

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

Wood Mountain Fish LLC, *et al.*,

Plaintiffs,

v.

Mowi ASA (f/k/a Marine Harvest ASA), *et al.*,

Defendants.

Civil No. 19-22128-CIV-SMITH/LOUIS

**INDIRECT PURCHASER PLAINTIFFS'
UNOPPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH
ALL DEFENDANTS AND CERTIFICATION OF SETTLEMENT CLASS AND
INCORPORATED MEMORANDUM OF LAW**

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I. INTRODUCTION

Indirect purchasers of farm-raised salmon (“IPPs” or “Plaintiffs”) brought this class action against salmon producers alleging anticompetitive conduct that inflated the price of farm-raised salmon and salmon products (“Salmon”) in the United States. IPPs obtained a \$33 million class-wide settlement with all Defendants. The settlement will provide direct cash relief to class members and avoid the risks inherent in a complex indirect-purchaser antitrust action brought against foreign Defendants. The Court granted preliminary approval of the settlement on November 17, 2022, directed notice to the proposed settlement class, and scheduled a final approval hearing for February 24, 2023. ECF No. 341. Because the settlement is fair, adequate, and reasonable, Plaintiffs respectfully request that the Court grant final approval of the settlement, certify the settlement class, award fees to Class Counsel, and approve reimbursement of litigation expenses.

II. BACKGROUND

IPPs have set forth the detailed factual background and procedural history of this case in their motion for preliminary approval and motion for fees and costs, which are incorporated by reference here. *See* ECF No. 336 (Motion for Preliminary Approval); ECF No. 345 (Motion for Fees and Expenses). In short, IPPs filed this case alleging that Defendants, a group of Norwegian Salmon producers, coordinated prices of Salmon in violation of the antitrust laws. ECF No. 1 ¶ 1.¹

IPPs reached the \$33 million settlement with all Defendants through a mediation overseen by the Honorable Edward Infante, retired Chief Magistrate Judge for the Northern District of California. The parties executed a settlement agreement on September 8, 2022. ECF No. 336-2 (“Settlement Agreement”). The Settlement Agreement defined the following Settlement Class:

All persons and entities who indirectly purchased, for resale, Defendants’ farm-raised salmon or products derived therefrom in any of the following states, districts, or territories: Alabama, Arizona, Arkansas, California, the District of Columbia, Florida, Guam, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina,

¹ A related case by direct purchasers of salmon (“DPPs”) against the same defendants was filed on April 23, 2019. *See* Complaint, *In re Farm-Raised Salmon & Salmon Prods. Antitrust Litig.*, Case No. 19-cv-21551, ECF No. 1. The parties in the DPP action reached a settlement, which was granted final approval by the court on September 8, 2022. *In re Farm-Raised Salmon*, ECF No. 543.

North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, or Wisconsin.

Settlement Agreement ¶ 6, ECF No. 336-2. The Settlement Class excludes the Court, its personnel, and any Defendants and their parent, subsidiary, or affiliated companies. *Id.*

The claims released by this agreement are described in full in paragraph 1.s of the Settlement Agreement, and include all claims “related to or arising from conduct alleged in the Complaint,” with the exception of the following claims: “(a) Claims based on negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defects, breach of product warranty, or breach of contract; or (b) Claims based upon a Releasing Party’s purchase(s) of farm-raised Atlantic salmon occurring outside the United States or its territories for use or consumption outside of the United States or its territories.” *Id.* ¶ 1.s; *see id.* ¶ 16.

The Court granted preliminary approval of the agreement on November 17, 2022. Shortly thereafter, and consistent with the Settlement Agreement, Defendants paid \$33 million into an escrow account, establishing the Settlement Fund. *Id.* ¶¶ 2.b, 1.aa. Under the Settlement Agreement, funds may only be disbursed upon final approval by the court and entry of judgment, except that “Class Counsel may pay from the Settlement Fund, without further approval from Defendants or the Court, the costs and expenses reasonably and actually incurred up to the sum of USD \$500,000 in connection with providing notice and the administration of the settlement after Preliminary Approval.” *Id.* ¶ 2.c. As directed by the Court’s preliminary approval order, on November 22, 2022, Defendants confirmed they had notified the relevant state and federal officials of the settlement in accordance with the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b). *See* ECF No. 343.

On December 1, 2022, Plaintiffs filed a motion for an award of attorney’s fees and reimbursement of litigation expenses. *See* ECF No. 345. In the Settlement Agreement, the parties agreed that Class Counsel would not seek more than 30% of the settlement fund in attorney’s fees. Settlement Agreement ¶ 14.a. Consistent with that agreement, Class Counsel requested a fee award of \$9,900,000, or 30% of the gross settlement fund and separately requested reimbursement of \$1,278,166.09 in litigation expenses. ECF No. 345 at 1.

The Court-appointed Settlement Administrator issued individual notice to potential Settlement Class members on December 15, 2022. Decl. of Derek Smith Regarding Notice Administration (“Smith Decl.”) ¶ 9. Notice was delivered via email to 40,352 potential class

members. *Id.* For potential class members whose email notices were not delivered, a notice was sent via U.S. mail. *Id.* ¶ 11. Another 353,537 notices were sent via U.S. mail to potential class members where no email address was identified. *Id.* ¶ 9. As part of the notice program, the Settlement Administrator also published notice in several industry publications likely to be viewed by potential Settlement Class members. *Id.* ¶¶ 13–14.

The deadline for opting out of the Settlement Class passed on January 13, 2023. *See* ECF No. 344. No opt-out requests postmarked by that deadline have been received. Smith Decl. ¶ 21. The deadline to file objections is January 26, 2023. *See* ECF No. 344. To date, no objections have been filed. Smith Decl. ¶ 22.² Settlement Class members will have until February 17, 2023 to file claims. To date, 40,692 claims have been filed. *Id.* ¶ 19.

The Settlement Administrator established a settlement website with information about the settlement and claims process for class members. *Id.* ¶ 15. The website contains relevant documents and instructions on how to file a claim, opt-out of the settlement, and object to the settlement. *Id.* Claims can be submitted through mail or directly through the secure claim form available on the website. *Id.*

III. LEGAL STANDARD

“A class action may be settled only with court approval, which requires the court to find the settlement ‘fair, reasonable, and adequate’ based on a number of factors.” *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021) (quoting Fed. R. Civ. P. 23(e)(2)).

Upon final approval of a settlement, a court may certify a class “solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.” *Borcea v. Carnival Corp.*, 238 F.R.D. 664, 671 (S.D. Fla. 2006). To certify a settlement class, the court must first find that the requirements of Rule 23(a) and the relevant provision of Rule 23(b) are satisfied, but it need not consider “whether the case, if tried, would present intractable management problems.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

² Neither Class Counsel nor the Settlement Administrator have received any objections to date. If any objections are filed between this filing and the deadline, Plaintiffs will respond to those objections and be prepared to address them at the final approval hearing. Plaintiffs will also be prepared to provide an update on the number of claims filed.

IV. ARGUMENT

A. The Court Should Grant Final Approval.

1. Class Members Received the Best Notice Practicable.

Before exercising jurisdiction over claims for damages by absent class members, the Court must ensure sufficient procedural due process protections are in place, consistent with the Constitution and Rule 23. *See Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 691 (S.D. Fla. 2014). “Absent class members must receive notice and an opportunity to be heard and to participate in the litigation, whether in person or through counsel.” *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1377 (S.D. Fla. 2007). To satisfy constitutional due process, “[t]he notice must be the best practicable, reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (internal quotation marks omitted).

The notice program in this case satisfied both Rule 23 and constitutional due process requirements. The Settlement Class consists of individuals and entities that indirectly purchased Defendants’ Salmon for resale in the U.S. jurisdictions that permit antitrust recovery by indirect purchasers. To identify potential class members, the Settlement Administrator used a commercially available database of grocery stores, meat and fish markets, eating places, caterers, and non-commercial businesses, schools, and institutions that may have eating places. In total, the Settlement Administrator identified and delivered individual notice to over 350,000 potential class members. Smith Decl. ¶ 9. This direct notice program was supplemented by a media campaign by posting advertisements in several industry-specific e-newsletters read by potential class members in the onsite food service industry, foodservice professionals, restaurant operators, and food retailers. *Id.* ¶¶ 13–14.

“Where certain class members’ names and addresses cannot be determined with reasonable efforts, notice by publication is generally considered adequate.” *Juris v. Inamed Corp.*, 685 F.3d 1294, 1321 (11th Cir. 2012). In this case, IPPs worked with an experienced settlement administrator to use reasonable efforts to identify individual class members and provided direct notice to over 350,000 potential class members. Smith Decl. ¶ 9. In addition, notice was published widely in trade newsletters frequently read by potential class members. *Id.* ¶ 13–14. Under these circumstances, where the names and addresses of some class members are not readily available through Defendants’ records, publication by notice was appropriate. *See, e.g., Carter v. Forjas*

Taurus S.A., No. 1:13-CV-24583, 2016 WL 3982489, at *6 (S.D. Fla. July 22, 2016); *Schorr v. Countrywide Home Loans, Inc.*, No. 4:07-cv-00019, 2015 WL 13402606, at *5 n.3 (M.D. Ga. Apr. 1, 2015). For example, a comprehensive notice program of direct communications, supplemented with notice by publication, can satisfy due process. *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1262 (S.D. Fla. 2016).

This robust notice program of targeted, direct communications supplemented by publication is consistent with court-approved notice programs in indirect antitrust actions nationwide. *See, e.g., In re Pool Prods. Distrib. Mkt. Antitrust Litig.*, MDL No. 2328, 2015 WL 4528880, at *7, 21 (E.D. La. July 27, 2015) (approving notice by distribution supplementing a direct notice program in indirect purchaser action); *In re Pork Antitrust Litig.*, No. 18-cv-1776, 2022 WL 4238416, at *7 (D. Minn. Sept. 14, 2022) (approving notice by publication in indirect action by consumers); *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, No. 14-md-02542, 2020 WL 7389330, at *5 (S.D.N.Y. Dec. 16, 2020) (approving notice by publication in indirect purchaser action). Therefore, the notice program used in this case provided the best notice practicable under the circumstances, satisfying Rule 23 and procedural due process.

2. The Settlement is Fair, Reasonable, and Adequate.

This settlement satisfies the factors used to evaluate the fairness of a settlement in the Eleventh Circuit. *See Fed. R. Civ. P. 23(e); Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).

