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11 *Plaintiff Class*

12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 **IN RE: PACKAGED SEAFOOD**
15 **PRODUCTS ANTITRUST**
16 **LITIGATION**
17 This document relates to:
18 Direct Purchaser Plaintiff Class

Case No. 15-md-2670 DMS (MSB)
MDL No. 2670

SETTLEMENT AGREEMENT
BETWEEN DIRECT
PURCHASER PLAINTIFFS
AND DEFENDANTS STARKIST
CO. AND DONGWON
INDUSTRIES CO., LTD.

1 This Settlement Agreement (“Settlement Agreement”), dated August 13, 2024
2 (“Execution Date”), is made and entered into by and among Defendants StarKist Co.
3 (StarKist”) and Dongwon Industries Co., Ltd. (“DWI”) and Direct Purchaser
4 Plaintiffs Olean Wholesale Grocery Cooperative, Inc., Pacific Groservice Inc. d/b/a
5 PITCO Foods, Piggly Wiggly Alabama Distributing Co., Inc., Howard Samuels as
6 Trustee in Bankruptcy for Central Grocers, Inc., Trepcu Imports and Distribution
7 Ltd., and Benjamin Foods LLC (“the named plaintiffs”), individually, on behalf of a
8 certified litigation class of direct purchaser plaintiffs, and as representatives of the
9 Settlement Class defined herein (collectively, “DPPs”). This Settlement Agreement
10 is intended by the Parties to fully, finally, and forever resolve, discharge and settle
11 the Released Claims, upon and subject to the terms and conditions hereof.

12 WHEREAS, in the instant class action *In Re: Packaged Seafood Products*
13 *Antitrust Litigation*, No. 15-md-2670 DMS (MSB), MDL No. 2670 (S.D. Cal.),
14 currently pending before the Honorable Dana M. Sabraw in the United States District
15 Court for the Southern District of California, DPPs have alleged that StarKist and
16 DWI participated in an unlawful conspiracy to restrain trade;

17 WHEREAS, StarKist and DWI deny DPPs’ allegations and have asserted a
18 number of defenses to DPPs’ claims;

19 WHEREAS, Settlement Class Counsel have concluded after carefully
20 considering DPPs’ claims, and the possible legal and factual defenses thereto, that it
21 is in DPPs’ best interests to enter into this Settlement Agreement with StarKist and
22 DWI to avoid the uncertainties and risks of further litigation and trial, and that the
23 settlement set forth herein is fair, reasonable, adequate and in the best interests of the
24 Settlement Class as defined below in Paragraph 1.23;

25 WHEREAS, StarKist and DWI, having maintained that there is no legal or
26 factual basis for their liability in this matter and that they have valid defenses to the
27 claims alleged, have nevertheless agreed to enter into this Settlement Agreement to

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

3 WHEREAS, DPPs and StarKist and DWI agree that neither this Settlement
4 Agreement nor any statement made in the negotiation thereof shall be deemed or
5 construed to be an admission by or evidence against StarKist and DWI or evidence
6 of the truth of any of DPP allegations;

7 WHEREAS, DPPs and StarKist and DWI have engaged in multiple arm’s-
8 length settlement negotiations, assisted by Magistrate Judge Michael S. Berg, and
9 have reached this Settlement Agreement, subject to the approval of the Court; and

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

19 **1. Definitions**

20 1.1. “Action” means the class action captioned *In Re: Packaged Seafood*
21 *Products Antitrust Litigation*, No. 15-md-2670 DMS (MSB), MDL No. 2670 (S.D.
22 Cal.), currently pending before the Honorable Dana M. Sabraw in the United States
23 District Court for the Southern District of California, all actions relating to the claims
24 alleged in “Direct Purchaser Plaintiffs’ Fourth Amended Consolidated Class Action
25 Complaint” and all actions that have been or are subsequently filed in or transferred
26 for consolidation and/or coordinated pretrial proceedings to the Southern District of
27 California by the Judicial Panel on Multidistrict Litigation as part of MDL No. 2670.

1 1.2. “Claims” shall mean any and all actions, suits, claims, rights,
2 demands, assertions, allegations, causes of action, controversies, proceedings, losses,
3 damages, injuries, attorneys’ fees, costs, expenses, debts, liabilities, judgments, or
4 remedies, whether equitable or legal.

5 1.3. “Claims Administrator” shall mean JND or any other third-party
6 class action settlement claims administrator mutually agreed upon by the Parties and
7 approved by the Court for the purposes of administering this settlement.

8 1.4. “Complaint” means the Direct Purchaser Plaintiffs’ Fourth
9 Amended Consolidated Class Action Complaint filed in the Action [ECF No. 1460].

10 1.5. “Court” means the United States District Court for the Southern
11 District of California.

12 1.6. “Defendant” means any defendant named in DPPs’ Complaint (*i.e.*,
13 StarKist and DWI, as defined above, Bumble Bee Foods LLC, Lion Capital
14 (Americas), Inc., and Lion Capital LLP, and Tri-Union Seafoods LLC d/b/a Chicken
15 of the Sea and Thai Union Group PCL).

16 1.7. “Document” is defined to be synonymous in meaning and equal in
17 scope to the usage of this term in Federal Rule of Civil Procedure (“Federal Rule”)
18 34(a). A draft or non-identical copy is a separate document within the meaning of
19 this term.

20 1.8. “DPPs” means the named plaintiffs defined above and the unnamed
21 members of the Settlement Class.

