

**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  
PRELIMINARY APPROVAL OF SETTLEMENT WITH ALL DEFENDANTS,  
PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS, AND APPROVAL  
OF CLASS NOTICE AND INCORPORATED MEMORANDUM OF LAW**

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## I. INTRODUCTION

Plaintiffs, indirect purchasers of farm-raised salmon (“IPPs” or “Plaintiffs”), brought this case against Norwegian salmon producers alleging anticompetitive conduct that artificially inflated farm-raised salmon prices in the United States. After three years of litigation, Plaintiffs have obtained a class-wide settlement of \$33 million. *See* Declaration of Heidi M. Silton in Supp. of Mot. for Prelim. Approval (“Silton Decl.”) Ex. 1 (“Settlement Agreement”). This is an excellent result for the class and avoids lengthy litigation and the uncertainties inherent in prosecuting a complex indirect-purchaser action against foreign Defendants. When ultimately called on to review this settlement for final approval, this Court is likely to approve the settlement. Therefore, Plaintiffs respectfully submit that this Court should preliminarily approve the settlement, preliminarily certify the settlement class, approve the proposed notice plan, direct notice to the settlement class, and schedule a fairness hearing.<sup>1</sup> *See* Fed. R. Civ. P. 23(e); *Manual for Complex Litigation* (Fourth) § 21.63 (2004).

## II. BACKGROUND

On May 24, 2019, Plaintiff, Wood Mountain Fish, LLC,<sup>2</sup> filed this case alleging unlawful coordination of prices charged to indirect purchasers of farm-raised salmon and salmon products (“Salmon”). ECF No. 1 ¶ 1.<sup>3</sup> These allegations were based on publicly available information, including investigations into potential antitrust violations by the European Commission. *Id.* ¶ 32. The Court appointed Interim Co-Lead Class Counsel, *see* ECF Nos. 24, 92, and consolidated another case filed on behalf of indirect purchasers with the *Wood Mountain* case. *See* ECF No. 101.

Shortly before Plaintiffs filed this case, direct purchaser plaintiffs (“DPPs”) of Salmon filed suit against Defendants on April 23, 2019. *See* Complaint, *In re Farm-Raised Salmon & Salmon Prods. Antitrust Litig.*, Case No. 19-cv-21551 (DPP ECF No. 1).<sup>4</sup> Plaintiffs’ motion to transfer and

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<sup>1</sup> The Court granted the parties’ joint motion for a stay on September 22, 2022. Plaintiffs request that the Court continue the stay of all proceedings pending final resolution of the settlement. *See* Settlement Agreement ¶ 5.

<sup>2</sup> Wood Mountain Fish, LLC has been voluntarily dismissed from this case. *See* ECF No. 271.

<sup>3</sup> Unless otherwise indicated, all ECF citations in this brief refer to the docket in this case.

<sup>4</sup> In this brief, all references to documents filed in the DPP action, *In re Farm-Raised Salmon*, 19-cv-21551, will be referred to as “DPP ECF No. ##.”

coordinate the indirect and direct actions was denied. ECF No. 14. Because the two cases had similar factual bases and the same defendants, the parties coordinated discovery under the oversight of Magistrate Judge Louis while proceeding on separate tracks. In the DPP case, Judge Altonaga denied a motion to dismiss in June 2021, DPP ECF No. 307, and that action was scheduled to progress more quickly than this action.

IPPs amended their complaint April 22, 2021, further refining their allegations, adding more plaintiffs and an additional defendant, Cermaq. ECF No. 178. Prior to this, Defendants produced documents to government investigators and produced those same documents to IPPs. IPPs set up a review team and coding manual and reviewed tens of thousands of pages of those documents, many of which were in Norwegian. This review, combined with their continued review of relevant economic and industry literature, allowed them to make significant refinements to the complaint further supporting their claims.

On July 30, 2021, IPPs filed the Second Amended Complaint (“SAC”), which is the operative pleading. ECF No. 217. The SAC added parties and noted an ongoing antitrust investigation into Defendants’ conduct by the U.S. Department of Justice. *See, e.g.*, SAC ¶ 95. Plaintiffs alleged that Defendants leveraged their market power to fix, maintain, and raise the price of Salmon by exchanging pricing and other competitively sensitive information with one another. *Id.* ¶ 8. IPPs allege the primary mechanism for this coordination was the development and manipulation of the Nasdaq Salmon price index, NQSalmon. *Id.* ¶ 9. Plaintiffs brought claims for injunctive relief under Sections 1 and 3 of the Sherman Act and claims for damages under the laws of 32 states, the District of Columbia, and Guam. *Id.* ¶¶ 277–575. Currently, the named plaintiffs 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. *See* SAC ¶¶ 18–28; ECF No. 271. Defendants moved to dismiss the SAC, but the case settled before the Court resolved that motion.<sup>5</sup>

Since discovery commenced, Defendants produced more than 872,000 documents. In addition to responding to numerous interrogatories and requests for production in the direct action, Defendants responded to 19 requests for production and three interrogatories from the IPPs. IPPs

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<sup>5</sup> After the parties executed the settlement agreement, they jointly moved to stay the case, and the Court granted that request.

hired Norwegian-language translators to review and translate Defendants' documents, established a document review protocol, managed weekly calls with the review team, and reviewed documents translated and flagged by the reviewers. This review only intensified in the months leading up to the settlement, as IPPs identified production gaps and began the meet-and-confer process to obtain additional discovery from each defendant. In addition to pursuing discovery from the Defendants, IPPs served 17 subpoenas on third parties, engaged in numerous meet-and-confers with those parties, and received and reviewed their productions. IPPs worked with their expert witness to identify appropriate parties to subpoena and specify the data needed to analyze the Salmon sales in the U.S.

With DPPs, IPPs jointly deposed Defendants' corporate representatives under Rule 30(b)(6), pushing the litigation forward with efficiency. IPPs participated in numerous discovery conferences, reviewed thousands of documents, and litigated discovery motions. *See, e.g.*, ECF Nos. 290, 305. IPPs reviewed documents identified and translated by their review team on an ongoing basis from November 2021 until a settlement was reached. Through that process, IPPs worked with the Norwegian-language reviewers to craft targeted searches for evidence in the case. This work allowed IPPs to initiate a set of discovery requests unique to each defendant, in addition to new global requests. With the assistance of their expert, IPPs also analyzed Defendants' sales transaction data to prove damages on a class-wide basis, incurring costs in the process.

While reviewing Defendants' productions, IPPs reviewed documents to respond to Defendants' discovery requests, including 34 requests for production. Each Plaintiff identified responsive documents, which took considerable effort because many Plaintiffs are small businesses, including family-owned businesses and a sole proprietorship. For example, caterer Amy Mehaffey's records were stored on a personal computer and on paper in boxes. Restaurant Prime Steakhouse's records were all on paper in banker's boxes. IPPs hired a vendor to assist with electronic document collection. In total, IPPs reviewed over 50,000 documents and produced a first set of responsive records to Defendants on June 22, 2022.

IPPs retained an expert to analyze Defendants' data and assess the antitrust impact of Defendants' alleged conduct on the proposed class. IPPs' expert performed initial work to ensure the relevant information was obtained in discovery to assess the economic effect of the alleged antitrust conspiracy on indirect purchasers, including research and discussion with counsel regarding the Salmon production and distribution market and analysis of the appropriate third



parties whose sales data would be needed for the expert's damages model. IPPs arranged for Defendants' data to be analyzed and processed into a usable format, sharing these data-cleaning costs with the DPPs, ultimately reducing the costs IPPs would have otherwise incurred.

After a Court-ordered mediation in the DPP case, Defendants reached a settlement agreement with the DPPs for \$85 million. DPP ECF No. 524 at 3. That agreement was executed on May 25, 2022. *Id.* IPPs and Defendants engaged the same mediator who oversaw the DPP mediation, the Honorable Edward Infante, retired Chief Magistrate Judge in the Northern District of California. After several weeks of intense and hard-fought negotiations following an in-person mediation session and additional sessions by video conference and telephone, IPPs reached a settlement agreement with all Defendants, which was executed on September 8, 2022. *See* Settlement Agreement at 26–31.

The Settlement Agreement proposes to release all claims in this case in exchange for a \$33 million payment, inclusive of class recovery amounts, fees, and costs. *Id.* ¶¶ 1.s, 1.w, 2a, 16. The Settlement Agreement requires Plaintiffs to submit a motion for preliminary approval to the Court, *id.* ¶ 5, and seek certification of the following “Settlement Class” for settlement purposes only:

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.

*Id.* ¶ 6. 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.

The Settlement Agreement establishes a process for providing notice to the Settlement Class and allowing for class members to opt out of the settlement, subject to court approval. *Id.* ¶¶ 7–8. This process would be overseen by a third-party “Settlement Administrator.” *Id.* ¶ 7.a. The Settlement Agreement allows “[a]ny person who has not requested exclusion from the Settlement Class” to object to the settlement by properly submitting a written objection to the Court. *Id.* ¶ 10. The objection must include a notice of intention to appear, proof of membership in the Settlement Class with evidence of indirect purchases of Defendants’ Salmon, and the specific grounds of the objection, including any exhibits. *Id.* If the Court grants preliminary approval, Defendants have agreed to pay the settlement amount into an escrow account within 10 days after preliminary approval. *Id.* ¶ 2.b. At the conclusion of the notice period established by the Court, Plaintiffs agree to move for final approval of the settlement and seek certification of the settlement class and dismissal of the litigation, thereby releasing the Defendants from all claims by the Settlement Class related to the conduct alleged in this case. *Id.* ¶ 9. Attorney’s fees for class counsel, who have prosecuted this case on a contingent basis, may not exceed 30% of the Settlement Fund. *Id.* ¶ 14.a.

In addition to the Settlement Agreement, the parties have separately reached a “Supplemental Agreement” that permits Defendants to terminate the settlement in the event that a certain number of indirect purchasers opt out of the settlement. *Id.* ¶ 19. The terms of this supplemental agreement will remain confidential and will only be disclosed to the Court for *in camera* review upon request. Together, the Settlement Agreement and the Supplemental Agreement represent the complete agreement between the parties. *Id.* ¶ 36.

IPPs have asked several possible notice and claims administration vendors to submit competitive bids and have fully vetted the resulting proposals. IPPs propose appointing KCC as the Settlement Administrator.<sup>6</sup> KCC has proposed a notice program that identifies likely class members by purchasing commercially available lists of contact information for restaurants, caterers, grocery stores, institutions, and other entities. Peak Decl. ¶¶ 9–10. The notice program will email the notice to the business email address of each potential class member or, if an emailing address is unavailable, to the business’s mailing address. *Id.*; see Siltan Decl. Ex. 2 (“Long Form Notice”), Ex. 3 (“Short Form Notice”), Ex. 4 (“Email Notice”). The notice program will also

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<sup>6</sup> KCC is an experienced notice provider and class action settlement administrator, as set forth more fully in the accompanying Declaration of Carla A. Peak in Support of Indirect Purchaser Settlement Notice Program (“Peak Decl.”) ¶¶ 5–9.

publish the notice through industry newsletters likely to be read by potential class members. *Id.* ¶¶ 12–13.

IPPs propose allocating the settlement proceeds on a *pro rata* basis to eligible Settlement Class members in proportion to the total amount of the net Settlement Fund. Silton Decl. Ex. 5 (“Plan of Allocation”) at 1. The *pro rata* distribution will be based upon 100% of the purchase price of qualifying purchases documented in the class member’s claim form, which may be subject to auditing by the Settlement Administrator. *See* Silton Decl. Ex. 6 (“Settlement Claim Form”). The claims process will allow class members the opportunity to correct any deficiencies with their claim submission and object to a purchase amount they believe was incorrectly calculated. Plan of Allocation at 2–3.

### **III. LEGAL STANDARD**

Class action claims may only be settled with the court’s approval “after a hearing and only on finding that [the settlement] is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *In re Equifax Inc. Customer Data Breach Sec. Litig.*, 999 F.3d 1247, 1273 (11th Cir. 2021). Before approving a settlement, the court must direct notice of a settlement “to all class members who would be bound by the proposal if giving notice is justified by the parties’ showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B). Accordingly, the notice process requires a court to assess if a proposed settlement is likely to meet the requirements of Rule 23(e)(2) and whether the court is likely to certify the class for the purposes of settlement. This process is preliminary in nature and a court’s findings at this stage are conditioned upon final approval. *See, e.g., Fruitstone v. Spartan Race, Inc.*, Case No. 1:20-cv-20836, 2021 WL 354189, at \*1 (S.D. Fla. Feb. 2, 2021); *Ervin v. Scotts Co., LLC*, Case No. 17-60344-CIV, 2020 WL 13413684, at \*1 (S.D. Fla. Oct. 15, 2020).

Rule 23(e)(2) requires a court to 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 courts to weigh six additional factors on motions for class settlement approval: "(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." *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); see *In re Equifax*, 999 F.3d at 1273. "Determining the fairness of the settlement 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.

The settlement notice process requires a court to consider the likelihood of certifying the settlement class. Fed. R. Civ. P. 23(e)(1)(B). The 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).

#### **IV. ARGUMENT**

For the reasons discussed below, the Court should preliminarily approve the Settlement Agreement, preliminarily certify the Settlement Class, and approve the proposed notice form.

##### **A. The Court Is Likely to Approve the Settlement.**

"Under Rule 23(e), approval should be given so long as the settlement is 'fair, adequate and reasonable and is not the product of collusion between the parties.'" *Fla. Educ. Ass'n v. Dep't of Educ.*, 447 F. Supp. 3d 1269, 1275 (N.D. Fla. 2020) (quoting *Bennett*, 737 F.2d at 986). After more than three years of litigation, Plaintiffs secured a \$33 million settlement to compensate a class of indirect purchasers of Salmon for Defendants' alleged violations of the antitrust laws. Although Plaintiffs have engaged in substantial discovery and vigorously litigated this case, much remains to be done absent settlement. The settlement will avoid the uncertainties, risks, and costs of years of continued litigation against foreign Defendants who largely conducted their business

in the Norwegian language. Rule 23 and circuit precedent establish several factors to analyze the fairness of a settlement, all of which weigh in favor of settlement here.

**1. Class Counsel and Plaintiffs Vigorously Represented the Settlement Class.**

Throughout this case, class counsel and Plaintiffs have vigorously represented the interests of the Settlement Class, easily satisfying the adequacy requirement of Rule 23(e)(2)(A). Class counsel investigated the claims prior to filing the first complaint, which contained detailed factual allegations, and amended the complaint twice, resulting in a complaint of over 120 pages. Counsel responded to a motion to dismiss while simultaneously pursuing discovery. *See* ECF No. 245.

Class counsel have diligently represented the interests of the IPP class. Judge Altonaga denied Defendants' motion to dismiss the DPP action on March 23, 2021. DPP ECF No. 307. Discovery began in earnest in both cases. Although the IPP case was at a different stage, the discovery issues in the DPP case largely applied to the IPP case, and IPPs participated in discovery conferences with the parties in that matter. IPP and DPP class counsel shared access to a single database with Defendants' and third parties' documents and shared document reviewer resources. Document review was particularly challenging in this case, as the key documents—for example, communications among Defendants—were largely in Norwegian, and thus had to be searched and reviewed in Norwegian and translated into English. Plaintiffs also coordinated with DPPs for Rule 30(b)(6) depositions of Defendants, jointly conducting 10 depositions and jointly questioning each witness. IPPs also took one deposition after the DPPs had resolved their claims.

After the DPPs reached a settlement with Defendants, the IPPs continued pursuing additional discovery, serving discovery for information specific to indirect purchaser issues and for additional information not included within Defendants' productions, which Plaintiffs identified based on their own review and analysis. Plaintiffs sought additional documents and custodians from each defendant. With SalMar, the dispute advanced to motion practice and class counsel argued the motion before Magistrate Judge Louis, who ordered further meet and confers. *See* ECF Nos. 305, 322. Prior to reaching a settlement, Plaintiffs had begun negotiations with all Defendants for additional information and were prepared to advance to motion practice if necessary.

IPPs adequately represented the interests of the class, responding to Defendants' discovery requests and producing thousands of documents. To make this production, Plaintiffs had to pull thousands of paper and electronic records. Because Plaintiffs are mostly small businesses,

including one sole proprietorship, this document collection was burdensome. Class counsel reviewed over 50,000 documents and had begun a rolling production of responsive documents before settlement. Most Plaintiffs are small businesses without sophisticated recordkeeping systems or extra staff to conduct review. Nevertheless, these Plaintiffs worked diligently to produce documents to Defendants. Additionally, class counsel reviewed Defendants' productions and oversaw a team of Norwegian language reviewers to do so. IPPs retained an expert to analyze damages and consider the impact of the alleged conspiracy on IPPs, as Salmon purchasers downstream from the direct purchasers. Thus, both Plaintiffs and class counsel have adequately represented the interests of the class.

## **2. The Parties' Negotiations Were At Arm's Length.**

Settlement negotiations in this case were conducted before the Honorable Edward Infante, retired federal Magistrate Judge from the Northern District of California. "The involvement of 'an experienced and well-known' mediator 'is also a strong indicator of procedural fairness.'" *Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295 (5th Cir. 2017) (quoting *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012)); see 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."). Judge Infante is just such a mediator, with extensive experience in complex litigation—including a successful mediation in the DPP case, which led to a settlement that was finally approved by the Court. See Siltan Decl. Ex. 7 (Judge Infante Biography).

Moreover, Plaintiffs had conducted substantial discovery and were thus well-informed about the strength of their case and risks of continued litigation. "Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness." *Ervin*, 2020 WL 13413684, at \*4; see *Eisenband v. Schumacher Automotive, Inc.*, Case No. 18-cv-80911, 2019 WL 1301746, at \*4 (S.D. Fla. Feb. 20, 2019) (quoting *Manual for Complex Litigation* (Third) § 30.42 (1995)).

Finally, IPPs continued to litigate the case aggressively until a settlement was reached. In the months leading up to settlement, litigation only intensified. On June 22, 2022, IPPs produced documents to Defendants in response to their Requests for Production. IPPs argued a motion to compel production from Defendant SalMar before Magistrate Judge Louis on July 11, 2022. The

parties' negotiations were at arm's-length and the circumstances of the settlement support that conclusion.

### **3. Plaintiffs Negotiated Appropriate and Adequate Relief.**

The Settlement Agreement provides the class with adequate relief, especially in light of the stage of the litigation, complexity of the case, and costs of delayed relief. Rule 23(e)(2)(C) sets forth four factors relevant to measuring the adequacy of relief. Each consideration demonstrates the adequacy of the \$33 million settlement Plaintiffs obtained for the Settlement Class.

First, "the costs, risks, and delay of trial and appeal" show that the relief here is more than adequate. Fed. R. Civ. P. 23(e)(2)(C)(i). The Court has not yet ruled on Defendants' motion to dismiss and, although Plaintiffs have engaged in substantial discovery, it would likely be years before a trial would occur. Additionally, this case involves foreign defendants, introducing further complications likely to delay litigation. For example, Defendants have raised issues related to Norwegian and European privacy laws to object to discovery—issues that likely would only be resolved through motion practice. The risk and cost of years of litigation before trial, and the possibility of subsequent years of appeals, weigh heavily in favor of finding that the settlement is adequate. *See, e.g., Greco v. Ginn Dev. Co., LLC*, 635 F. App'x 628, 633 (11th Cir. 2015); *In re Motorsports Merchandise Antitrust Litig.*, 112 F. Supp. 2d 1329, 1334 (N.D. Ga. 2000).

Second, Plaintiffs have proposed an effective "method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). The Settlement Agreement establishes a settlement fund that, after costs, attorney's fees, and expenses have been paid, will be used solely for the benefit of the Settlement Class. Defendants have no right of reversion. Settlement Agreement ¶ 2.d. Should any *de minimis* funds remain after funds have been distributed to the class, the residual funds would be subject to *cy pres* distribution only upon application to the Court. *Id.*; *see Nelson v. Mead Johnson & Johnson Co.*, 484 F. App'x 429, 435 (11th Cir. 2012) (holding that a potential *cy pres* distribution "was a permissible method to distribute unclaimed [class] settlement funds"). The settlement will provide cash relief to the Settlement Class on a *pro rata* basis. Courts have recognized the adequacy of a non-reversionary fund distributed on a *pro rata* basis. *See, e.g., George v. Academy Mortg. Corp. (UT)*, 369 F. Supp. 3d 1356, 1379 n.6 (N.D. Ga. 2019).

The proposed notice method involves targeted email notices and short form notice mailings to the business address of entities likely to have indirectly purchased Defendants' Salmon during



the Class Period. *See* Peak Decl. ¶¶ 9–10; *see* Short Form Notice; Email Notice. The direct notice program will be supplemented by publishing the notice in industry newsletters most likely to be read by class members. *See id.* at ¶¶ 12–13. These notices will direct the class to the settlement website, which will contain the Long Form Notice. *Id.* ¶¶ 9, 10, 14; *see* Long Form Notice. Because the Settlement Class consists of indirect purchasers who do not have a direct sales relationship with the Defendants, the class cannot be identified using Defendants’ sales data. To identify class members, the Settlement Administrator will obtain commercially available lists of hundreds of thousands of entities likely to have purchased Salmon for resale during the Class Period. Peak Decl. ¶¶ 9–11. The Settlement Administrator will obtain these lists through a third party that aggregates contact information categorized by Standard Industrial Classification (“SIC”) codes. *Id.* ¶ 9. To obtain relief, the Settlement Class members must submit a completed Settlement Claim Form and verify the amount of Salmon purchased during the Class Period. Settlement Claim Form at 2.

Third, the proposed award of attorneys’ fees is reasonable. Fed. R. Civ. P. 23(e)(2)(C)(iii). The Settlement Agreement specifies that Class Counsel may seek up to 30% of the Settlement Fund for a fee award, a benchmark at or below amounts courts in other class cases have found reasonable. Settlement Agreement ¶ 14.a; *see, e.g., Vasquez v. Scotts Co., LLC*, Case No. 17-60344, 2021 WL 8946148, at \*4 (S.D. Fla. May 24, 2021) (approving award of one-third of the settlement payment); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011); *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999). In the DPP case, the court recently approved a fee of 30%. *See* DPP ECF No. 543 ¶ 15. Class Counsel will seek to reimburse costs from the settlement fund, consistent with the Settlement Agreement. *See* Settlement Agreement ¶ 2. Throughout this litigation, Class Counsel has coordinated with the DPPs to maximize efficiencies and avoid incurring duplicative costs for document review, depositions, and experts.