A court should consider whether “the class representatives and class counsel have adequately represented the class,” the proposed settlement “was negotiated at arm’s length,” the relief proposed to the class is adequate, and the class members are treated “equitably relative to each other.” Fed. R. Civ. P. 23(e)(2). When deciding whether the relief is adequate, the court must take into account: “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” *Id.*

The Eleventh Circuit has instructed district courts to consider several additional factors, known as the *Bennett* factors, which include: “(1) ‘the likelihood of success at trial’; (2) ‘the range of possible recovery’; (3) ‘the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable’; (4) ‘the complexity, expense and duration of

litigation’; (5) ‘the substance and amount of opposition to the settlement’; and (6) ‘the stage of proceedings at which the settlement was achieved.’” *In re Equifax Inc.*, 999 F.3d at 1273 (quoting *Bennett*, 737 F.2d at 986). Weighing these factors “is left to the sound discretion of the trial court” and should be “informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement.” *Bennett*, 737 F.2d at 986.

a) *The Parties’ Negotiations and Efforts of Class Counsel Support a Preliminary Finding of Fairness.*

Courts in the Eleventh Circuit have noted that “[s]ettlement negotiations that involve arm’s length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness.” *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 662 (S.D. Fla. 2011) (citing Manual for Complex Litig. (Third) § 30.42 (1995)); e.g., *Ervin v. Scotts Co., LLC*, No. 17-60344, 2020 WL 13413684, at *4 (S.D. Fla. Oct. 15, 2020); *Eisenband v. Schumacher Auto., Inc.*, No. 18-cv-80911, 2019 WL 1301746, at *4 (S.D. Fla. Feb. 20, 2019). In this case, Class Counsel have zealously represented the class since before the case was filed and engaged in arm’s-length negotiations under the oversight of an experienced mediator to reach this settlement. These circumstances support a “preliminary finding of fairness.” *In re Checking Account Overdraft Litig.*, 275 F.R.D. at 662; see Fed. R. Civ. P. 23(e)(2).

As detailed in the motion for preliminary approval, Class Counsel vigorously represented the class by: (1) investigating the claims prior to filing; (2) obtaining early discovery of documents Defendants had produced to government investigators; (3) amending the complaint twice, based, at least in part, on documents produced to government investigators; (4) developing a document review protocol and reviewing hundreds of thousands of documents, most of which were in Norwegian; (5) obtaining discovery from relevant third-parties by serving 17 subpoenas and engaging in meet-and-confers with those parties; (6) crafting a unique deposition protocol to manage the challenges of depositions of foreign citizens during a global pandemic; (7) conducting Rule 30(b)(6) depositions and identifying fact witnesses to be deposed; (8) seeking additional discovery after reviewing Defendants’ productions; (9) managing the collection of Plaintiffs’ documents, many of which were stored on paper; (10) reviewing Plaintiffs’ documents to produce relevant discovery to Defendants and beginning production; (11) retaining an expert to analyze Defendants’ data and identify the information needed to prove damages at trial. These efforts, especially in light of the challenges presented by litigating against foreign corporations primarily

conducting business in the Norwegian language, demonstrate how the Class Counsel's representation of the class was more than adequate.

The circumstances of the settlement negotiations similarly support a preliminary finding of fairness for several reasons. First, the settlement was overseen by former Magistrate Judge Infante, who has extensive experience with mediations in complex, antitrust litigation. Judge Infante had also overseen the mediation in the DPP action, so was familiar with the facts of the cases and the potential barriers to settlement. His management of the settlement process is a "strong indicator of procedural fairness." *Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295 (5th Cir. 2017); Fed. R. Civ. P. 23(e)(2)(B) advisory committee's notes to 2018 amendment ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests."). Second, IPPs conducted substantial discovery prior to the mediation and were thus well-informed about the strengths and risks of the case while negotiating the settlement. *See Ervin*, 2020 WL 13413684, at *4. Third, IPPs continued to litigate the case until the settlement was reached, producing documents, reviewing discovery, negotiating deposition witnesses, and arguing a motion to compel.

In short, the circumstances of the settlement and the significant litigation efforts by Class Counsel support a finding a fairness.

b) *IPPs Obtained Substantial Relief for the Class.*

The Rule 23(e)(2) factors measuring the adequacy of relief and the *Bennett* factors weigh strongly in favor of the settlement obtained by IPPs. Fed. R. Civ. P. 23(e)(2)(C); *Bennett*, 737 F.2d at 986. The \$33 million recovery obtained here is substantial and avoids years of protracted litigation and the risks inherent in a complex antitrust case.

The "costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), and the first, fourth, and sixth *Bennett* factors, which relate to "the likelihood of success at trial," "the complexity, expense and duration of litigation," and the timing of the settlement weigh in favor of final approval here. The case has been pending since May 2019 and was settled prior to a ruling on Defendants' motion to dismiss and before IPPs filed a motion for class certification. At this early stage, it is likely the litigation would have continued for years absent a settlement. While IPPs were confident in the strength of their case based on the evidence reviewed to date, there are many complexities and risks typical in indirect purchaser actions. Courts routinely comment on

the complexity of such cases. *See e.g. Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1206 (S.D. Fla. 2006) (“Courts in this Circuit recognize that large class actions involving various legal theories are, by their nature, very difficult.”); *In re Domestic Drywall Antitrust Litig.*, No. 13-MD-2437, 2019 WL 1258832, at *3 (E.D. Pa. Mar. 19, 2019); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 304–05 (3d Cir. 2011) (en banc); *In re Nexium Antitrust Litig.*, 777 F.3d 9, 26 (1st Cir. 2015). The complexity of this case was even more pronounced because it involved foreign defendants and a large volume of documents in a foreign language. Based on these risks and complexities, the settlement obtained here is fair. Absent this settlement, class members would likely need to wait several years before obtaining any recovery. Any outcome favorable to IPPs would also likely be appealed, introducing even more delay.

The second and third *Bennett* factors, “the range of possible recovery” and “the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable,” similarly weigh in favor of a finding of fairness here. Indirect antitrust claims may only be brought in jurisdictions that permit such claims. Accordingly, this case only involves commerce in 34 U.S. jurisdictions, not the entire U.S., and the settlement amount reflects that reduced range of possible recovery.

Next, the fifth *Bennett* factor, “the substance and amount of opposition to the settlement,” weighs in favor of final approval. To date, no objections have been filed and no opt-out requests have been received. Smith Decl. ¶¶ 21–22. With a class of thousands of indirect salmon purchasers, these numbers indicate that the amount of opposition is very low. Because no objections have been filed, there is no indication of any substantive opposition to the settlement.

Finally, the Rule 23(e)(2)(C) factor related to attorneys’ fees weighs in favor of final approval. As explained in the motion for fees, the fee request in this case is reasonable and consistent with similar class actions nationwide and in the Eleventh Circuit. Even after fees and expenses, the settlement amount for the class remains substantial.

For these reasons, the Court should find that the settlement in this case is fair, reasonable, and adequate.

c) *The Settlement Treats Class Members Equitably and Effectively Distributes the Settlement Fund.*

Rule 23(e) requires the Court to consider whether the method of distribution is effective and treats class members equitably. Courts have concluded that a notice program treats class members equitably where it distributes funds on a *pro rata* basis. *See Lloyd v. James E. Albertelli*,

P.A., No. 20-cv-60300, 2020 WL 7295767, at *1 (S.D. Fla. Dec. 10, 2020); *see also Juris v. Inamed Corp.*, 685 F.3d at 1328 n.31. The allocation plan in this case proposed to distribute funds based on the amount of Defendants’ Salmon each claimant purchased during the class period in the relevant indirect purchaser states and territories, providing direct cash relief to the class. Courts routinely find this method of distribution to be equitable and effective. *See, e.g., Sullivan*, 667 F.3d at 327; *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, MDL No. 1486, 2013 WL 12333442, at **79–80 (N.D. Cal. Jan. 8, 2013), *report and recommendation adopted by* 2014 WL 12879520, at *1 (N.D. Cal. June 27, 2014); *In re Packaged Ice Antitrust Litig.*, No. 08-MDL-01952, 2011 WL 6209188, at *15 (E.D. Mich. Dec. 13, 2011); *In re Airline Ticket Comm’n Antitrust Litig.*, 953 F. Supp. 280, 284–85 (D. Minn. 1997); *In re Corrugated Container Antitrust Litig.*, 556 F. Supp. 1117, 1129 (S.D. Tex. 1982). Therefore, these considerations weigh in favor of final approval.

B. The Settlement Class Should Be Certified.

The Court previously granted preliminary certification of the Settlement Class after concluding that the class satisfied the requirements of Rule 23. Because those considerations have not changed, the Court should certify the Settlement Class for purposes of this settlement only. *Borcea*, 238 F.R.D. at 671 (“A class may be certified solely for purposes of settlement where a settlement is reached before a litigated determination of the class certification issue.” (internal quotations omitted)); *accord In re Equifax Inc.*, 999 F.3d at 1277 (affirming certification of settlement class).

The Settlement Class fulfills the prerequisites of Rule 23(a). First, the class is sufficiently numerous “that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Settlement Administrator identified and delivered individual notice to over 350,000 potential class members and at least 40,692 class members have filed claims to date, which is well above the threshold required for numerosity. Smith Decl. ¶¶ 9, 19; *see Rosen v. J.M. Auto Inc.*, 270 F.R.D. 675, 680 (S.D. Fla. 2009) (noting that more than forty class members is generally adequate to satisfy numerosity). Second, the Settlement Class’s antitrust claims share common questions of law or fact that can be resolved in a common manner. *See* Fed R. Civ. P. 23(a)(2); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Defendants’ liability for the state-law antitrust claims alleged by IPPs could be resolved in a common manner because IPPs have alleged a common price-manipulation scheme that raised prices across the United States. *See In re Terazosin Hydrochloride*

Antitrust Litig., 220 F.R.D. 672, 686 (S.D. Fla. 2004) (“Specifically in the antitrust context, courts in this Circuit have consistently held that allegations of price-fixing, monopolization, and conspiracy by their very nature involve common questions of law or fact.”).

Third, IPPs’ claims are typical of the Settlement Class because they “arise from the same event or pattern or practice and are based on the same legal theory.” *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009); *see* Fed. R. Civ. P. 23(a)(3). The Class Representatives include restaurants, grocery stores, and a caterer who purchased Salmon for resale and are alleged to have paid increased prices for Salmon. Fourth, these Class Representatives and Class Counsel have adequately represented the class. Fed. R. Civ. P. 23(a)(4). The adequacy inquiry considers “(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action.” *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1323 (11th Cir. 2008). The Class Representatives have no conflicts of interest here because they stand to gain the same monetary relief as the class. That relief will be distributed on a *pro rata* basis based on the amount of Salmon they purchased during the relevant time period. Further, Class Counsel and the Class Representatives have more than adequately prosecuted this action, bringing the case through three years of litigation, including substantial discovery. In short, the Settlement Class and Class Counsel clearly meet the requirements of Rule 23(a).