22 1.9. “Effective Date” means the earliest date on which all of the events
23 and conditions specified in Paragraph 7 herein have occurred or have been met.

24 1.10. “Escrow Account” means an account to be established with
25 Huntington Bank for the purpose of holding the Settlement Funds.

26 1.11. “Escrow Agent” means the bank or trust company that agrees to
27 establish and maintain the Escrow Account.

1 1.12. “Final Approval” means an order finally approving the DPPs’
2 class settlement and dismissing the Action with prejudice as to StarKist and DWI
3 without costs (other than those provided for in this Settlement Agreement), to be
4 rendered by the Court in the Action.

5 1.13. “Judgment” means a final order of judgment by the Court
6 dismissing the Action as to any Released Party and approving the Settlement
7 Agreement under Federal Rule 23(e), as described in Paragraph 6.1 herein.

8 1.14. “Order Date” refers to the date on which an eligible claimant
9 places an order for StarKist Product in connection with this Settlement.

10 1.15. “Packaged Tuna” means shelf-stable tuna sold for human
11 consumption and packaged in either cans or pouches, and excludes tuna cups, tuna
12 salad kits, and salvage sales.

13 1.16. “Parties” means DPPs, Settlement Class Members, and StarKist
14 and DWI.

15 1.17. “Person” means an individual or an entity.

16 1.18. “Preliminary Approval” means an order preliminarily approving
17 the settlement, to be rendered by the Court in the Action.

18 1.19. “Released Claims” means any and all Claims, whether class,
19 individual, or otherwise, that the Releasing Parties or any of them ever had, now has,
20 or hereafter can, shall, or may have, directly, representatively, derivatively, or in any
21 other capacity, against the Released Parties or any of them, whether such Claims are
22 based on federal, state, local, statutory, or common law, or any other law, code, rule,
23 or regulation of any country or other jurisdiction worldwide, whether such Claims
24 are known or unknown, suspected or unsuspected, asserted or unasserted, foreseen
25 or unforeseen, actual or contingent, liquidated or unliquidated, regardless of legal
26 theory, and regardless of the type or amount of relief or damages claimed, or Claims
27 that have been, could have been, or in the future might have been, claimed in law or
in equity, on account of, arising out of, resulting from, or in any way related to any

1 conduct regardless of legal theory, and regardless of the type or amount of relief or
2 damages claimed, or Claims that have been, could have been, or in the future might
3 have been, claimed in law or in equity, on account of, arising out of, resulting from,
4 or in any way related to DPPs' purchases of Packaged Tuna, including any conduct
5 concerning the pricing, selling, discounting, marketing, manufacturing, distribution,
6 or promotion, of Packaged Tuna, during the period from June 1, 2011 to July 31,
7 2015. The Released Claims also include all claims that could have been brought
8 based in whole or in part on the facts, occurrences, transactions, or other matters that
9 were alleged in the Complaint.

10 1.20. "Released Parties" means, jointly and severally, individually and
11 collectively: StarKist and DWI, their present and former parents, subsidiaries,
12 divisions, affiliates, and departments, their respective past and present officers,
13 directors, members, employees, agents, attorneys, servants, insurers, and
14 representatives of each of the aforesaid entities, and the predecessors, successors,
15 heirs, executors, administrators, and assigns of each of the foregoing. As used in this
16 definition, "affiliates" means entities controlling, controlled by, or under common
17 control with any of the Released Parties.

18 1.21. "Releasing Parties" means, jointly and severally, and individually
19 and collectively: DPPs and all Settlement Class Members, their predecessors,
20 successors, present and former parents, subsidiaries, divisions, affiliates, and
21 departments, each of their respective past and present officers, directors, employees,
22 agents, attorneys, servants, and representatives, and the predecessors, successors,
23 heirs, executors, administrators, and assigns of each of the foregoing.

24 1.22. "Settlement Amount" means Thirty-Two Million Six Hundred and
25 Fifty Thousand Dollars (\$32,650,000.00) in United States currency and Twenty-Six
26 Million and One Hundred Thousand Dollars (\$26,100,000.00) in-kind in StarKist
27 Products valued at their national list prices as of the Order Date (the "Product
28 Component"). StarKist will deposit One Million Dollars (\$1,000,000.00) in United

1 States currency into the Escrow Account within five (5) days of Preliminary
2 Approval by the Court, Fifteen Million Eight Hundred and Twenty-Five Thousand
3 Dollars (\$15,825,000.00) in United States currency into the Escrow Account within
4 120 days after Final Approval by the Court, and Fifteen Million Eight Hundred and
5 Twenty-Five Thousand Dollars (\$15,825,000.00) in United States currency into the
6 Escrow Account no later than December 1, 2025. Subject to the approval of the
7 Court, each Settlement Class Member who submits a valid claim shall receive its pro
8 rata share of cash and StarKist Products. The allocation of cash among the Settlement
9 Class shall be made on a pro rata basis, following the payment of approved fees and
10 costs, to eligible class members who submit claims. Likewise, the allocation of
11 StarKist Products among the Settlement Class shall be made on a pro rata basis to
12 eligible class members who submit claims. StarKist will distribute the StarKist
13 Products to all claimants with eligible claims as advised by Settlement Class Counsel
14 in an amount to be determined by the Claims Administrator as described below in
15 Paragraph 10.2.