Fourth, Plaintiffs have identified “any agreement made in connection with the proposal.” Fed. R. Civ. P. 23(e)(3); *see id.* 23(e)(2)(C)(iv). The only agreements are the Settlement Agreement and the Supplemental Agreement. The Settlement Agreement is being concurrently filed with this motion. The parties have agreed to make the Supplemental Agreement available to the Court for *in camera* review upon request.



Based on the factors under Rule 23(e)(2)(C), the Settlement Agreement adequately compensates the class for the antitrust injuries alleged in this case, especially in light of the stage of litigation at which the settlement was obtained.

**4. The Settlement Agreement Treats Class Members Equitably.**

A class settlement treats class members equitably when it establishes a fair method of processing claims and distributes funds on a *pro rata* basis. Fed. R. Civ. P. 23(e)(2)(D); *see Lloyd v. James E. Albertelli, P.A.*, Case No. 20-cv-60300, 2020 WL 7295767, at \*1 (S.D. Fla. Dec. 10, 2020); *see also Juris v. Inamed Corp.*, 685 F.3d 1294, 1328 n.31 (11th Cir. 2012). The proposed notice program here will distribute funds to the Settlement Class on a *pro rata* basis. Plan of Allocation at 1. Courts have found allocation plans to be fair, reasonable, and adequate where funds are distributed *pro rata* based on the amount of the product purchased by each class member, including in actions arising under different state laws. *See, e.g., Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 327 (3d Cir. 2011) (en banc) (affirming *pro rata* settlement distribution where claims arose under state laws); *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, Master File No. M-02-1486-PJH, 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) (same); *In re Packaged Ice Antitrust Litig.*, No. 08-MDL-01952, 2011 WL 6209188, at \*15 (E.D. Mich. Dec. 13, 2011) (approving *pro rata* distribution based on amount purchased; *In re Airline Ticket Comm’n Antitrust Litig.*, 953 F. Supp. 280, 284–85 (D. Minn. 1997) (same); *In re Corrugated Container Antitrust Litig.*, 556 F. Supp. 1117, 1129 (S.D. Tex. 1982) (same). Therefore, this factor weighs in favor of preliminary approval.

**5. The Bennett Factors Weigh In Favor of Preliminary Approval.**

The *Bennett* factors similarly weigh in favor of preliminary approval. *See Bennett*, 737 F.2d 986. Although Plaintiffs have confidence that they would succeed at trial, having already obtained and reviewed significant evidence in discovery, success at trial is not a certainty. This is especially true in antitrust cases, which are “arguably the most complex action to prosecute,” in part because “[t]he legal and factual issues involved are always numerous and uncertain in outcome.” *In re Motorsports*, 112 F. Supp. 2d at 1337. The complexity of this antitrust case is even more pronounced because the Defendants are foreign entities, most of the evidence is in the Norwegian language, relevant evidence may be shielded from discovery by the law of foreign jurisdictions, and Plaintiffs must establish evidence of the downstream impact Defendants’ alleged

anticompetitive conduct had on indirect purchasers of Salmon. These are among the “complex, novel issues” often presented by antitrust cases. *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258 F.R.D. 545, 559 (N.D. Ga. 2007). Accordingly, the first and fourth *Bennett* factors, likelihood of success at trial and the complexity, expense, and duration of the litigation, favor settlement. *Bennett*, 737 F.2d at 986.

As to the second and third 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,” these also weigh in favor of this settlement. *Id.* The \$33 million recovery is substantial and was reached through arm’s-length negotiations by counsel with deep experience in antitrust litigation after extensive discovery and overseen by a well-qualified mediator. *See* Sifton Decl. Exs. 8, 9 (Interim Co-Lead Counsel Resumes). Courts have acknowledged that these factors introduce a “presumption of fairness.” *See Ervin*, 2020 WL 13413684, at \*4; *Eisenband*, 2019 WL 1301746, at \*4; *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 661–62 (S.D. Fla. 2011). The range of possible recovery in an indirect case is generally lower than in a direct case. Total damages are lower because indirect actions for damages cannot be brought in all U.S. jurisdictions because only certain jurisdictions allow indirect purchaser actions, thereby reducing the amount of commerce affected by Defendants’ alleged conspiracy. The effort by experts is multiplied from that required in a direct case because they must show the damages were passed on by direct purchasers to indirect purchasers. Because of additional technical and legal complexity, indirect purchasers face more uncertainty on class certification than direct purchasers do. The settlement obtained here, as compared to the direct purchaser settlement, accounts for these risks.

The fifth *Bennett* factor, opposition to the settlement, is likely to weigh in favor of the settlement. Plaintiffs do not anticipate substantial objections—indeed, no class members objected to the recently approved settlement in the direct action. DPP ECF No. 539 at 1. The sixth *Bennett* factor, the stage of litigation, weighs heavily in favor of settlement. As discussed above, this settlement was reached early in this litigation.

Thus, analysis under the *Bennett* factors shows that the settlement is likely to approved.

#### **B. The Proposed Settlement Class Should Be Preliminarily Certified.**

To issue a notice for the Settlement Class, the Court must consider whether the class is likely to be certified. Fed. R. Civ. P. 23(e)(1)(B). Here, the settlement class meets the requirements of Rule 23(a) and 23(b)(3). The Settlement Agreement proposed a class of “[a]ll persons and

entities who indirectly purchased, for resale, Defendants’ farm-raised salmon or products derived therefrom” in the jurisdictions for which Plaintiffs have pleaded a damages claim for the antitrust law violations alleged in the SAC. Settlement Agreement ¶ 6.

The class definition proposed differs from the classes defined in the SAC by combining the classes for each state into a single class. *See id.* By combining the classes pleaded into a single class for settlement purposes only, the Settlement Class will be more easily explained to the class members. Courts have approved such settlement classes in indirect-purchaser antitrust actions. *See, e.g., In re Packaged Ice Antitrust Litig.*, 322 F.R.D. 276, 282 (E.D. Mich. 2017); *In re Liquid Aluminum Sulfate Antitrust Litig.*, Civil No. 16-md-2687, 2019 WL 7375288, at \*2 (D.N.J. Nov. 7, 2019); *see also Sullivan*, 667 F.3d at 297–98 (affirming certification of settlement class over objections related to state law issues in part because “each putative class member suffered the same alleged injury as a result of [defendant’s] anticompetitive conduct, irrespective of the vagaries of applicable state laws”). The Eleventh Circuit has affirmed a multi-state settlement class where there were not substantial differences in state law as to justify separate subclasses. *In re Equifax*, 999 F.3d at 1276.

**1. The Settlement Class Is Sufficiently Numerous.**

The Settlement Class is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). This class is estimated to consist of nearly 400,000 businesses that purchased Salmon for resale across 32 states, the District of Columbia, and Guam. Settlement Agreement ¶ 6; Peak Decl. ¶¶ 9–10. For example, the class includes every restaurant or caterer who sold Salmon for resale from April 10, 2013 to the date of preliminary approval. *See* Settlement Agreement ¶ 1.z (defining “Settlement Class Period” as the “the period between April 10, 2013 until the date of Preliminary Approval”); *accord* SAC ¶ 10. Joining hundreds of thousands of such class members would be impracticable.

**2. Common Issues of Law and Fact Exist.**

This case presents “questions of law or fact common to the class” that can be resolved in a common manner for the entire class in question. Fed. R. Civ. P. 23(a)(2); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). This requirement is a “low hurdle.” *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009). “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.” *In re Terazosin Hydrochloride*, 220 F.R.D. 672, 686 (S.D. Fla. 2004) (collecting cases).

Consistent with courts’ observations about the nature of antitrust claims, each of the claims for damages alleged turns on proving Defendants’ conspiratorial conduct “to fix, raise, maintain or stabilize the prices of farm-raised salmon sold in the United States and in each of the States alleged.” SAC ¶ 263(a). The class claims arise under different laws, but Defendants’ liability here turns on alleged common conduct that created an overcharge for Salmon throughout the chain of distribution in across the United States. Plaintiffs have alleged that Defendants followed the “law of one price” such that an increase in prices would be consistent globally and throughout the United States. SAC ¶¶ 227–234. Thus, under Plaintiffs’ allegations, the members of the Settlement Class were all affected by Defendants’ alleged price manipulation scheme in the same manner. Because the questions related to Defendants’ liability can be answered in a uniform manner across the class, the Settlement Class satisfies Rule 23’s commonality requirement. *See Sullivan*, 667 F.3d at 327–28.

### **3. Plaintiffs’ Claims Are Typical of the Settlement Class.**

Plaintiffs in this case include restaurants, grocery stores, and a caterer, and their claims are typical of the Settlement Class. *See Fed. R. Civ. P. 23(a)(3)*. A plaintiff’s claims are typical if “the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.” *Williams*, 568 F.3d at 1357. The representative must “possess the same interest and suffer the same injury” as the class. *Id.* This requirement “may be satisfied despite substantial factual differences when there is a strong similarity of legal theories.” *Id.* (internal alteration omitted).

Plaintiffs’ claims are typical of the class because they arise from the same alleged course of conduct; namely the Defendants’ anticompetitive scheme, and Plaintiffs allege that they suffered the same injury as Settlement Class members, paying increased prices for Salmon. Any factual differences between various types of class members (e.g., grocery stores or restaurants) are immaterial to the instant typicality analysis because all Settlement Class members are entities or individuals who resold Salmon that they purchased indirectly from Defendants for an allegedly inflated price.

**4. Plaintiffs and Class Counsel have Adequately Represented the Class.**

The Eleventh Circuit considers two questions to evaluate adequacy: “(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). First, there are no conflicts of interest between the Plaintiffs and the class. All stand to gain the same relief on a *pro rata* basis based on the amount of Salmon they purchased. See Plan of Allocation at 1. Second, as explained above, the Plaintiffs have vigorously represented the class and participated in substantial discovery. Class Counsel are highly experienced in antitrust litigation and have aggressively litigated this case to obtain the settlement in question. See Sifton Decl. Exs. 8, 9. The Settlement Class satisfies the adequacy requirement in Rule 23(a).

**5. Common Issues Predominate.**

The first aspect of Rule 23(b)(3) requires Plaintiffs to show that common issues of law or fact predominate over individualized issues. “Common issues of fact and law predominate if they have a direct impact on every class member’s effort to establish liability and on every class member’s entitlement to injunctive and monetary relief.” *Williams*, 568 F.3d at 1357 (internal alterations omitted). “Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws.” *Amchem Prods. Inc.*, 521 U.S. at 625. This is true for antitrust claims brought by indirect purchasers under state laws, as a court in this district held in an indirect purchaser action: “class certification pursuant to Rule 23(b)(3) is nonetheless appropriate where there is a commonality of substantive law applicable to all class members.” *In re Terazosin Hydrochloride*, 220 F.R.D. at 695. “[C]ourts repeatedly have held that the existence of a conspiracy is the predominant issue in price fixing cases, warranting certification of the class even where significant individual issues are present.” *Id.*

In this case, proof of Defendants’ alleged conspiracy to restrain trade is common across the class and predominates over any individual issues. Additionally, proof of the antitrust impact to the class members may be shown by common evidence and “[c]ourts in the Eleventh Circuit have recognized that a presumption of impact properly arises in such cases where the defendants have market power and are alleged to have conspired with competing manufacturers.” *Id.* at 696–97. Therefore, Plaintiffs have satisfied the predominance requirement of Rule 23(b)(3) for settlement purposes.

**6. Class Treatment Is Superior to Other Available Methods.**

The second aspect of Rule 23(b)(3), superiority, is similarly satisfied here because a class action is clearly superior to hundreds of thousands of individual claims by indirect purchasers across the country. “[T]he focus is on the relative advantages of a class action suit over whatever forms of litigation might be realistically available to the plaintiffs.” *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 317 F.R.D. 675, 700 (N.D. Ga. 2016). Many members of the Settlement Class, like the Plaintiffs, are small business that lack the time and resources to pursue antitrust claims on their own behalf. The individual recovery for each class member would likely be lower than the costs of litigation, making individual litigation not only infeasible, but economically counterintuitive. *See Roundtree v. Bush Ross, P.A.*, 304 F.R.D. 644, 663 (M.D. Fla. 2015) (“[G]iven the large number of claims, the relatively small amount of damages available, the desirability of consistently adjudicating the claims, the high probability that individual members of the proposed classes would not possess a great interest in controlling the prosecution of the claims, and the fact that it would be uneconomical to litigate the issues individually, a class action is the superior method.”). Therefore, a class is the superior method for resolution of this case.

**C. The Proposed Notice Is the Best Practicable.**

Where a class settlement is likely to be approved and a settlement class is likely to be certified, “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). “For a court to exercise jurisdiction over the claims of absent Class members, there must be minimal procedural due process protection.” *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1377 (S.D. Fla. 2007). “To satisfy due process requirements, the 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.’” *Morgan v. Public Storage*, 301 F. Supp. 3d 1237, 1261 (S.D. Fla. 2016) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811–12 (1985)). The notice must adequately describe the substantive claims and “contain information reasonably necessary to make a decision to remain a class member and be bound by the final judgment or opt out of the action.” *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998).

Plaintiffs’ proposed notice program is the best practicable under the circumstances because it will identify and notify hundreds of thousands of potential class members through directed mailings and email, if available. *See Peak Decl.* ¶¶ 9–11; Email Notice. Working with a reputable

and experienced notice vendor, Plaintiffs have identified the types of businesses likely to be in the Settlement Class using industry-standard SIC codes. Peak Decl. ¶ 9; Peak Decl. Ex. 1. These codes contain categories that will allow Plaintiffs to identify types of businesses likely to have purchased Salmon during the Class Period. Peak Decl. ¶ 9. The Claims Administrator will purchase lists of all businesses that fit in these categories and send a postcard notice to the businesses' mailing addresses and, where available, to the businesses' email addresses. *Id.*; Short Form Notice. In addition, Plaintiffs and the notice vendor will publish the notice in industry publications likely to be read by potential class members. *Id.* ¶¶ 12–13; *see Juris*, 685 F.3d at 1321 (“Where certain class members’ names and addresses cannot be determined with reasonable efforts, notice by publication is generally considered adequate.”).

The form of the notice proposed is also the best practicable. The postcard mailed to potential class members contains basic information about the case and directs recipients to an official settlement website with more detailed information. Short Form Notice. The website states the class definition, including the Class Period and the geographic limitations of the class, and explains in plain language who qualifies as a class member. Peak Decl. ¶¶ 14–15; *see* Long Form Notice. In addition, the settlement website will include important case documents, including a copy of the settlement agreement, a copy of this motion, and the Court’s preliminary approval order, and will be updated as the notice and settlement process proceed to provide potential class members with the latest information. *Id.* at ¶ 14. The Settlement Administrator will staff a toll-free number that potential class members may call with questions. *Id.* ¶ 15.

The opt-out requirements and opt-out period protect the due process rights of absent class members. Any class member seeking exclusion must mail an opt-out request or submit an online claim form with basic contact information and documentation to prove membership in the class, and an authorized representative must sign a statement affirming the class member’s desire to be excluded. Settlement Agreement ¶ 8; Peak Decl. ¶ 16; Long Form Notice at 9. The opt-out period proposed is 35 days from the deadline for completion of the notice program, which will give the class members sufficient time to consider their options. Plaintiffs will also promptly file a fee petition and publish it on the case website for class members to examine, ensuring that they have all the relevant information before the opportunity to opt-out or object concludes. *See Johnson v.*



*NPAS Sols., LLC*, 975 F.3d 1244, 1252 (11th Cir. 2020). Plaintiffs propose that the Court schedule a fairness hearing approximately 100 days after issuing a preliminary approval order.<sup>7</sup>

This program is the best practicable because the Settlement Class members have no direct relationship with the Defendants, so are not identifiable using Defendants' data. In these circumstances, directly contacting the potential class members will be an effective way of disseminating notice. The notice by publication will provide an additional notice to any potential class members. Therefore, this notice program adequately protects the due process rights of absent class members, and the Court should direct notice using the forms proposed.

## V. CONCLUSION

After years of hard-fought litigation and discovery, but years ahead of trial, Plaintiffs obtained a \$33 million class settlement in this case. This settlement provides an adequate recovery for the class, especially considering the stage of litigation, the risks avoided, and the complexity of an indirect-purchaser antitrust class action. The settlement was negotiated at arm's-length with an experienced mediator. The parties expect that the Court will likely approve the settlement when it is presented for final approval. The Settlement Class meets the requirements of Rule 23 and Plaintiffs have proposed a notice program that protects the due process of rights of absent class members. Therefore, IPPs request that the Court preliminarily approve the settlement, preliminarily certify the settlement class, direct notice using the forms proposed, and schedule a fairness hearing.

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<sup>7</sup> 28 U.S.C. § 1715(b) requires Defendants to provide notice to certain government officials "[n]ot later than 10 days after a proposed settlement of a class action is filed in court." The Settlement Agreement requires Defendants to send those notices within 10 days. Settlement Agreement ¶ 20. The Court may not issue an order giving final approval of a settlement earlier than 90 days after those notices are served. 28 U.S.C. § 1715(d). The schedule proposed, with a final approval hearing scheduled at least 100 days from the filing of this motion, thus accommodates the statutory notice period.



**CERTIFICATION OF PRE-FILING CONFERENCE**

On October 3, 2022, Plaintiffs provided Defendants with a written copy of the motion, all supporting materials, and a proposed order for review, consistent with the requirements of the Settlement Agreement. *See* Settlement Agreement ¶ 5. Defendants do not oppose the motion.

Dated: October 6, 2022

/s/ Nathan C. Zipperian

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

**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

**DECLARATION OF HEIDI M.  
SILTON IN SUPPORT OF INDIRECT  
PURCHASER PLAINTIFFS'  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT WITH ALL  
DEFENDANTS, PRELIMINARY  
CERTIFICATION OF SETTLEMENT  
CLASS, AND APPROVAL  
OF CLASS NOTICE**

I, Heidi M. Silton, declare as follows:

1. I am a partner at Lockridge Grindal Nauen, P.L.L.P. (“LGN”) and am Interim Co-Lead Counsel for Indirect Purchaser Plaintiffs (“IPPs”) in the above-captioned action. [ECF No. 92.] I am a member in good standing of the State Bar of Minnesota and have been admitted to this Court *pro hac vice*. [ECF No. 15.] I am counsel of record for plaintiffs in the above-captioned matter. I have personal knowledge of the matters set forth herein and could competently testify thereto.

2. I submit this Declaration in support of IPPs’ Unopposed Motion for Preliminary Approval of Settlement with all Defendants, Preliminary Certification of Settlement Class, and Approval of Class Notice.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement Agreement between all Defendants and the Indirect Purchaser Plaintiffs, which was fully executed on September 8, 2022.

4. Attached hereto as Exhibit 2 is a true and correct copy of the proposed Long Form Notice.

5. Attached hereto as Exhibit 3 is a true and correct copy of the proposed Short Form Notice.

6. Attached hereto as Exhibit 4 is a true and correct copy of the proposed Email Notice.

7. Attached hereto as Exhibit 5 is a true and correct copy of the proposed Plan of Allocation.

8. Attached hereto as Exhibit 6 is a true and correct copy of the proposed Settlement Claim Form.

9. Attached hereto as Exhibit 7 is a true and correct copy of a biography of the Honorable Edward A. Infante, retired, which was obtained online from JAMS.

10. Attached hereto as Exhibit 8 is a true and correct copy of my and my firm's resume.

11. Attached hereto as Exhibit 9 is a true and correct copy of the resume of my co-lead counsel, Fred Isquith, Sr., and the law firm of Zwerling Schachter & Zwerling.

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

Executed on October 6, 2022.

/s/Heidi M. Sifton  
Heidi M. Sifton

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

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**WOOD MOUNTAIN FISH LLC, *et al.***

**Plaintiffs,**

**v.**

**Case No. 19-22128-CIV-SMITH/LOUIS**

**MOWI ASA, *et al.***

**Defendants.**

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**SETTLEMENT AGREEMENT BETWEEN ALL DEFENDANTS  
AND THE INDIRECT PURCHASER PLAINTIFFS**

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”), dated September 8, 2022 (“Execution Date”), is made and entered into by and among 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 AS (collectively, “Defendants”); and Indirect Purchaser 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. (collectively, the “Indirect Purchaser Plaintiffs”), both individually and as representatives of the Settlement Class defined herein.

WHEREAS, in the instant class action, *Wood Mountain Fish LLC, et al. v. Mowi ASA, et al.*, No. 19-22128-CIV-SMITH/Louis, currently pending before the Honorable Rodney Smith in the United States District Court for the Southern District of Florida, Indirect Purchaser Plaintiffs

have alleged that Defendants violated Sections 1 and 3 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 3) and the laws of 34 states;

WHEREAS, Defendants deny each and all of the Claims and allegations of wrongdoing in the Litigation and all charges of wrongdoing or liability against them arising out of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation and have asserted a number of defenses to Indirect Purchaser Plaintiffs' Claims;

WHEREAS, Defendants filed a motion to dismiss this case and that motion has been fully briefed and remains under advisement with the Court;

WHEREAS, Class Counsel, who represent the Indirect Purchaser Plaintiffs, have concluded, after an investigation into the facts and the law, and after carefully considering the circumstances of Claims made by Indirect Purchaser Plaintiffs on behalf of themselves and the Settlement Class, and the possible legal and factual defenses thereto, that it is in the best interests of Indirect Purchaser Plaintiffs and the Settlement Class to enter into this Settlement Agreement with Defendants to avoid the uncertainties and risks of further litigation, and that the settlement set forth herein is fair, reasonable, adequate and in the best interests of the Settlement Class;

WHEREAS, Defendants, while denying that they have any liability for the Claims and believing that they have strong defenses to the Claims alleged, recognize that continued litigation of the Claims is likely to be expensive, time consuming, and distracting, have thus agreed to enter into this Settlement Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby put to rest with finality this controversy by obtaining complete dismissal of the Litigation and a release by the Settlement Class Members of all Released Claims; and

WHEREAS, Class Counsel and Defendants have engaged in arm's-length settlement negotiations, assisted by a neutral mediator (United States Magistrate Judge Edward Infante (Ret.)), and have reached this Settlement Agreement, which, subject to the approval of the Court, embodies all of the terms and conditions of the settlement between Indirect Purchaser Plaintiffs,

both for themselves individually and on behalf of the Settlement Class and each member thereof, and Defendants.