Plaintiffs have satisfied the predominance requirement of Rule 23(b)(3) for settlement purposes. The predominant factual and legal issues here relate to Defendants’ alleged anticompetitive conspiracy to raise the price of Salmon through unlawful price coordination. *See, e.g.*, Second Am. Compl. ¶¶ 227–34. These common issues predominate over individualized issues and can be decided in the same manner for the Settlement Class with respect to Plaintiffs’ claims under the antitrust laws of the 34 jurisdictions at issue. *See In re Terazosin Hydrochloride*, 220 F.R.D. at 695; *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. at 620 (“Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws.”).

Resolving this dispute through a class action is the superior method of resolving the dispute. Fed. R. Civ. P. 23(b)(3). At least 40,692 claims have been filed to date. Smith Decl. ¶ 19. Without a class mechanism to resolve these claims, each of those class members could obtain relief only by bringing a separate case. On a class-wide basis, the recovery is substantial, especially given the stage of litigation and other risks inherent in complex litigation, as discussed above.

However, the individual recovery for each of these class members, especially those who have purchased less Salmon, would make individual litigation infeasible. *See Roundtree v. Bush Ross, P.A.*, 304 F.R.D. 644, 663 (M.D. Fla. 2015). Thus, a class action is the superior method of adjudicating this case.

In short, the Court should grant final certification of the class for settlement purposes. The Settlement Class clearly satisfies each of the requirements of Rule 23(a) and Rule 23(b)(3).

C. Class Counsel’s Request for Reimbursement of Fees and Expenses Should Be Granted.

IPPs respectfully request that the Court award \$9,900,000 in attorneys’ fees, which is 30% of the \$33 million gross settlement fund, and reimburse \$1,278,166.09 in reasonable and necessary litigation expenses. The factual and legal bases for this request are set forth in IPPs’ motion for attorneys’ fees and litigation expenses, which IPPs incorporate by reference. *See* ECF No. 345.³ For the reasons discussed in that motion, and as summarized below, the Court should award fees and reimburse litigation expenses.

Under Rule 23 and the common fund doctrine followed by the Eleventh Circuit, “[a]ttorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval.” *Camden I Condominium Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991) (citing Fed. R. Civ. P. 23(e)). The common fund doctrine originates in the equitable powers of the federal courts to ensure individuals benefitting from a case are not “unjustly enriched at the successful litigant’s expense.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Eleventh Circuit has directed district courts to follow the common fund doctrine by awarding fees in the amount of a reasonable percentage of the settlement fund. *Camden I*, 946 F.2d at 774; *see Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1293 (11th Cir. 1999); *In re Equifax Inc.*, 999 F.3d at 1280.

Under the factors established by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974), and later adopted by the Eleventh Circuit in *Camden I*, a fee award of 30% is appropriate in this case. *See Camden I*, 946 F.2d at 772 n.3. Several *Johnson* factors relate to the work performed by Class Counsel and the difficulty and skill required

³ IPPs’ filed their motion for fees and expenses on December 1, 2022, before class notice was issued and well before the deadlines for opt-outs or objections. Accordingly, IPPs satisfied the timing requirements discussed in *Johnson v. NPAS Solutions, LLC*, 975 F.3d 1244, 1252 (11th Cir. 2020).

to litigate the case. *See* ECF No. 345 at 7–11 (analyzing *Johnson* factors 1, 2, 3, 4, 7, and 9). Class Counsel have vigorously litigated this complex case for over three years, investigating the claims, reviewing tens of thousands of pages of discovery in translation, negotiating discovery protocols, conducting depositions, serving 17 subpoenas on third parties, collecting Plaintiffs’ documents for production, litigating discovery disputes, and briefing a motion to dismiss. While performing that work, Class Counsel faced several complexities based on the legal claims raised and the nature of the facts in this case. *See, e.g., In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000) (noting complexities of antitrust cases); *In re Nexium Antitrust Litig.*, 777 F.3d at 26 (noting complexities of indirect purchaser actions). Defendants are foreign corporations doing business in Norwegian, and Class Counsel had to navigate litigation during a global pandemic. The efforts of Class Counsel and the complexity of this case weigh in support of the fee award requested.

Two *Johnson* factors consider how the percentage sought compares to fees in similar cases. *See* ECF No. 345 at 12–13 (discussing *Johnson* factors 5 and 12). The 30% award sought here is consistent with antitrust cases in this district and nationwide. That percentage is exactly what the court awarded in the recently settled direct purchaser action and is at or below the percentage typically awarded in this district. *In re Farm-Raised Salmon*, ECF No. 543; *see, e.g., Morgan v. Public Storage*, 301 F. Supp. 3d at 1252–53; *Diakos v. HSS Sys., LLC*, No. 14-61784, 2016 WL 3702698, at *7 (S.D. Fla. Feb. 5, 2016); *Duque v. 130 NE 40th St., LLC*, No. 14-23965-CIV, 2016 WL 7442797, at *3 (S.D. Fla. Jan. 27, 2016); *Gevaerts v. TD Bank*, No. 11:14-cv-20744, 2015 WL 6751061, at *14 (S.D. Fla. Nov. 5, 2015); *Cifuentes v. Regions Bank*, No. 11-cv-23455, 2014 WL 1153772, at *8 (S.D. Fla. Mar. 20, 2014). Moreover, the 30% sought here is in line with awards in indirect purchaser settlements. *See, e.g., In re Interior Molded Doors Indirect Purchaser Antitrust Litig.*, No. 3:18-cv-00850, 2021 WL 5195089, at *3 (E.D. Va. July 27, 2021); *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, No. 14-md-02542, 2021 WL 2328431, at *1 (S.D.N.Y. June 7, 2021); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420, 2020 WL 7264559, at *23 (N.D. Cal. Dec. 10, 2020); *In re Pool Prods. Distrib. Mkt. Antitrust Litig.*, 2015 WL 4528880, at *21. Because the award requested here is on par with awards in similar cases, these factors weigh in favor of the award.

The *Johnson* factors related to the risk borne by Class Counsel similarly weigh in favor of the award sought here. *See* ECF No. 345 at 14–15 (analyzing *Johnson* factors 6, 8, and 10). The

\$33 million recovery is substantial and an excellent result for the class, especially because the case was still in its early stages when settlement was reached. The settlement thus avoids years of litigation. See *Greco v. Ginn Dev. Co., LLC*, 635 F. App'x 628, 633 (11th Cir. 2015). There were substantial risks avoided by settling this case, including risks unique to indirect purchaser actions. See *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, MDL No. 1486, 2013 WL 12387371, at *20 (N.D. Cal. Nov. 5, 2013).

In short, because the *Johnson* factors weigh strongly in favor of the fee award requested, the Court should award 30% of the settlement fund as attorneys' fees.

IPPs have also requested reimbursement of litigation expenses. Courts may reimburse litigation expenses that were reasonable and necessary to the prosecution of the case. *Waters*, 190 F.3d at 1299; *Morgan*, 301 F. Supp. 3d at 1258. Common expenses courts have recognized as reasonable and necessary include "among others, fees for experts, photocopies, travel, online research, translation services, mediator fees, and document review and coding expenses." *Gevaerts*, 2015 WL 6751061, at *14. Class Counsel have detailed the expenses incurred in the prosecution of this case, see ECF No. 345 at 16, all of which fit into the categories of necessary litigation expenses for a complex case. In total, IPPs seek \$1,278,166.09 in expenses, an amount that is less than half of the expenses recently awarded in the direct purchaser case. Order Approving Class Settlement at 9, *In re Farm-Raised Salmon*, ECF No. 543. Because the expenses sought here are reasonable and were necessary to bring this case, the Court should reimburse Class Counsel for litigation expenses from the settlement fund.

V. CONCLUSION

IPPs obtained a \$33 million settlement for the class of indirect purchasers in this case. This is an excellent result for the class, as it provides direct cash relief that will be distributed on a *pro rata* basis. To date, no class member has filed an objection. The settlement clearly meets the requirements of Rule 23(e) and is fair, reasonable, and adequate. The Settlement Class also meets the requirements for class certification under Rule 23(a) and 23(b)(3). Accordingly, IPPs request that the Court approve the settlement, certify the class for settlement purposes only under Rule 23, appoint IPPs as Class Representatives, and appoint the law firms of Zwerling, Schachter & Zwerling LLP (Fred T. Isquith) and Lockridge Grindal Nauen P.L.L.P. (Heidi M. Siltan) as Settlement Class Counsel. Class Counsel's fee request is similarly reasonable and fair, especially in light of the complex issues in this case, the amount of work performed by counsel, and the risks

associated with antitrust cases. Class Counsel respectfully request that the Court grant their motion for an award of attorneys' fees and reimbursement of litigation expenses. After the Final Approval Hearing currently scheduled for February 24, 2023, Plaintiffs respectfully request that the Court grant these motions and enter an order granting the relief described above.

CERTIFICATION OF PRE-FILING CONFERENCE

On January 11, 2023, Class Counsel provided Defendants with a copy of this motion. Defendants have agreed that they do not oppose this motion.

Dated: January 19, 2023

/s/ Nathan C. Zipperian

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*Co-Lead Class Counsel for the Indirect Purchaser
Settlement Class*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

Wood Mountain Fish LLC, *et al.*,

Plaintiffs,

v.

Mowi ASA (f/k/a Marine Harvest ASA), *et al.*,

Defendants.

Civil No. 19-22128-CIV-SMITH/LOUIS

**DECLARATION OF DEREK SMITH REGARDING NOTICE ADMINISTRATION
IN SUPPORT OF INDIRECT PURCHASER PLAINTIFFS'
UNOPOSED MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH
ALL DEFENDANTS AND CERTIFICATION OF SETTLEMENT CLASS**

1. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct. I am a Director of Class Action Services at KCC Class Action Services, LLC ("KCC"). KCC is an experienced national class action notice provider and class administrator with experience in administering class action settlements. KCC's services include pre-settlement consulting, settlement fund escrow, disbursement and tax reporting, class member data management, legal notification, call center support, and claims administration.

2. KCC was chosen by Class Counsel and approved by the Court to design and implement the settlement notice program (the "Notice Plan") and notice documents to inform Class Members about their rights and options under the class action settlement.

3. With the support of KCC's claims administration and media teams, each element of the Court-approved Notice Plan has been implemented.

4. The reach of the Notice Plan is consistent with other effective, court-approved notice programs. Additionally, the Federal Judicial Center's ("FJC") Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (the "FJC Checklist") considers 70-95% reach among class members reasonable.

5. The Notice Plan used a combination of individual mailed notice and paid notice placements in industry-related trade media to reach the indirect purchaser Settlement Class.

6. The Notice Plan fairly and adequately covered the Settlement Class without excluding any demographic group or geographic area.

7. The Notice Plan was consistent with other court-approved class notice programs that KCC has designed and implemented for purposes of class-action settlements.