16 1.23. “Settlement Class” means the Direct Purchaser Settlement Class,
17 which is defined as follows:

18 All persons and entities that directly purchased packaged tuna products
19 within the United States, its territories and the District of Columbia from
20 any Defendant at any time between June 1, 2011 and July 31, 2015.
21 Excluded from the class are all governmental entities; Defendants and any
22 parent, subsidiary or affiliate thereof; Defendants’ officers, directors,
23 employees, and immediate families; any federal judges or their staffs;
24 purchases of tuna salad kits or cups; and salvage purchases. Also excluded
25 from the class is any person or entity that was excluded from the class, in
26 whole or in part, pursuant to the Court’s Order in this Action at ECF No.
27 3097, which incorporates the list of entities at ECF No. 3095-1.

28 1.24. “Settlement Class Counsel” means Hausfeld LLP, 600
Montgomery Street, Suite 3200, San Francisco, CA 94111.

1 1.25. "Settlement Class Member" means each member of the Settlement
2 Class as defined in Paragraphs 1.23 and referred to in Paragraph 3 herein.

3 1.26. "Settlement Fund" shall mean those monies representing the
4 consideration to be paid by StarKist to Direct Purchaser Plaintiffs and the Settlement
5 Class Members, including the Settlement Amount and any income earned on that
6 amount while such monies are held in the Escrow Account.

7 1.27. "StarKist Products" shall mean StarKist-branded products on the
8 StarKist national price list that comprise the in-kind portion of the Settlement
9 Amount described in Paragraphs 1.22 and 10.2.

10 **2. Cooperation and Effectuation of this Settlement Agreement**

11 Counsel for Direct Purchaser Plaintiffs and StarKist and DWI shall use all
12 reasonable efforts to effectuate this Settlement Agreement, including cooperating in
13 efforts to obtain the Court's approval of procedures (including the giving of class
14 notice under Federal Rules 23(c) and 23(e)) and to secure certification of the
15 Settlement Class for settlement purposes and the complete and final dismissal with
16 prejudice of the Action as to StarKist and DWI. Prior to the filing of any motions or
17 other papers in connection with the settlement, including, without limitation, the
18 motion for Preliminary Approval of the settlement (as contemplated in Paragraph 4.1
19 of this Settlement Agreement) and for Final Approval of the settlement (as
20 contemplated in Paragraph 6.1 of this Settlement Agreement), Settlement Class
21 Counsel will send those papers to counsel for StarKist and DWI within a reasonable
22 amount of time prior to filing. The text of any proposed form of order approving this
23 Settlement Agreement shall be agreed upon by Settlement Class Counsel and
24 Counsel for StarKist and DWI before it is submitted to the Court.

25 **3. Settlement Class Certification**

26 On July 30, 2019, the Court granted DPPs' motion to certify a class pursuant
27 to Federal Rule 23(b)(3). The Settlement Class, as defined above in Paragraph 1.23,
28 is almost identical to the Court's order certifying the litigation class in the Action at

1 ECF No. 1931, except that the Settlement Class also excludes parties later excluded
2 from the litigation class by the Court’s Order in this Action at ECF No. 3097. The
3 Parties hereby stipulate for purposes of this settlement only that the requirements of
4 Rule 23(a) and 23(b)(3) of the Federal Rules are satisfied, and, subject to Court
5 approval, the Settlement Class shall be certified for settlement purposes.

6 **4. Motion for Preliminary Approval**

7 4.1. At an appropriate time after the Execution Date of this Settlement
8 Agreement, and after consultation as to timing with counsel for StarKist and DWI,
9 Settlement Class Counsel shall file with the Court a motion requesting entry of
10 Preliminary Approval, *inter alia*:

11 (a) finding the proposed settlement in the Settlement
12 Agreement has been negotiated at arm’s length, and
13 preliminarily approving the proposed settlement as fair,
14 reasonable, and adequate, and in the best interests of the
15 Settlement Class; scheduling a hearing to consider (i)
16 whether the proposed settlement should be approved as fair,
17 reasonable, and adequate to Settlement Class Members, and
18 whether the Judgment should be entered dismissing the
19 Claims of DPPs and all Settlement Class Members against
20 StarKist and DWI on the merits and with prejudice; and (ii)
21 whether to approve any application by Settlement Class
22 Counsel for an award of attorneys’ fees and payment of
23 costs and expenses (“Fairness Hearing”);

24 (b) certifying the Settlement Class for settlement purposes,
25 designating class representatives and Settlement Class
26 Counsel as defined herein, and finding that each element for
27 certification of the Settlement Class pursuant to Federal
28 Rule 23 is met;

1 (c) enjoining initiation, commencement, or prosecution of any
2 action or proceeding asserting any Released Claims
3 described in Paragraph 8 by any Releasing Party.

4 4.2. DPPs shall seek, and StarKist and DWI shall not oppose,
5 certification of the Settlement Class and appointment of Settlement Class Counsel as
6 lead counsel for purposes of this settlement.

7 **5. Notice to Settlement Class Members**

8 5.1. After Preliminary Approval of this Settlement Agreement and
9 submission to the Court and approval of a program to provide notice to the Settlement
10 Class in accordance with the requirements of the Federal Rules of Civil Procedure
11 and due process, Settlement Class Counsel shall provide the Settlement Class
12 Members with notice of the settlement and the date of the Fairness Hearing in a
13 manner to be approved by the Court.

14 5.2. Upon approval by the Court of a program to provide notice to the
15 Settlement Class, Settlement Class Counsel shall cause a summary notice of the
16 settlement to be published in such manner and scope as is reasonable and consistent
17 with the requirements of Federal Rule 23.

