 and counsel have adequately represented the class; (2) the proposal was negotiated at
25 arm’s length; (3) the settlement provides adequate relief for the class; and (4) the
26 proposal “treats class members equitably relative to each other.”

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1 These factors are not exclusive. This Court may consider any combination of
2 factors that it deems appropriate to assessing the fairness of the settlement.
3 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 254 (N.D. Cal. 2015) (noting
4 “The court need not consider all of these factors, or may consider others.”).

5 This Court previously determined that the Settlement satisfies each of the
6 requirements of Rule 23(e)(2). *See* Preliminary Approval Order at 1, 7-11. There is
7 no reason to depart from the Court’s preliminary conclusion that the proposed
8 Settlement is fair, adequate, and reasonable.

9 **1. The *Churchill Village* Factors Favor Settlement Approval**

10 Under the first *Churchill Village* factor, this Court considers the strength of
11 plaintiffs’ case. *See* Fed. R. Civ. P. 23(e)(2)(C). This includes the difficulty of
12 “prevailing at summary judgment, prevailing on appeal, as well as the difficulty of
13 satisfying any judgment in favor of the class.” *Carlin v. DairyAmerica*, 380 F. Supp.
14 3d 998, 1009 (E.D. Cal. 2019). In considering this factor, the Court need not reach
15 “any ultimate conclusion” about the case, “for it is the very uncertainty of outcome”
16 and avoiding more litigation “that induce consensual settlements.” *Bravo v. Gale*
17 *Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714, at *25-26 (C.D. Cal. Feb. 16, 2017).
18 Although the case against the COSI Defendants regarding liability is strong and EPPs
19 believe they will prevail at summary judgment and, ultimately, at trial, the outcome
20 of litigation especially class certification is always uncertain.

21 Therefore, EPPs must balance the strength of their case against the second
22 *Churchill* factor: the risk, expense, complexity and delay of further litigation. Fed. R.
23 Civ. P. 23(e)(2)(C)(i). “In most situations, unless the settlement is clearly inadequate,
24 its acceptance and approval are preferable to lengthy and expensive litigation with
25 uncertain results.” *Bravo* at *28. This case has presented a stunning array of
26 challenges. Notwithstanding the presence of an ACPERA leniency applicant and a
27 criminal investigation, the issue of impact -- who was damaged and to what extent
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1 remains hotly contested. Manifold Decl., ¶ 22. COSI’s admissions in its leniency
2 application and its proffers to the plaintiffs only described certain acts that occurred,
3 not the impact of those acts. *Id.* Further, the COSI Defendants maintain that those acts
4 ended earlier than the 2015 end date of the EPP class period. *Id.* The criminal case
5 proceeded all the way through a jury trial, and a half dozen witnesses asserted
6 privileges against self-incrimination. *Id.*, ¶ 23. The class-wide damages alone will
7 require a trial. *Id.* EPPs will have to put time and effort and financial resources into
8 that trial, and any appeal that followed, which would “prolong the litigation, and any
9 recovery by class members, for years.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d
10 948, 966 (9th Cir. 2009); Manifold Decl., ¶ 23.

11 Furthermore, setting the risks of litigation aside, COSI Defendants have
12 indicated that they may not be able to pay a full judgment. Manifold Decl., ¶ 24. The
13 harm caused by the conspiracy and the resulting damages were so large that thinly-
14 capitalized Bumble Bee could not withstand the strain, and it filed for bankruptcy and
15 was sold off to a fishing company during this litigation, leaving a shell from which
16 no recovery has been achieved. *Id.*, ¶ 25. The risks that EPPs face from summary
17 judgment, trial, and appeal, as well as the possibility that Defendants may not be able
18 to pay any resulting judgment following the conclusion of those proceedings, all
19 weigh strongly in favor of final approval. *Id.*