8. After the Court granted Plaintiffs' Unopposed Motion for an Order for Preliminary Approval of Settlement with all Defendants, Preliminary Certification of Settlement Class, and Approval of Class Notice and Incorporated Memorandum of Law, KCC began implementing the Notice Plan. This declaration provides relevant details and "proofs of performance" of the notice activities undertaken.

NOTICE PLAN IMPLEMENTATION

Mailing

9. On November 29, 2022, KCC received the purchased lists of potential Class Members, including 40,352 records with a mailing address and an email address available and 353,537 records with only mailing addresses available. On December 15, 2022, KCC caused the Postcard Notice to be mailed via United States Postal Service ("USPS") First Class Mail to 353,537 records and caused the Email Notice to be sent to the 40,352 records with an email address available. Notices were mailed or emailed to 393,889 records.

10. Prior to mailing, the addresses were checked against the National Change of Address ("NCOA") database maintained by the USPS; certified via the Coding Accuracy Support System ("CASS"); and verified through Delivery Point Validation ("DPV").

11. For Email Notices that were undelivered, KCC caused Notice Postcards to be printed and mailed on December 28, 2022. Postcard Notices returned by the USPS as undeliverable were re-mailed to any address available through postal service information. Any returned mailing that did not contain an expired forwarding order with a new address indicated was researched through standard skip tracing and re-mailed if a new address was obtained. As of January 17, 2023, these efforts resulted in one re-mailing to an updated address.

12. Attached as **Exhibit A** is a copy of the Postcard Notice, the Email Notice, the Long Form Notice, and the Claim Forms as distributed to the entities or posted on the website.

Paid Media

13. KCC caused digital Notices to appear in the December 9, 2022 issue of *NRN a.m.*, in the December 12, 2022 issue of *FSD Update*, in the December 13, 2022 issues of *RB Daily e-*

newsletter and *RH Indie Idea Feed*, and in the December 15, 2022 issues of *FM Today* and *SN Daily* e-newsletters. Attached as **Exhibit B** are true and correct copies of the digital Notices as they appeared in each e-newsletter.

14. KCC also purchased impressions to be distributed on *WinsightGroceryBusiness.com* as a Fresh Food category sponsorship. A total of 3,121 impressions were delivered from December 7, 2022 through December 31, 2022. Attached as **Exhibit C** is confirmation of the digital Notices as they appeared on the website.

Response Mechanisms

15. On December 10, 2022, the informational settlement website www.SalmonIndirectPurchaserSettlement.com was made live. At this website, Settlement Class members may file a Claim Form online. Class Members may also obtain additional information and Court documents, including the Settlement Agreement, Preliminary Approval Order, Notice, and contact information for the claims administrator. In addition, the website address was provided in all printed notice materials and accessible through an embedded link in the digital notices.

16. As of January 18, 2023, the settlement website has received 13,755 hits and 39,781 Claim Form submissions.

17. On December 10, 2022, the toll-free number was made live. Calling the toll-free number allows Settlement Class members to learn more about the Settlement in the form of frequently asked questions and answers and to request to have more information and a claim form mailed directly to them. The toll-free number was included in all printed notice documents.

18. As of January 18, 2023, the toll-free number has received a total of 277 calls, and we have received 112 requests for Notice Packets be mailed.

Response

19. The deadline for Settlement Class members to submit a Claim Form is February 17, 2023. As of January 18, 2023, KCC has received 40,692 claims filed through both postal mail and the case website. KCC will continue to process any claims timely filed through the deadline to submit a Claim Form.

20. Claim submissions are not required to provide proof of purchase, but KCC will review claims under standard practices to flag suspect, erroneous, or duplicate claims and may require proof of purchase to be provided for suspect claims.

21. The deadline for Settlement Class members to request to be excluded from the settlement passed on January 13, 2023. As of January 18, 2023, KCC has not received any exclusion requests.

22. The deadline for Settlement Class members to object to the settlement is January 26, 2023. As of January 18, 2023, KCC has not received any objections.

CONCLUSION

23. As described above, the Notice Plan effectively reached over 80% of the likely Class on average 2.5 times each via the measurable consumer media efforts alone.

24. In my experience, this reach percentage is consistent with other effective court-approved notice programs. In addition, it meets the 70-95% reach standard set forth in the FJC Checklist.

25. In my opinion, distributing the Notice to the Class Members via this Notice Plan provided the best notice practicable under the circumstances of this case, satisfied due process, including its “desire to actually inform” requirement, conformed to all aspects of Federal Rule of Civil Procedure 23, and comported with the guidance for effective notice articulated in the *Manual for Complex Litigation, Fourth*.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of January 2023 at Bakersfield, California.



DEREK SMITH

EXHIBIT A

Wood Mountain Fish v. Mow ASA
Settlement Administrator
P.O. Box 301132
Los Angeles, CA 90030-1132

LEGAL NOTICE

If you purchased farm-raised salmon between April 10, 2013 and November 17, 2022, you may be entitled to payment from a Class Action Settlement.

Farm-raised salmon consists of products like whole head-on gutted salmon, salmon fillets or smoked salmon.

1-844-776-0179

www.SalmonIndirectPurchaserSettlement.com



Postal Service: Please Do Not Mark Barcode

MOD-«Claim8»-«CkDig»

Claim ID: <<Claim8>>

PIN: <<PIN>>

«FirstNAME» «LastNAME»

«Addr2»

«Addr1»

«City», «State»«FProv» «Zip»«FZip»

«FCountry»

MOD

A proposed \$39 million Settlement has been reached in a class action lawsuit alleging that Defendants (listed below) conspired to raise, fix, stabilize or maintain prices within the market for sale of farm-raised salmon and that, as a result, people and entities paid more than they otherwise would have. Defendants are Mowi ASA (f/k/a Marine Harvest ASA), Mowi USA, LLC (f/k/a Marine Harvest USA, LLC), Mowi Canada West, Inc. (f/k/a Marine Harvest Canada, Inc.), Mowi Ducktrap, LLC (an assumed name of Ducktrap River of Maine LLC), Grieg Seafood ASA, Grieg Seafood BC Ltd., Grieg Seafood North America Inc. (f/k/a Ocean Quality North America Inc.), Grieg Seafood USA, Inc. (f/k/a Ocean Quality USA Inc.), Grieg Seafood Premium Brands, Inc. (f/k/a Ocean Quality Premium Brands, Inc.), Sjør AS (f/k/a Ocean Quality AS), SalMar ASA, Lerøy Seafood AS, Lerøy Seafood USA Inc., Cermaq Group AS, Cermaq US LLC, Cermaq Canada Ltd., and Cermaq Norway. Defendants deny all liability. The Court has not decided who is right.

Who is included? “Settlement Class Members” include all persons and entities who indirectly purchased, for resale, Defendants’ farm-raised salmon or products derived from farm-raised salmon, such as salmon fillets or smoked salmon, sold or distributed by Defendants in any of the following states, districts, or territories: AL, AR, AZ, CA, DC, FL, GU, HI, IL, IA, KS, MA, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NM, NV, NY, OR, RI, SC, SD, TN, UT, VT, WV, or WI between April 10, 2013 and November 17, 2022.

What does the Settlement provide? If the proposed Settlement is approved, Defendants will pay \$33,000,000.00 into a Settlement Fund. After deducting attorneys’ fees (up to 30% of the Settlement Fund), litigation costs and expenses, and settlement administration costs, the balance of the Settlement Fund will be distributed to Settlement Class Members who submit valid Claim Forms. Payments will be distributed *pro rata* based on the value of the Settlement Class Member’s credited, verified purchase amount against all claims submitted.

How do I get a payment? Go to www.SalmonIndirectPurchaserSettlement.com and file a Claim Form online or print and mail a Claim Form to the Settlement Administrator. Claim Forms must be submitted online or postmarked by **February 17, 2023**.

What are my other options? If you are included in the Settlement Class and you do nothing, your rights will be affected and you won’t get a payment. If you do not want to be legally bound by the Settlement, you must exclude yourself by **January 13, 2023**. Unless you exclude yourself, you won’t be able to sue any of the Defendants for any claim made in this lawsuit or released by the Settlement Agreement. If you don’t exclude yourself, you may object to the Settlement or ask for permission for you or your lawyer to appear and speak at the hearing—at your own cost—but you don’t have to. Objections and requests to appear are due by **January 26, 2023**.

The Court’s Fairness Hearing. The Court will hold a hearing in this case (*Wood Mountain Fish LLC, et al. v. Mowi ASA, et al.*, No. 19-22128-CIV-SMITH/LOUIS) on **February 24, 2023** to decide whether to approve the Settlement and attorneys’ fees and costs.

Want more? Complete details, including the Settlement Agreement, are available at www.SalmonIndirectPurchaserSettlement.com.

ClaimID: <<Claim8>>

PIN: <<PIN>>

If you purchased farm-raised salmon between April 10, 2013 and November 17, 2022, you may be entitled to payment from a Class Action Settlement.

You or your company may have indirectly purchased farm-raised salmon or products derived from farm-raised salmon during the period between April 10, 2013 through November 17, 2022. This class action lawsuit and the information described in this notice relate to those purchases. This notice explains that a proposed Settlement has been preliminarily approved by the Court, and the legal rights and options that you may exercise before the Court decides whether to finally approve the Settlement.

The Court in charge of this case is the United States District Court for the Southern District of Florida. The case is called *Wood Mountain Fish LLC, et al. v. Mowi ASA, et al.*, Case No. 19-22128-CIV-SMITH/LOUIS.

A proposed \$33 million Settlement has been reached in a class action lawsuit alleging that Defendants (listed below) conspired to raise, fix, stabilize or maintain prices within the market for sale of farm-raised salmon and that, as a result, people and entities paid more than they otherwise would have.

Defendants: Mowi ASA (f/k/a Marine Harvest ASA), Mowi USA, LLC (f/k/a Marine Harvest USA, LLC), Mowi Canada West, Inc. (f/k/a Marine Harvest Canada, Inc.), Mowi Ducktrap, LLC (an assumed name of Ducktrap River of Maine LLC), Grieg Seafood ASA, Grieg Seafood BC Ltd., Grieg Seafood North America Inc. (f/k/a Ocean Quality North America Inc.), Grieg Seafood USA, Inc. (f/k/a Ocean Quality USA Inc.), Grieg Seafood Premium Brands, Inc. (f/k/a Ocean Quality Premium Brands, Inc.), Sjør AS (f/k/a Ocean Quality AS), SalMar ASA, Lerøy Seafood AS, Lerøy Seafood USA Inc., Cermaq Group AS, Cermaq US LLC, Cermaq Canada Ltd., and Cermaq Norway.

Defendants have denied all liability and asserted that their conduct was lawful and/or exempt from antitrust laws, among other defenses. The Court has not decided who is right.