NOW, THEREFORE, in consideration of the promises, covenants, agreements, and releases set forth herein and for other good and valuable consideration, and incorporating the above recitals herein, subject to the approval of the Court, it is agreed by the undersigned, on behalf of the Defendants and the Indirect Purchaser Plaintiffs, on behalf of themselves and the Settlement Class Members, that all existing and potential Claims that were raised or could have been raised in this Litigation arising from the conduct alleged in the Complaint as defined herein, be settled, compromised, and dismissed with prejudice as to the Defendants and the other Released Parties, and, except as hereinafter provided, without costs as to Indirect Purchaser Plaintiffs, the Settlement Class Members, or Defendants, on the following terms and conditions.

1. General Definitions. The terms below and elsewhere in this Settlement Agreement with initial capital letters shall have the meanings ascribed to them for purposes of this Settlement Agreement.

- a. “Affiliates” with respect to a company, means all other entities which, whether directly or indirectly, (1) are controlled by that company, (2) are under common control with that company, or (3) control that company. The term “control” as used in this definition means the power to individually or jointly with another entity direct or cause the direction of the management and the policies of an entity, whether through the ownership of a majority of the outstanding voting rights or otherwise.
- b. “Claims” shall mean any and all actions, claims, rights, demands, assertions, allegations, causes of action, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, debts, liabilities, judgments, or remedies, whether equitable or legal.
- c. “Class Co-Lead Counsel” means Lockridge Grindal Nauen P.L.L.P. (Heidi M. Silton) and Zwerling, Schachter & Zwerling LLP (Fred T. Isquith, Sr.)



- d. “Class Counsel” means Co-Lead Counsel and Cotchett, Pitre & McCarthy, LLP; Cuneo Gilbert & LaDuca, LLP; Gustafson Gluek PLLC; Miller Shah, LLP; Pritzker Levine LLP; and Wolf Haldenstein Adler Freeman & Herz LLP.
- e. “Complaint” means the Indirect Purchaser Plaintiffs’ Second Amended Class Action Complaint filed in the Litigation on July 30, 2021 [ECF No. 217].
- f. “Court” means the United States District Court for the Southern District of Florida.
- g. “Defendants” refers to: 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) (collectively, “Mowi”); 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.) (collectively, “Grieg”); Sjør AS (f/k/a Ocean Quality AS) (“Sjør”); SalMar ASA (“SalMar”); Lerøy Seafood AS and Lerøy Seafood USA Inc. (collectively, “Lerøy”); and Cermaq Group AS; Cermaq US LLC; Cermaq Canada Ltd.; and Cermaq Norway AS (collectively, “Cermaq”).
- h. “Defense Counsel” means the law firms of Mayer Brown LLP, Toth Funes, P.A., Freshfields Bruckhaus Deringer US LLP, Bowman and Brooke, LLP, Cleary Gottlieb Steen & Hamilton LLP, Sidley Austin LLP, Skadden, Arps, Slate, Meagher & Flom LLP, Homer Bonner Jacobs Ortiz, P.A., Quinn Emanuel Urquhart & Sullivan, LLP, Leon Cosgrove, LLP, and Robins Kaplan LLP.
- i. “Effective Date” means the earliest date on which all of the events and conditions specified in Paragraph 15 herein have occurred or have been met.
- j. “Escrow Account” means the account or accounts meeting the requirements of Treas. Reg. § 1.468B-1(c)(3) to be established by Class Counsel for receipt of the Settlement Amount.

- k. “Execution Date” means the date on which all Parties have signed this Settlement Agreement.
- l. “Final Approval” means an order and Judgment by the Court that finally approves this Settlement Agreement and the settlement pursuant to Federal Rule of Civil Procedure 23 and dismisses the Litigation with prejudice, which is to be consistent in all material respects to the proposed order shared with Defendants pursuant to Paragraph 9.
- m. “Indirect Purchaser Plaintiffs” means the named class representatives 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.
- n. “Judgment” means the final order of judgment described in Paragraph 9 herein.
- o. “Litigation” means the litigation captioned *Wood Mountain Fish LLC, et al. v. Mowi ASA, et al*, No. 19-22128-CIV-SMITH/Louis, currently pending before the Honorable Rodney Smith in the United States District Court for the Southern District of Florida and includes all related indirect purchaser actions filed in or transferred to the United States District Court for the Southern District of Florida and consolidated thereunder and all such actions that may be so consolidated in the future.
- p. “Parties” means Indirect Purchaser Plaintiffs and Defendants.
- q. “Person(s)” means an individual or an entity.
- r. “Preliminary Approval” means an order by the Court that is in all material respects consistent with the proposed order shared with Defendants pursuant to Paragraph 5, and which preliminarily approves the settlement set forth in this Settlement Agreement, certifies the proposed Settlement Class for purposes of settlement only, and directs notice thereof to the Settlement Class pursuant to Federal Rule of Civil Procedure 23.

- s. “Released Claims” shall mean all manner of Claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including without limitation costs, penalties, and attorneys’ fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, that any of the Releasing Parties, or any one of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, related to or arising from conduct alleged in the Complaint or which could have been asserted in the Litigation against the Released Parties, or any one of them, prior to the Effective Date, on account of, arising out of, resulting from, or related to in any respect the purchase, sale, pricing, discounting, manufacturing, offering, or distributing of farm-raised Atlantic salmon or products derived therefrom in the United States, including, without limitation, Claims arising under federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, or civil conspiracy law, including without limitation the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. However, the Released Claims do not include 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. This reservation of Claims does not impair or diminish the right of the Released Parties to assert any and all defenses to such Claims.
- t. “Released Parties” means, jointly and severally, individually and collectively: Defendants, including their respective predecessors, successors, present, past and future officers, directors, executives, employees, managing directors, agents, contractors, attorneys, legal or other representatives, parents (direct and indirect,

including holding companies), divisions, subsidiaries, and Affiliates.

- u. “Releasing Parties” means, jointly and severally, and individually and collectively: Indirect Purchaser Plaintiffs and all Settlement Class Members, their predecessors, successors, present and former parents, subsidiaries, divisions, Affiliates, and departments, each of their respective past and present officers, directors, employees, agents, attorneys, servants, and representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, regardless of whether a Settlement Class Member submits any claim for payment or receives any such payment pursuant to any claims process that may be established and approved by the Court.
  - v. “Settlement Administrator” means the firm retained to disseminate notice to the Settlement Class and to administer the payment of Settlement Funds to the Settlement Class, subject to approval of the Court.
  - w. “Settlement Amount” means the sum of USD \$33,000,000.00 (thirty-three million United States Dollars).
  - x. “Settlement Class” has the meaning given to it in Paragraph 6.
  - y. “Settlement Class Member(s)” means each Person that is a member of the Settlement Class and has not timely and validly excluded himself, herself, or itself from the Settlement Class in accordance with the procedures established by the Court.
  - z. “Settlement Class Period” means the period between April 10, 2013 until the date of Preliminary Approval.
  - aa. “Settlement Fund” means the dollar amount of the Settlement Amount plus any interest, income, or proceeds earned thereon after payment thereof by Defendants into the Escrow Account.
2. Settlement Consideration.

- a. The Settlement Amount represents an all-in cash settlement amount, inclusive of class recovery amounts, fees (attorneys' fees and other fees), and costs (including litigation expenses and class notice costs). The Settlement Amount represents the full amount to be paid by Defendants pursuant to this Agreement, and Defendants shall not be required to make any other payments for any other reason pursuant to this Agreement.
- b. Within ten (10) calendar days of the Court's grant of Preliminary Approval, Defendants shall pay or cause to be paid the Settlement Amount into the Escrow Account. In the event that the foregoing date falls on a Saturday, Sunday, or U.S. or Norwegian bank holiday, the payment will be made on the next business day. The payment shall be made by wire transfer in immediately available funds.
- c. Subject to the Court's approval, settlement funds may be disbursed only upon the Judgment becoming final and non-appealable, in accordance with the Court's Final Approval Order, 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. Additional sums, to the extent required for notice and administration, shall not be withdrawn from the Escrow Account without prior approval of the Court, on good cause shown.
- d. After all costs (including notice costs), attorneys' fees, and any other expenses have been paid from the Settlement Fund, remaining funds shall be distributed to Settlement Class Members in accordance with this Settlement Agreement. If, following further distribution, the remaining funds become *de minimis* in Class Counsel's reasonable judgment, such residual funds shall be made the subject of an application to the Court by Indirect Purchaser Plaintiffs for *cy pres* distribution. Defendants shall have no right of reversion.

3. The Parties' Efforts to Effectuate This Settlement Agreement. Class Counsel agree to recommend approval of the settlement by the Court and by the Settlement Class Members. Class Counsel, Indirect Purchaser Plaintiffs, and Defense Counsel agree to cooperate in good faith and use their best efforts to carry out the terms of this Settlement Agreement and to obtain the Court's Preliminary Approval and Final Approval of this Settlement Agreement and the settlement contemplated hereby.
4. Litigation Standstill. The Parties, through their respective counsel, shall cease all litigation activities against each other related to the Litigation unless and until (a) the Court denies Preliminary Approval or Final Approval of this Settlement Agreement, or (b) the Settlement Agreement is terminated in accordance with Paragraph 19. For avoidance of doubt, nothing in this paragraph shall prevent any Party from complying with a lawful subpoena touching upon the subject matter of the Litigation.
5. Motion for Preliminary Approval. Within twenty (20) business days of the Execution Date, Indirect Purchaser Plaintiffs will move the Court for preliminary approval of this settlement and a stay of all proceedings in the Litigation pending final resolution of the settlement ("Preliminary Approval Motion"). No later than three (3) business days prior to filing, Class Counsel shall provide the Preliminary Approval Motion and all supporting materials, including a proposed order, to Defendants for their review. Defendants shall not unreasonably withhold their assent. To the extent that Defendants object to any aspect of the Preliminary Approval Motion, they shall communicate such objection to Class Counsel, and the Parties shall meet and confer to resolve any such objection. If this occurs, the deadline to submit the Preliminary Approval Motion shall be extended to five (5) business days after the conclusion of the meet-and-confer process. In the event that the Parties are unable to reach agreement as to the Preliminary Approval Motion and/or the supporting materials, each Party reserves its right to make such additional filings as it may deem necessary, subject to the limitations of this Settlement Agreement, in further support of the Preliminary Approval Motion.

6. Certification of Settlement Class. As part of the Preliminary Approval Motion, the Indirect Purchaser Plaintiffs shall seek, and Defendants shall take no position with respect to, (a) appointment of Class Counsel as settlement class counsel for purposes of this Settlement, and (b) certification of the following “Settlement Class” for settlement purposes only:

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.

Excluded from the Settlement Class are the Court and its personnel and any Defendants and their parent, subsidiary, or affiliated companies.

7. Notice to the Settlement Class. After Preliminary Approval, and subject to approval by the Court of the means for dissemination:
- a. The Settlement Administrator, at the direction of Class Counsel, shall provide the best notice practicable under the circumstances, which may be provided by publication, in conformance with a notice plan to be approved by the Court. The Settlement Administrator shall be selected by Class Counsel for approval by the Court.
  - b. Neither the Settlement Class, Class Counsel, Defendants, nor Defense Counsel shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or obtaining approval of the settlement or administering the settlement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund and in accordance with this Settlement Agreement, subject to any necessary Court approval, to pay the costs for notice and

administration in conjunction with Preliminary Approval and Final Approval of this Settlement Agreement.

- c. Any costs of notice and administration that Class Counsel are permitted to withdraw from the Settlement Fund, either pursuant to this Settlement Agreement or order of the Court, shall be nonrefundable if, for any reason, the Settlement Agreement is terminated according to its terms or is not finally approved by the Court.
8. Requests for Exclusion. Any Person who wishes to seek exclusion from the Settlement Class must timely submit a written request for exclusion as provided in this Paragraph (“Request for Exclusion”). Any Person who timely submits a Request for Exclusion (an “Opt Out”) shall be excluded from the Settlement Class, shall have no rights with respect to the settlement or this Settlement Agreement, and shall receive no benefits as provided in this Settlement Agreement.
- a. Unless otherwise ordered by the Court, a Request for Exclusion must be in writing, which shall: (a) state the name, address, and telephone number of the Person or entity seeking exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (b) contain a signed statement that “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.)”; (c) provide documents sufficient to prove membership in one or more of the Settlement Class; and (d) be signed by such Person requesting the exclusion or an authorized representative, as well as proof of authorization to submit the request for exclusion if submitted by an authorized representative. The name of the Person(s) seeking exclusion shall be as specific as possible, including any “formerly known as” names, “doing business as” names, etc. Only the specific Person(s) identified may be excluded from the settlement. A Request for Exclusion that does not include all of the foregoing information, that does not contain a proper



signature, that is sent to an address other than the one designated in the notice to Settlement Class Members, or that is not sent within the time specified in the notice, shall be invalid, and the Person serving such an invalid request shall remain a Settlement Class Member and shall be bound by this Settlement Agreement, if approved.

- b. Class Counsel shall promptly forward to Defense Counsel complete copies of all requests for exclusion/opt outs as they are received. To the extent a claims administrator is retained to administer any distribution of the Settlement Fund, Class Counsel are responsible for promptly providing such claims administrator with copies of any requests for exclusion received pursuant to this Paragraph. Further, Class Counsel shall, within five (5) business days after the Court-ordered deadline for timely requests for exclusion from the Settlement Classes, cause to be provided to Defense Counsel a list of Opt-Outs who have timely excluded themselves from the Settlement Classes. With respect to any potential member of the Settlement Class who validly requests exclusion from the Settlement Class, Defendants reserve all of their respective legal rights and defenses, including but not limited to any defenses relating to whether the excluded individual or entity is an indirect purchaser of farm-raised Atlantic salmon and/or has standing to bring any claim against the Defendants or any of them.
9. Motion for Final Approval and Entry of Final Judgment. If the Court grants Preliminary Approval, then the Indirect Purchaser Plaintiffs, through Class Counsel, and in accordance with the schedule set forth in the Court's Preliminary Approval, shall submit to the Court a separate motion for final approval of this settlement ("Final Approval Motion"). No later than five (5) business days prior to filing the Final Approval Motion, Class Counsel shall provide the Final Approval Motion and all supporting materials to Defendants for their review. Defendants shall not unreasonably withhold their assent. To the extent that Defendants object to any aspect of the Final Approval Motion, they shall communicate

such objection to Class Counsel and the parties shall meet and confer to resolve any such objection. In the event that the Parties are unable to reach agreement as to the contents of the Final Approval Motion and/or the supporting materials, each Party reserves its right to make such additional filings as it may deem necessary, subject to the limitations of this Settlement Agreement, in further support of the Final Approval Motion. The Final Approval Motion shall seek entry of an order and final Judgment:

- a. certifying as a settlement class, pursuant to Rule 23 of the Federal Rules of Civil Procedure and solely for purposes of this settlement, the Settlement Class described in Paragraph 6;
- b. fully and finally approving the settlement contemplated by this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement for the Settlement Class within the meaning of Federal Rule of Civil Procedure 23, and directing the implementation, performance, and consummation of this Settlement Agreement pursuant to its terms and conditions;
- c. determining that the notice to the Settlement Class constituted the best notice practicable under the circumstances of the settlement and the fairness hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- d. dismissing the Litigation with prejudice as to the Defendants; such 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;
- e. discharging and releasing the Released Parties from all Released Claims;
- f. reserving continuing and exclusive jurisdiction over the Settlement Agreement for all purposes; and
- g. determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and reciting that the judgment of dismissal of the Litigation as to all Defendants shall be final and appealable.

10. Objections to the Settlement. Any Person who has not requested exclusion from the Settlement Class and who objects to the settlement set forth in this Settlement Agreement may appear in person or through counsel, at that Person's own expense, at the fairness hearing to present any evidence or argument that the Court deems proper and relevant. However, no such Person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such Person shall be received and considered by the Court, unless such Person properly submits a written objection that includes: (i) a notice of intention to appear; (ii) proof of membership in one or more of the Settlement Class, including documentation evidencing indirect purchases of Defendants' salmon and/or salmon products during the Settlement Class Period; and (iii) the specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all documents or writings that such Person desires the Court to consider. Such a written objection must be mailed to Class Counsel at the addresses provided in the notice to the Settlement Class and postmarked no later than thirty (30) days prior to the date set for the fairness hearing. As soon as practicable, Class Counsel shall cause all written objections to be filed with the Court. Any Person that fails to object in the manner prescribed herein shall be deemed to have waived his, her, or its objections and will forever be barred from making any such objections in the Litigation, unless otherwise excused for good cause shown, as determined by the Court.

11. Escrow Account.

- a. The Escrow Account shall be administered by Class Counsel for the Indirect Purchaser Plaintiffs and Settlement Class under the Court's continuing supervision and control pursuant to the escrow agreement between Class Counsel and their chosen escrow agent.
- b. The funds deposited in the Escrow Account may be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market funds invested

substantially in such instruments; *provided, however*, that such portions of the Settlement Fund as may reasonably be needed to pay current expenses associated with providing notice to the Settlement Class pursuant to Paragraph 2.c. hereof, and any other amounts approved by the Court following Final Approval, may be deposited in a federally insured bank account. Any interest or other income or proceeds earned on any of the foregoing shall be reinvested as they mature in similar instruments at their then-current market rates. Any interest, income, or proceeds earned on any of the foregoing shall become part of the Settlement Fund. Defendants shall have no responsibility for, or liability in connection with, the Settlement Fund, including, without limitation, the investment, administration, maintenance, or distribution thereof.

- c. All funds held in the Escrow Account shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and/or further order(s) of the Court.
12. Qualified Settlement Fund. The Parties agree to treat the Settlement Fund as being at all times a Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1, and to that end, the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. In addition, Class Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Class Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Funds being a “Qualified Settlement Fund” within

the meaning of Treas. Reg. § 1.4688-1. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be Class Counsel. Class Counsel or other Person designated by Class Counsel, shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund, whether or not Final Approval has occurred. The escrow agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). In the event federal or state income tax liability is finally assessed against and paid by any Defendant as a result of any income earned on the funds in the Escrow Account, such Defendant shall be entitled to reimbursement of such payment from the funds in the Escrow Account after approval of the Court and whether or not Final Approval has occurred. Defendants will use reasonable efforts to resist any such assessment or payment. Except as set forth in this Paragraph, neither Defendants nor any Released Party shall have any responsibility to make any tax filings related to the Settlement Fund or to pay any taxes with respect thereto.

13. Distribution of Settlement Fund to Settlement Class. Settlement Class Members shall be entitled to look solely to the Settlement Fund for settlement and satisfaction against the Released Parties for the Released Claims and shall not be entitled to any other payment or relief from the Released Parties. Except as provided by order of the Court, no member of the Settlement Class shall have any interest in the Settlement Fund or any portion thereof. Indirect Purchaser Plaintiffs, members of the Settlement Class, and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for all expenses including,

but not limited to, attorneys' fees and expenses and the costs of notice and administration of the Settlement Agreement to potential members of the Settlement Class. Defendants and the other Released Parties shall not be liable for any costs, fees, or expenses of any of the Indirect Purchaser Plaintiffs' and Class Counsel's attorneys, experts, advisors, or representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Fund.

14. Fee Awards, Costs and Expenses, and Service Payments to Indirect Purchaser Plaintiffs.

- a. Class Counsel may apply to the Court for a fee award, plus expenses and costs actually incurred, to be paid from the proceeds of the Settlement Fund. Defendants will take no position as to Class Counsel's request for attorneys' fees, which will not exceed 30% of the Settlement Fund.
- b. Attorneys' fees and expenses awarded by the Court shall be payable from the Settlement Fund upon award in accordance with the Court's Final Approval Order.
- c. Neither Defendants nor any other of the Released Parties shall have any responsibility for, or interest in, or liability whatsoever with respect to allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any fee and expense award that the Court may make in the Litigation.
- d. There shall be no payment of any fee and expense award, or any other awards the Court may make, out of the Settlement Fund until the Effective Date has occurred.
- e. Should the Court award any fees and expenses, allocation of those fees and expenses shall be determined by Class Co-Lead Counsel.
- f. Within ten (10) days after the Effective Date, the escrow agent shall pay any approved attorneys' fees, expenses, and/or repayment of the class representatives' costs, time, and expenses via wire transfer from the Settlement Fund as directed by Class Counsel in accordance with and attaching the Court's order approving such payments.

15. Effective Date of the Settlement. This Settlement Agreement shall become final and

effective on the earliest date on which all of the following events and conditions have occurred or have been met (“Effective Date”): (a) this settlement has been approved in all respects by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure; (b) the Court has entered the Judgment; and (c) the time for appeal or to seek permission to appeal from the Court’s approval of the Settlement Agreement and entry of the Judgment has expired or, if appealed, approval of this Settlement Agreement and the Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. Neither the provisions of Federal Rule of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

16. Release.

- a. Upon the Effective Date, and in addition to the effect of any Judgment entered in accordance with this Settlement Agreement, Releasing Parties shall be deemed to have released and forever discharged the Released Parties from the Released Claims and the Litigation will be dismissed with prejudice as to Defendants.
- b. Upon the Effective Date, the Releasing Parties covenant and agree that they, and each of them, will forever refrain from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action, or collecting from, seeking to recover from, or proceeding against the Released Parties on behalf of themselves individually or collectively in connection with any of the Released Claims. Indirect Purchaser Plaintiffs and Class Counsel acknowledge that Defendants consider it to be a material term of this Settlement Agreement that all Releasing Parties will be bound by the provisions of this Paragraph 16.
- c. During the period after the expiration of the deadline for submitting a request for exclusion pursuant to Paragraph 8, as determined by the Court, and prior to the Effective Date, all Releasing Parties who have not submitted a valid request to be excluded from the Settlement Class shall be preliminarily enjoined and barred from

asserting any Released Claims against the Released Parties.

17. Further Release. Each Releasing Party further expressly agrees that, upon the Effective Date, it will waive and release with respect to the Released Claims that such Releasing Party has released pursuant to Paragraph 16 hereof any and all provisions, rights, and benefits conferred either (a) by § 1542 of the California Civil Code, which reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

(b) by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, or (c) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth in Paragraph 16 hereof. Each Releasing Party may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the subject matter of the Released Claims that such Releasing Party has released pursuant to Paragraph 16 hereof, but each such individual or entity hereby expressly agrees that, upon the Effective Date, it shall have waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the Released Claims that such Releasing Party has released pursuant to Paragraph 16 hereof, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The release of unknown, unanticipated, and unsuspected losses or claims is contractual, and not a mere recital.