20 The third factor, the risk of maintaining class certification through trial, also
21 weighs in favor of final approval. *In re Bluetooth Headset Prods. Liab. Litig.*, 654
22 F.3d 935, at 946 (9th Cir. 2011); *Bellinghausen*, 306 F.R.D. at 255 (citing risk of
23 maintaining certification “if the litigation were to proceed”); *Chen v. Chase Bank*
24 *USA*, 2020 U.S. Dist. LEXIS 110755, at *16-17 (N.D. Cal. June 23, 2022) (same).
25 Settlement was reached prior to the Court granting class certification, which the EPPs
26 recognized had risk. Manifold Decl., ¶ 26. Class certification was hotly contested. *Id.*
27 The Class Order was appealed to Ninth Circuit, then vacated and remanded for further
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1 consideration by the Court, and recently affirmed. *Id.* Even now that the EPPs have
2 prevailed again on class certification, there is a risk of further appeal to the Supreme
3 Court—that may delay the case even further. *Id.* It is an appropriate consideration in
4 approving the parties’ decision to achieve resolution by settlement. *Id.* The risk of any
5 appeal after trial also weighs in favor of settlement approval. *Id.*

6 The fourth *Churchill Village* factor, the amount obtained through the
7 Settlement, also supports final approval. *See also* Fed. R. Civ. P. 23(e)(2)(C);
8 *Procedural Guidance for Class Action Settlements* § 1(e) (suggesting courts consider
9 amount of settlement to potential recovery). The Settlement with COSI must be
10 viewed in light of limits on potential recovery. COSI applied for and was granted
11 leniency applicant status under ACPERA § 213(a), 118 Stat. at 665 (as amended).
12 The leniency applicant is (a) exempt from joint and several liability, which otherwise
13 attaches by operation of law in antitrust litigation; and (b) is exempt from trebling,
14 which is likewise automatic in antitrust cases. Accordingly, COSI’s maximum
15 exposure – by statute – was its single damages for its own sales: not single damages
16 for the conspiracy, and nothing trebled. *Morning Star Packing Co. v. S.K. Foods, L.P.*,
17 2015 U.S. Dist. LEXIS 80034 (E.D. Cal. June 18, 2015).

18 In assessing the amount recovered here, the Court should also consider that, as
19 the “first settlement in the litigation,” this agreement carries additional “significant
20 value” because it may “‘break the ice’ and bring other defendants to the point of
21 serious negotiations.” *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643
22 (E.D. Pa. 2003). Courts typically approve settlements that offer the first settling party
23 a discount due to “the significant value in and of itself as an icebreaker settlement,”
24 particularly when, as here, the settling defendants have agreed to cooperate in the
25 remaining litigation. *In re Domestic Airline Travel Antitrust Litig.*, 378 F. Supp. 3d
26 10, 19 (D.D.C. 2019); *In re Ampicillin Antitrust Litig.*, 82 F.R.D. 652, 654 (D.D.C.
27 1979) (finding that “assistance in the case” will “prove invaluable to the plaintiffs”).
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1 With Bumble Bee gone in a puff of bankruptcy smoke the remaining non-settling
2 Defendants “will remain liable for all class damages under principles of joint and
3 several liability.” *Standard Iron Works v. Arcelormittal*, 2014 U.S. Dist. LEXIS
4 185803, at *16 (N.D. Ill. Oct. 23, 2014).