Who is in the Settlement Class? The Settlement Class consists of all persons and entities who indirectly purchased, for resale, Defendants' farm-raised salmon or products derived from farm-raised salmon, such as salmon fillets or smoked salmon, sold or distributed by Defendants in any of the following states, districts, or territories: Alabama, Arizona, Arkansas, California, the District of Columbia, Florida, Guam, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, or Wisconsin between April 10, 2013 and November 17, 2022.

What does the Settlement provide? If the proposed Settlement is approved, the Defendants will pay a total Settlement Amount of \$33,000,000.00 into a Settlement Fund. After deducting attorneys' fees (up to 30% of the Settlement Fund), litigation costs and expenses, and settlement administration costs, the balance of the Settlement Fund will be distributed to Settlement Class Members who submit a valid Claim Form. Payments will be distributed *pro rata* based on the value of the Settlement Class Member's credited, verified purchase amount against all claims submitted. If monies remain in the Settlement Fund after paying all eligible claims, a secondary payment may be distributed to eligible Settlement Class Members or the balance will be distributed by *cy pres* to a charitable recipient, subject to Court approval.

How do I get a payment? Go to www.SalmonIndirectPurchaserSettlement.com and file a Claim Form online or print and mail a Claim Form to the Settlement Administrator. Claim Forms must be submitted online or postmarked by February 17, 2023. Payments will be made to Settlement Class Members who submit timely and valid Claim Forms after the Court grants "final approval" to the Settlement and after all appeals are resolved.

What are my other options? If you are included in the Settlement Class and do nothing, your rights will be

affected and you won't get a payment. If you don't want to be legally bound by the Settlement, you must exclude yourself from it by January 13, 2013. Unless you exclude yourself, you won't be able to sue, continue to sue, or be part of any other lawsuit against any of the Defendants for any claim made in this lawsuit or released by the Settlement Agreement. If you stay in the Settlement (i.e., don't exclude yourself), you may object to it or ask for permission for you or your lawyer to appear and speak at the hearing—at your own cost—but you don't have to. Objections and requests to appear are due by January 26, 2023.

The Court's Fairness Hearing. The Court has scheduled a final "Fairness Hearing" on February 24, 2023 at the United States District Court, U.S. Federal Building and Courthouse, Courtroom 202B, 299 East Broward Blvd., Fort Lauderdale, FL 33301. At the hearing, the Court will consider whether: (i) the proposed Settlement should be approved as fair, reasonable, and adequate; and (ii) whether to approve an award of attorneys' fees and payment of costs and expenses. If there are objections, the Court will consider them.

Want more? Complete details, including the Settlement Agreement, are available at www.SalmonIndirectPurchaserSettlement.com. You may also call 1-844-776-0179.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS LAWSUIT.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

If you purchased farm-raised salmon between April 10, 2013 and November 17, 2022, you may be entitled to payment from a Class Action Settlement.

A Federal Court authorized this notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON'T ACT.

This notice is to:

- Provide information regarding a proposed \$33 million Settlement of a class action lawsuit on behalf of persons and entities who indirectly purchased, for resale, farm-raised salmon or products derived from farm-raised salmon, such as salmon fillets or smoked salmon, sold by Defendants (listed below).
- Announce an order certifying a Settlement Class and provide information and a process and deadline to exclude yourself from the Settlement Class.
- Provide information about a process and deadline for Settlement Class Members to:
 - 1) submit claims for payments from the Settlement; and
 - 2) object to the Settlement or to a request for payment of attorneys' fees and reimbursement of expenses from the Settlement.

A Federal Court still has to decide whether to finally approve the Settlement. Payments to Settlement Class Members who submit timely qualifying claims will be made only (1) if the Court approves the Settlement and after any appeals are resolved, and (2) after the Court approves a Plan of Allocation to distribute the Settlement Fund minus expenses and any court-approved attorneys' fees to Settlement Class Members.

KEY SETTLEMENT TERMS

• **SETTLEMENT CLASS**

All persons and entities who indirectly purchased, for resale, Defendants' farm-raised salmon or products derived from farm-raised salmon, such as salmon fillets or smoked salmon, sold or distributed by Defendants (listed below) in any of the following states, districts, or territories: Alabama, Arizona, Arkansas, California, the District of Columbia, Florida, Guam, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, or Wisconsin during the Settlement Class Period.

- **ELIGIBLE PRODUCTS**

Defendants' farm-raised salmon or products derived from farm-raised salmon, such as salmon fillets or smoked salmon, purchased during the Settlement Class Period from a person or entity **other than** a Defendant.

- **SETTLEMENT CLASS PERIOD**

- April 10, 2013 and November 17, 2022.

- **CO-LEAD COUNSEL**

- Lockridge Grindal Nauen P.L.L.P. (Heidi M. Siltou)
- Zwerling, Schachter & Zwerling LLP (Fred T. Isquith Sr.)

- **DEFENDANTS**

- **Mowi Defendants**

- Mowi ASA (f/k/a Marine Harvest ASA);
- Mowi USA, LLC (f/k/a Marine Harvest USA, LLC);
- Mowi Canada West, Inc. (f/k/a Marine Harvest Canada, Inc.); and
- Mowi Ducktrap, LLC (an assumed name of Ducktrap River of Maine LLC).

- **Grieg Defendants**

- Grieg Seafood ASA;
- Grieg Seafood BC Ltd.;
- Grieg Seafood North America Inc. (f/k/a Ocean Quality North America Inc.);
- Grieg Seafood USA, Inc. (f/k/a Ocean Quality USA Inc.); and
- Grieg Seafood Premium Brands, Inc. (f/k/a Ocean Quality Premium Brands, Inc.).

- **Sjór Defendant**

- Sjór AS (f/k/a Ocean Quality AS)

- **SalMar Defendant**

- SalMar ASA

- **Lerøy Defendants**

- Lerøy Seafood AS; and
- Lerøy Seafood USA Inc.

- **Cermaq Defendants**

- Cermaq Group AS;
- Cermaq US LLC;
- Cermaq Canada Ltd.; and
- Cermaq Norway.

- YOUR RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.
- YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DON'T ACT. READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS AND OPTIONS		
You May	Explanation	Deadline
Do Nothing	<ul style="list-style-type: none"> • Receive no benefits. • Give up your right to separately sue or continue to sue Defendants for the claims in this case. 	None.
Submit a Claim Form	<ul style="list-style-type: none"> • File a Claim to receive benefits. • Give up your right to separately sue or continue to sue Defendants for the claims in this case. 	Postmarked or submitted online by February 17, 2023.
Exclude Yourself from the Settlement	<ul style="list-style-type: none"> • Remove yourself from the Settlement Class. • Receive no benefits. • Keep the right to separately sue or continue to sue Defendants for the claims in this case at your own expense. 	Postmarked by January 13, 2023.
Object to the Settlement	<ul style="list-style-type: none"> • Comment on or tell the Court that what you do not like about the Settlement—you will still be bound by the Settlement if the Court approves the Settlement. 	Postmarked or pre-paid delivery by January 26, 2023.
Go to the Fairness Hearing	<ul style="list-style-type: none"> • Ask to speak in Court about the Settlement by filing a Notice of Intention to Appear. • If you want your own attorney to represent you, you must pay for that attorney. • Attend the Fairness Hearing at your own expense. 	Postmarked by January 26, 2023. Hearing scheduled for February 24, 2023 at 10:30. E.T. This date is subject to change without further notice. Please check the settlement website for updates.

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BASIC INFORMATION

1. Why did I receive this notice package?

You or your company may have indirectly purchased farm-raised salmon or products derived from farm-raised salmon during the period between April 10, 2013 and November 17, 2022. This class action lawsuit and the information described in this notice relate to those purchases. This notice explains that:

- There is a proposed Settlement that has been preliminarily approved by the Court.
- You have a right to know about the Settlement and have legal rights and options that you may exercise before the Court decides whether to finally approve the Settlement.

The Court in charge of this case is the United States District Court for the Southern District of Florida. The case is called *Wood Mountain Fish LLC, et al. v. Mowi ASA, et al.*, Case No. 19-22128-CIV-SMITH/LOUIS. It was filed in 2019.

2. What is this lawsuit about?

Plaintiffs allege that Defendants conspired to raise, fix, stabilize or maintain prices within the market for sale of farm-raised salmon and that, as a result, members of the Class paid more than they otherwise would have. Defendants have denied all liability for this conduct and asserted that their conduct was lawful and/or exempt from the antitrust laws, among other defenses. The Court has not decided who is right. Plaintiffs and Defendants have reached a proposed Settlement to avoid the uncertainties, risks, and costs of further litigation.

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

In a class action lawsuit, one or more persons or businesses (called “Class Representatives”) sue on behalf of others who have similar claims. The Class Representatives in this lawsuit are Portland Hunt-Alpine Club, LLC, Prime Steakhouse, Mamme Inc., Rocca Kurt’s Brothers Inc., Stephen T. Deangelis, Inc., Amy Mehaffey, Nautical Okoboji LLC, People’s Food Cooperative, Inc., Classic City Catering, Inc., and Bama Seafood, Inc. The Class Representatives and the Defendants have agreed to settle the case. The proposed Settlement requires Defendants to pay money to members of the Settlement Class. The Class Representatives and their attorneys believe the Settlement is in the best interest of the Settlement Class.

THE SETTLEMENT CLASS

4. Who is included in the Settlement Class?

You are a member of Settlement Class if you fit the following definition: All persons and entities who indirectly purchased, for resale, Defendants’ farm-raised salmon or farm-raised salmon products, from a person or entity **other than** a Defendant, in any of the following states, districts, or territories: Alabama, Arizona, Arkansas, California, the District of Columbia, Florida, Guam, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, or Wisconsin during the Settlement Class Period.

Excluded from the Settlement Class are Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, as well as any government entities.

Persons or entities that fall within the Settlement Class and do not exclude themselves from that Settlement will be bound by the terms of the Settlement and its release.

THE LAWYERS REPRESENTING YOU

5. Who are the lawyers representing you?

The Court appointed Heidi Silton, a partner at Lockridge Grindal Nauen P.L.L.P. and Fred Isquith Sr., Senior National Litigation Counsel to Zwerling, Schachter & Zwerling LLP, along with other firms, to represent the Settlement Class. Heidi Silton and Fred Isquith Sr. are called Co-Lead Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

6. How will the lawyers be paid?

Attorneys’ fees and expenses are paid out of the Settlement Fund. With respect to the Settlement, Co-Lead Counsel will file a motion (the “Fee Petition”) on or before December 1, 2022 that asks the Court to approve payment of attorneys’ fees in an amount of \$9,900,000.00, not to exceed 30% of the \$33 million Settlement, as well as for reimbursement of litigation costs and expenses incurred, including fees and costs expended while providing notice to the Class and administering the Settlement. Once filed, the Fee Petition will be available on the settlement website, www.SalmonIndirectPurchaserSettlement.com. You will have an opportunity to object to or comment on it. Any fees and expenses approved by the Court in connection with the Fee Petition will be paid out of the Settlement Fund before making payments to eligible Settlement Class Members.