18. No Admission. Whether or not this Settlement Agreement becomes final or is terminated pursuant to its terms, the Parties expressly agree that this Settlement Agreement and its contents, including without limitation its exhibits and any and all statements, negotiations,



documents, and discussions associated with it, shall not 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.

19. Option to Terminate. Defendants, in their sole collective discretion, may terminate the Settlement Agreement in accordance with the separate Supplemental Agreement Regarding Termination Rights, which will remain confidential unless otherwise ordered by the Court.. The Parties will not, directly or indirectly, encourage or cause any Person to opt out of the Settlement Class.
20. Class Action Fairness Act. Within ten (10) days of filing of this Settlement Agreement in Court with the above-mentioned motion for Preliminary Approval, Defendants, at their sole expense, shall submit all materials required to be sent to appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and shall confirm to Class Counsel that such notices have been sent.
21. Binding Effect. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, Settlement Class, the Releasing Parties, and the Released Parties. Without limiting the generality of the foregoing, upon Final Approval, each and every covenant and agreement herein by the Indirect Purchaser Plaintiffs shall be binding upon all members and potential members of the Settlement Class and Releasing Parties who have not validly excluded themselves from the Settlement Class.

22. Sole Remedy. This Settlement Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any Released Party, and upon the Effective Date, the Releasing Parties shall be forever barred from initiating, asserting, maintaining, or prosecuting any and all Released Claims against any Released Party.
23. Costs. Except as otherwise provided herein, Indirect Purchaser Plaintiffs and Defendants shall each be responsible for bearing their own costs and fees incurred in this Litigation.
24. Effect of Disapproval or Rescission. If the settlement contemplated by this Settlement Agreement does not receive final Court approval and the Judgment is not entered, if such final approval and/or Judgment is modified or set aside on appeal, if the Settlement Class are not certified for settlement purposes, or if this Settlement Agreement is terminated or voided for any reason, then all amounts paid by Defendants into the Settlement Fund (other than costs that may already have reasonably been incurred or expended in accordance with this 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.
25. Notices. All notices under this Settlement Agreement shall be in writing. Each such notice shall be given either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier, and, in the case of either (a), (b), or (c), shall be addressed:

If directed to Indirect Purchaser Plaintiffs, the Settlement Class, or any Settlement Class Member, to:

Heidi M. Siltan  
LOCKRIDGE GRINDAL NAUEN P.L.L.P.  
100 Washington Ave S., Suite 2200  
Minneapolis, MN 55401  
hmsilton@locklaw.com

Fred T. Isquith, Sr.

ZWERLING, SCHACHTER & ZWERLING LLP  
41 Madison Avenue  
New York, NY 10010  
ftisquith@zsz.com

If directed to Defendants, to:

*For Cermaq:*

Britt M. Miller  
MAYER BROWN LLP  
71 S. Wacker Dr.  
Chicago, IL 60606  
bmiller@mayerbrown.com

*For Grieg:*

Eric Mahr  
FRESHFIELDS BRUCKHAUS DERINGER US LLP  
700 13th Street NW, 10th Floor  
Washington, D.C. 20005  
eric.mahr@freshfields.com

*For Lerøy:*

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Washington, D.C. 20037  
bhoffman@cgsh.com

*For Mowi:*

Matthew M. Martino  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
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New York, NY 10001  
matthew.martino@skadden.com

*For SalMar:*

Stephen Neuwirth  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
stephenneuwirth@quinnemanuel.com

*For Sjó:*

Ryan W. Marth  
ROBINS KAPLAN LLP  
800 LaSalle Ave, Suite 2800  
Minneapolis, MN 55402  
rmarth@robinskaplan.com

or such other address as the Parties may designate, from time to time, by giving notice to all parties hereto in the manner described in this Paragraph. Providing a copy by email shall only be in addition to, and not a substitute for, the formal notice mechanisms provided for in (a), (b), or (c) of this Paragraph.

26. Express Authority. Each counsel signing this Settlement Agreement on behalf of a Party or Parties has full and express authority to enter into all of the terms reflected herein on behalf of each and every one of the clients for which counsel is signing.
27. Board Approval. All Defendants expressly represent that they have obtained all required approvals from their Boards of Directors for this Settlement Agreement.
28. Confidentiality of Settlement Negotiations. Class Counsel and Defense Counsel shall keep strictly confidential and not disclose to any third party any non-public information regarding the parties' negotiation of this settlement and/or this Settlement Agreement except for disclosure made with the prior consent of the other Parties. For the sake of clarity, information contained within this Settlement Agreement shall be considered public after the Settlement Agreement has been filed with the Court in connection with the Preliminary Approval Motion.
29. Voluntary Settlement. The Parties agree that this Settlement Agreement was negotiated in good faith by the Parties and reflects a settlement that was reached voluntarily after consultation with competent counsel and the participation of a neutral mediator, and no Party has entered this Settlement Agreement as the result of any coercion or duress. The Settlement Class Members and Class Counsel, or any of them, may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the subject matter of the Litigation, but the subsequent discovery or existence of such different or additional facts shall have no bearing on the validity of this Settlement Agreement once

executed and shall not serve as a basis for any Party to challenge or otherwise seek to rescind, terminate, or cancel the settlement.

30. Modification/Waiver. This Settlement Agreement may be modified or amended only by a writing executed by the Parties, subject (if after preliminary or final approval by any court) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.
31. No Drafter. None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any of its provisions hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Settlement Agreement.
32. No Third-Party Beneficiaries. No provision of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Released Party, Indirect Purchaser Plaintiff, member of the Settlement Class, or Class Counsel.
33. Choice of Law and Dispute Resolution. All terms of this Settlement Agreement shall be governed by, and interpreted according to, federal substantive and procedural law. Any disputes concerning matters contained in this Settlement Agreement, if they cannot be resolved by negotiation and agreement, shall be submitted, in the first instance, for mediation before Judge Edward Infante (Ret.) in his capacity as mediator, and if not then resolved, shall be submitted to the Court.
34. Consent to Jurisdiction. The Parties and any Releasing Parties hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, or relating to the award of fees and expenses and any allocation thereof.
35. Execution in Counterparts. This Settlement Agreement may be executed in counterparts,

each of which shall be deemed an original, but all of which together shall constitute a single agreement. Facsimile or Portable Document Format signatures shall be considered as valid signatures for purposes of execution of this Settlement Agreement, but original signature pages shall thereafter be collated for filing of this Settlement Agreement with the Court.

36. Integrated Agreement. This Settlement Agreement comprises the entire, complete, and integrated agreement between the Parties, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between the Parties. The Parties agree that this Settlement Agreement may be modified only by a written instrument signed by the Parties and that no Party will assert any Claim against another based on any alleged agreement affecting or relating to the terms of this Settlement Agreement not in writing and signed by the Parties.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Settlement Agreement on the date first above written.

Dated: September 8, 2022

**LOCKRIDGE GRINDAL NAUEN  
P.L.L.P.**



Heidi M. Siltan  
Kristen G. Marttila  
Joseph C. Bourne  
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**ZWERLING, SCHACHTER  
& ZWERLING LLP**

---

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Interim Co-Lead Class Counsel for the  
Indirect Purchaser Class

**MILLER SHAH LLP**

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Telephone: (954) 515-0123  
jagoldstein@millershah.com

Liaison Counsel for Indirect Purchaser Class

IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Settlement Agreement on the date first above written.

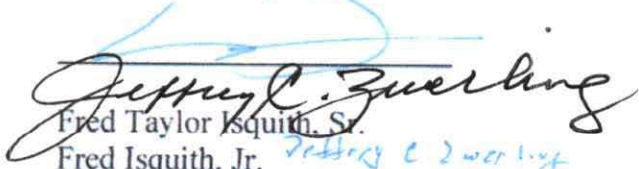
Dated: September 8, 2022

**LOCKRIDGE GRINDAL NAUEN  
P.L.L.P.**

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Heidi M. Silton  
Kristen G. Marttila  
Joseph C. Bourne  
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Interim Co-Lead Class Counsel for the  
Indirect Purchaser Class

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Liaison Counsel for Indirect Purchaser Class



Dated: September 8, 2022

**MAYER BROWN LLP**



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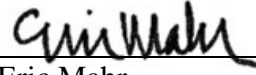
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*Counsel for Cermaq US, LLC, Cermaq  
Group AS, Cermaq Canada Ltd., and  
Cermaq Norway AS*

Dated: September 8, 2022

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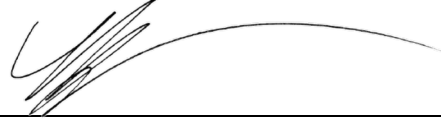
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Grieg Seafood BC Ltd., Grieg Seafood  
North America Inc. (f/k/a Ocean Quality  
North America, Inc.), Grieg Seafood USA  
Inc. (f/k/a Ocean Quality USA Inc.), and  
Grieg Seafood Premium Brands, Inc. (f/k/a  
Ocean Quality Premium Brands, Inc.)*

Dated: September 8, 2022

**CLEARY GOTTlieb STEEN  
& HAMILTON LLP**



---

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*Counsel for Defendants Lerøy Seafood AS  
and Lerøy Seafood USA Inc.*

Dated: September 8, 2022

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*Counsel for 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)*

Dated: September 8, 2022

**QUINN EMANUEL URQUHART  
& SULLIVAN, LLP**



---

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**HOMER BONNER JACOBS  
ORTIZ, P.A.**

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*Counsel for Defendant SalMar ASA*

Dated: September 8, 2022

**ROBINS KAPLAN LLP**



---

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Ryan W. Marth  
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**LEÓN COSGROVE, LLP**

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lmathews@leoncosgrove.com

*Counsel for Defendant Sjóv AS (f/k/a  
Ocean Quality AS)*

## **EXHIBIT 2**

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

**If you purchased farm-raised salmon  
between April 10, 2013 and [Date of Preliminary Approval], 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 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 Through [Date of the Preliminary Approval]

- **CO-LEAD COUNSEL:**

- Lockridge Grindal Nauen P.L.L.P. (Heidi M. Sifton)
- 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.).

- **Sjor Defendant**

- Sjór AS (f/k/a Ocean Quality AS)

- **SalMar Defendant**

- SalMar ASA

- **Leroy 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.

<b>YOUR LEGAL RIGHTS AND OPTIONS</b>		
<b>You May:</b>	<b>Explanation</b>	<b>Deadline</b>
<b>Do Nothing</b>	<ul style="list-style-type: none"> <li>• Receive no benefits</li> <li>• Give up your right to separately sue or continue to sue Defendants for the claims in this case.</li> </ul>	<b>None.</b>
<b>Submit a Claim Form</b>	<ul style="list-style-type: none"> <li>• File a Claim to receive benefits.</li> <li>• Give up your right to separately sue or continue to sue Defendants for the claims in this case.</li> </ul>	Postmarked or submitted online by [DATE].
<b>Exclude Yourself from the Settlement</b>	<ul style="list-style-type: none"> <li>• Remove yourself from the Settlement Class.</li> <li>• Receive no benefits.</li> <li>• Keep the right to separately sue or continue to sue Defendants for the claims in this case at your own expense.</li> </ul>	Postmarked or pre-paid delivery by [DATE].
<b>Object to the Settlement</b>	<ul style="list-style-type: none"> <li>• 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.</li> </ul>	Postmarked or pre-paid delivery by [DATE].
<b>Go to the Fairness Hearing</b>	<ul style="list-style-type: none"> <li>• Ask to speak in Court about the Settlement by filing a Notice of Intention to Appear</li> <li>• If you want your own attorney to represent you, you must pay for that attorney.</li> <li>• Attend the Fairness Hearing at your own expense.</li> </ul>	<p>Postmarked or pre-paid delivery by [DATE].</p> <p>Hearing scheduled for [DATE] at [TIME]. E.T. This date is subject to change without further notice. Please check the settlement website for updates.</p>

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION .....**

1. Why did I receive this notice package?
2. What is this lawsuit about?
3. What is a class action and who is involved?

**THE SETTLEMENT CLASS**

4. Who is included in the Settlement Class?

**THE LAWYERS REPRESENTING YOU**

5. Who are the lawyers representing you?
6. How will the lawyers be paid?

**SETTLEMENT BENEFITS**

7. What does the proposed Settlement provide?
8. How do I file a Claim Form in the Settlement?
9. When do I get my payment?
10. What am I giving up by staying in the Settlement Class?

**IF YOU DO NOTHING**

11. What happens if I do nothing?

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

12. What is the difference between excluding myself from the Settlement or objecting to the Settlement?
13. How do I exclude myself from the Settlement?

**OBJECTING TO THE SETTLEMENT**

14. How do I object to the proposed Settlement?

**THE COURT WILL HAVE A FINAL “FAIRNESS HEARING” ABOUT THE SETTLEMENT**

15. When is where the final Fairness Hearing?

**FOR MORE INFORMATION.....**

## 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 from April 10, 2013 through the [date of preliminary approval]. 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 Siltan, 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 Siltan 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 funds. With respect to the Settlement, Co-Lead Counsel will file a motion (the "Fee Petition") on or before [\_\_\_\_\_] that asks the Court to approve payment of attorneys' fees in an amount of [\$\_\_\_\_\_] 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, [\_\_\_\_\_] 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 attorney's 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 Claims 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 claims 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 by *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.XXXX.com](http://www.XXXX.com)] or by mail to the address below postmarked by [DATE]:

[XXXX Settlement]  
[c/o KCC Claims Administration]  
[P.O. Box xxxxx]  
[Novato, CA \_\_\_\_-\_\_\_\_]

**If you do not submit a valid Claim Form by [DATE], 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.XXXX.com](http://www.XXXX.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.XXXXX.com](http://www.XXXXX.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, or 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 Defendant 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 form the Settlement Class?

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, or pre-paid delivery service to be hand-delivered by, [DATE] to the following address:

[XXXX Settlement]  
[c/o KCC Settlement Administration]  
[P.O. Box xxxxx]  
[Novato, CA \_\_\_\_-\_\_\_\_]

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.

**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, [DATE]:

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

**OR**

Fred T. Isquith, Sr.  
ZWERLING, SCHACHTER & ZWERLING LLP  
41 Madison Avenue  
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 [DATE] at [TIME] at the following address:

United States District Court  
Judge Rodney Smith  
US 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.XXXX.com](http://www.XXXX.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.XXXX.com](http://www.XXXX.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 [phone number].

If your present address is different from the address on the envelope in which you received 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.**

Dated: \_\_\_\_\_

## **EXHIBIT 3**

LEGAL NOTICE

**If you purchased  
farm-raised salmon  
between April 10, 2013  
and [PA Date], 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-xxx-xxx-xxxx]  
[www.XXXX.com]**

**XXX**

*Salmon IPP Settlement Administrator*  
P.O. Box xxxxx  
City, ST xxxxx-xxxx

First-Class  
Mail  
US Postage  
Paid  
Permit #\_\_

«Barcode»

Postal Service: Please do not mark barcode

«First1» «Last1»  
«co»  
«Addr1» «Addr2»  
«City», «St» «Zip»  
«Country»

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 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 [date of preliminary approval].

**What does the Settlement provide?** If the proposed Settlement is approved, Defendants will pay \$33,000,000 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.XXXX.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 [DATE].

**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 [DATE]. 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 [DATE].

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

**Want more?** Complete details, including the Settlement Agreement, are available at [www.XXXX.com].

## **EXHIBIT 4**

To:

From:

Subject: Farm-Raised Salmon Antitrust Settlement

**If you purchased farm-raised salmon between April 10, 2013 and [date of preliminary approval], 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 from April 10, 2013 through the [date of preliminary approval]. 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 [date of preliminary approval].

**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.XXXX.com](http://www.XXXX.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 [date]. 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 [date]. 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 [date].

**The Court’s Final Hearing.** The Court has scheduled a final “Fairness Hearing” on [date] at the United States District Court, US Federal Building and Courthouse, Courtroom 202B, 299 East Broward Blvd., Fort Lauderdale, Florida 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.XXXX.com](http://www.XXXX.com). You may also call [phone number].

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

## **EXHIBIT 5**



**WOOD MOUNTAIN FISH LLC, et al. v. MOWI ASA et al.**  
**United States District Court for the Southern District of Florida**  
**Case No. 19-22128-CIV-SMITH/LOUIS**

**DISTRIBUTION OF NET SETTLEMENT FUND**

**PLAN OF ALLOCATION**

The Net Cash Settlement Fund (the Settlement Fund less amounts approved by the Court for Administrative Costs, including costs of issuance of Class Notice to the Settlement Class, Settlement Administrator fees and expenses, and fees related to the Cash Settlement Fund, and any Court-awarded attorneys' fees and reimbursed litigation expenses) will be distributed to Settlement Class Members submitting timely and valid claims showing indirect purchases of Defendants' farm-raised salmon, or products derived from Defendants' farm-raised salmon (such as salmon fillets or smoked salmon) ("Salmon"), sold by persons or distributors other than the Defendants in or made from a Class Member's residence or principal place of business located within the states of AL, AZ, AR, CA, FL, HI, IL, IA, KS, ME, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OR, RI, SC, SD, TN, UT, VT, WV, WI, the territory of Guam, and the District of Columbia between April 10, 2013 and [Preliminary Approval Date] ("the Settlement Class Period"), as set forth below:

- Each Settlement Class Member that timely submits a valid Claim Form for Defendants' Salmon indirectly purchased by the Settlement Class Member shall be credited with the purchase price documented in the Claim Form, not including any taxes, fees or surcharges related to the purchase.
- The Net Settlement Fund will be allocated, *pro rata*, to eligible Settlement Class Members on a claims-made basis, based upon the total dollar value of each Settlement Class Member's credited verified purchase amount ("Verified Claim Amount") in proportion to the total amount of the Net Settlement Fund.
- Each eligible Settlement Class Member's actual recovery **will be a percentage** of their credited Verified Claim Amount, **and will vary** depending on the number and amounts of qualifying Verified Claims submitted.
- All of the Net Settlement Fund will be distributed, in full, to eligible Settlement Class Members who have valid claims, according to this Plan of Allocation.
- To the extent there are undistributed amounts remaining in the Net Settlement Fund after distribution to eligible Settlement Class Members with valid claims under this Plan of Allocation, if any (resulting, for example, by the fact that cash settlement payment checks went uncashed), 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 by *cy pres* to a charitable recipient, to be determined and subject to Court approval.

**PROCEDURES FOR SUBMITTING CLAIMS FOR SETTLEMENT BENEFIT  
PAYMENTS AND FOR CURING CLAIM FORM DEFICIENCIES**

- To be eligible for a distribution payment from the Net Settlement Fund, the Settlement Class Member's Claim Form must be completed and verified, and the Total Purchase Amount listed on the Claim Form must be accurately calculated.
- Each Settlement Class Member Claim Form (whether submitted by the Class Member by mail or electronically) shall bear a unique control number. The Settlement Administrator will use this control number, and the contact information provided, to communicate with a Settlement Class Member in the event the Settlement Administrator determines that a Claim Form is deficient, or the Total Purchase Amount listed is inaccurately calculated.
- The Settlement Administrator has the sole authority to determine the credited value of, the validity of, or deficiency within, any Claim Form under this Plan of Allocation.
- If a Claim Form is determined to be deficient by the Settlement Administrator in any respect, the Settlement Administrator will send a Notice of Deficiency to the Settlement Class Member using the contact information provided by the Settlement Class Member on the Claim Form. The Notice of Deficiency will identify the reasons why the Settlement Administrator determined the Claim Form to be deficient and tell the Settlement Class Member the time period in which the Settlement Class Member must correct the deficiency.
- The Settlement Class Member **MUST** cure or correct the deficiency to the satisfaction of the Settlement Administrator within the time period specified in the Notice of Deficiency. If the Class Member does not timely correct or cure the deficiency within the time period specified by the Settlement Administrator in the Notice of Deficiency, the Settlement Administrator will determine the Claim Form to be invalid and the Settlement Class Member will be deemed ineligible to receive a payment from the Settlement Fund.
- In lieu of a Notice of Deficiency, if a Claim Form is certified and valid in all respects except that the Total Purchase Amount is inaccurately calculated, the Settlement Administrator will send a Notice of Claim Adjustment to the Settlement Class Member using the contact information provided by the Settlement Class Member on the Claim Form. The Notice of Claim Adjustment will list the Total Purchase Amount the Settlement Administrator believes to be accurate, tell the Settlement Class Member the time period in which the Settlement Class Member must object to the Claim Adjustment, identify the reasons for that objection, and provide any documentation the Settlement Class Member believes supports that objection.
- The Settlement Class Member **MUST** object to the Claim Adjustment, with any appropriate supporting documentation, within the time period specified by the Settlement Administrator in the Notice of Claim Adjustment. If the Settlement Class Member does not object within this time period, the amount listed by the Settlement Administrator in the

Notice of Claim Adjustment will be deemed to be that Settlement Class Member's Total Purchase Amount for purposes of calculating any distribution from the Net Settlement Fund under the Plan of Allocation. The Settlement Administrator, in consultation with Class Counsel, will evaluate the Settlement Class Member's objection and thereafter decide the Total Purchase Amount to be applied to the Settlement Class Member's Claim, which decision shall be deemed to be final, subject only to review or modification by the Court, as provided in the Settlement Agreement.

- The Court shall retain jurisdiction over implementation of the Settlement and disposition of the Settlement Fund, including whether to allow, disallow, or adjust the claim of any Settlement Class Member on equitable grounds. If a Settlement Class Member disputes the Settlement Administrator's determination as to the eligibility of its Claim, its credited value, or whether to adjust the Class Member's claim due to a deficiency in its claim, and wishes to seek Court review of its dispute, the Settlement Class Member **MUST** file a statement of no more than two (2) pages with the Court within fourteen (14) days of the Settlement Administrator's decision to disallow or adjust the Claim. Any statement of response by Class Counsel and/or Defendants shall be filed with the Court not later than fourteen (14) days thereafter. The Court will decide the dispute based on these filings and whatever other materials or procedures the Court may require. No person shall have any claim against any Plaintiff, Class Counsel, Defendant, counsel for any Defendant, or the Settlement Administrator, based on the distribution of the Net Settlement Funds made substantially in accordance with the Plan of Allocation or as modified or interpreted by the Court.