5 Given these circumstances, the amount recovered (\$20 million) is more than
6 reasonable. EPPs secured one-third of the maximum possible recovery their own
7 expert calculated through Settlement. *See* ECF No. 1981-20, (Expert Merit Report of
8 David Sunding (Feb. 15, 2019) (calculating COSI Defendants’ overcharges to EPPs
9 to be \$60,078,695)). This compares favorably to other antitrust and class action
10 settlements that have received approval. *See In re Domestic Airline Travel Antitrust*
11 *Litig.*, 378 F. Supp. 3d at 19 (finding \$15 million settlement to be “in line” with other
12 icebreaker settlements); *see also Carlin*, 380 F. Supp. 3d at 1011 (“Courts regularly
13 approve class settlements where class members recover less than one quarter of the
14 maximum potential recovery amount.”); *In re Mego Fin.l Corp. Sec. Litig.*, 213 F.3d
15 454, 459 (9th Cir. 2000) (finding settlement that provided plaintiffs one-sixth of their
16 potential recovery to be “fair and adequate”); *Bellinghausen*, 306 F.R.D. at 256
17 (approving settlement that provided between 8.5 and 25.4 percent of the potential
18 recovery); *In re Critical Path, Inc., Secs. Litig.*, 2002 U.S. Dist. LEXIS 26399, at *21
19 (N.D. Cal. June 18, 2002) (finding \$17.5 million settlement “not unreasonable” when
20 compared to potential recovery of \$200 million). When combined with the
21 cooperation the COSI Defendants have agreed to provide, the relief provided for by
22 the Settlement more than merits final approval.

23 The fifth and sixth *Churchill Village* factors also support final approval. COSI
24 and EPPs signed a memorandum of understanding on this Settlement after over three
25 and a half years of litigation. Because of the time expended on this case, EPPs are in
26 a good position to evaluate the value of the Settlement. *See Bravo* at *32-33 (finding
27 that extensive discovery shows that counsel fully understand case’s factual and legal
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1 issues). Furthermore, as stated in the Preliminary Approval Order, “EPPs are
2 represented by Class Counsel with substantial experience in litigating and evaluating
3 antitrust class actions. Their views and experience also weigh in favor of approval.”
4 ECF 2734 at 10-11; ECF 2552-5 (Wolf Haldenstein Firm Resume).

5 The seventh *Churchill Village* factor – the presence of a governmental
6 participant and the Class Members’ reactions – need not be considered at this time.
7 While the DOJ has brought criminal charges based on the same underlying conduct,
8 it has not sought restitution in any of its cases. The COSI Settlement Agreement
9 requires the COSI Defendants to serve CAFA notices on DOJ and any relevant states,
10 providing them the opportunity to “raise any concerns that they have during the
11 normal course of the class action settlement procedures.” *Bellinghausen*, 306 F.R.D.
12 at 258; Manifold Decl., Ex. 1, § 47; *see also Procedural Guidance for Class Action*
13 *Settlements* § 10 (CAFA compliance).

14 The final *Churchill Village* factor considers the reaction of class members to
15 the proposed settlement when determining the Settlement’s fairness. *Churchill Vill.*,
16 361 F.3d at 575. “It is established that the absence of a large number of objections to
17 a proposed class action settlement raises a strong presumption that the terms of a
18 proposed class action are favorable to the class members.” *Nat’l Rural Telecomms.*
19 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) (collecting cases); *see*
20 *also In re Fleet/Norstar Sec. Litig.*, 935 F. Supp. 99, 107 (D.R.I. 1996). It is significant
21 there was no objection and only a single request for exclusion by certain DAPs, given
22 the reach of the Notice and the number of claims received. This factor weighs heavily
23 in favor of approval.

24 **2. The Rule 23(e) Factors Support Approval of the Settlement**

25 As noted above, in addition to the *Churchill Village* factors, Rule 23(e)(2)
26 requires courts to consider whether (1) class representatives and counsel have
27 adequately represented the class; (2) the proposal was negotiated at arm’s length; (3)
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1 the settlement provides adequate relief for the class; and (4) the proposal “treats class
2 members equitably relative to each other.”

3 EPPs respectfully submit that, for the reasons discussed above and cited by the
4 Court in its Class Order, they have established that class representatives and their
5 counsel have adequately represented the class’ interest; the COSI Settlement provides
6 adequate relief for the class; and the proposal treats Settlement Class Members
7 equitably. The Court previously appointed Wolf Haldenstein as EPP Class Counsel
8 (ECF No. 1931 at 59) the EPPs request the Court appoint them as Settlement Class
9 Counsel at the time it certifies the Settlement Class. *See* Fed. R. Civ. P. 23(g) (1).