18 5.3. The costs and expenses associated with providing notice of the
19 settlement to members of the Settlement Class pursuant to the Court-approved
20 notification plan shall be paid from the Settlement Fund. StarKist and DWI agree to
21 permit use of the Settlement Fund toward the out-of-pocket costs and expenses of
22 administering the settlement, comprising out-of-pocket costs and expenses associated
23 with providing notice of the settlement to the Settlement Class (“Notice Costs”). Up
24 to a maximum of one million US dollars (USD \$1,000,000.00) of those Notice Costs
25 are not recoverable by StarKist or DWI if this Settlement Agreement does not
26 become final or is terminated to the extent such Notice Costs have actually been
27 expended or incurred. Other than as set forth in this Paragraph, StarKist and DWI
28 shall have no obligation to pay for the costs and expenses of providing notice of the

1 settlement to members of the Settlement Class. StarKist and DWI agree that
2 Settlement Class Counsel may withdraw funds as necessary from the Settlement
3 Fund after Preliminary Approval for the purpose of providing notice to the Settlement
4 Class of the settlement as described herein.

5 **6. Fairness Hearing**

6 6.1. At the Fairness Hearing, DPPs shall seek entry of Judgments:

- 7 (a) approving the Settlement Agreement and its terms as being
8 fair, reasonable, and adequate as to the Settlement Class,
9 within the meaning of Federal Rule 23, and directing its
10 consummation according to its terms;
- 11 (b) determining that the notices to Settlement Class Members
12 constituted, under the circumstances, the best practicable
13 notice of this Settlement Agreement and the Fairness
14 Hearing, and constituted due and sufficient notice for all
15 other purposes to all Persons entitled to receive notice;
- 16 (c) dismissing the Claims against StarKist and DWI with
17 prejudice, without costs;
- 18 (d) permanently barring and enjoining the institution,
19 commencement, or prosecution, by any of the Releasing
20 Parties, of any action asserting any Released Claim against
21 any Released Party, in any local, state, federal, or other court
22 of any nation, or in any agency or other authority or arbitral
23 or other forum wherever located;
- 24 (e) providing that any Settlement Class Member who fails to
25 object in the manner prescribed in the Settlement
26 Agreement shall be deemed to have waived any objections
27 to the settlement and the Settlement Agreement and will

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forever be barred from making any such objections to the settlement or the Settlement Agreement;

(f) retaining exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of the settlement; and

(g) determining under Federal Rule 54(b) that there is no just reason for delay and directing that the Judgment of dismissal as to StarKist and DWI shall be final and entered forthwith.

6.2. Any Settlement Class Member who objects to the settlement may appear, at that Person’s own expense, at the Fairness Hearing in person or through counsel, to present any evidence or argument with respect to the settlement, to the extent permitted by the Court. However, no such Person shall be heard, and no papers, briefs, pleadings, or other Documents shall be received and considered by the Court unless such Person properly submits a written objection that includes: (a) notice of intention to appear, (b) proof of membership in the Settlement Class, and (c) the specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all Documents or writings that such Person desires the Court to consider. Such a written objection must be both filed with the Court no later than thirty-five (35) days prior to the date set for the Fairness Hearing, and mailed to both Settlement Class Counsel and StarKist and DWI’s counsel at the addresses set forth below and provided in the notices to the Settlement Class, postmarked (or mailed by overnight delivery) no later than thirty-five (35) days prior to the date of the Fairness Hearing.

For Settlement Class Counsel:
Christopher L. Lebsock
Hausfeld LLP
600 Montgomery Street, Suite 3200

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San Francisco, CA, 94111
For StarKist:
Ashley M. Bauer
Latham & Watkins LLP
505 Montgomery Street, Ste 2000
San Francisco, CA 94111

Any Person who fails to object in the manner prescribed herein shall be deemed to have waived any objections to the Settlement Agreement and will forever be barred from making any such objections to this Settlement Agreement in the Action or in any other action or proceeding, unless otherwise permitted for good cause shown as determined by the Court.

7. Effective Date of Agreement

The Effective Date of this Settlement Agreement is the earliest date on which all of the following events and conditions have occurred or have been met: (a) the Court has entered a Judgment, following notice to the Settlement Class and the Fairness Hearing, approving this Settlement Agreement under Federal Rule 23(e) and dismissing the Action as against any Released Party who is named as a Defendant in the Action, with prejudice as to all Settlement Class Members and without costs except as specified herein; and (b) the time for appeal or to seek permission to appeal from the Court’s approval of the Settlement Agreement and entry of the Judgment has expired or, if appealed, approval of this Settlement Agreement and the Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. Neither the provisions of Federal Rule 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

8. Release and Covenant Not to Sue

8.1. Upon the occurrence of the Effective Date, and only after the completion of all installment payments pursuant to the Settlement Amount due by

1 StarKist as set forth in Paragraphs 1.22, 10.1, and 10.2 herein, and in consideration
2 of the payment of the Settlement Amount set forth in Paragraph 1.22 herein, each of
3 the Releasing Parties shall be deemed to have, and by operation of the Judgment shall
4 have, fully, finally, and forever released, relinquished, and discharged all Released
5 Claims against the Released Parties, shall have covenanted not to sue or otherwise
6 seek to establish liability against any of the Released Parties based, in whole or in
7 part, upon any of the Released Claims, and shall be permanently barred and enjoined
8 from instituting, commencing, prosecuting, or asserting any such Released Claim
9 against any of the Released Parties. The statute of limitations of all Released Claims
10 against the Released Parties shall be tolled from the Execution Date until after the
11 completion of all installment payments pursuant to the Settlement Amount due by
12 StarKist as set forth in Paragraphs 1.22, 10.1, and 10.2 herein.