## **EXHIBIT 6**

**MUST BE SUBMITTED  
ONLINE OR  
POSTMARKED NO  
LATER THAN  
XXXX, XX, XXXX**

## Cash Payment

## CLAIM FORM

Wood Mountain Fish et al. v. Mowi ASA et al.  
Case No. 19-22128-CIV-SMITH/LOUIS  
U.S. District Court, Southern District of Florida

For Office Use Only

This Claim Form is for use by persons or entities that, **between April 10, 2013 and [Preliminary Approval]**, 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 Wisconsin.<sup>1</sup>

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 [date]**.

Go to [[www.XXXX.com](http://www.XXXX.com)] if you need more information concerning who may submit a claim.

### I. CLAIMANT INFORMATION

NAME: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE/ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

### II. METHOD OF PAYMENT

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

Check ☐

ACH ☐

### 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 [Preliminary Approval Date]** 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.

<sup>1</sup> 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 (5) **Cermaq Defendants** [Cermaq Group AS; Cermaq US LLC; Cermaq Canada Ltd.; and Cermaq Norway].

Purchase Year	Purchase Location	Annual Purchase Amount
On or after April 13, 2013	[drop down list of states]	
2014		
2015		
2016		
2017		
2018		
2019		
2020		
2021		
On or before [XXXX, XX], 2022		
	<b>Total Purchase Amount:</b>	

**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: \_\_\_\_\_ Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**V. ADDITIONAL INFORMATION**

Your Claim Form must be submitted online ([[www.XXXX.com](http://www.XXXX.com)]) or by First Class U.S. mail postmarked by no later than [date]. Mail your completed Claim Form and documentation to:

Salmon IPP Settlement Administrator  
[P.O. Box xxxxx]  
[City, ST xxxxx-xxxx]

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.XXXX.com](http://www.XXXX.com)], for details.**

**QUESTIONS? Call [1-800-XXX-XXXX] or visit [[www.XXXX.com](http://www.XXXX.com)]**

## **EXHIBIT 7**



## Hon. Edward A. Infante (Ret.)

JAMS Mediator, Arbitrator, Referee/Special Master,  
Neutral Evaluator

### Case Manager

Sandra Chan

T: 415-774-2611

F: 415-982-5287

Two Embarcadero Center, Suite 1500, San Francisco,  
CA 94111

[schan@jamsadr.com](mailto:schan@jamsadr.com)

## Biography

**Hon. Edward A. Infante (Ret.)** is known for his ability to mediate complex cases involving a wide range of issues. A former chief magistrate judge of the U.S. District Court, Northern District of California, Judge Infante has more than 35 years of dispute resolution experience. As a JAMS neutral and as a federal judge, he became known for successfully resolving complex disputes, with particular expertise in business litigation, employment, intellectual property, securities and antitrust cases.

Judge Infante has successfully resolved numerous class actions involving everything from shareholders' rights to data breaches to Telephone Consumer Protection Act (TCPA) matters to false advertising and product liability cases. He has the ability to grasp complex corporate, accounting, financial and insurance issues while keeping in mind practical ongoing business considerations in order to assist parties in reaching solutions. He is widely respected for his knowledge of the law, sharp business acumen, objectivity and persistent efforts to resolve disputes.



Judge Infante is experienced with mediating cases set before various venues, including state and federal Courts, the U.S. International Trade Commission (ITC), the U.S. Patent and Trademark Office (PTO) and various international venues.

In 2018, Judge Infante took an appointment as a recalled magistrate judge in the U.S. District Court for the Central District of California while on a sabbatical from JAMS. During his time back on the bench, he used his experience and expertise in settlement to help parties reach resolutions. He returned full time to JAMS in 2019.

## ADR Experience and Qualifications

- As a federal judge and a mediator, conducted over 4,000 settlement conferences and mediations in all types of civil litigation, including securities fraud and shareholder class actions, intellectual property disputes and employment cases
- Resolved thousands of pretrial matters, including discovery, pleading and summary judgment motions, and presided over numerous jury trials
- Served as special master in several complex federal cases; authored Chapter 53, titled "Masters," in *Moore's Federal Practice* (the chapter discusses the appointment and procedures of special masters)

## Representative Matters

### Business/Commercial

- Mediated all types of business suits involving breach of contract, accounting, valuation and breach of warranty claims

### Civil Rights

- *Lopez v. San Francisco Unified School District*: large Americans with Disabilities Act (ADA) settlement that set the stage for accessibility upgrades in San Francisco public schools
- *Willits, et al. v. City of Los Angeles*: the largest ADA class settlement

### Class Actions

Settled over 750 class and mass actions, including wage and hour matters; antitrust class actions; securities fraud, including 10b-5 class actions; data breach and privacy; and matters involving laws such as the Truth in Lending Act, Song-Beverly Consumer Warranty Act, California Private Attorneys General Act (PAGA) and the TCPA.

- *In re Payment Card Interchange Fee Antitrust Litigation*: largest antitrust settlement of \$7.25 billion in multi-district litigation on behalf of a class of approximately 7 million merchants in the United States
- Mediated multiple class actions alleging autodialer calls and text messages that were sent to consumers' mobile phones in violation of the TCPA
- *In re Currency Conversion Fee Antitrust Litigation*: a nationwide class action concerning the use of certain payment cards for foreign transactions; settled for \$336 million
- Numerous securities class actions and derivative actions involving over 100 NASDAQ- and NYSE-listed companies
- Multiple products class actions, including those alleging defects in automobiles, etc.
- False advertisement/misrepresentation: multiple food labeling cases alleging deceptive and misleading product packaging; multiple cases alleging false labeling and false bargain advertisement

## Employment

- Mediated numerous wage and hour class actions, including those involving California PAGA claims
- Mediated race, gender and age discrimination suits; mediated sexual harassment, wrongful discharge and other employment-related breach of contract disputes
- Dispute alleging violation of Employee Retirement Income Security Act (ERISA) for failure to pay patient claims or to honor patients' out-of-network benefits
- Class action alleging gender discrimination against a major public educational institution
- Settled multiple disputes alleging racial discrimination; worked with the employer and the Equal Employment Opportunity Commission (EEOC) to design consensual consent decrees

## False Claims Act

- *State of California ex rel. Hunter Laboratories v. Quest Diagnostics, et al.*: settled for \$300 million; the largest False Claims Act settlement in California history and the largest single-state False Claims Act settlement in United States history

- False Claims Act case involving British Petroleum (BP) and the State of California involving claims of overcharging for natural gas; settled for \$102 million
- False Claims Act case in which U.S. Department of Justice intervened against a Silicon Valley company accused of concealing its commercial prices and overcharging the U.S. government; settled for \$75.5 million
- Whistleblower case involving the University of Phoenix alleging that its student recruitment policy violated the False Claims Act

## Health Care

- *Shurtleff vs. Health Net*: settled this medical data breach/privacy class action
- Antitrust class action alleging unlawful markup in the average wholesale prices of various brand-name drugs; settled for \$350 million, one of the largest Racketeer Influenced and Corrupt Organizations (RICO) Act settlements in history
- Resolved individual actions filed by various public entities under public sector health care plans

## Insurance

- Mediated coverage disputes involving multiple parties and bad faith allegations

## Intellectual Property

- **Technology areas**
  - Biotechnology (pharmaceutical and medical device), semiconductor, network, peripherals, microprocessors, internet and e-commerce, and consumer electronics
- **Copyright**
  - Mediated multiple copyright infringement and piracy of software claims
  - Mediated a dispute alleging violation of the Digital Millennium Copyright Act involving internet content
  - Special master in copyright dispute over billion-dollar doll market between a company and a former employee and between competitors
  - Settled copyright infringement dispute between artist and motion picture studio over the creation of a character in a major motion picture
  - Settled a dispute arising from the use of the title, character, name, text and photographs associated with a book
- **Patents**
  - As a federal judge, adjudicated patent infringement matters, including Markman hearings

and motions for summary judgment involving infringement and validity claims, and presided over several jury trials

- *Nikon v. ASML*: international patent dispute involving multiple patents resulting in complex cross-licensing agreements
- Mediated a multi-million-dollar web browser plug-in patent dispute
- Settled an international patent infringement dispute involving multiple patents, resulting in complex cross-licensing agreements
- Mediated a multi-million-dollar patent infringement and breach of licensing agreement involving a design chip set used in smartphone technology
- Mediated pre-litigation patent infringement claims between two Fortune 500 companies resulting in a cross licensing agreement involving patent portfolios
- Mediated several biotech patent infringement disputes, including a case with antitrust counterclaims involving multiple patents for DNA sequencing methods and apparatus
- Mediated a web browser plug-in patent dispute between a non-practicing entity and a Fortune 500 company
- Mediated a multi-patent dispute involving remote control technology
- Global settlement of three patent infringement lawsuits involving multiple software and audio technology patents

- **Trade Secrets**

- Settled numerous disputes alleging unfair business competition between competitors in various industries, including internet and e-commerce, computer software and hardware, and financial markets

- **Trademark**

- Mediated a trademark infringement, unfair competition and cybersquatting claim under the Lanham Act regarding the Formula 1 mark developed in connection with auto racing; settlement involved the transfer of domain names to plaintiff
- Settled multi-million-dollar dispute involving luxury brand alcoholic beverage
- Settled a putative class action alleging virtual infringement of registered trademarks
- Settled trademark disputes involving fragrance and related products

## **Securities**

Judge Infante has settled innumerable shareholders' rights actions involving more than 100 NYSE- and NASDAQ-listed companies, as well as insurance companies, involving issues such as 10b-5 class actions, breach of fiduciary duty, fraud, stock option backdating and stockholder derivative actions. Cases handled include the following:

- *In re IndyMac Mortgage-Backed Securities (MBS) Litigation*: settled for \$340 million; class

action claims against six underwriters of IndyMac mortgage-backed securities, resulting in one of the largest federal class action settlements in mortgage-backed securities

- *In re McKesson, HBOC, Inc. Securities Litigation*: settled for \$960 million; one of the largest securities fraud class settlements
- *California Public Employees' Retirement Systems ("CalPERS") v. Moody's Corp.*: settled for \$130 million; claims of negligent misrepresentation by credit rating agency in issuing "Aaa" ratings for certain mortgage-backed securities

## Honors, Memberships, and Professional Activities

*Completed Virtual ADR training conducted by the JAMS Institute, the training arm of JAMS.*

- Included on "National Mediators" list, Chambers USA America's Leading Lawyers for Business, 2016–2018
- Recognized as an "ADR Champion," *National Law Journal*, 2016–2018
- Recognized as a "Top California Neutral," *Daily Journal*, 2003–2004, 2006–2012
- Recognized as the Best Neutral in the Bay Area (2007–2008) and as one of top Best Neutrals in the Bay Area (2009–2012), through an open survey of attorneys, *The Recorder*
- Recognized as a "Super Lawyer in Mediation and Arbitration," *San Francisco Magazine*, 2019
- Member, Federal Magistrate Judges Association, 1973–present; (President, 1981, 1982; Vice President, 1979–1980); moderator and panelist in various federal practice seminars, including the Federal Practice Institute, 1983–1993
- Adjunct Professor, Santa Clara University Law School; lectured in evidence, judicial administration and alternative dispute resolution, 1990–2002

## Background and Education

- Magistrate Judge, U.S. District Court, Central District of California, 2018–2019
- Chief Magistrate Judge, U.S. District Court, Northern District of California, 1990–2001
- Magistrate Judge, U.S. District Court, Southern District of California, 1972–1986
- United States Trustee; U.S. Department of Justice; Region 15; Southern District of California, District of Hawaii, Territory of Guam and Commonwealth of the Northern Marianas Islands; 1988–1990
- Partner; Schall, Boudreau & Gore; San Diego; 1986–1988
- J.D., Boston University School of Law, 1965
- A.B., Boston College, 1962

## Publications

- **2018 National Law Journal Alternative Dispute Resolution ADR Champions List**  
The National Law Journal

Available worldwide ›

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## **EXHIBIT 8**



Founded in 1978, Lockridge Grindal Nauen P.L.L.P. represents clients of all shapes and sizes, taking the time to understand each client's goals and aspirations before tailoring our representation to meet their individual needs, whether they be in the courtroom, the halls of Congress, city hall, or in their state capitol.

Our clients include local and tribal governments, health care professionals and organizations, real estate developers, energy companies, telecommunications providers, casualty insurers, trade and industry associations, health and pension funds, unions, as well as issue-based coalitions. Lockridge Grindal Nauen's attorneys and government relations professionals are assisted by an extensive support staff. The firm has offices in Minneapolis, Minnesota, and Bismarck, North Dakota.

For over 40 years, Lockridge Grindal Nauen P.L.L.P. has advocated on behalf of clients impacted by illegal business operations. Our antitrust team has prosecuted national and global cartels on behalf of businesses injured by anticompetitive conduct. We have obtained billions in settlements and verdicts for our clients and classes. Our clients include businesses across the country that have been injured by domestic or global cartels.

Since 1890, when Congress passed the Sherman Antitrust Act, protecting and promoting a competitive economy has been a bedrock American principle. The United States and many states have adopted laws and regulations to protect the free and open markets and prohibit unfair competition. Companies that disregard these laws injure not just the companies with which they compete for business but the consumers who rely on their goods and services. Enforcement of antitrust laws helps to promote healthy competition and, therefore, robust economies.

#### **LGN'S ANTITRUST LAWYERS**

LGN's antitrust experts are leaders in the field. Our team members serve in a variety of leadership positions: serving on the Board of Directors and Advisory Board of the American Antitrust Institute, past Presidents of the Committee to Support the Antitrust Laws (COSAL), the Minnesota State Bar Association's Antitrust Law Section, the Antitrust Law Advisory Board of Strafford Publications, and the American Bar Association Antitrust Section's Committees such as the Membership Committee. We also have served as contributing authors to national and international antitrust law treatises and other publications, including the American Bar Association's Antitrust Law Developments publication. We have participated in the Federal Practice Committee for the District of Minnesota and Merit Selection Panels for the District of Minnesota and are members of the Sedona Conference.

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## **BREADTH AND DEPTH OF ANTITRUST LITIGATION**

Enforcing antitrust regulations requires thorough investigation, development of creative strategies, and dealing with statutes across different jurisdictions. The attorneys at LGN lead high-stakes antitrust litigation challenging collusion, such as bid-rigging agreements, price-fixing, exchanging pricing information among competitors, and horizontal market division, including agreements not to compete. We also challenge illegal monopolies and attempts to monopolize, illegal joint ventures, and other conduct that unreasonably restrains trade and violates federal and state antitrust and fair competition laws.

## **PRAISE FOR OUR ANTITRUST TEAM**

For over 40 years, our antitrust team has fought for fair markets and open competition that has led to recovering billions of dollars in damages on behalf of injured class members. Our antitrust team is experienced in pre-lawsuit investigations, complex discovery issues, including e-discovery, expert discovery, Daubert motions, trials, and all other aspects of cutting-edge antitrust litigation.

Courts have repeatedly praised our antitrust team. For instance, U.S. District Judge John Gleeson (ret.) described us as “highly experienced practitioners in complex litigation generally and antitrust litigation specifically.” *Precision I*, 2013 WL 4525323, at \*16; *Precision II*, 2015 WL 6964973, at \*8 (“The settlement amounts proposed here attest to Class Counsel’s abilities.”). U.S. District Chief Judge Ruben Castillo (ret.) recognized not only “the outstanding result obtained for the Class” but also “the quality of work product and quantity of work” we performed. *In re Potash Antitrust Litig. (II)*, Case No. 1:08-cv-06910, Doc. No. 589 at 2 ¶ 5.



## Heidi M. Silton

Antitrust Law  
Business Litigation

*Partner*

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Heidi Silton is a partner in the firm's antitrust department and practices primarily in complex business litigation. Heidi represents mainly small and mid-sized businesses in complex litigation involving other businesses and litigates in Minnesota and throughout the United States. She and the firm are regularly appointed lead and co-lead plaintiffs' class counsel by courts in nationwide antitrust litigation.

For the past several years, Heidi has been named one of Minnesota's top 50 women lawyers, and top 100 lawyers, by a peer review list of leading Minnesota Lawyers. She is the Past President and an active member of The Committee to Support the Antitrust Laws (COSAL), an Advisory Board member of the American Antitrust Institute (AAI) and is the current chair of AAI's Private Enforcement Awards Judging Committee. She also serves as one of the Committee Vice-Chair to the American Bar Association's Antitrust Section Membership Committee and as an advisor to the American Bar Association's Global Private Litigation Committee. Heidi is a past chair and emeritus of the Minnesota State Bar Association Antitrust Law Section.

In addition to her litigation practice, she is a member of Twin Cities Diversity in Practice's Membership and Engagement Committee and a member of the firm's Diversity and Inclusion Committee. Heidi believes in the value of mentorship and works to mentor other attorneys both inside and outside her firm.

An active volunteer in her community, Heidi serves on the board of Arete Academy and on the board of Reader/Writer where she is also a writing coach for 8th graders. Heidi has also co-chaired galas to support the Sanneh Foundation, the American Diabetes Association, and Second Harvest.

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## Representative Cases

- *In re Generic Pharmaceuticals Pricing Antitrust Litig.*, No. 2:16-md-02724-CMR (E.D. Pa) – Member of End-Payer Plaintiffs Steering Committee
- *In re Google Digital Advertising Antitrust Litig.*, No. 1:21-md-03010 (S.D.N.Y.)
- *In re Google Play Consumer Antitrust Litig.*, No. 5:20-cv-05761 (N.D. Cal.)
- *In re Packaged Seafood Products Antitrust Litig.*, No. 15-MD-2670, (S.D. Cal.)
- *In re Seroquel XR (Extended Release Quetiapine Fumarate) Antitrust Litig.*, Nos. 20-cv-1076 and 20-cv-01090 (D. Del.)
- *Staley, et al., v. Gilead Sciences, Inc. et al.*, No.: 3:19-cv-02573 (N.D. Cal.) – Member of Interim Executive Committee for End-Payor Class Plaintiffs
- *Wood Mountain Fish LLC, et al., v. Mowi ASA, f/k/a Marine Harvest ASA, et al.* (S.D. Fla.), No. 19-022128-CIV –court-appointed interim Co-Lead Class Counsel for the Salmon Indirect Purchaser Class
- *In re Aggrenox Antitrust Litig.*, No. 3:14-md-02516-SRU (D. Conn.)
- *In re Automotive Refinishing Paint Antitrust Litig.*, MDL No. 1426 (E.D. Pa.)
- *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-cv-00395 (E.D. Va.)
- *In re Digital Music Antitrust Litig.*, No. 1:06-md-01780 (S.D.N.Y.)
- *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M:02-cv-1486 (N.D. Cal.)
- *El Jay Poultry v. Packaging Corporation of America, et al.*, No. 1:10-cv-5896 (N.D. Ill.)
- *In re Fasteners Antitrust Litig.*, MDL No. 1912, (E.D. Pa.)
- *In re Flat Glass (II) Antitrust Litig.*, No. 2:08-mc-180 (W.D. Pa.) – Plaintiffs’ Co-Lead Counsel
- *In re Food Service Equipment Hardware Antitrust Litig.*, No. 1:10-cv-1849 (N.D. Ga.)
- *In re Foundry Resins Antitrust Litig.*, No. 2:04-md-1638 (S.D. Ohio)
- *Funeral Consumers Alliance, Inc., et al. v. Serv. Corp. Int’l, et al.*, No. H-05-3394 (S.D. Tex.)
- *In re Hydrogen Peroxide Antitrust Litig.*, MDL No. 1682 (E.D. Pa.)
- *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, MDL No. 2542 (S.D.N.Y.)
- *Kleen Products LLC, et al. v. Packaging Corp. of Am., et al.*, No. 1:10-cv-5711 (N.D. Ill.)
- *In re Lidoderm Antitrust Litig.*, No. C-14-md-02521 (N.D. Cal.)
- *In re Monosodium Glutamate Antitrust Litig.*, MDL No. 1328 (D. Minn.) and related *Inquívosa et al. v. Ajinomoto Co., et al.*, No. 03-cv-2997 (D. Minn.) – Plaintiffs’ Co-Lead Counsel
- *In re National Collegiate Athletic Ass’n Athletic Grant-In-Aid Cap Antitrust Litig.*, MDL No. 2541 (N.D. Cal.)
- *In re Niaspan Antitrust Litig.*, No. 2:13-md-2460 (E.D. Pa.)
- *In re Packaged Ice Antitrust Litig.*, MDL No. 1952 (E.D. Mich.)
- *In re Parcel Tanker Shipping Antitrust Litig.*, MDL No. 1568 (D. Conn.)
- *In re Platinum and Palladium Antitrust Litig.*, No. 1:14-cv-09391 (S.D. N.Y.)
- *In re Potash Antitrust Litig. (II)*, No. 1:08-md-06910 (N.D. Ill.) – Plaintiffs’ Co-Lead Counsel
- *Freight Forwarders Antitrust Litig. (Precision Associates, Inc. v. Panalpina World Transport (Holding) Ltd., et al.)*, No. 1:08-cv-42 (E.D.N.Y.) – Plaintiffs’ Co-Lead Counsel

- *In re Pressure Sensitive Labelstock Antitrust Litig.*, MDL No. 1556 (M.D. Pa.) – Plaintiffs’ Co-Lead Counsel
- *In re Publication Paper Antitrust Litig.*, No. 3:04-md-1631-SRU (D. Conn.)
- *In re Refrigerant Compressors Antitrust Litig.*, MDL No. 2042
- *In re Supervalu, Inc., Customer Data Security Breach Litig.*, MDL No. 2586 (D. Minn.)
- *In re Urethane Antitrust Litig.*, MDL No. 1616 (D. Kan.) - Plaintiffs’ Co-Lead Counsel
- *Wallace, et al. v. Kraft Foods Group, Inc., et al.*, No. 1:15-cv-02937 (N.D. Ill.)