10 In considering whether the Settlement resulted from arm’s-length negotiations,
11 courts often find it useful to look at issues including (1) “attorneys’ fees out of
12 proportion to class member compensation;” (2) an agreement by the defendant not to
13 contest class counsel’s attorney’s fees; and (3) an agreement to allow unawarded
14 attorneys’ fees to revert to the defendants. *In re Volkswagen “Clean Diesel” Mktg.,*
15 *Sales Practices, & Prods. Liab. Litig.*, 895 F.3d 597, 611 & n.19 (9th Cir. 2018)
16 (citing *In re Bluetooth*, 654 F.3d at 947); *Procedural Guidance for Class Action*
17 *Settlements* §1(h).

18 Here, Settlement Class Counsel will *not* be requesting any attorney fees, just
19 litigation costs and expenses, from the COSI Settlement so these concerns are moot.
20 The COSI Settlement – secured after multiple discussions with experienced counsel
21 and a core COSI executive present— resulted from hard-fought, arm’s-length
22 negotiations. *See* Costs Motion; Manifold Decl. ¶¶ 16-20. Given the circumstances,
23 the amount recovered (\$20 million) is more than adequate. A first “ice-breaker”
24 settlement from an ACPERA cooperator – securing one-third of the maximum
25 possible recovery by the EPPs’ own expert calculation - provides substantial relief.

26 As discussed above (and in prior briefing and argument before this Court), the
27 EPPs submit that the settlement proposal is adequate in light of the effectiveness of
28

1 the proposed methodologies for claims-processing and distribution of relief, the lack
2 of any proposed award for attorney fees, and the complete disclosure of all agreements
3 made in connection with the proposed settlement. Fed. R. Civ. P. Rule 23(e) (2) (C)
4 (ii)-(iv).

5 Finally, the distribution of the proposed Settlement Fund treats all Settlement
6 Class Members equally and distribution will be made to Authorized Claimants on a
7 *pro rata* basis. ECF 2552-6, Ex. I. This Court previously found “the Settlement treats
8 all Class members equitably, and there are no differences between the scope of relief
9 between any Class members.” ECF 2734 at 13. The COSI Settlement thus satisfies
10 Rule 23(e).

11 **C. EPPs’ Claims Process is Efficient and Reasonable**

12 The Court must also assess the effectiveness of the proposed method of
13 distributing relief to the class including the method of processing class-member
14 claims to determine if the relief is adequate. *See* Fed. R. Civ. P. 23(e) (2) (C) (ii).

15 JND has extensive experience in processing claims especially for millions of
16 claimants. JND also has the capacity to distribute efficiently monies to millions of
17 Authorized Claimants once all of the claims against the Non-Settling Defendants have
18 been resolved, all appeals exhausted, and distribution is ordered by the Court. As
19 discussed in detail above, JND described its proposed methodologies for claims
20 processing and distribution of relief in this Action for the Court. *See* Claims Process
21 Decl., ¶¶ 11-21. The proposed claim-processing methodologies are convenient for and
22 generally favored by Settlement Class Members (a simple online claim submission)
23 which provides faster claim processing with fewer deficiencies. *Id.* Distribution of
24 relief is equally efficient and based on the claimant’s preferred method of payment
25 (PayPal or check). *Id.* The effectiveness of JND’s claim processing methodologies
26 favors final approval.

27 The Class Notices also informs Settlement Class Members that no cash
28

1 distribution will be made if a claim is below \$5.00. Notice Decl., Ex. F. It is typical
2 to provide for a *de minimis* threshold so that the costs of administration are not out of
3 proportion to the size of the claim payment. *Id.* A claims threshold provides an
4 incentive for Settlement Class members to cash small checks. *Id.* In JND’s experience,
5 it is not usual to see *de minimis* thresholds even higher. *Id.*

6 Courts routinely approve *de minimis* thresholds for claims processing and
7 distribution and consider threshold payments to be “accepted as a feature of class
8 action distributions.” *In re Dynamic Random Access Memory Antitrust Litig.*, 2013
9 U.S. Dist. LEXIS 188116, *340 (N.D. Cal 2013) (setting a \$10 threshold).