13 **8.2. Waiver of California Civil Code § 1542 and Similar Laws.** With
14 respect to any and all Released Claims, the Parties stipulate and agree that, upon the
15 Effective Date and the completion of all installment payments pursuant to the
16 Settlement Agreement as set forth in Paragraphs 1.22, 10.1, and 10.2 herein, DPPs
17 shall expressly waive and, upon the Effective Date and the completion of all
18 installment payments pursuant to the Settlement Agreement as set forth in Paragraphs
19 1.22, 10.1, and 10.2 herein, each of the Releasing Parties shall be deemed to have
20 waived, and by operation of the Judgment shall have waived: (i) the provisions,
21 rights, and benefits of California Civil Code Section 1542 and South Dakota Codified
22 Laws Section 20-7-11 (to the extent either or both of them apply to the Action), each
23 of which provides that:

24 **A GENERAL RELEASE DOES NOT EXTEND TO**
25 **CLAIMS THAT THE CREDITOR OR RELEASING**
26 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN**
27 **HIS OR HER FAVOR AT THE TIME OF EXECUTING**
28 **THE RELEASE AND THAT, IF KNOWN BY HIM OR**
HER, WOULD HAVE MATERIALLY AFFECTED HIS

**OR HER SETTLEMENT WITH THE DEBTOR OR
RELEASED PARTY.**

(ii) any equivalent, similar, or comparable present or future law or principle of law in any jurisdiction (U.S. or foreign); and/or (iii) any law or principle of law in any jurisdiction (whether U.S. or foreign) that would similarly limit or restrict the effect or scope of the provisions of the release set forth above. Releasing Parties expressly acknowledge that they may hereafter discover facts in addition to or different from those facts that any of them or their counsel now knows or believes to be true with respect to the subject matter of the Settlement Agreement, but upon the completion of the installment payments pursuant to the Settlement Agreement as set forth in Paragraphs 1.22, 10.1, and 10.2 herein, and retroactive to the Effective Date, each Plaintiff shall expressly have, and, upon the Effective Date, each Releasing Party shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery of existence of such different or additional facts. DPPs acknowledge, and the Releasing Parties shall be deemed to have acknowledged, and by operation of the Judgment shall have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

9. Reservation of Settlement Class Members' Rights

All rights of any Settlement Class Member against any alleged co-conspirator or any other Person other than the Released Parties are specifically reserved by DPPs and the Settlement Class Members.

1 **10. Settlement Consideration**

2 10.1. The total monetary amount payable by StarKist (comprising class
3 damages, costs of class notice and administration, and attorneys' fees and costs) in
4 settlement of all claims relating to the Action and all Released Claims, is the
5 Settlement Amount described above in Paragraph 1.22. The deposited sums shall be
6 held in the Escrow Account until there is an order from the Court concerning
7 distribution or use of the Settlement Amount. The Escrow Account Agent shall be
8 subject to escrow instructions mutually acceptable to Settlement Class Counsel and
9 StarKist and DWI, and such escrow is to be administered under the Court's continuing
10 supervision and control. The timing provisions herein are a material part of this
11 Settlement Agreement.

12 10.2. The Product Component of this settlement shall be administered as
13 follows: The Claims Administrator shall provide StarKist with the pro rata allocation
14 of the Product Component within thirty (30) days of verifying the claims of eligible
15 Class Members. The Product Component of the Settlement Agreement shall be
16 redeemed over the course of no more than three (3) years following Final Approval
17 or following ninety (90) days after the Claims Administrator provides StarKist with
18 the pro rata allocation of the Product Component of the settlement, whichever is later.
19 Settlement Class Members may place an order for any StarKist-branded products on
20 StarKist's national price list in effect on the date that they place their order to redeem
21 their pro rata share of StarKist Products. Settlement Class Members must place their
22 first order for StarKist Products within one-hundred and eighty (180) days after Final
23 Approval or ninety (90) days after the Claims Administrator provides StarKist with
24 the pro rata allocation of the Product Component of the settlement, whichever is later.
25 Any Settlement Class Member whose allocation of StarKist Products is valued at less
26 than \$113,000.00 must redeem all of its StarKist Products in one (1) order. There is
27 no limit on the number of orders that Settlement Class Members whose allocations of

1 StarKist Products are valued at or above \$113,000.00 may place. StarKist Products
2 shall be delivered FOB destination point to each Settlement Class Member who makes
3 a claim and places an order, freight pre-paid to a single agreed shipping address within
4 the continental United States for that claimant, provided that the claimant shall pay
5 the standard shipping costs for any shipments that are made in less than full truckloads
6 if more than one order for StarKist Products is placed for its allocated share of the
7 Product Component. StarKist will pay full trucking costs on all full truckload
8 shipments. StarKist agrees to promptly ship the agreed upon StarKist Products subject
9 to availability. In the event of a product allocation, StarKist shall not discriminate
10 against orders for StarKist Products, and shall treat the orders of Settlement Class
11 Members as it treats all other orders in determining order fulfillment. StarKist shall
12 annually provide the Claims Administrator and Settlement Class Counsel with an
13 accounting of the Product Component, including a list of the StarKist Products
14 claimed during each preceding calendar year, and the dollar value of such orders
15 (valued at the national list price in effect as of the Order Date). Any claimant may
16 elect to transfer its share of StarKist Products to a designated 501(c)(3) cy pres
17 recipient to be agreed upon by the Parties by informing StarKist in writing of its desire
18 to transfer. The orders for StarKist Products by Settlement Class Members shall be
19 subject to StarKist's standard terms and conditions for product orders. Upon
20 conclusion of the three-year period set forth herein, Settlement Class Counsel, subject
21 to the approval of the Court, may direct the shipment of any undistributed portion of
22 the Product Component to an appropriate 501(c)(3) cy pres recipient to be agreed upon
23 with StarKist. StarKist shall have the sole discretion as to the selection of StarKist
24 Products that comprise the cy pres Product Component. In no event shall any StarKist
25 Products revert to StarKist.