## Presentations

- “Hot Topics in Obtaining Discovery in Foreign Countries,” University of Minnesota Law School, Electronic Discovery Seminar (March 4, 2014)
- “Generational Issues in the Law,” University of Minnesota Law School, MSBA and Women in the Legal Profession seminar series (April 4, 2013)
- “Hot Topics in Antitrust Law,” Minnesota Women Lawyers CLE (January 18, 2012)
- “Hypotheticals for Practical Application,” MSBA CLE on Antitrust Law Issues in Intellectual Property Litigation and Licensing (May 25, 2011)

## Publications

- Congressional Antitrust Bills Seek to Regulate a New Internet Era, *Antitrust*, Vol. 36, No. 2 (2022) (with Craig Davis and Halli Spraggins)
- Recent Developments in Discovery of European Commission Documents, *Global Competition Litigation Review* (2021) (with Craig Davis and Eura Chang)
- Fairness Requires the Elimination of Forced Arbitration, *The Journal of the Antitrust and Unfair Competition Law Section of the California Lawyers Association* (2021) (with Robert Kitchenoff, Pamela Gilbert, Nigar Shaikh, and Geoffrey Kozen)
- Forced Arbitration is a Bar to the Effective Enforcement of the Antitrust Laws; With Equal Right, *the Official Journal of Minnesota Women Lawyers* (2021) (with Jessica Servais)
- Animal Science: The US Supreme Court’s Interpretation of Foreign Law Asserted by Foreign Governments in Competition Law Cases, *12 Global Competition Litigation Review* no. 2, at 45 (2019) (with Craig Davis and Kasia Kokoszka)
- The Discovery Evolution of European Commission Competition Law Documents, *9 Global Competition Litigation Review* no. 3, at 96 (2016) (with Craig Davis)
- Trending Methods of International Service of Process: @elusivedefendant#youcanrunbutyoucan’thide#HagueConvention; *31 No. 19 Westlaw Journal Computer and Internet* 1 (February 2014)
- A Conspiracy of Note (and your withdrawal should be too); *American Bar Association Journal — Law News Now* (March 2013)
- Social Media Discovery: The Ongoing Struggle to “Update Status”; *Bench & Bar of Minnesota* (December 2012) (with Courtney Blanchard); republished in *The Computer & Internet Lawyer* (May 2013)

- Pfleiderer AG v. Bundeskartellamt: A Step Forward in Efforts to Obtain Discovery From European Commission Antitrust Proceedings, 19 No. 6 Westlaw Journal Antitrust 1 (September 2011) (with Craig S. Davis)

## Professional Recognition

- Named a Minnesota Super Lawyer® from 2003-2022.
- Named one of Minnesota's Top 50 Women Super Lawyers® in 2012, 2015-2021, and a Top 100 Minnesota Women Super Lawyer® for 2007-2009.
- Named a Top 100 Minnesota Super Lawyer® in 2017.
- Named one of the Minneapolis/St. Paul Business Journal's "40 Under 40" in 2005.
- Immediate former President and current member of Committee to Support the Antitrust Laws (COSAL)
- Committee Vice Chair of the American Bar Association Membership Committee
- Advisory Member of the American Bar Association Global Private Litigation Committee, Antitrust Section
- Member of the Twin Cities Diversity In Practice (TCDIP) Engagement & Innovation Committee
- Chair of the American Antitrust Institute (AAI) Antitrust Enforcement Awards Judging Committee
- Advisory Board Member of the American Antitrust Institute (AAI)

## Education

- William Mitchell College of Law, 1995

## Bar Admissions

- 1995, Minnesota

## Court Admissions

- Minnesota
- U.S. District Court, District of Minnesota
- U.S. Court of Appeals, Seventh Circuit
- U.S. Court of Appeals, Eighth Circuit



## Kristen G. Marttila

Kristen Marttila is partner with LGN. Ms. Marttila has over a decade of antitrust experience in numerous multidistrict, consolidated, and complex class actions throughout the country. Ms. Marttila was named a Minnesota Super Lawyer by her peers in 2022, and was previously named a Super Lawyers Rising Star each year from 2015 through 2020. She clerked for The Honorable Patrick J Schiltz and The Honorable Eric C Tostrud, both in the District of Minnesota, and has served in numerous leadership roles in the Federal Bar Association at the Chapter and National levels, as well as in projects of the American Bar Association's Antitrust Section. Through the Committee to Support the Antitrust Laws, ("COSAL"), Ms. Marttila is the Vice Chair of the Amicus Committee, and has worked on amicus briefs on pro-competition issues in federal courts of appeal around the country. Ms. Marttila serves as LGN's Pro Bono Chair, and she maintains an active pro bono practice representing clients in civil rights, criminal appeals, and criminal expungement cases.

Ms. Marttila has played a significant role in the following major antitrust cases, among others: *Wood Mountain Fish, LLC v. Mowi ASA*, No. 19-cv-22128 (S.D. Fla.) (LGN serves as co-lead counsel for indirect purchasers in this antitrust class action; personally involved in all aspects of litigation, including written discovery, meet and confers, depositions, motion practice and oral argument); *Precision Associates, Inc. v. Panalpina World Transport (Holding) Ltd.*, No. 08-cv-0042 (E.D.N.Y.) (firm appointed co-lead counsel; antitrust class action involving 29 defendant groups settled for over \$400 million); *In re Potash Antitrust Litig.*, MDL No. 1996 (N.D. Ill.) (obtained favorable ruling from the Seventh Circuit, sitting en banc, regarding interpretation of the Foreign Trade Antitrust Improvements Act, and achieved settlements totaling \$90 million).

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## Joseph C. Bourne

Joseph Bourne is senior counsel with LGN. Mr. Bourne has over a decade of antitrust experience in numerous multidistrict, consolidated, and complex class actions throughout the country. Mr. Bourne has been named a Super Lawyers Rising Star by his peers every year since 2014. Mr. Bourne is dedicated to serving the local community; he was named a North Star Lawyer by the Minnesota State Bar Association from 2012 to 2014 in recognition of his pro bono work, and he served as a volunteer attorney in the District of Minnesota and Minnesota Chapter of the Federal Bar Association's Pro Se Project.

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Mr. Bourne is currently, or has recently been, actively involved in the following major antitrust cases, among others: *In re Pork Antitrust Litigation*, No. 18-cv-01776 (D. Minn.) (LGN appointed co-lead counsel; personally involved in all aspects of litigation, with a leading role in written discovery, depositions, and discovery motion practice and oral argument); *Wood Mountain Fish, LLC v. Mowi ASA*, No. 19-cv-22128 (S.D. Fla.) (LGN serves as co-lead counsel for indirect purchasers in this antitrust class action; personally involved in all aspects of litigation, including written discovery, meet and confers, depositions, motion practice and oral argument); *In re Packaged Seafood Products Antitrust Litigation*, No. 15-md-2670 (S.D. Cal.) (LGN serves as counsel for end payer plaintiffs in this certified antitrust class action); *Precision Associates, Inc. v. Panalpina World Transport (Holding) Ltd.*, No. 08-cv-0042 (E.D.N.Y.) (firm appointed co-lead counsel; antitrust class action involving 29 defendant groups settled for over \$400 million).

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## Derek C. Waller

Derek Waller is an associate with LGN and is admitted to the bar in the State of Minnesota. He practices primarily complex litigation in antitrust, health care, and insurance related matters. Mr. Waller serves as class counsel in a consumer fraud class action certified by the court in 2021, *Taqueria El-Primo LLC v. Farmers Ins.*, 19-cv-3071 (D. Minn.).

Prior to joining the firm, Mr. Waller served as a law clerk for the Honorable Joan N. Ericksen, United States District Judge in the District of Minnesota for two years. In 2019, he graduated *magna cum laude* from the University of Minnesota Law School, where he served as an editor on the *Minnesota Law Review*.

He has published articles in the *Minnesota Law Review* and *ABA Journal of Affordable Housing and Urban Development*.

He provides *pro bono* services for criminal expungements through the Volunteer Lawyers Network, serves on two nonprofit boards, and coaches a health law competition moot court team at the University of Minnesota Law School.

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## **EXHIBIT 9**



**Zwerling, Schachter & Zwerling, LLP**  
Counselors at Law

## **FIRM RESUME OF ZWERLING, SCHACHTER & ZWERLING, LLP**

Zwerling, Schachter & Zwerling, LLP was formed on January 1, 1985 (the “Zwerling Firm”), and is currently involved in numerous class actions in the areas of antitrust, securities, and consumer rights.

The Zwerling Firm proudly was an active member of The 9/11 Project where it provided legal representation *pro bono* for the families of union-member victims of the World Trade Center attacks. It was invited to join The Project with eight other collaborating law firms, but was the only one which regularly represents plaintiffs in litigation. New York Lawyers for the Public Interest coordinated The Project. The Project successfully obtained relief for those families above what they would have received from the 9/11 fund.

### **Antitrust / Consumer Litigation**

The Zwerling Firm has acted or is presently acting as a lead counsel or member of an executive committee in numerous class actions involving antitrust claims and deceptive trade practices, including: *In Re: Google Digital Advertising Antitrust Litigation*, 1:21-md-03010 (S.D.N.Y.) (“Google Advertising Litigation”); *In re: Deere & Company Repair Services Antitrust Litigation*, 3:22-cv-50188 (N.D. Ill.) (“John Deere”); *In re: Juul Labs, Inc. Antitrust Litigation*, 20-cv-2345-WHO (N.D. Cal.) (“Juul Antitrust Litigation”); *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litigation*, 18- MD-2819 (E.D.N.Y.); *Lincoln Adventures LLC et al v. Certain Underwriters at Lloyd’s London Members of Syndicates et. al.*, 2:08-cv-00235 (D. N.J.) (“Lloyd’s Litigation”); *White Mountain Fish LLC et al. v. Mowi ASA (f/k/a Marine Harvest ASA*, 19-22121-CIV, (S.D. Fla.) (“Farmed Salmon Litigation”); *In re Cipro Cases I and II*, JCCP Nos. 4154 and 4220 (Cal. Super.); *In re Ciprofloxacin Hydrochloride Antitrust Litigation*, MDL No. 1383 (E.D.N.Y.); *In re OxyContin Litigation*, MDL No. 1603 (S.D.N.Y.); *In re Insurance Brokerage Antitrust Litigation*, MDL No. 1663 (D.N.J.) (“Insurance Brokers”); *In re Neurontin Antitrust Litigation*, MDL No. 1479 (D.N.J.); *In re Tamoxifen Citrate Antitrust Litigation*, MDL No. 1408 (E.D.N.Y.); *Karofsky v. Abbott Laboratories*, No. CV-95-1009 (Me. Super. Ct. Cumberland County) (as well as in 10 related cases in other state courts); *In re Lorazepam and Clorazepate Antitrust Litigation*, MDL No. 1290 (D.D.C.) (as well as in 11 related cases in state courts); *Newman v. DuPont Merck Pharmaceutical Company*, No. 788358 (Cal. Super. Ct. Orange County); *Pickett v. Holland America Line-Westours, Inc.*, 6 P.3d 63 (Wash. Ct. App. 2000); *Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699 (Fla. Dist. Ct. App. 2000); *Renaissance Cruises, Inc. v. Glassman*, 738 So. 2d 436 (Fla. Dist. Ct. App. 1999) (as well as in 7 related cases in other state courts); *Garcia v. General Motors Corporation*, No. L-4394-95 (N.J. Super. Ct.); *In re Playmobil Antitrust Litigation*, No. 9:95-cv-2896 (JS) (E.D.N.Y.); and *Boni v. America Online Inc.*, C.A. No. 95-C-07 (Del. Ch.) and *Feige v. America Online Inc.*, Index No. 118333/95 (N.Y. Sup. Ct. N.Y. County) (as well as other related cases in state courts).

In the antitrust area, the Zwerling Firm is currently Lead Counsel for the indirect purchasers in the *Juul Antitrust Litigation*, Co-Lead Counsel in the *Farmed Salmon Litigation*, Co-Lead Counsel in the *Lloyd's Litigation*, member of the Plaintiffs' Steering Committee in *John Deere Litigation*; member of the Advertiser Class Action Steering Committee in *Google Advertising Litigation*. The Zwerling Firm is also currently Liaison Counsel for end-payor plaintiffs in the *Restasis Antitrust Litigation*. In that capacity, the Zwerling Firm participates in all decision-making in connection with the prosecution of the litigation and serves as the direct liaison with the Court and other parties.

The Zwerling Firm has represented union health and welfare funds in litigation to recover damages for price-fixing and other anti-competitive behavior for over 20 years. Such actions have included the *Norvir Antitrust Litigation*, the *Tamoxifen Antitrust Litigation*, the *Lorazepam and Clorazepate Antitrust Litigation*, and the *Ciprofloxacin Hydrochloride Antitrust Litigation*. In both the federal MDL and the California *Cipro* cases, the Zwerling Firm served as Co-Lead Counsel challenging pay-for-delay pharmaceutical agreements on behalf of a class of indirect purchasers of the drug ciprofloxacin. As Co-Lead Counsel in California, the Zwerling Firm was able to revive a case that had been dismissed by numerous courts and abandoned by most of plaintiffs' counsel. In the process, California Co-Lead Counsel were able to reverse a significant error in the application of antitrust law to pharmaceutical reverse payment agreements and achieve a total settlement of \$399.1 million – a total in excess of plaintiffs' expert's estimate of single damages.

In *In re Abbott Laboratories Norvir Antitrust Litigation*, the Zwerling Firm represented the SEIU International Health Fund ("SEIU") against Abbott Laboratories in an action for monopoly leveraging under Section 2 of the Sherman Antitrust Act, as well as the California Unfair Competition law and state law unjust enrichment. In August, 2008, the parties reached a settlement whereby thirteen not-for-profit organizations shared almost \$5 million in Cy Pres funds.

The Zwerling Firm was appointed co-lead counsel for plaintiffs in numerous related indirect purchase actions brought against Mylan Laboratories, Inc. regarding injury to competition and monopolization, as well as price fixing. Those actions included an action in federal court, *In re Lorazepam & Clorazepate Antitrust Litigation*, and resulted in settlements of over \$100 million. The plaintiffs represented by the Zwerling Firm included several institutions, such as union health funds and private insurers.

The Zwerling Firm was co-lead counsel and a member of the Executive Committee in eleven actions filed against the major pharmaceutical manufacturers alleging violations of state antitrust laws for charging higher prices to consumers who purchased brand name prescription drugs from retail pharmacies. Those cases resulted in a \$65 million settlement. The courts presiding over those cases have commented on the Zwerling Firm's expertise:

- I think the lawyering in this case is most commendable. I think that both sides have accorded themselves in a manner that allows us to be proud of the profession. . .

Transcript of Hearing at 16-17, *Kerr v. Abbott Laboratories*, No. 96-2837 (Minn. Dist. Ct. Nov. 24, 1998).

- [T]his Court, in particular, has been helped along every step of the way by some outstanding lawyering.....You can hardly say that there's been anything but five star attorneys involved in this case.

Transcript of Hearing at 31 & 33, *Scholfield v. Abbott Laboratories*, No. 96 CV 460 (Wis. Cir. Ct. Oct. 5, 1998).

- I think the quality of counsel is excellent.

Transcript of Hearing at 28, *McLaughlin v. Abbott Laboratories*, No. CV 95-628 (Ariz. Super. Ct. Oct. 28, 1998).

- I'll join my learned colleagues from this and other jurisdiction[s] in commending counsel in arriving at something that represents a great deal of hard work and a great deal of ingenuity in putting together a settlement of this magnitude and complexity, and especially the cost effective way in which this settlement is proposed to be distributed.

Transcript of Hearing at 17, *Karofsky v. Abbott Laboratories*, No. CV-95-1009 (Me. Super. Ct. Dec. 2, 1998).

In *Insurance Brokers*, settlements totaling over \$198 million were reached with three of the many defendant groups. The Zwerling Firm was also one of the three class counsel in *Rodriguez v. West Publishing Corporation*, No. 2:05-cv-3222 R(MCx) (C.D. Cal.), where a \$49 million settlement of antitrust claims was approved by the Court and affirmed by the Ninth Circuit Appeals on behalf of a class of law graduates enrolled in the BAR/BRI bar review courses.

In addition, the Zwerling Firm represented consumers who were victims of overcharging in the sale of toys in *In re Playmobil Antitrust Litigation*. Judge Seybert complimented the work of Class Counsel, including the Zwerling Firm, stating in her opinion certifying the Class:

As set forth in greater detail in the firm resumes...: (1) Zwerling, Schachter & Zwerling, LLP [and three other firms]...all have extensive familiarity with the prosecution of complex litigations, class actions and specifically, antitrust litigations. This is further borne out by counsels' submissions and conduct to date before this Court.

*In re Playmobil Antitrust Litigation*, 35 F. Supp. 2d 231, 245 (E.D.N.Y. 1998) (citation omitted).

In the area of deceptive trade practices, the Zwerling Firm was lead counsel in coordinated nationwide actions against the world's leading passenger cruise lines regarding their advertising practices concerning "port charges." (*Cicogna v. Royal Caribbean Cruises, Ltd.*, No. 96-8075 (Fla. Cir. Ct. Dade County); *Espinet v. Kloster Cruise Ltd.*, No. 96-8076 (Fla. Cir. Ct. Dade County); *Bellikoff v. Celebrity Cruises Inc.*, No. 96-8077 (Fla. Cir. Ct. Dade County); *Hackbarth v. Carnival Cruise Lines Inc.*, No. 96-8078 (Fla. Cir. Ct. Dade County); *Glassman v. Renaissance*

*Cruises, Inc.*, No. 96-5490 (Fla. Cir. Ct. Broward County); *Pickett v. Holland America Line-Westours, Inc.*, No. 96-2-10831 (Wash. Super. Ct. King County) (“*Pickett*”), *Barton v. Princess Cruises Inc.*, No. BC 148448 (Cal. Super. Ct. Los Angeles County); *Millheiser v. Dolphin Cruise Line*, No. 96-18146 (Fla. Cir. Ct. Dade County); *Latman v. Costa Cruise Lines N.V.*, No. 96-18139 (Fla. Cir. Ct. Dade County); and *Cronin v. Cunard Cruise Line Ltd.*, Index No. 115899/96 (N.Y. Sup. Ct. N.Y. County)). These cases resulted in settlements in excess of \$100 million. In *Pickett*, the Court complimented the Zwerling Firm by declaring that “[t]his has been litigated very professionally from the beginning to the end.”

In addition, the Zwerling Firm was involved in cases regarding defective automobile brakes (*McGill v. General Motors Corporation*, Index No. 15525/95 (N.Y. Sup. Ct. Bronx County) (related to *Garcia v. General Motors Corporation*, No. L-4394-95 (N.J. Super. Ct.))).

The Zwerling Firm was appointed Administrator for the General Motors Diesel Litigation Fund under the direction of Judge Henry Bramwell, District Judge, United States District Court, Eastern District of New York.

### **Other Complex Litigation**

The Zwerling Firm represented numerous Indian Tribes and Native Villages seeking relief from pharmaceutical manufacturers and distributors of prescription opioid drugs in *In re: National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio). The Zwerling Firm served on the Tribal settlement committee, and helped organize and draft an amicus brief submitted on behalf of over 450 Tribes throughout the United States.

In *County of Nassau v. Hotels.com, L.P.*, No. 2:06-cv-5724 (ADS) (E.D.N.Y.), the Zwerling Firm represents Nassau County (NY) in a class action seeking to recover unpaid taxes from internet-based hotel reservation companies on behalf of a class consisting of all New York counties and municipalities.

In addition, the Zwerling Firm has also represented union health and welfare funds in litigation against the tobacco industry. Those claims were for the excess costs incurred by the funds in providing health care to the members of their unions as a result of the fraudulent and deceptive practices of the tobacco companies (*Eastern States Health & Welfare Fund v. Philip Morris, Inc.*, Index No. 603869/97 (N.Y. Sup. Ct. N.Y. County)).

The Zwerling Firm has been counsel in high profile constitutional and civil rights actions. In *Haley v. Pataki*, No. 3:95-cv-550 (TJM) (N.D.N.Y.), the firm obtained an order forcing the Governor of the State of New York to stop withholding salaries from legislative employees in an attempt to coerce members of the State Legislature to vote on his State budget. In a related case, *Dugan v. Pataki*, Index No. 16341/95 (N.Y. Sup. Ct. Kings County), the Zwerling Firm obtained the same relief for the elected members of the State Legislature.

The Zwerling Firm has represented the New York City Council in *Mayor of New York v. Council of New York*, Index No. 402354/95 (N.Y. Sup. Ct. N.Y. County), an action in which the Mayor challenged the legislative powers of the City Council in connection with the establishment

of a board to review allegations of police corruption.

The Zwerling Firm also represented the Straphangers Campaign, a mass transit advocacy group, in *New York Urban League, Inc. v. Metropolitan Transportation Authority*, No. 1:95-cv-9001 (RPP) (S.D.N.Y.), an action to compel the State of New York and the MTA to allocate transit subsidies in a manner which does not have a discriminatory impact on minority ridership in New York City.