10 **D. The Proposed Plan of Allocation is Fair, Reasonable, and**
11 **Adequate**

12 “Approval of a plan for the allocation of a class settlement fund is governed by
13 the same legal standards that are applicable to approval of the settlement; the
14 distribution plan must be ‘fair, reasonable and adequate.’” *In re Citric Acid Antitrust*
15 *Litig.*, 145 F. Supp. 2d 1152, 1154 (N.D. Cal. 2001) (citations omitted). When
16 allocating funds, “[i]t is reasonable to allocate the settlement funds to class members
17 based on the extent of their injuries or the strength of their claims on the merits.” *In*
18 *re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1045 (N.D. Cal. 2007) (citations
19 omitted) (approving securities class action settlement allocation on a “per-share
20 basis”); *Four in One Co. v. S.K. Foods, L.P.*, 2014 U.S. Dist. LEXIS 113084, at * 44
21 (E.D. Cal. Aug. 14, 2014) (approving “plan of allocation providing for a *pro rata*
22 distribution of the net settlement fund based on verified claimants’ volume of
23 qualifying purchases” as “fair, adequate, and reasonable”).

24 All Settlement Class Members are eligible to make claims for cash from the
25 \$15 million Settlement Fund. Settlement Class Members must submit a Claim Form
26 (either online, via telephone, or through the mail) to receive funds. Notice Decl., ¶¶
27 18, 22, 27. The Claim Form is simple and easy to complete. *See* Notice Decl., Ex. F

1 (Claim Form). Class members will be asked for their names, mailing address, email,
2 and to provide any documentation (if available) and an attestation demonstrating that
3 they are a Settlement Class Member. *Id.*, Ex. F. The Settlement Administrator JND
4 will administer the entire process, including validating the claims and calculating the
5 Settlement Payment amounts in accordance with the Settlement Agreement. *Id.*

6 **E. Waiver of Attorney Fees Favors Final Approval of Settlement**

7 In considering the terms of any proposed award of attorneys’ fees, including
8 the timing of payment, courts often find it useful to look at issues including (1)
9 “attorneys’ fees out of proportion to class member compensation;” (2) an agreement
10 by the defendant not to contest class counsel’s attorney’s fees; and (3) an agreement
11 to allow unawarded attorneys’ fees to revert to the defendants. *In re Volkswagen*
12 *"Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 895 F.3d, 611 & n.19
13 (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 947); *Procedural*
14 *Guidance for Class Action Settlements* §1(h). Here, Settlement Class Counsel will **not**
15 be requesting any attorney fees, just reimbursement of actual litigation costs and
16 expenses incurred to date, from the Settlement Fund, so these concerns are moot. ECF
17 2673-7 (“Jt. Stip.”) ¶¶ 5-12.

18 The Joint Stipulation submitted by the Settling Parties further affirms that there
19 is *no* agreement between the Settling Parties for the reimbursement of or award of
20 attorneys’ fees and costs “outside” of the COSI Settlement Agreement (which remains
21 unchanged). Jt. Stip., ¶ 12. Settlement Class Counsel also affirms that they unilaterally
22 waived any rights to seek attorneys’ fees from the Settlement Funds or from the COSI
23 Defendants.¹¹ The approved Class Notices inform Settlement Class Members that
24

25 ¹¹ The COSI Settlement Agreement (¶¶ 27-31) provides that Class Counsel ‘may’
26 submit an application to the Court for an award of attorneys’ fees plus reimbursement
27 of litigation costs and expenses in connection with prosecuting this Action. COSI
28 Settlement Agreement, ¶ 27. Manifold Decl., Ex. 1 ¶¶ 27-31. Because Plaintiffs and

1 Settlement Class Counsel will *not* to seek an award of attorneys’ fees from the
2 Settlement Fund but reserve their rights to seek a fee award from any monies
3 recovered from the Non-Settling Defendants and to base any such request, in part, on
4 the benefit obtained from the COSI Settlement. ECF 2673-3 (Long Form Notice).