26 10.3. The Escrow Agent shall cause the funds deposited in the Escrow
27 Account to be invested in instruments backed by the full faith and credit of the United

1 States Government or fully insured by the United States Government or an agency
2 thereof, or money market funds invested substantially in such instruments, and shall
3 reinvest any income from these instruments and the proceeds of these instruments as
4 they mature in similar instruments at their then-current market rates.

5 10.4. All funds held in the Escrow Account shall be deemed and
6 considered to be in custodia legis of the Court and shall remain subject to the
7 jurisdiction of the Court, until such time as such funds shall be distributed pursuant to
8 this Settlement Agreement and/or further order(s) of the Court.

9 10.5. DPPs and StarKist and DWI intend for the Settlement Fund to be
10 treated as being at all times a “qualified settlement fund” within the meaning of Treas.
11 Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as
12 necessary or advisable to carry out the provisions of Paragraph 10.7, including the
13 “relation-back election” (as defined in Treas. Reg. § 1.468B-1) so as to enable the
14 Settlement Fund to be treated as a “qualified settlement fund” from the earliest date
15 possible. Such elections shall be made in compliance with the procedures and
16 requirements contained in such regulations. It shall be the responsibility of the Escrow
17 Agent to timely and properly prepare and deliver the necessary documentation for
18 signature by all necessary parties, and thereafter to cause the appropriate filing to
19 occur.

20 10.6. For the purpose of § 468B of the Internal Revenue Code of 1986,
21 as amended, and the regulations promulgated thereunder, the “administrator” shall be
22 the Claims Administrator. The Claims Administrator shall timely and properly file all
23 information and other tax returns necessary or advisable with respect to the Settlement
24 Fund (including without limitation the returns described in Treas. Reg. § 1.468B-
25 2(k)(1)). Such returns (as well as the elections described in Paragraph 10.5) shall be
26 consistent with Paragraph 10.8.

1 10.7. All (i) taxes (including any estimated taxes, interest, or penalties)
2 arising with respect to the income earned by the Settlement Fund, including any taxes
3 or tax detriments that may be imposed upon StarKist and DWI or any other Released
4 Party with respect to any income earned by the Settlement Fund for any period during
5 which the Settlement Fund does not qualify as a “qualified settlement fund” for federal
6 or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in
7 connection with the operation and implementation of Paragraphs 10.5 through 10.9
8 (including, without limitation, expenses of tax attorneys and/or accountants and
9 mailing and distribution costs and expenses relating to filing (or failing to file) the
10 returns described in Paragraph 10.6 (“Tax Expenses”)), shall be paid out of the
11 Settlement Fund.

12 10.8. Neither StarKist and DWI nor any other Released Party nor their
13 respective counsel shall have any liability or responsibility, including filing
14 responsibility, for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses
15 shall be treated as, and considered to be, a cost of administration of the Settlement
16 Fund and shall be timely paid by the Escrow Agent out of the Escrow Account from
17 the Settlement Fund. The Escrow Agent shall be obligated (notwithstanding anything
18 herein to the contrary) to withhold from distribution to any claimants authorized by
19 the Court any funds necessary to pay such amounts including the establishment of
20 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may
21 be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). Neither StarKist and
22 DWI nor any other Released Party are responsible nor shall they have any liability
23 therefor. DPPs and StarKist and DWI agree to cooperate with the Escrow Agent, each
24 other, and their tax attorneys and accountants to the extent reasonably necessary to
25 carry out the provisions of Paragraphs 10.3 through 10.11. StarKist and DWI make
26 no representation to DPPs regarding the appropriate tax treatment of the Settlement
27

1 Fund, income earned on the Settlement Fund, or any distribution taken from the
2 Settlement Fund.

3 10.9. If this Settlement Agreement does not receive Final Approval by
4 the Court, or if the Action is not certified as a class action for settlement purposes, or
5 if this Settlement Agreement is terminated or voided for any reason, then all amounts
6 paid by StarKist and DWI into the Settlement Fund (other than costs that may already
7 have reasonably been incurred or expended in accordance with Paragraphs 5.3 and
8 11) shall be returned to StarKist and DWI from the Escrow Account by the Escrow
9 Agent along with any interest accrued thereon, within ten (10) business days after
10 such order becomes final and non-appealable.

11 10.10. StarKist and DWI shall not be liable for any costs, fees, or
12 expenses of any of DPPs' respective attorneys, experts, advisors, agents, or
13 representatives, except all such costs, fees, and expenses as provided for in Paragraphs
14 5.3 and 11 or otherwise approved by the Court may be paid out of the Settlement
15 Fund.

16 10.11. If, after all costs (including notice costs), attorneys' fees, and any
17 other expenses have been paid from the Settlement Fund, there are any remaining
18 funds, they shall be distributed to the Settlement Class, or in Settlement Class
19 Counsel's reasonable judgment, be made the subject of an application to the Court by
20 DPPs for cy pres distribution in accordance with governing standards in the Ninth
21 Circuit.