SETTLEMENT BENEFITS

7. What does the proposed Settlement provide?

If the proposed Settlement is approved, the Defendants will pay a total Settlement Amount of \$33,000,000.00 into a Settlement Fund, of which up to \$500,000.00 will be set aside for settlement administration and notice. After deductions for attorneys’ fees and litigation costs (Question 6), the Fund will be distributed to Settlement Class Members who send in a valid Claim Form.

You cannot receive compensation unless you timely submit a Claim Form to the Settlement Administrator by the claim deadline as set forth in Question 8, below.

The credited value of any timely and valid Claim will be calculated based on the Settlement Class Member's verified Purchase Amount of farm-raised salmon, or products derived from farm-raised salmon, in accordance with the Plan of Allocation.

Each Settlement Class Member who submits a valid Claim Form will receive its *pro rata* share of the Fund, after attorneys' fees, settlement and class administration costs, and other expenses have been deducted, based on the value of its credited, verified Purchase Amount against all claims submitted (a "Settlement Award"). However, any claim whose value is less than the cost to transmit payment will not be paid.

To the extent there are any undistributed funds following an initial distribution to Settlement Class Members, the Settlement Administrator, upon the recommendation of Class Counsel and approval of the Court, will either make a subsequent distribution to Settlement Class Members, or, if it is infeasible to do so in light of the amount of undistributed funds and costs, that money, together with any uncashed checks, will be distributed *cy pres* to a charitable recipient, to be determined and subject to Court approval.

The Court retains the power to approve or reject, in part or in full, any individual claim of a Settlement Class Member. Because the alleged overcharge resulting from the conspiracy alleged by Plaintiffs is only a portion of the price paid for Defendants' farm-raised salmon or farm-raised salmon products, your recovery will be less than the total amount you paid.

8. How do I file a Claim Form in the Settlement?

To qualify for compensation under the Settlement, you must select, complete and timely submit a Claim Form. The completed Claim Form must be submitted online at www.SalmonIndirectPurchaserSettlement.com or by mail to the address below postmarked by February 17, 2023:

Wood Mountain Fish v. Mowi ASA Settlement Administrator
P.O. Box 301132
Los Angeles, CA 90030-1132

If you do not submit a valid Claim Form by February 17, 2023, you will not receive a payment, but you will be bound by the Court's judgment.

9. When do I get my payment?

Payments will be made to Settlement Class Members who submit timely and valid Claim Forms after the Court grants "final approval" to the Settlement and after all appeals are resolved. If the Court approves the Settlement, there may be appeals, and it cannot be determined with certainty how long it will take to resolve any appeal. Please be patient. The settlement website, www.SalmonIndirectPurchaserSettlement.com, will be updated with new information as it is known.

10. What am I giving up by staying in the Settlement Class?

Unless you exclude yourself from the Settlement Class, you are staying in the Settlement Class. By staying in the Settlement Class, you cannot sue, continue to sue, or be part of any other lawsuit against any Defendant that makes claims based on the same legal issues alleged or that could have been alleged in this case. All Court orders will apply to you and legally bind you. The Released Claims are detailed in the Settlement Agreement, available at www.SalmonIndirectPurchaserSettlement.com.

IF YOU DO NOTHING

11. What happens if I do nothing at all?

If you do nothing, you will not get a payment from the Settlement. Unless you exclude yourself, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants that makes claims based on the same legal issues alleged or that could have been alleged in this case. All Court orders will apply to you and legally bind you.

EXCLUDING YOURSELF FROM THE SETTLEMENT

12. What is the difference between excluding myself from the Settlement and objecting to the Settlement?

If you exclude yourself from the Settlement, you are removing yourself or opting out of the Settlement Class and removing yourself from the Settlement and its benefits and releases. You will not receive any benefits from the Settlement and you cannot object to it.

- If you want to sue any one or more of the Defendants, on your own, about the legal issues in this case, then you must exclude yourself from the Settlement. Unless you exclude yourself, you give up any right to sue any Defendant for the claims that the proposed Settlement resolves.
- If you have a pending lawsuit against any one or more of the Defendants involving the same legal issues in this case, speak to your lawyer in that case immediately. You must exclude yourself from the Settlement Class in order to continue your own lawsuit against Defendants. Unless you exclude yourself, you give up any right to sue any Defendant for the claims that the proposed Settlement resolves.

If you object to the Settlement, you will remain a member of the Settlement Class. Objecting is simply telling the Court that you don't like something about the Settlement. You can object to or otherwise comment on any term of the Settlement, including why you think the Court should not approve the Settlement. You may also comment on or object to the Fee Petition. The Court will consider your views.

13. How do I exclude myself from the Settlement?

If you are a member of the Settlement Class and you decide that you want to exclude yourself, you must send an "Exclusion Request" by first-class mail postmarked by January 13, 2023 to the following address:

Wood Mountain Fish v. Mowi ASA Settlement Administrator
P.O. Box 301132
Los Angeles, CA 90030-1132

Your written request should include (1) the identity of the party that has chosen to be excluded, as well as the name and telephone number of the appropriate contact person, (2) evidence of your membership in the Settlement Class, (3) a statement indicating that you wish to be excluded from the Settlement Class (for example "I/we hereby request that I/we be excluded from the proposed Settlement Class in *Wood Mountain Fish LLC, et al. v. Mowi ASA, et al.*, No. 19-22128-CIV-SMITH/Louis (S.D. Fla.)"), and (4) your signature. If you are submitting the exclusion request on behalf of a business or entity, include any "formerly known as" names, "doing business as" names, etc.

OBJECTING TO THE SETTLEMENT

14. How do I object to the proposed Settlement?

In order for the Court to consider your objection to the Settlement (or the Fee Petition), your objection must be sent to Co-Lead Counsel by first-class mail postmarked by, or pre-paid delivery service to one of the following addresses by, January 26, 2023:

Heidi M. Silton
LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Ave. South, Suite 2200
Minneapolis, MN 55401

OR

Fred T. Isquith Sr.
ZWERLING, SCHACHTER & ZWERLING LLP
41 Madison Ave
New York, NY 10010

Your objection(s) must be in writing and must provide evidence of your membership in the Settlement Class. The written objection should state the precise reason or reasons for the objection(s), including any legal support you wish to bring to the Court's attention and any evidence you wish to introduce in support of the objection. You may, but need not, file the objection(s) through an attorney. You are responsible for paying your attorney.

If you are a member of the Settlement Class, you have the right to voice your objection to the Settlement or to the Fee Petition made by Co-Lead Class Counsel at the Fairness Hearing. To do so, you must follow all instructions for objecting in writing (as stated above). You may object in person and/or through an attorney. You are responsible for paying your attorney and any costs related to your or your attorney's attendance at the hearing. You need not attend the Fairness Hearing in order for the Court to consider your objection.

THE COURT WILL HAVE A FINAL "FAIRNESS HEARING" ABOUT THE SETTLEMENT

15. When and where is the Final Fairness Hearing?

The Court has scheduled a final "Fairness Hearing" on February 24, 2023 at 10:30 a.m. at the following address: United States District Court, Judge Rodney Smith, U.S. Federal Building and Courthouse, Courtroom 202B, 299 East Broward Blvd., Fort Lauderdale, FL 33301. At the hearing, the Court will consider: (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate to Settlement Class Members; and (ii) whether to approve any Fee Petition made by Co-Lead Class Counsel for an award of attorneys' fees and payment of costs and expenses. If there are objections, the Court will consider them. You or your own lawyer may attend the hearing if you wish, at your own expense, but do not have to. You may ask to speak at the Fairness Hearing if you filed an objection as instructed in Question 14, but you do not have to. The Court will listen to people who have asked to speak at the hearing.

After the hearing, the Court will decide whether to approve the Settlement. We do not know how long the Court will take to decide. **The date and or time of the hearing may change without further notice to the Settlement Class, so please check www.SalmonIndirectPurchaserSettlement.com for updates.**

FOR MORE INFORMATION

For more detailed information concerning matters relating to the proposed Settlement, you may wish to review the Settlement Agreement and the related Court Orders. These documents are available on the settlement website, www.SalmonIndirectPurchaserSettlement.com, which also contains answers to "Frequently Asked Questions" as well as more information about the case.

Additionally, to learn more about the ongoing litigation or any of the Settlement, more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address listed in Question 15.

You may also obtain more information by calling the toll-free helpline at 1-844-776-0179.

If your current address is different from the address on the Claim Form you received with this notice, or if you did not receive this notice directly but believe you should have, please call the toll-free helpline.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS LAWSUIT.

Wood Mountain Fish v. Mowi ASA
 Settlement Administrator
 P.O. Box 301132
 Los Angeles, CA 90030-1132



MOD

«Barcode»

Postal Service: Please do not mark barcode

MOD-«Claim8»-«CkDig»
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 «FCountry»

Wood Mountain Fish LLC, et al. v. Mowi ASA, et al.

U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
 Case No. 19-22128-CIV-SMITH/LOUIS

**Must Be Postmarked
 By February 17, 2023**

Claim ID: <<Claim8>>
 PIN Code: <<PIN>>

Cash Payment Claim Form

This Claim Form is for use by persons or entities that, **between April 10, 2013 and November 17, 2022**, indirectly purchased, for resale, one or more of the Defendants’ farm-raised salmon, or products derived from Defendants’ farm-raised salmon (such as salmon fillets or smoked salmon), in or made from a Settlement Class Member’s residence or principal place of business located within any of the following states, districts, or territories: Alabama, Arizona, Arkansas, California, the District of Columbia, Florida, Guam, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, or Wisconsin¹.

To make a claim for payment from the Net Settlement Fund, you must complete this Claim Form in its entirety. Your Claim Form must be submitted online or **postmarked by February 17, 2023**.

Go to www.SalmonIndirectPurchaserSettlement.com if you need more information concerning who may submit a claim.

I. CLAIMANT INFORMATION

First Name	Last Name	
Street Address		
Street Address (continued)		
City	State	ZIP Code
Phone		
Email		

¹ The Defendants are: (1) **Mowi Defendants** [Mowi ASA (f/k/a Marine Harvest ASA); Mowi USA, LLC (f/k/a Marine Harvest USA, LLC); Mowi Canada West, Inc. (f/k/a Marine Harvest Canada, Inc.); and Mowi Ducktrap, LLC (an assumed name of Ducktrap River of Maine LLC)]; (2) **Grieg Defendants** [Grieg Seafood ASA; Grieg Seafood BC Ltd.; Grieg Seafood North America Inc. (f/k/a Ocean Quality North America Inc.); Grieg Seafood USA, Inc. (f/k/a Ocean Quality USA Inc.); and Grieg Seafood Premium Brands, Inc. (f/k/a Ocean Quality Premium Brands, Inc)]; (3) **Sjór Defendant** [Sjór AS (f/k/a Ocean Quality AS)]; (4) **SalMar Defendant** [SalMar ASA]; (5) **Lerøy Defendants** [Lerøy Seafood AS; and Lerøy Seafood USA Inc.]; and (6) **Cermaq Defendants** [Cermaq Group AS; Cermaq US LLC; Cermaq Canada Ltd.; and Cermaq Norway].