### **Securities Litigation**

The Zwerling Firm has acted or is presently acting as a lead counsel or as a member of an executive committee for plaintiffs in many securities related lawsuits, including: *McCoy v. Cullum & Burks Securities, Inc.*, No. 8:09-cv-1084-DOC (RNBx) (C.D. Cal.) (“Medical Capital Securities Litigation”); *Billitteri v. Securities America, Inc.*, No. 3:09-cv-1568-F (N.D. Tex.) (“Provident Royalties Litigation”); *Anwar v. Fairfield Greenwich Limited*, Master File No. 1:09-cv-118 (VM) (S.D.N.Y.) which obtained a recovery on behalf of investors in “feeder funds” that in turn invested with Bernard L. Madoff Securities, LLC.; *In re Citigroup Auction Rate Securities Litigation*, No. 1:08-cv-3139 (LTS) (S.D.N.Y.); *In re NYMEX Holdings Shareholder Litigation*, C.A. No. 3621 (VCN) (Del. Ch.); *In re Vonage Initial Public Offering (IPO) Securities Litigation*, No. 3:07-cv-177 (FLW) (D.N.J.); *In re BP Prudhoe Bay Royalty Trust Securities Litigation*, No. C06-1505 MJP (W.D. Wash.); *Diana Allen Life Insurance Trust v. BP plc*, No. 1:06-cv-14209 (PAC) (S.D.N.Y.); *In re First BanCorp Securities Litigation*, No. 3:05-cv-2148 (GAG) (D.P.R.); *Fox v. Levis*, No. 1:07-cv-3252 (RO) (S.D.N.Y.); *In re Silicon Image, Inc. Securities Litigation*, Master File No. C 05-456 (MMC) (N.D. Cal.); *In re Old Banc One Shareholders Securities Litigation*, No. 00C2100 (N.D. Ill.); *In re Network Associates Derivative Litigation*, No. CV 781854 (Cal. Super. Ct. Santa Clara County); *In re Telxon Corporation Securities Litigation*, No. 5:98-cv-2876 (KMO) (N.D. Ohio); *Hayman v. PricewaterhouseCoopers LLP*, No. 1:01-cv-1078 (KMO) (N.D. Ohio); *In re Corrections Corporation of America Shareholder Litigation*, Master File No. 98-1257-iii (Tenn. Ch.); *In re Adaptec Inc. Derivative Litigation*, No. CV 772590 (Cal. Super. Ct. Santa Clara County); *In re Pacific Scientific Securities Litigation*, No. SACV-96-1106-LHM(EEEx) (C.D. Cal.); *Kaplan v. Prins Recycling Corporation*, No. 2:96-cv-2444 (WHW) (D.N.J.); *In re Health Management Inc. Securities Litigation*, No. 9:96-cv-889 (ADS) (E.D.N.Y.); *Weikel v. Tower Semiconductor, Ltd.*, No. 2:96-cv-3711 (AJL) (D.N.J.); *In re Bennett Funding Group, Inc. Securities Litigation*, No. 1:96-cv-2583 (JES) (S.D.N.Y.); *In re Horizon/CMS Healthcare Corporation Securities Litigation*, Master File No. 1:96-cv-442 BB/LCS (D.N.M.); *Rosenberg v. Stauth*, No. 5:96-cv-1808-M (W.D. Okla.); *Solomon v. Armstrong*, C.A. No. 13515 (Del. Ch.) (the “GM/EDS Split-off Litigation”); *In re Archer Daniels Midland Company Derivative Litigation*, C.A. No. 14403 (Del. Ch.); *In re American Pacific Securities Litigation*, No. CV-S-93-576-PMP (D. Nev.); *McNeil v. Austin*, Index No. 33189/91 (N.Y. Sup. Ct. N.Y. County), *In re Foodmaker/Jack-in-the-Box Securities Litigation*, No. C93-517 WDL (W.D. Wash.); *In re Ames Department Stores, Inc. Stock Litigation*, No. 2:90-cv-27 (PCD) (D. Conn.); *In re General Development Corporation Securities Litigation*, No. 1:90-cv-691 (SM) (S.D. Fla.); *In re Republic Pictures Corporation Shareholders Litigation*, C.A. No. 13122 (Del. Ch.); *In re Blockbuster Entertainment Corporation Shareholders Litigation*, C.A. No. 13319 (Del. Ch.); *In re First Capital Holdings Corporation Financial Products Securities Litigation*, MDL No. 901 (C.D.



Cal.); *In re New World Entertainment Securities Litigation*, Master File No. CV 88-6260-MRP(Kx) (C.D. Cal.); *In re Anchor Securities Litigation*, No. 1:88-cv-3024 (CPS) (E.D.N.Y.); *In re 3Com Corporation Securities Litigation*, No. C-89-20480 (WAI) (N.D. Cal.); *In re Par Pharmaceutical, Inc. Derivative Litigation*, No. 1:89-cv-5497 (RPP) (S.D.N.Y.); *Fishbein v. Resorts International Inc.*, No. 1:89-cv-6043 (MGC) (S.D.N.Y.); *In re Bank of Boston Securities Litigation*, Master File No. 89-2269-H (D. Mass.); *In re Howard Savings Bank Securities Litigation*, No. 2:89-cv-5131 (WGB) (D.N.J.); *Merrit v. Gulf States Utilities Co.*, No. B-86-574-CA (E.D. Tex.).

In addition, the Zwerling Firm represents or has represented public employee pension funds and union pension funds in securities litigations, including: *In re MGIC Investment Corporation Securities Litigation*, No. 2:08-cv-458-LA (E.D. Wis.); *In re American International Group, Inc. Securities Litigation*, No. 1:08-cv-4772 (LTS) (S.D.N.Y.); *In re Doral Financial Corporation Securities Litigation*, MDL No. 1706 (S.D.N.Y.); and *Clinton Charter Township Police and Fire Retirement System v. Reckler*, No. 2:03-cv-5008 (TCP) (E.D.N.Y.).

The following is a representative sample of the complex securities claims which the Zwerling Firm has litigated:

- *In re First BanCorp Securities Litigation*, No. 3:05-cv-2148 (GAG) (D.P.R.) - co-lead counsel in securities fraud class action involving sham mortgage sales transactions between Puerto Rico banks. The Zwerling Firm achieved a \$74.25 million settlement in less than eighteen months of litigation, which is pending court approval.

- *Hayman v. PricewaterhouseCoopers, LLP*, No. 1:01-cv-1078 (KMO) (N.D. Ohio) - brought on behalf of investors in Telxon Corp. securities against the company's auditors for issuing false opinions on the company's financial statements. The Zwerling Firm obtained a recommendation for a default judgment against PricewaterhouseCoopers, LLP and subsequently settled the action for \$27.9 million.

- *In re Telxon Corp. Securities Litigation*, No. 5:98-cv-2876 (KMO) (N.D. Ohio) - a securities fraud class action where the Zwerling Firm, as sole lead counsel obtained a settlement of \$40 million on behalf of investors. Class members in the *PricewaterhouseCoopers* and *Telxon* actions received over 70% of their losses in the two settlements.

- *In re Corrections Corporation of America Shareholder Litigation*, Master File No. 98-1257-iii (Tenn. Ch.) - shareholder class action challenging a management-led buyout of public shareholders in exchange for shares in a publicly held REIT.
- In re Bennett Funding Group, Inc. Securities Litigation*, No. 1:96-cv-2583 (S.D.N.Y.) - securities fraud class action involving the single largest alleged Ponzi scheme in the United States. The Zwerling Firm has been on the Executive Committee which has successfully prosecuted the accountants, insurers, and sellers of the alleged fraudulent securities.

- *In re Health Management Inc. Securities Litigation*, No. 9:96-cv-889 (ADS) (E.D.N.Y.) - securities fraud class action alleging accounting fraud by the company and its auditors. The Zwerling Firm was co-lead trial counsel in the first case tried pursuant to the Private

Securities Litigation Reform Act of 1995.

- *Rosenberg v. Stauth*, No. 5:96-cv-1808-M (W.D. Okla.) - shareholders' derivative action involving alleged improper business practices at Fleming Companies, Inc. in which the demand futility defense was successfully defeated.

- *In re ICN/Viratek Securities Litigation*, No. 1:87-cv-4296 (S.D.N.Y.) - securities fraud class action involving FDA sought approval of an HIV drug.

- *McNeil v. Austin*, Index No. 33189/91 (N.Y. Sup. Ct. N.Y. County) - shareholders' derivative action regarding the sale of defective nuclear containment systems by General Electric.

- *In re Adaptec Inc. Derivative Litigation*, Master File No. CV 772590 and *In re Network Associates Derivative Litigation*, Master File No. CV 781854 (Cal. Super. Ct. Santa Clara County) – shareholders' derivative lawsuits pursuant to California's insider trading statute to recover profits from the company's officers and directors.

- *In re Ames Department Stores, Inc. Stock Litigation*, No. 2:90-cv-27 (PCD) (D. Conn.) - securities fraud class action in which the Second Circuit reaffirmed the scope of the "in connection with" requirement of the Securities Exchange Act § 10(b).

Courts have commented favorably upon the expertise of the Zwerling Firm. In appointing the Firm as lead counsel in *In re Old Banc One Shareholders Securities Litigation*, No. 00C2100 (N.D. Ill.), the Court noted that the "attorneys have extensive experience, many successes on their resumes, and have obtained sizable recoveries on behalf of their clients." Minute Order dated December 21, 2000.

In appointing it as lead counsel in *In re Telxon Corporation Securities Litigation*, No. 5:98-cv-2876 (KMO) (N.D. Ohio), the Court determined that the Zwerling Firm has "the requisite ability and expertise to prosecute and manage this litigation effectively." Memorandum and Order at 39, August 25, 1999.

As a member of a team of plaintiffs' trial counsel in *In re ICN/Viratek Securities Litigation*, No. 1:87-cv-4296 (S.D.N.Y.), the Zwerling Firm was complimented by Judge Kimba Wood as having done a "superb job on behalf of the class. This was a very hard fought case. You had very able, superb opponents, and they put you to your task. The trial work was beautifully done and I believe very efficiently done."

In *In re Par Pharmaceutical, Inc. Derivative Litigation*, No. 1:89-cv-5742 (RPP) (S.D.N.Y.), Judge Patterson, in commenting on the Zwerling Firm, said "[they] acted skillfully and resourcefully [The Zwerling Firm] exercised wisdom and judgment and negotiated a skillful settlement with the defending company and with the officer and director/defendants." Slip opinion dated June 15, 1992.

Chief Judge Weinstein, in the *Jack Eckerd Corporation* litigation (E.D.N.Y. 1986), and Judge Charles P. Sifton in both *Golden v. Shulman*, [1988 Transfer Binder] Fed. Sec. L. Rep.



(CCH) ¶ 94,060 (E.D.N.Y. Sept. 30, 1988) and *Cagan v. Anchor Savings Bank, FSB*, [1990 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 95,324 (E.D.N.Y. May 22, 1990) also commented favorably upon the Zwerling Firm.

One of the partners of the Zwerling Firm was appointed by former Chief Judge Browning as Proof-of-Claim Counsel in connection with the loss analysis in *In re Washington Public Power Supply System Securities Litigation*, MDL No. 551 (D. Ariz.). In that matter, former United States District Judge Nicholas J. Bua, as Special Master appointed by the Court, in commenting on one of the partners in the Zwerling Firm, said: “I...find that the services of Mr. Schachter were efficiently and reasonably performed by him personally....Mr. Schachter specifically was appointed by the District Court to serve as Claims Counsel. It was not unreasonable for a senior partner like Mr. Schachter, with his vast knowledge of the case, to directly oversee the claims administration process rather than relying upon less knowledgeable junior attorneys. The class received its money’s worth for Mr. Schachter’s services.”

### **Members of the Firm**

#### **Jeffrey C. Zwerling**

Jeffrey C. Zwerling was admitted to the bar of the State of New York in 1972 and to the bar of the State of Arizona in 1981; he is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York, and the United States Court of Appeals for the Second Circuit. He received a Bachelor of Science degree with Honors from Lehigh University in 1968 and a Juris Doctor degree from Columbia University School of Law in 1971. He was Articles Editor of the *Columbia Journal of Transnational Law*. His professional affiliations include: the Second Circuit Federal Bar Council, New York State Bar Association, Association of the Bar of the City of New York, Nassau County Bar Association, and State Bar of Arizona. Mr. Zwerling was chosen as among the top 5% of attorneys in the New York City area as a “Super Lawyer”; he is rated in Martindale Hubbell as a “Preeminent Lawyer”.

On July 1, 1977, Mr. Zwerling founded the Law Offices of Jeffrey C. Zwerling; on January 1, 1985 that firm became Zwerling, Schachter & Zwerling, LLP. Prior to 1977, Mr. Zwerling was associated with the firms of Gasperini, Koch & Savage; Koch & Gluck; and Murray A. Gordon, P.C., with emphasis on civil litigation, real estate, and general corporate and commercial matters. Mr. Zwerling has represented and advised the Uniformed Fire Officers Association in regard to its pension funds and annuity plans.

Mr. Zwerling has extensive experience in all phases of complex litigation, including jury and non-jury trials, mediation, expert discovery, and settlement negotiations. He has negotiated several innovative corporate governance and structural changes in the resolution of shareholders' complaints. He is highly knowledgeable about economic and finance issues. Mr. Zwerling co-authored “The Dell Case: The Doors To The Courts Close Further For Investors” in the Aspatore Special Report (Thomson Reuters/Aspatore 2008).

**Robert S. Schachter**

Robert S. Schachter was admitted to the bar of the State of New York in 1972; he is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York, the Central District of California, the Eastern District of Wisconsin, the United States Court of Appeals for the Federal Circuit, the Second, Fifth, Seventh, Ninth and Eleventh Circuits, and the Supreme Court of the United States. He received a Bachelor of Arts degree from Syracuse University in 1968 and a Juris Doctor degree from Brooklyn Law School in 1971. His professional affiliations include: The American Bar Association (Lecturer, Panels in Class Actions, 1980 and 1998) and the Second Circuit Federal Bar Council. Mr. Schachter was chosen as among the top 5% of attorneys in the New York City area as a “Super Lawyer”; he is rated in Martindale Hubbell as a “Preeminent Lawyer”.

Mr. Schachter was a panelist at the Public Funds Summit (2002-2004), Investment Education Symposium sponsored by the Council of Louisiana Trustees (2002), and Fire & Police Pension Summit (2002). Mr. Schachter is a panelist for a series of seminars moderated by the late Professor Francis McGovern of the Duke University Law School concerning “Distribution of Securities Litigation Settlements—Improving the Process.” These seminars are aimed to develop solutions to improve the efficiency and effectiveness of securities litigation settlement distributions. Participants in the conference include attorneys, judges, regulators, institutional filers and claims administrators. The purpose of the seminars is to prepare a report for presentation to the Federal Judicial Conference.

Prior to the formation of the Zwerling Firm, Mr. Schachter was associated from 1973 through 1984 with the firm now known as Labaton Sucharow LLP. Mr. Schachter became a partner of that firm on January 1, 1978, concentrating in complex multi-district litigation.

Mr. Schachter has extensive experience in all phases of complex litigation. He has been involved in many settlement negotiations, as well as the drafting of complex settlement documents, and has particular expertise in the administration of class settlements. Mr. Schachter has been instrumental in crafting novel settlements which have been applauded by courts in securities, as well as antitrust matters, including corporate governance issues.

**Robin F. Zwerling**

Robin F. Zwerling was admitted to the bar of the State of New York in 1976; she is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second, Fourth, Sixth, Seventh and Ninth Circuits, and the Supreme Court of the United States. She received a Bachelor of Arts degree *cum laude* from Jackson College of Tufts University in 1972, and a Juris Doctor degree from Georgetown University Law Center in 1975. Her memberships include: the American Bar Association and the National Association of Securities and Commercial Law Attorneys, and the

Second Circuit Federal Bar Council.

As a member of the Program Committee of the Second Circuit Federal Bar Council, Ms. Zwerling plans and coordinates Continuing Legal Education programs. She was chosen as among the top 5% of attorneys in the New York City area as a “Super Lawyer”; she is rated in Martindale Hubbell as a “Preeminent Lawyer”.

Ms. Zwerling has concentrated in litigation since her graduation from law school. At that time, she became associated with Martin, Clearwater & Bell, becoming a partner in 1982 and remained there until the formation of the Zwerling Firm in 1985. Ms. Zwerling has extensive experience in all phases of litigation, including trials and appellate arguments. She has tried cases in both state and federal courts. Ms. Zwerling successfully completed the National Institute of Trial Advocacy’s Advanced Trial Practice course after having tried a number of cases.

### **Susan Salvetti**

Susan Salvetti was admitted to the bar of the State of New York in 1980; she is admitted to the following federal courts: the United States District Court for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second and Sixth Circuits. She received a Bachelor of Arts degree *summa cum laude* from Thomas More College of Fordham University in 1976 and a Juris Doctor degree from Fordham University School of Law in 1979. Her memberships include: the Second Circuit Federal Bar Council, Who’s Who in American Women, and Phi Beta Kappa, and is rated in Martindale Hubbell as a “Preeminent Lawyer”. Ms. Salvetti authored the published *Report on Class Certification for Particular Issues Pursuant to Federal Rules of Civil Procedure 23(C)(4)(A)*, 12 NYLitigator 63 (2007).

Ms. Salvetti has concentrated in litigation throughout her career, becoming a partner of the Zwerling Firm on January 1, 1992. Prior to her association with the firm in 1985, she was associated with Martin, Clearwater & Bell. Prior to that time, Ms. Salvetti was associated with Newman, Tannenbaum, Helpen & Hirschtritt, a general practice firm.

Ms. Salvetti has extensive experience in all phases of complex litigation, including as trial counsel; she has also taken and defended numerous depositions, argued motions before trial and appellate courts, and negotiated complicated settlements in both securities and consumer matters.

Ms. Salvetti played a pivotal role as a member of a team of plaintiffs’ trial counsel in In re ICN/Viratek Securities Litigation, No. 1:87-cv-4296 (S.D.N.Y.). Ms. Salvetti was complimented by Judge Kimba Wood as having done a “superb job on behalf of the class.... This was a very hard fought case. You had very able, superb opponents, and they put you to your task.... The trial work was beautifully done and I believe very efficiently done....”

**Senior Counsel**

**Justin M. Tarshis**

Justin M. Tarshis was admitted to the bar of the State of New York in 2003; he is also admitted to the United States District Court for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second Circuit. He received a Bachelor of Science degree from the University of Wisconsin in 1999, and a Juris Doctor degree *cum laude* from Brooklyn Law School in 2002. While in law school, Mr. Tarshis was the recipient of the Samuel L. Sporn Academic Achievement Scholarship and the CALI Excellence for the Future Award in Civil Practice. In addition, Mr. Tarshis served as an intern to the Honorable Shira A. Scheindlin of the Southern District of New York, as well as an intern in the New York State Attorney General's Office.

**Associates of the Firm**

**Donatella P. Keohane**

Donatella P. Keohane was admitted to the bar of the State of New York in 2003; she is also admitted to the Brazilian bar (State of Rio de Janeiro chapter). She received a Bachelor of Laws degree from Universidade Federal do Rio de Janeiro in 1998, and a Master of Laws degree from Fordham University School of Law in 2002. Prior to her association with the Zwerling firm, Ms. Keohane had been associated with Clifford Chance US LLP.

**Jessica C. Hermes**

Jessica C. Hermes was admitted to the bar of the State of New York in 2016. She received a Bachelor of Arts degree from Villanova University in 2012 and a Juris Doctor degree from New York University School of Law in 2015, where she was Notes Editor and Staff Editor for the *Journal of Legislation & Public Policy*.

Ms. Hermes has been involved in all phases of litigation, including drafting and responding to discovery requests, preparing for depositions, drafting motions, and preparing for and participating in hearings and trials.

She has been involved in complex litigation matters related to securities and antitrust law.

### **Of Counsel**

#### **Fred T. Isquith, Sr.**

Fred Taylor Isquith, Sr. is Of Counsel – National Litigation to the Zwerling Firm, as well as other affiliations. He graduated from Columbia University Law School in 1971. Since then, Mr. Isquith has concentrated in antitrust and securities litigation, often as lead counsel in large, complex, class actions across the country. Clients have included businesses and investors with claims for wrongdoing against the largest corporations in America.

Mr. Isquith has extensive experience in complex market and financial areas representing institutional investors, such as public and labor pension funds, labor health and welfare benefit funds, and private institutional investors. He has recovered over \$7 billion. Prior to the Zwerling Firm, Mr. Isquith was Chair of the Antitrust Department of Wolf Haldenstein. There, he was lead counsel in, among others, the *Package Seafood Antitrust Litigation*, (S.D. Cal.), the *Keurig Coffee Antitrust Litigation* (S.D.N.Y.), *Farmed Salmon Antitrust* (S.D. Fla.) and *Viega Plumbing Antitrust* (M.D. Pa).

Mr. Isquith served as Chair of the Antitrust Committee of the New York City Bar Association from 2019-2021. He was the President of the National Association of Securities and Commercial Law Attorneys. He has lectured before bar associations and at law schools, has authored more than 50 published articles and 1,000 columns, and as recently as 2019, participated in a CLE program for the ABA. He is the author of a chapter in a Bar Association book on Federal Civil Practice and is often cited by legal industry media and the general press regarding complex litigation. Other activities include the New York State Bar Association President's Committee on Access to Justice and its Committee on Evidence. He is also a Fellow of the American Bar Foundation.

Mr. Isquith was co-lead in *Panzier v. Wolf*, which established the fraud on the market theory in the Second Circuit, later affirmed by the United States Supreme Court.

In the *Genetically Modified Rice Litigation* (E.D. Mo.), Mr. Isquith represented U.S. rice farmers in a landmark action against Bayer A.G., achieving a recovery of \$750 million.

Courts have often commented favorably about Mr. Isquith where he was in a leadership position. For example:

*K.J. Egleston, L.P. v. Heartland Industrial Partners* (E.D. Mich.), Judge Rosen stated in June 2010, of the “outstanding job of representing clients” and further commented that “the conduct of all counsel in this case and the result they have achieved for all of the parties confirms that they deserve the national recognition they enjoy.”

*Parker Friedland v. Iridium World Communicans Led* (D.D.C.), Judge Laughrey said “I really appreciate the quality of work that we had in our chambers as a result of this case.”

*In re: Comdisco Sec Litigation* (N.D. Ill.), Judge Shadur commented upon the “kind of professionalism that the critics of class actions...are never willing to recognize. I really cannot speak too highly of the services rendered by class counsel in an extraordinarily difficult situation.”

In re Dynamic Random Access Memory Antitrust Litigation (N.D. Cal.), Judge Hamilton said: “...the results are exceptional.... The percentages as you have outlined them, do put this [case] in one of the upper categories of results of this kind of [antitrust class action]. I am aware of the complexity.... You did an exceptionally good job at organizing and managing the case, assisting me in management of the case....”

Mr. Isquith is among the nation’s top securities class action attorneys, as recognized in *Venture* magazine. Mr. Isquith has been elected as among the top 5% of attorneys in the New York City area chosen as a “Super Lawyer” since 2006; *Avenue Magazine* has listed him among the legal elite; and he is listed in *Martindale Hubbell* as a “Preeminent Lawyer”, as well as in *Who’s Who in America*.

**Fred T. Isquith, Jr.**

Fred T. Isquith, Jr. is Of Counsel to the Zwerling Firm, as well as other affiliations. He was admitted to the bar of the State of New York in 2010; he is also admitted to the following federal courts: The United States District Court for the Southern and Eastern Districts of New York. He received a Bachelor of Science degree from Cornell University in 2004, and a Juris Doctor degree from Syracuse University College of Law in 2009, where he served as an editor on the *Journal of International Law and Commerce* and as an executive board member for the Moot Court Honors Society. Mr. Isquith also has a Masters’ degree in Public Administration from the Syracuse University Maxwell School of Citizenship and Public Affairs in 2009.