22 **11. Administration of the Settlement Fund**

23 11.1. The costs and expenses of administration of the settlement
24 pursuant to the terms of this Settlement Agreement shall be paid out of the Settlement
25 Fund. The Claims Administrator(s) shall, on a monthly basis, submit invoices, with
26 appropriate supporting documentation, to Settlement Class Counsel for payment
27 from the Escrow Account. To the extent practicable, the administration of this

1 settlement shall be coordinated with the administration of other aspects of this
2 Action, including, but not limited to, any other settlement(s) entered into between
3 DPPs and any other settling Defendant(s) and/or the administration of any recovery
4 obtained on behalf of the class by summary judgment or trial.

5 11.2. StarKist and DWI shall not have any responsibility, financial
6 obligation, or liability whatsoever with respect to the investment, distribution, or
7 administration of the Settlement Fund, including, but not limited to, the costs and
8 expenses of such investment, distribution, and administration, except as expressly
9 otherwise provided in the Settlement Agreement.

10 **12. Withdrawal From or Modification of the Settlement**

11 12.1. If the Court declines to approve this Settlement Agreement or any
12 material part hereof, or if such approval is materially modified or set aside on appeal,
13 or if the Court does not enter the Judgment, or if the Court enters the Judgment and
14 appellate review is sought and, on such review, such Judgment is not affirmed or is
15 materially modified, then StarKist and DWI and DPPs shall each, in their respective
16 sole discretion, have the option to rescind this Settlement Agreement in its entirety.

17 12.2. If StarKist and DWI choose to exercise the option to rescind
18 pursuant to Paragraph 12.1, any and all amounts then constituting the Settlement
19 Fund (including all income earned thereon and excluding any reasonable expenses
20 that have been paid or incurred associated with providing notice to the Settlement
21 Class, administering the Settlement Fund, incurred or paid under Paragraph 10.7 of
22 this Settlement Agreement, and/or any Taxes already paid on such income), together
23 with any amounts, including attorneys' fees, paid to Settlement Class Counsel
24 pursuant to Paragraph 14 below (including all income earned thereon), shall be
25 returned forthwith to StarKist. A modification or reversal on appeal of any amount
26 of Settlement Class Counsel's fees and/or expenses awarded by the Court or any plan
27 of allocation or distribution of the Settlement Fund shall not be deemed a

1 modification of all or a part of the terms of this Settlement Agreement or the
2 Judgment.

3 12.3. StarKist and DWI and DPPs expressly reserve all of their rights if
4 this Settlement Agreement does not become effective or if it is rescinded pursuant to
5 Paragraph 12.1 of this Settlement Agreement. In addition, if for any reason (including
6 a party's exercise of a valid right to rescind this Settlement Agreement), the
7 Settlement Agreement does not receive Final Approval by the Court, then the
8 certification of the Settlement Class shall become null and void without further Court
9 action, and shall not be used or referred to for any further purpose in the Action or in
10 any other action or proceeding, and shall not prejudice any party in arguing for or
11 against contested class certification in this Action or in any other proceeding. Further,
12 this Settlement Agreement, whether or not it is finally approved and whether or not
13 StarKist and DWI or DPPs elect to rescind it under Paragraph 12.1 of the Settlement
14 Agreement, and any and all negotiations, Documents, and discussions associated
15 with it, shall not be deemed or construed to be an admission or evidence of any
16 violation of any statute or law, or of any liability or wrongdoing by StarKist and DWI
17 or any Defendant, or of the truth of any of the claims or allegations contained in the
18 Complaint or any other pleading filed by DPPs in the Action, or waiver or invalidity
19 of any defense, and evidence thereof shall neither be discoverable nor used directly
20 or indirectly except in a proceeding to enforce or interpret the Settlement Agreement.

21 **13. No Admissions**

22 The Parties intend the settlement as described herein to be a final and
23 complete resolution of all disputes between them with respect to the Released Claims,
24 and it shall not be deemed an admission by any party as to the jurisdiction of the
25 Court over the claims asserted against StarKist and DWI, or as to the merits of any
26 claim or defense or any allegation made in the Action.
27

1 **14. Settlement Class Counsel’s Attorneys’ Fees and Expenses**

2 14.1. The procedure for, and the allowance or disallowance by the Court
3 of, any application by Settlement Class Counsel for attorneys’ fees and expenses are
4 not part of the Settlement Agreement and are to be considered by the Court separately
5 from the Court’s consideration of the fairness, reasonableness, and adequacy of the
6 settlement. Any order or proceeding relating to any application for, or approval of,
7 attorneys’ fees and expenses, the pendency of any such application, or any appeal or
8 review of an order relating thereto or reversal or modification thereof, shall not
9 operate to terminate or cancel this Settlement Agreement, or affect or delay the
10 finality of the Judgment. StarKist and DWI agree that Settlement Class Counsel may
11 withdraw from the Settlement Fund any amount awarded by the Court for attorneys’
12 fees and costs five (5) days following the Court’s award, subject to an appropriate
13 financial undertaking required by the Court in the event of an appeal of the Court’s
14 award of attorneys’ fees and expenses. Attorneys’ fees and expenses authorized by
15 the Court to be paid from the Settlement Fund shall be payable notwithstanding the
16 existence of any timely filed objections to the Settlement Agreement, to any payment
17 of fees, expenses, or incentives or potential for appeal therefrom, or collateral attack
18 on the Settlement Agreement or any part thereof, subject to Settlement Class
19 Counsel’s obligation to make appropriate refunds or repayments to the Settlement
20 Fund, if the Effective Date does not occur, or the Settlement Agreement is subject to
successful collateral attack, or the fee or cost amount is reduced or reversed.