FOR CLAIMS PROCESSING ONLY	OB	CB	<input type="radio"/> DOC <input type="radio"/> LC <input type="radio"/> REV	<input type="radio"/> RED <input type="radio"/> A <input type="radio"/> B
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II. METHOD OF PAYMENT

Please selected your desired method of payment (fill in only ONE):

Check
 ACH

Name of Bank Account

Account Type Checking Savings

Bank Account Number

Routing Number

III. PURCHASE INFORMATION

To be eligible for a payment from the Net Settlement Fund, you must complete the chart below by filling in the columns for any purchases for resale of Defendants’ farm-raised salmon, or products derived from Defendants’ farm-raised salmon, purchased indirectly (that is, purchased directly from a company or person *other than a Defendant*) **between April 10, 2013 and November 17, 2022 ONLY** in the states, districts or territories listed above. Do not include taxes, fees or surcharges associated with any purchases as they cannot be recovered.

Settlement Class Members that provide a completed Claim Form will be eligible to receive a percentage of their Total Purchase Amount from the Net Settlement Fund.

Purchase Year	Purchase Location	Annual Purchase Amount
On or after April 13, 2013		\$_____ . ____
2014		\$_____ . ____
2015		\$_____ . ____
2016		\$_____ . ____
2017		\$_____ . ____
2018		\$_____ . ____
2019		\$_____ . ____
2020		\$_____ . ____
2021		\$_____ . ____
On or before November 17, 2022		\$_____ . ____
Total Purchase Amount		\$_____ . ____



IV. CERTIFICATION

Under penalty of perjury, I certify that the information I noted on this Claim Form and any supporting materials submitted with it are, to the best of my knowledge, true and correct, and that I made all of the identified purchases.

Signature: _____ Date (mm/dd/yyyy): _____

Print Name: _____

V. ADDITIONAL INFORMATION

Your Claim Form must be submitted online at **www.SalmonIndirectPurchaserSettlement.com** or by First Class U.S. mail postmarked by no later than **February 17, 2023**. Mail your completed Claim Form and documentation to:

Wood Mountain Fish v. Mowi ASA Settlement Administrator
P.O. Box 301132
Los Angeles, CA 90030-1132

Retain a copy of your completed Claim Form for your records.

If your Claim Form is deficient, you will be notified by the Settlement Administrator and provided with time to correct it. You **MUST** correct any deficiencies within this time frame to be eligible to receive a payment. **See the Plan of Allocation, available at www.SalmonIndirectPurchaserSettlement.com, for details.**

QUESTIONS? Call 1-844-776-0179 or visit www.SalmonIndirectPurchaserSettlement.com



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EXHIBIT B

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[Chef Michael Mina's restaurant group names new CEO](#)

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If you purchased farm-raised salmon between April 10, 2013 and November 17, 2022, you may be entitled to payment from a Class Action Settlement.



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20 restaurant industry mergers & acquisitions in 2022

2022 was a slightly calmer year than usual for mergers and acquisitions in the restaurant industry, with 20 such deals having been made, but that doesn't mean it was any less interesting than years past.

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FSD UPDATE



TODAY'S TOP STORIES

Grubhub, Kiwibot team up to deliver more food to college students

The latest robot delivery partnership will debut at the University of North Dakota.

Lynn McKee to retire from Aramark after 42 years of service

McKee has held several key HR positions at the company, including her current role as executive vice president of human resources.

S.C. bill would provide universal free school meals to students

The state is the latest to consider offering free breakfast and lunch to all pupils during the school day.

If you purchased farm-raised salmon between April 10, 2013 and November 17, 2022, you may be entitled to payment from a Class Action Settlement.

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Healthcare dining rises to the challenge

Labor shortages, rising costs and supply chain struggles are still fixtures in healthcare dining, FoodService Director's second annual state of healthcare survey revealed.



PODCASTS



How Sonic integrates culinary and marketing to drive innovation Menu items are constantly flowing out of the chain's R&D pipeline to tap into diners' desire for variety.

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RESTAURANT BUSINESS | DAILY



Boost brand loyalty with compelling post-dining customer experiences



TODAY'S TOP STORIES

How Portillo's is boosting productivity and cutting costs

The iconic Chicago chain is testing ways to unlock sales by reorganizing kitchens, automating prep, cross-training and paying team members more.

A New York college student shines a light on fast food prices

The Bottom Line: Fast Food Index shows prices at McDonald's, Chick-fil-A, Taco Bell and Chipotle by ZIP code. It shows a wide range of prices for the same product. **PREMIUM**

Largest Jack in the Box franchisee makes strategic investment in fast-casual Nick the Greek

The founding team retains a minority stake and will continue running the growing 48-unit gyro-and-souvlaki franchise concept.

Augmented reality: Where consumers eat with their eyes first

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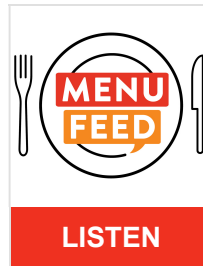
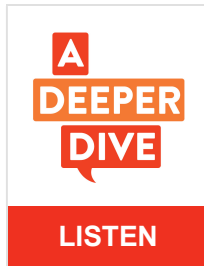


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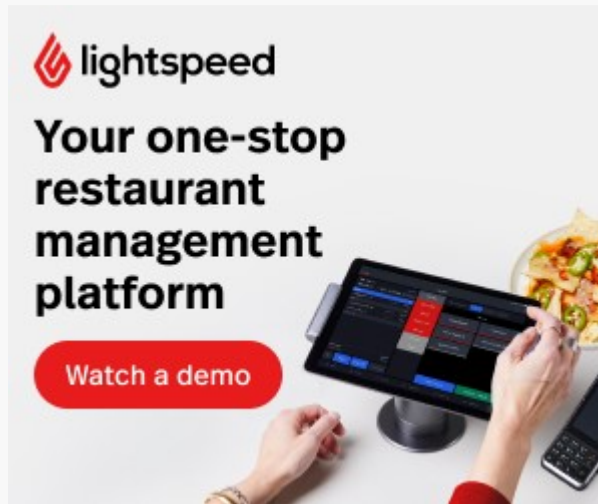
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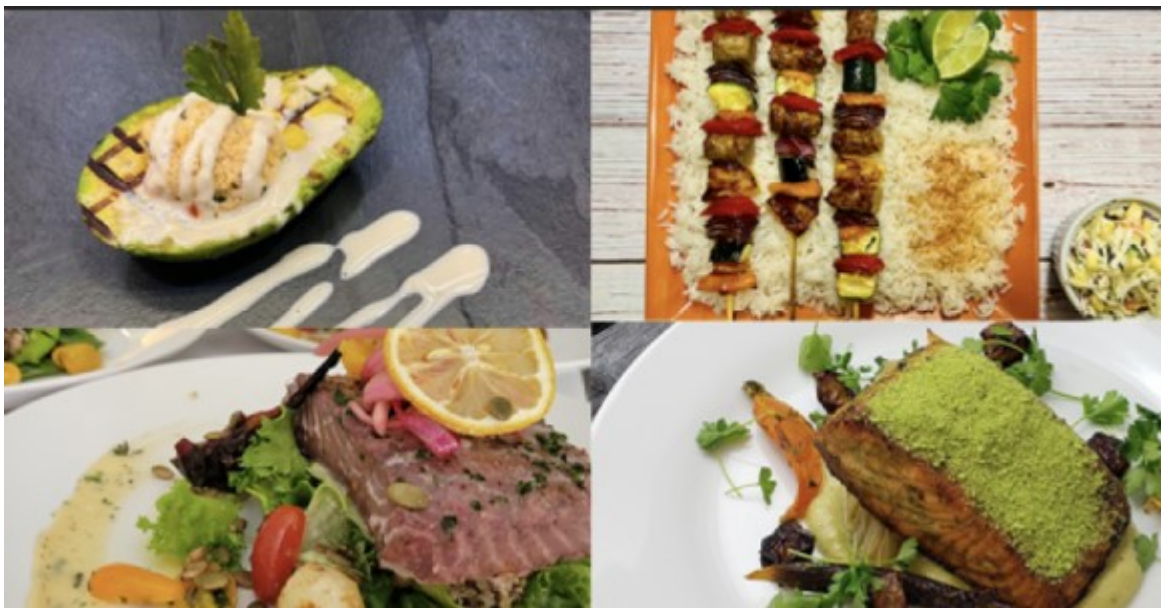
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EXHIBIT C

economic forces have impacted meat-buying trends nationwide.

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By *Heather Lalley* on Nov. 11, 2022



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cheese from grocery unless reheated, according to the Centers for

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**

Wood Mountain Fish LLC, *et al.*,

Plaintiffs,

v.

Mowi ASA (f/k/a Marine Harvest ASA), *et al.*,

Defendants.

Civil No. 19-22128-CIV-SMITH/LOUIS

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT
AND CERTIFICATION OF SETTLEMENT CLASS**

This matter is before the Court on Indirect Purchaser Plaintiffs’ Unopposed Motion for Final Approval of Settlement with All Defendants and Certification of Settlement Class [ECF No. 348] (“Motion for Final Approval”) and Indirect Purchaser Plaintiffs’ Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses and Costs [ECF No. 345] (“Motion for Fees and Expenses”).

The Court has considered the record in this matter and the requirements of law, including the Motion for Final Approval and its accompanying declarations and exhibits, the Settlement Agreement, ECF No. 336-2; the Court’s November 17, 2022 Order granting preliminary approval (the “Preliminary Approval Order”), [ECF No. 341]; the statements made at the Final Approval Hearing held on February 24, 2023; and the Motion for Fees and Expenses. The Court finds that notice was issued to the proposed Settlement Class, that Defendants provided the relevant notices required by the Class Action Fairness Act, 28 U.S.C. § 1715, and that 90 days have passed since those notices were served on the appropriate federal and state officials.

The Motion for Final Approval and Motion for Fees and Expenses are **GRANTED** and it is **ORDERED** as follows:

1. This Final Judgment and Order of Dismissal as to all Defendants incorporates by reference the definitions in the Settlement Agreement, and all capitalized terms used but not defined herein shall have the same meanings as in the Settlement Agreement.