5 EPPs and Settlement Class Counsel *do* seek reimbursement for reasonable costs
6 and expenses incurred to date of \$4,155,027.67 from the Distribution Fund. *See* Cost
7 Motion. This request for reimbursement of reasonable costs and expenses is: (i)
8 governed by Paragraphs 27 to 31 of the Settlement Agreement; (ii) specifically
9 identified in the revised Class and Settlement Notices disseminated to class members;
10 (iii) subject to scrutiny by the Court and the proposed Settlement Class, and (iv) only
11 awarded as finally approved by the Court. The COSI Defendants have *no* agreement
12 with Plaintiffs and Class Counsel for the reimbursement or award of fees and costs
13 other than as set forth in the Agreement.¹²

14 As discussed above, the lack of any proposed award of attorneys’ fees from the
15 Distribution Fund and the identification of all agreements as required under Rule 23
16 (e) (2) (C)(iv) and 23(e)(3) further warrant approval of the proposed settlement as
17 adequate.

18 **F. The Class Members’ Positive Reaction Favors Final Approval**

19 The Court should consider the reaction of class members to the proposed
20 settlement when determining the Settlement’s fairness. *Churchill Vill.*, 361 F.3d at
21 575. As discussed above, the absence of objections raises a presumption that the
22 terms of a proposed settlement are favorable to class members. The objection and
23

24 _____
25 Class Counsel determined unilaterally not to seek an award of attorneys’ fees, there
26 will be no “Fee Award” from the Distribution Fund as described in Paragraphs 27 to
31 of the COSI Settlement Agreement. *Id.*

27 ¹² The Settling Parties have agreed to a cap of \$5,000,000 for the costs of Class and
28 Settlement Notice and claims administration as set forth in Paragraph 18.

1 exclusion deadline was May 13, 2022. Notably, only a single request for exclusion of
2 DAP entities resulted, with no objection to the Settlement. Notice Decl., ¶¶ 23-26.

3 **G. The Court-Approved Notice Program Satisfies Due Process and**
4 **Adequately Provided Notice to Class Members**

5 Before final approval of a class action settlement, the Court must find that class
6 members were notified in a reasonable manner. Fed. R. Civ. P. 23(e)(1). When a
7 settlement class is certified under Rule 23(b)(3), class members must receive “the best
8 notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(b)(3). The
9 notice program cannot “systematically leave any group without notice.” *Officers for*
10 *Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 624 (9th
11 Cir. 1982). Settlement notice must describe “the terms of the settlement in sufficient
12 detail to alert those with adverse viewpoints to investigate and to come forward and
13 be heard.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012). The notice plan
14 must ultimately comport with due process requirements. *Rodriguez*, 563 F.3d at 963.
15 Here, the Court-approved Notice Plan implemented by the Parties and the Settlement
16 Administrator comports with due process and was the best practicable means under
17 the circumstances. *See* ECF 2734 at 12-13.

18 The Notice reached over 85% of potential class members via notice placements
19 with the leading digital network (Google Display Network), the top social media site
20 (Facebook), and a highly read consumer magazine (People). Notice Decl., ¶ 30. The
21 proposed Class Notice clearly explains the objection process to Settlement Class
22 Members and informs them that they may appear at the fairness hearing or retain
23 counsel to represent their interests. Class members may appear at the Fairness
24 Hearing, or submit a timely and appropriate written statement through counsel.

25 As the Court previously determined “[h]ere, the Settlement treats all Class
26 members equitably, and there are no differences between the scope of relief between
27 any Class members.” ECF 2734 at 13.

1 **IV. CONCLUSION**

2 EPPs’ icebreaker settlement with the COSI Defendants provides substantial
3 benefits to Class Members. Accordingly, EPPs request that the Court grant final
4 approval the Settlement and certify the Settlement Class

5 Dated: May 25, 2022

By: s/ Betsy C. Manifold
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