21 14.2. StarKist and DWI shall have no responsibility for, and no liability
22 whatsoever with respect to, the division of attorneys’ fees and expenses among
23 counsel representing the DPPs, and any negotiation or dispute among counsel
24 representing the DPPs in that regard shall not operate to terminate or cancel this
25 Settlement Agreement, or affect or delay the finality of the Judgment.

26 14.3. Except as otherwise provided herein, DPPs and StarKist and DWI
27 shall each be responsible for bearing their own costs and fees incurred in this Action.

1 **15. Miscellaneous Provisions**

2 15.1. StarKist and DWI expressly represent that they have obtained all
3 required approvals from their management for this Settlement Agreement.

4 15.2. This Settlement Agreement shall constitute the entire agreement
5 between the Parties pertaining to the settlement of the Action against StarKist and
6 DWI and supersedes any and all prior and contemporaneous undertakings of the
7 Parties in connection therewith. The terms of the Settlement Agreement are and shall
8 be binding upon each of the Parties hereto, their heirs, executors, administrators,
9 representatives, agents, attorneys, partners, successors, predecessors-in-interest, and
10 assigns, and upon all other Persons claiming any interest in the subject matter hereto
11 through any of the parties hereto including any Settlement Class Members.

12 15.3. This Settlement Agreement may be modified or amended only by
13 a writing executed by Settlement Class Counsel and counsel for StarKist and DWI,
14 subject (if after preliminary or final approval by any court) to the approval of the
15 Court. Amendments and modifications may be made without notice to the Settlement
16 Class unless notice is required by law or by the Court.

17 15.4. None of the Parties hereto shall be considered to be the drafter of
18 this Settlement Agreement or any its provisions hereof for the purpose of any statute,
19 case law, or rule of interpretation or construction that would or might cause any
20 provision to be construed against the drafters of this Settlement Agreement.

21 15.5. This Settlement Agreement shall be construed and interpreted to
22 effectuate the intent of the Parties which is to provide, through this Settlement
23 Agreement, for a complete resolution of the Released Claims with respect to the
24 Released Parties.

25 15.6. Nothing expressed or implied in this Settlement Agreement is
26 intended to or shall be construed to confer upon or give any person or entity other
27 than Settlement Class Members, Releasing Parties, and Released Parties any right or
28 remedy under or by reason of this Settlement Agreement.

1 15.7. This Settlement Agreement shall be binding upon, and inure to the
2 benefit of, the Releasing Parties and the Released Parties.

3 15.8. DPPs and StarKist and DWI acknowledge that they have been
4 represented by counsel and have made their own investigations of the matters covered
5 by this Settlement Agreement to the extent they have deemed it necessary to do so.
6 Therefore, DPPs and StarKist and DWI and their respective counsel agree that they
7 will not seek to set aside any part of the Settlement Agreement on the grounds of
8 mistake. Moreover, DPPs and StarKist and DWI and their respective counsel
9 understand, agree, and expressly assume the risk that any fact may turn out
10 hereinafter to be other than, different from, or contrary to the facts now known to
11 them or believed by them to be true, and further agree that the Settlement Agreement
12 shall be effective in all respects and shall not be subject to termination, modification,
13 or rescission by reason of any such difference in facts. If any provision of this
14 Settlement Agreement is found by a court of competent jurisdiction to be illegal,
15 invalid, or unenforceable for any reason, the remainder of this Settlement Agreement
16 will not be affected and, in lieu of each provision that is found illegal, invalid, or
17 unenforceable, a provision will be added as a part of this Settlement Agreement that
18 is as similar to the illegal, invalid, or unenforceable provision as may be legal, valid,
and enforceable.

19 15.9. All terms of this Settlement Agreement shall be governed by, and
20 interpreted according to, the substantive laws of the State of California without regard
21 to its choice of law or conflicts of laws principles.

22 15.10. StarKist and DWI, DPPs, and all Settlement Class Members
23 hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit,
24 action, proceeding, or dispute arising out of or relating to this Settlement Agreement
25 or the applicability, or interpretation of this Settlement Agreement, including,
26 without limitation, any suit, action, proceeding, or dispute relating to the release
27

1 provisions herein. StarKist and DWI do not, by way of this Settlement Agreement,
2 submit to the jurisdiction of the Court for any other purpose.

3 15.11. This Settlement Agreement may be executed in counterparts.
4 Facsimile or Portable Document Format signatures shall be considered as valid
5 signatures for purposes of execution of this Settlement Agreement, but original
6 signature pages shall thereafter be collated for filing of this Settlement Agreement
7 with the Court.

8 15.12. Each of the undersigned attorneys represents that he or she is
9 fully authorized to enter into the terms and conditions of, and execute, this Settlement
10 Agreement, subject to Court approval, and the undersigned Settlement Class Counsel
11 represent that they are authorized to execute this Settlement Agreement on behalf of
12 DPPs and the Settlement Class.

13 IN WITNESS HEREOF, the Parties, through their fully authorized
14 representatives, have agreed to this Settlement Agreement as of the date first written
15 above.

16 [signature page follows]
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Dated: August 13, 2024

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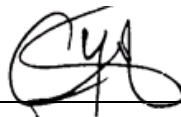
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Class Counsel for the Direct Purchaser Plaintiffs

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Dated: August 13, 2024

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