2. For the reasons discussed below, the Court has jurisdiction over the subject matter of the Litigation and over all parties to the Settlement Agreement, including all Settlement Class Members.

3. The notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, have been satisfied.

Certification of the Settlement Class

4. The court hereby certifies the following Settlement Class solely for settlement purposes:

All persons and entities who indirectly purchased, for resale, Defendants' farm-raised salmon or products derived therefrom in any of the following states, districts, or territories: Alabama, Arizona, Arkansas, California, the District of Columbia, Florida, Guam, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, or Wisconsin.

5. The Court confirms, for settlement purposes only, that the Settlement Class meets the applicable requirements of Federal Rule of Civil Procedure 23(a) and (b)(3) as follows:

- a. The Settlement Class is ascertainable and consists of at least 40,692 and therefore satisfies the numerosity requirements of Federal Rule of Civil Procedure 23(a)(1).
- b. The case presents "questions of law or fact common to the class" and those questions can be resolved in a common manner for the entire class. Fed. R. Civ. P. 23(a)(2); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The antitrust claims here relate to Defendants' alleged anticompetitive conduct. These claims, as alleged in this case, involve common questions. *See In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 686 (S.D. Fla 2004).
- c. Plaintiffs' claims are typical of the class they seek to represent. Fed. R. Civ. P. 23(a)(3).
- d. Plaintiffs experienced the same alleged economic injury, stand to gain the same relief on a *pro rata* basis through the settlement, and have adequately

represented the Settlement Class. Class Counsel have substantial experience in complex antitrust litigation and have vigorously represented the interests of the class throughout this case. Accordingly, the Court finds that Plaintiffs and Class Counsel satisfy Federal Rule of Civil Procedure 23(a)(4).

- e. The common questions of law and fact related to Plaintiffs' antitrust claims predominate over any individual issues presented. Therefore, Plaintiffs have satisfied the predominance requirement of Rule 23(b)(3) for settlement purposes.
- f. A class is the superior method to adjudicate the antitrust claims in this case, as there are thousands of class members and class certification allows for an efficient and uniform resolution of the claims at issue. Therefore, the superiority requirements of Rule 23(b)(3) are also satisfied for settlement purposes.

6. This certification of the Settlement Class is for settlement purposes only and shall not constitute evidence in any other proceeding and may not be cited in support of the certification of any other proposed class.

7. The Court appoints Plaintiffs Portland Hunt-Alpine Club, LLC, Prime Steakhouse, Mamme Inc., Rocca Kurt's Brothers Inc., Stephen T. Deangelis, Inc., Amy Mehaffey, Nautical Okoboji LLC, People's Food Cooperative, Inc., Classic City Catering, Inc., and Bama Seafood, Inc. as class representatives for settlement purposes.

8. The Court hereby appoints the law firms of Zwerling, Schachter & Zwerling LLP (Fred T. Isquith, Sr.) and Lockridge Grindal Nauen P.L.L.P. (Heidi M. Silton), to serve as co-lead Class Counsel for the Settlement Class, having found the requirements of Rule 23(g) satisfied.

Notice to the Settlement Class

9. As shown by the record, the Court finds that notice has been provided to the Settlement Class in the manner approved and directed by the Preliminary Approval Order. The Court concludes that this notice provided the best notice practicable under the circumstances and that it adequately notified class members of the action, the Court's preliminary certification decision, the terms of the settlement, and rights of class members to opt-out of or object to the settlement. The Court finds that Plaintiffs' Motion for Fees and Expenses was made available to

the Settlement Class in advance of the opt-out and objection deadlines, and that the class therefore had notice of the fees and expenses sought.

10. The Court concludes that it may exercise jurisdiction over the Settlement Class and its members because adequate notice was provided, consistent with the Federal Rules of Civil Procedure and constitutional due process.

Final Approval of Settlement Agreement

11. The Court finds that the settlement as set forth in the Settlement Agreement was fairly and honestly negotiated by counsel with significant experience in antitrust class action litigation and resulted from good faith, arm's-length negotiations with assistance from United States Magistrate Judge Edward Infante (retired), an experienced mediator of complex cases.

12. After consideration of the requirements of Federal Rule of Civil Procedure 23(e) and factors set forth in *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984), the Court finds as follows:

- a. Class Representatives and Class Counsel have adequately represented the interests of the Settlement Class.
- b. The settlement was negotiated at arm's-length and there was no fraud or collusion underlying the Settlement Agreement.
- c. The relief provided to the Settlement Class is adequate, especially in light of the significant costs, risks, and delay of further litigation. The Court has specifically considered the risks associated with a complex, antitrust case brought by indirect purchasers under the laws of 34 jurisdictions when making this determination.
- d. The proposed allocation plan, which distributes the settlement fund to the Settlement Class on a *pro rata* basis, is an effective and equitable way to distribute relief to the class.

13. The response of the Settlement Class to the settlement has been positive, which further supports the Court's findings of fairness.

14. Accordingly, the Court grants final approval of the settlement as set forth in the Settlement Agreement under Federal Rule of Civil Procedure 23(e) because the settlement is fair, reasonable, and adequate, in the best interests of the parties, and in compliance with applicable law, including the Federal Rules of Civil Procedure, the United States Constitution, and the Class

Action Fairness Act. The Settlement Agreement is therefore binding on all Settlement Class Members.

Settlement Class Counsel's Motion for Fees and Reimbursement of Expenses

15. Class Counsel has filed a motion seeking an award of attorneys' fees in the amount of 30% of the gross settlement fund, which is \$9,900,000. This amount is consistent with the Settlement Agreement and the Settlement Class had sufficient notice prior to the opt-out and objection deadlines.

16. The Supreme Court and the Eleventh Circuit have recognized that federal courts have the authority to award attorneys a reasonable fee as a percentage of a common fund obtained for a class. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1293 (11th Cir. 1999); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 999 F.3d 1247, 1278 (11th Cir. 2021).

17. The Court has considered the 12 factors set forth in *Camden I*, 946 F.2d at 772 n.3, the Motion for Fees and Expenses and its supporting exhibits filed by the parties, and the record in this case, and finds as follows:

- a. Class Counsel have substantial experience and a strong reputation for prosecuting antitrust cases and have vigorously advocated for the Settlement Class throughout this litigation, investing substantial time and labor into the case for the benefit of the class.
- b. This case involved difficult and complex legal issues due to the nature of the legal claims in the case and the application of laws of 34 jurisdictions.
- c. Class Counsel represented the class on a contingent basis and therefore bore the risk of non-recovery.
- d. The percentage of the settlement fund requested by Class Counsel is within the range that is customary and reasonable in recent complex actions in this District, and is on par with awards in indirect purchaser antitrust cases nationwide.

18. Accordingly, the Court approves the application for attorneys' fees in the amount of \$9,900,000, to be paid from the settlement fund.

19. The Court also concludes that Class Counsel are entitled to reimbursement of litigation expenses that were reasonable and necessary to the prosecution of this case. *See Waters*, 190 F.3d at 1299. The Court has reviewed the expenses incurred as detailed in the Motion for Fees and Expenses and the accompanying declaration, and finds that the expenses are of a kind with expenses that courts in this District have recognized as reasonable and necessary. These expenses were reasonable and necessary to the prosecution of this case. Accordingly, the Court approves the application for reimbursement of \$1,278,166.09 in expenses, to be paid from the settlement fund.

Dismissal of Claims and Release

20. The Litigation and all claims contained therein, as well as all of the Released Claims, against any of the Released Parties by the Indirect Purchaser Plaintiffs, Settlement Class Members, and Releasing Parties are hereby dismissed with prejudice. The parties are to bear their own costs, except as otherwise specified by the Settlement Agreement and this Order.

21. Upon the Effective Date as defined in the Settlement Agreement, each of the Releasing Parties: (a) shall be deemed to have, and by operation of this Order and the Final Judgment entered thereby, waived and released (i) all Released Claims against the Released Parties and (ii) any rights to the protections afforded under California Civil Code section 1542 or any law of any state, territory, or district of the United States, or principle of common law, which is similar, comparable, or equivalent to section 1542 of the California Civil Code, or any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release; (b) shall forever be barred from initiating, asserting, maintaining, or prosecuting any and all Released Claims against any Released Party.

22. This dismissal shall not affect, in any way, the right of the Indirect Purchaser Plaintiffs and Settlement Class Members to pursue claims, if any, outside the scope of the Released Claims.

23. Neither the settlement, nor the Settlement Agreement and its contents, including without limitation its exhibits and any and all statements, negotiations, documents, and discussions associated with it, shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing or of the truth of any of the claims or allegations contained in the complaints in the Litigation or any other pleading or filing, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in

the Litigation or in any other action or proceeding. This Settlement Agreement shall not be construed as an admission of liability or wrongdoing, or used as evidence of liability, for any purpose in any legal proceeding, claim, regulatory proceeding, or government investigation. The Settlement Agreement may be filed in an action to enforce or interpret the terms of the Settlement Agreement, the settlement contained therein, and any other documents executed in connection with the performance of the agreements embodied therein. The Released Parties may file the Settlement Agreement and/or this Order of Dismissal in any action that may be brought against them in order to support a defense or counterclaim based on the principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

24. Without affecting the finality of this Order of Dismissal and the Final Judgment entering thereby, in any way, the Court hereby retains continuing jurisdiction over the Settlement Agreement for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of the Settlement Agreement, or relating to the award of fees and expenses and any allocation thereof. Any disputes concerning matters contained in the Settlement Agreement, if they cannot be resolved by negotiation and agreement, shall be submitted, in the first instance, for mediation before Judge Edward Infante (retired) in his capacity as mediator, and if not then resolved, shall be submitted to the Court.

25. If the settlement set forth in the Settlement Agreement is terminated pursuant to the Settlement Agreement, then the Settlement Agreement (including any amendments thereto) and this Order of Dismissal shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or referred to in any actions or proceedings by any Person, and each Party shall be restored to his, her, or its respective position as it existed prior to the execution of the Settlement Agreement.

26. Except as otherwise provided herein, in the event the Settlement Agreement is terminated, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties to the Settlement Agreement shall be deemed to have reverted to their respective status in the Litigation as of the Execution Date, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered, and all amounts paid by Defendants into the Settlement Fund (other than costs that may already have reasonably been incurred or expended in accordance with the Settlement

Agreement, such as notice and administration) shall be returned to Defendants from the Escrow Account along with any interest, income, or proceeds consolidated therewith, within ten (10) business days after such order becomes final and non-appealable.

27. There is no just reason for delay in the entry of this Final Judgment and Order of Dismissal and immediate entry by the Clerk of the Court is expressly directed pursuant to Federal Rule of Civil Procedure 54.

LET JUDGMENT BE ENTERED ACCORDINGLY.

_____, 2023

Hon. Rodney Smith
United States District Judge