Mr. Isquith has experience in complex class action litigation with a concentration in antitrust, commodities, market manipulation, and consumer class actions. He has served on the New York County Lawyers’ Association’s Federal Courts Committee and currently serves on the New York City Bar Association’s Antitrust and Trade Regulation Committee. He has published articles in the National Association of Shareholder and Consumer Attorneys (“NASCAT”) weekly newsletter regarding some of his notable cases. In 2018 – 2022, Mr. Isquith was named one of Super Lawyers’ Rising Stars in the antitrust field. Mr. Isquith will also be an instructor in the Department of Justice’s Steve Houck Antitrust Expert Training Academy in October of 2022.

**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.

**CASE NO. 1:19-cv-22128-RS**

**DECLARATION OF CARLA A. PEAK  
IN SUPPORT OF INDIRECT  
PURCHASER SETTLEMENT  
NOTICE PROGRAM**

I, Carla A. Peak, declare as follows:

1. My name is Carla A. Peak. I have personal knowledge of the matters set forth herein, and if called as a witness I could and would testify competently to them.

2. I am a nationally recognized expert in the field of legal notice and I have served as an expert in dozens of federal and state cases involving class action notice plans.

3. I am the Vice President of Legal Notification Services for KCC Class Action Services, LLC (“KCC”),<sup>1</sup> a firm that provides comprehensive class action services, including claims administration, legal notification, email and postal mailing campaign implementation, website design, call center support, class member data management, check and voucher disbursements, tax reporting, settlement fund escrow and reporting, and other related services critical to the effective administration of class action settlements. Our experience includes many of the largest and most complex settlement administrations of both private litigation and of actions brought by state and federal government regulators. KCC has been retained to administer more than 7,000 class actions and distributed settlement payments totaling well over a trillion dollars in assets.

4. This Declaration describes my experience as well as KCC’s experience. It also describes the proposed notice plan (the “Notice Plan” or “Notice Program”) designed for this proposed class action settlement, including why I believe it will be effective and will constitute

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<sup>1</sup> KCC acquired Gilardi & Co. LLC in 2015. This declaration combines the class action notice and administration experience of both firms.



the best notice practicable under the circumstances of this Settlement, pursuant to Fed. R. Civ. P. 23(c)(2)(B) (“Rule 23”).

### EXPERIENCE

5. KCC has administered class action settlements involving such defendants as HP-Compaq, Toyota, LensCrafters, United Parcel Service, Ford, Mitsubishi, Nissan, Whirlpool, ATI Video Cards, and Twentieth Century Fox. KCC has been appointed as the notice or claims administrator in many direct and indirect purchaser antitrust class actions. For example, *Barba v. Shire U.S., Inc.*, No. 1:13-cv-21158 (S.D. Fla.); *Edwards v. National Milk Producers Federation*, No. 3:11-cv-04766 (N.D. Cal.); *Fond Du Lac Bumper Exchange, Inc. v. Jui Li Enterprise Company, Ltd.*, No. 2:09-cv-00852 (E.D. Wis.); *Grand Strand Water & Sewer Authority v. Oltrin Solutions, LLC*, No. 4:14-cv-2800 (D.S.C.); *In re Aftermarket Filters Antitrust Litigation*, No. 1:08-cv-04883 (N.D. Ill.); *In re Asacol Antitrust Litigation*, No. 1:15-cv-12730 (D. Mass.); *In re Lidoderm Antitrust Litigation*, No. 3:14-md-02521 (N.D. Cal.); *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation*, No. 14-md-2503 (D. Mass.); *In re: Nexium (Esomeprazole) Antitrust Litigation*, No. 1:12-md-2409 (D. Mass.); *In re: Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-md-2343 (E.D. Tenn.); *In re: NCAA Athletic Grant-In-Aid Antitrust Litigation*, No. 14-md-2541 (N.D. Cal.); *In Re Korean Ramen Antitrust Litigation*, No. 13-cv-4115 (N.D. Cal.); *In re Lithium Ion Batteries Indirect Antitrust Litigation*, No. 13-md-02420 (N.D. Cal.); *The Dial Corporation, et al. v. News Corporation.*, No. 1:13-cv-06802 (S.D.N.Y.); *In re Hypodermic Products Antitrust Litigation*, No. 05-cv-1602 (D.N.J.); *In re Domestic Drywall Antitrust Litigation*, No. 2:13-md-02437 (E.D. Pa.); *In re Potash Antitrust Litigation (II)*, No. 1:08-cv-06910 (N.D. Ill.); *In re Aftermarket Filters Antitrust Litigation*, No. 1:08-cv-04883 (N.D. Ill.); *In re: Fresh and Process Potatoes Antitrust Litigation*, 4:10-md-02186 (D. Idaho); *In re Blood Reagents Antitrust Litigation*, No. 09-md-2081 (E.D. Pa.); and *In re Titanium Dioxide Antitrust Litigation*, No. 10-cv-00318 (D. Md.). More information on KCC’s experience can be found at [www.kccllc.com](http://www.kccllc.com).

6. I have personally been involved with creating and implementing notice programs in many large and significant class action settlements, including *In re Anthem, Inc. Data Breach Litig.*, a national data breach class action involving approximately 79 million class members who had personally identifiable information exfiltrated from Anthem’s databases; *In re: Skelaxin (Metaxalone) Antitrust Litig.*, No. 1:12-md-02343 (E.D. Tenn.), a multi-state antitrust settlement



involving both third-party payors and consumers that purchased or paid for brand and generic version of the prescription drug metaxalone; *Chambers v. Whirlpool Corp.*, No. 8:11-cv-01733 (C.D. Cal.), a national product defect case involving class members who purchased allegedly defective dishwashers; *In re Trans Union Corp. Privacy Litig.*, a \$75 million data breach class action settlement requiring one of the largest discretionary class action notice campaigns to reach virtually every adult in the United States; and *In re Residential Schs. Litig.*, No. 00-CV-192059 (Ont. S.C.J.), the largest and most complex class action in Canadian history incorporating a groundbreaking notice program to disparate, remote aboriginal persons qualified to receive benefits in the multi-billion dollar settlement.

8. In forming my opinions, I draw from my in-depth class action settlement and notice experience. I have worked in the class action notification field for nearly 20 years. During that time, I have been involved in all aspects in the design and implementation of class action notice planning, as well as the drafting of plain language notice documents that satisfy the requirements of Rule 23 and adhere to the guidelines set forth in the Manual for Complex Litigation, Fourth and by the Federal Judicial Center (“FJC”).

9. I have been involved with hundreds of cases, including the dissemination of notice around the globe in more than 35 languages. I have received numerous judicial comments citing cases I have worked on, as well as written articles and given presentations where I have discussed the adequacy and design of legal notice efforts.

#### **NOTICE PLAN DETAILS**

7. The proposed Notice Plan uses a combination of individual notice and paid notice placements in industry-related trade media to reach the indirect purchaser Class.

#### ***Class Definition***

8. The Settlement Class is defined as: “All persons and entities who indirectly purchased, for resale, Defendants’ farm-raised salmon or products derived from farm-raised, 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 during the Settlement Class Period.” “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.), and Mowi Ducktrap, LLC (an assumed name of Ducktrap River of Maine, LLC) (collectively, the “Mowi 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 (collectively, the “Grieg Defendants”); Sjør AS (f/k/a Ocean Quality AS) (“Sjor Defendant”); SalMar ASA (“SalMar Defendant”); Lerøy Seafood AS and Lerøy Seafood USA Inc (together, the “Lerøy Defendants”); and Cermaq Group AS, Cermaq US LLC, Cermaq Canada Ltd., and Cermaq Norway (collectively, the “Cermaq Defendants”).

### *Individual Notice*

9. KCC will send the Short Form settlement notice via email (“Email Notice”) to approximately 45,500 potential Settlement Class Members identified from a commercially available database<sup>2</sup> consisting of grocery stores, meat and fish markets, eating places, caterers, and including, but not limited to, non-commercial businesses, schools, and institutions that may have eating places. The Email Notice will contain a summary of the Settlement, as well as a link to the case website. The Email Notice content will be included in the body of the email, rather than as an attachment, to avoid spam filters and improve deliverability.

10. For potential Settlement Class members who are not sent an Email Notice, KCC will send a Single-Postcard Summary Notice via United States Postal Service (USPS) to 350,600 potential Settlement Class Members identified from the commercially available database for which only a postal address is available, as well as to the postal address associated with any email bounceback, or email that is known not to have been successfully delivered.

11. Prior to mailing, the postal addresses will be checked against the National Change of Address (NCOA)<sup>3</sup> database maintained by USPS; certified via the Coding Accuracy Support

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<sup>2</sup> This database categorizes businesses using Standard Industrial Classification (“SIC”) codes. These codes will allow KCC to identify the entities most likely to be class members. Attached as **Exhibit 1** is a list of SIC codes included in the database.

<sup>3</sup> The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and last known address.

System (CASS);<sup>4</sup> and verified through Delivery Point Validation (DPV).<sup>5</sup> Notices returned by USPS as undeliverable will be re-mailed to any address available through postal service forwarding order information.

### ***Media Campaign***

12. In addition to the individual notice effort described above, coverage among the indirect purchaser Class will be extended through the use of advertising in trade e-newsletters.

13. Specifically, digital Notices will appear in *FM Today*, *FSD Update*, *Meat Market Insights*, *NRN a.m.*, *RB Daily*, *RH Indie Idea Feed*, and *SN Daily*. *FM Today* is the flagship e-newsletter from *Food Management*, offering breaking news and analysis specific to the non-commercial onsite foodservice industry. *FSD Update* is *Food Service Director's* flagship e-newsletter, reaching all non-commercial segments. *Meat Market Insights* is issued by *Winsight Grocery Business* and reaches meat and seafood decision-makers. *NRN a.m.* is the flagship e-newsletter from *Nation's Restaurant News*, delivered daily to foodservice professionals. *RB Daily* is *Restaurant Business's* e-newsletter, reaching restaurant operators, from quick service to fine dining and including hotel/motel/resort/spa/casino operations. *RH Indie Idea Feed* is the flagship e-newsletter from *Restaurant Hospitality*, providing intel independent restaurants need to run and grow their business. *SN Daily*, from *Supermarket News*, provides the latest retail news, insights, and technology trends shaping the sectors of the food retailing industry.

### ***Response Mechanisms***

14. KCC will establish and maintain a case-specific website to allow potential Settlement Class Members to obtain additional information and documents about the Settlement. Website visitors will also be able to review a list of Frequently Asked Questions and Answers and file a Claim Form online.

15. KCC will establish a case specific toll-free number to allow potential Settlement Class Members to call to learn more about the case in the form of frequently asked questions. It will also allow potential Settlement Class Members to request to have additional information mailed to them.

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<sup>4</sup> Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP+4 coding systems.

<sup>5</sup> Records that are ZIP+4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

16. KCC will process exclusion requests from class members consistent with the Settlement Agreement. KCC will ensure that requests contain all the required information, as directed by the Court.

### CONCLUSION

17. In my professional judgment, I anticipate that the Notice Plan will effectively reach all or nearly all of the indirect purchaser Class. The Notice Plan is consistent with other effective court-approved settlement notice programs and is designed to meet due process requirements.

18. The Notice Plan will provide the best notice practicable under the circumstances of this case, conform to all aspects of Federal Rule of Civil Procedure 23, and comport with the guidance for effective notice articulated in the *Manual for Complex Litigation, Fourth*.

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

Executed this 6<sup>th</sup> day of October 2022.



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Carla A. Peak

# **Exhibit 1**

<b><u>SIC Code</u></b>	<b><u>Description</u></b>
5411	Grocery Stores
5421	Meat & Fish Markets
549916	Oriental Food Products
549917	Chinese Food Products
549919	Japanese Food Products
549923	Korean Foods
549926	Hawaiian Foods
549927	Mexican & Latin American Food Products
549930	British Food Products
549937	Vietnamese Foods
549941	Thai Food
549945	Halal Foods
549946	Native American Foods
549947	Caribbean Foods
549950	Meal Kit Delivery Service
549999	Miscellaneous Food Stores
5812	Eating Places
581305	Pubs
581307	Comedy Clubs
7011	Hotels & Motels
7941	Professional Sports Clubs & Promoters
8051	Skilled Nursing Care Facilities
8052	Intermediate Care Facilities
8059	Nursing & Personal Care Facilities NEC
8062	General Medical & Surgical Hospitals
8063	Psychiatric Hospitals
8069	Specialty Hospitals Except Psychiatric
8221	Colleges & Universities
8361	Residential Care
864107	Fraternities & Sororities

**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 INDIRECT PURCHASER PLAINTIFFS’  
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH  
ALL DEFENDANTS, PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS,  
AND APPROVAL OF CLASS NOTICE**

This matter is before the Court on Indirect Purchaser Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement with all Defendants, Preliminary Certification of Settlement Class, and Approval of Class Notice. [ECF No. \_\_\_\_ ] (“Motion”). As discussed below, upon considering the Motion and its accompanying declarations and exhibits, the Settlement Agreement [ECF No. \_\_\_\_ ], the record in this matter and requirements of the law, the Motion is **GRANTED** and it is **ORDERED** as follows:

**Preliminary Approval of Settlement Agreement**

1. “Under Rule 23(e), approval should be given so long as the settlement is ‘fair, adequate and reasonable and is not the product of collusion between the parties.’” *Fla. Educ. Ass’n v. Dep’t of Educ.*, 447 F. Supp. 3d 1269, 1275 (N.D. Fla. 2020) (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)). “Settlement 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, 661 (S.D. Fla. 2011) (citation omitted).

2. In addition to the factors enumerated in Rule 23(e)(2), the Court has considered the following factors established by Eleventh Circuit precedent: “(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.” *Greco v. Ginn Dev. Co., LLC*, 635 F. App’x 628, 632 (11th Cir. 2015) (quoting *Bennett*, 737 F.2d at 986).

3. Based on consideration of these factors, the Court finds that the settlement is fair, reasonable, and adequate, such that preliminary approval is warranted. The settlement was reached without collusion, and is the product of informed and arm’s-length negotiations before an experienced mediator between parties with accomplished counsel. The allocation plan would distribute proceeds *pro rata* based on the amount of Salmon purchased by each class member, and thus treats class members equitably. The Court finds that the Settlement Agreement is within the range of reasonableness such that a presumption of fairness is appropriate for the purposes of preliminary approval. Accordingly, the Court shall direct notice to the Settlement Class and schedule a Final Approval Hearing, as set forth below.

**Preliminary Approval of Class Certification and  
Appointment of Class Representatives and Class Counsel**

4. The 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, Plaintiffs must satisfy the requirements of Rule 23(a) and (b), except that “a district court need not inquire whether the case, if tried, would present intractable management problems.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

5. The Court finds that the requirements of Rule 23(a) are met:

- a. First, the proposed Settlement Class is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Plaintiffs have submitted evidence that estimates potential class members to be in the hundreds of thousands, which is sufficient to satisfy the numerosity requirement. The Settlement Class is ascertainable because it is clearly defined with reference to objective criteria, which will be used in the notice program and claims process to identify class members.
- b. Second, 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. Third, Plaintiffs' claims are typical of the class. Fed. R. Civ. P. 23(a)(3). A plaintiff's claims are typical if "the claims or defenses of the class and the class representative 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, 1357 (11th Cir. 2009). Plaintiffs' claims here arise from the same alleged course of conduct; namely, Defendants' allegedly anticompetitive behavior, and the class members would have experienced the same injury as a result in the form of increased prices for farm-raised salmon and products derived therefrom.
- d. Plaintiffs and class counsel will adequately represent the interests of the class. Two questions are relevant to evaluate adequacy: "(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). As to the Plaintiffs, all experienced the same alleged economic injury and stand to gain the same relief on a *pro rata* basis through the settlement. The Plaintiffs have already adequately represented the interests of the class in this litigation, including through discovery. As to Class Counsel, they have substantial experience in complex antitrust litigation and have adequately represented the interests of the class throughout this case. Accordingly, the Court finds that Plaintiffs and class counsel satisfy Rule 23(a)(4).

6. The Court finds that the predominance and superiority requirements of Rule 23(b)(3) are met:

- a. "Common issues of fact and law predominate if they have direct impact on every class member's effort to establish liability and on every class member's entitlement to injunctive and monetary relief." *Williams*, 568 F.3d at 1357 (internal alterations omitted). "Predominance is a test readily

met in certain cases alleging consumer or securities fraud or violations of the antitrust laws.” *Amchem Prods. Inc.*, 521 U.S. at 625. In this case, Plaintiffs are indirect purchasers of salmon whose claims arise under the antitrust laws of various states, but common issues predominate because “there is a commonality of substantive law applicable to all class members,” *In re Terazosin Hydrochloride*, 220 F.R.D. at 695, and common proof of Defendants’ alleged anticompetitive conduct predominates over any individual issues presented. Therefore, Plaintiffs have satisfied the predominance requirement of Rule 23(b)(3) for settlement purposes.

- b. A class is the superior method to adjudicate the antitrust claims in this case, as there are hundreds of thousands of class members and the amount of possible recovery for each of them individually would make individual litigation infeasible. *See Roundtree v. Bush Ross, P.A.*, 304 F.R.D. 644, 663 (M.D. Fla. 2015). Therefore, the superiority requirements of Rule 23(b)(3) are also satisfied for settlement purposes.

7. Accordingly, for the reasons stated above, the Court preliminarily certifies the following class for settlement purposes only:

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.

8. Provisional certification of the Settlement Class shall not constitute evidence in any other proceeding and may not be cited in support of the certification of any other proposed class.

9. The Court hereby 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.

10. 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. Siltan) to serve as co-lead

class counsel for the Settlement Class, having found the requirements of Rule 23(g) satisfied by these counsel.

**Approval of Class Notice and the Class Notice Program**

11. The Court approves the form and content of the notices proposed [ECF Nos. \_\_\_\_] and finds that they adequately describe the claims and will provide class members with the information reasonably necessary to make an informed decision about whether to be bound by the settlement. *See Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998).

12. The Court further finds that notice program proposed [ECF No. \_\_\_\_] will provide the best notice practicable under the circumstances. The notice program will adequately notify class members of the action, preliminary certification of the settlement classes, the terms of the settlement, the fees sought by class counsel, their rights to opt-out of or object to object to the settlement.

13. The Court appoints KCC as the Settlement Administrator. The Settlement Administrator shall implement the class notice program and provide notice to the settlement class members, consistent with this Order.

14. The Settlement Administrator shall complete the notice program no later than **[14 days after preliminary approval]**.

**Final Approval Hearing, Opt-Outs, and Objections**

15. A Final Approval Hearing shall be held before the **Honorable Rodney Smith at 299 East Broward Blvd, Fort Lauderdale, Florida 33301** on **[100 days after preliminary approval]** at [TIME] to determine whether to grant final approval of the settlement and determine whether class counsel's fee application should be granted. Plaintiffs and Class Counsel shall file a motion for final approval by no later than **[60 days after preliminary approval]**. This date or location may be changed by the Court without further notice to Class Members and interested Class Members are directed to the case website for any such updates.

16. Any person/entity in the settlement class who wishes to be excluded may exercise his/her/its right to opt-out of the settlement class by following the opt-out procedures set forth in the Settlement Agreement and in the settlement notice at any time during the opt-out period. Opt-out requests must be received on or before the last day of the opt-out period, which is **[35 days after deadline for completion of the notice program]**, and must:

- a. state the name, address, and telephone number of the person or entity seeking exclusion, and in the case of entities, the name and telephone number of the appropriate contact person;
- b. contain a signed statement that “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.)”;
- c. provide documents sufficient to prove membership in one or more of the Settlement Classes; and
- d. be signed by such person requesting the exclusion or an authorized representative, as well as proof of authorization to submit the request for exclusion if submitted by an authorized representative.

17. Any class member who/which has not requested exclusion and who/which objects to the settlement may appear in person or through counsel at the Final Approval Hearing if the person properly submits a written objection that includes:

- a. a notice of intention to appear;
- b. proof of membership in the Settlement Class, including documentation evidencing indirect purchases of Defendants’ salmon and/or salmon products during the Settlement Class Period; and
- c. the specific grounds for the objection and any reasons why such person or entity representative desires to appear and be heard, as well as all documents or writings that such Person desires the Court to consider.

Any objections must be mailed to Class Counsel at the address provided in the notice and postmarked by no later than thirty (30) days prior to the date set for the Final Approval Hearing.

18. Plaintiffs and Class Counsel shall file any responses to timely filed objections no later than **[14 days prior to Final Approval Hearing]**.

19. The Court orders Defendants to provide the relevant notices as required by the Class Action Fairness Act, 28 U.S.C. § 1715, to the extent they have not already done so.

20. In aid of the Court’s jurisdiction to implement and enforce the proposed Settlement, as of the date of the entry of this Order, all claims asserted by the Settlement Class against Defendants are stayed pending further Order of the Court, and Indirect Purchaser Plaintiffs and all members of the Settlement Class shall be preliminarily enjoined from commencing or prosecuting

any action or other proceeding against Defendants asserting any of the claims released in the Settlement Agreement pending its final approval or until such time as this Court lifts such injunction by subsequent order.

21. If the Settlement Agreement is terminated in accordance with its provisions, or is not approved by the Court or any appellate court, then the Settlement Agreement and all proceedings had in connection therewith shall be vacated, and shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the *status quo ante* rights of Indirect Purchaser Plaintiffs, Defendants, and members of the Settlement Class.

22. If the Settlement Agreement is terminated or is ultimately not approved, the Court will modify any existing scheduling order to ensure that the parties will have sufficient time to prepare for the resumption of litigation, including, but not limited to, class certification and dispositive motion practice, followed by preparation for trial.

23. Based on the foregoing, the Court reiterates the schedule for the Final Approval Hearing and the actions which must take place before it:

<u><b>Event</b></u>	<u><b>Date</b></u>
Defendants shall file a notice of compliance with 28 U.S.C. § 1715(b)	<b>October 16, 2022</b>
Deadline for Completion of Notice Program	[14 days after entry of preliminary approval]
Deadline for Class Counsel's application for an award of attorneys' fees and expenses	[14 days after entry of preliminary approval]
Deadline for opting-out of the Settlement Class	[35 days after deadline for Completion of Notice Program]
Deadline for filing papers in support of Final Approval of the Settlement	[60 days after entry of preliminary approval]
Deadline for submission of objections	[30 days prior to Final Approval Hearing]
Deadline to File Responses to Objections	[14 days prior to Final Approval Hearing]

<u>Event</u>	<u>Date</u>
Final Approval Hearing	[at least 100 days after entry of preliminary approval]

**IT IS SO ORDERED.**

\_\_\_\_\_, 2022

\_\_\_\_\_  
The Hon. Rodney Smith  
United States District Judge