

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 SAN FRANCISCO DIVISION

5
6 PATRICK HENDRICKS, individually and
7 on behalf of all others similarly situated,

8 Plaintiff,

9 v.

10 STARKIST CO.,

11 Defendant.

Case No. 3:13-cv-00729-HSG

**[PROPOSED] AMENDED SETTLEMENT
APPROVAL ORDER AND FINAL
JUDGMENT**

12
13 On July 23, 2015, this Court granted preliminary approval of the proposed class action
14 settlement between the parties (“Settlement Agreement”).

15 The Court also provisionally certified a nationwide Settlement Class for settlement
16 purposes, approved the procedure for giving notice and forms of Notice, and set a final approval
17 hearing to take place on December 17, 2015. The Settlement Class is defined as: “All residents of
18 the United States of America who, from February 19, 2009 through October 31, 2014, purchased
19 any of the StarKist Products (i.e. 5 oz. Chunk Light in Water, 5 oz. Chunk Light in Oil, 5 oz. Solid
20 White in Water, and 5 oz. Solid White in Oil).” Excluded from this definition are the Released
21 Persons. Settlement Class Members who exclude themselves from the Settlement, pursuant to the
22 procedures set forth in Section V of the Settlement Agreement, shall no longer thereafter be
23 Settlement Class Members and shall not be bound by the Settlement Agreement and shall not be
24 eligible to make a claim for any benefit under the terms of this Settlement Agreement.

25 On December 17, 2015, the Court held a duly noticed final approval hearing to consider:
26 (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate;
27 (2) whether a judgment should be entered dismissing the complaint on the merits and with prejudice
28 in favor of the Defendant and against all persons or entities who are Settlement Class members

1 herein who have not requested exclusion from the Settlement Class; and (3) whether and in what
2 amount to award counsel for the Settlement Class as attorneys' fees and expenses and whether and
3 in what amount to make incentive awards.

4 The Court, having considered all matters submitted to it at the hearing and otherwise, and it
5 appearing that the Class Notice substantially in the form approved by the Court was given in the
6 manner that the Court ordered to persons who purchased the StarKist Products at issue, as ordered
7 by the Court, and having considered and determined that the proposed settlement of the claims of
8 the Settlement Class Members against the Defendant, as well as the release of the Defendant and
9 the Released Persons, and the awards of attorneys' fees and expenses requested and incentive
10 awards ordered, are fair, reasonable and adequate, hereby ORDERS THAT:

11 1. The Settlement Agreement, including the definitions contained therein, is
12 incorporated by reference into this Amended Settlement Approval Order and Final Judgment.

13 2. The Court finds that the prerequisites for a settlement class under Federal Rules of
14 Civil Procedure ("Fed. R. Civ. P.") 23(a) and (b)(3) have been satisfied in that: (a) the number of
15 Settlement Class Members is so numerous that joinder of all members thereof is impracticable;
16 (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the
17 Representative Plaintiff are typical of the claims of the Settlement Class he seeks to represent;
18 (d) the Representative Plaintiff has and will fairly and adequately represent the interests of the
19 Settlement Class; (e) the questions of law and fact common to the Settlement Class Members
20 predominate over any questions affecting any individual Settlement Class Member; and (f) a class
21 action is superior to the other available methods for the fair and efficient adjudication of the
22 controversy.

23 3. Pursuant to Fed. R. Civ. P. 23, this Court hereby finally certifies this action, for
24 purposes of settlement, as a nationwide class action on behalf of: All residents of the United States
25 of America who, from February 19, 2009 through October 31, 2014, purchased any of the StarKist
26 Products (i.e. 5 oz. Chunk Light in Water, 5 oz. Chunk Light in Oil, 5 oz. Solid White in Water, and
27 5 oz. Solid White in Oil). Excluded from this definition are the Released Persons. Settlement Class
28 Members who exclude themselves from the Settlement, pursuant to the procedures set forth in

1 Section V of the Settlement Agreement, shall no longer thereafter be Settlement Class Members and
2 shall not be bound by this Settlement Agreement and shall not be eligible to make a claim for any
3 benefit under the terms of this Settlement Agreement.

4 4. The Court appoints Bursor & Fisher, P.A. as counsel for the Settlement Class. The
5 Court designates named plaintiff Patrick Hendricks as the Class Representative.

6 5. Notice of the pendency of this action as a class action and of the proposed settlement
7 was given to Settlement Class Members in a manner reasonably calculated to provide the best
8 notice practicable under the circumstances. The form and method of notifying the Settlement Class
9 of the pendency of the Action as a class action and of the terms and conditions of the proposed
10 Settlement met the requirements of Fed. R. Civ. P. 23, due process, and any other applicable law,
11 and constituted due and sufficient notice to all persons and entities entitled thereto.

12 6. The Settlement Agreement is approved as fair, reasonable and adequate, and the
13 Settlement Class Members and the Parties are directed to consummate the Settlement Agreement in
14 accordance with its terms and conditions.

15 7. Pursuant to Fed. R. Civ. P. 23(h), the Court hereby awards Class Counsel attorneys'
16 fees and expenses in the amount of \$_____. The Court also orders payment of an
17 incentive award(s) in the amount(s) of _____ to _____. These amounts are to be
18 paid in the time and manner described in the Settlement Agreement.

19 8. The Action is hereby dismissed with prejudice and without costs as against the
20 Defendant and the Released Persons.

21 9. Representative Plaintiff and all Settlement Class Members (except any such person
22 who has filed a proper and timely request for exclusion) are hereby permanently barred and
23 enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any
24 and all of the Released Claims against any of the Released Persons.

25 10. Effective as of the Final Settlement Approval Date, each and all of the Settlement
26 Class Members (except any such person who has filed a proper and timely request for exclusion)
27 shall release and forever discharge any and all claims or causes of action arising from the factual
28 allegations and/or legal claims made in the Action, whether in law or equity, whether seeking

1 damages or any other relief (including attorneys' fees), of any kind or character, known or
2 unknown, that are now recognized by law or that may be created or recognized in the future by
3 statute, regulation, judicial decision, or in any other manner, based upon any federal or state
4 statutory or common law, including, without limitation, claims sounding in tort, contract, and the
5 consumer protection laws of the United States or of any state or other jurisdiction within the United
6 States, as well as under the unfair or deceptive trade practices, trade regulation, consumer fraud,
7 misrepresentation, and false advertising law of the United States or any state or other jurisdiction
8 within the United States (the "Released Claims"). Excluded from the Released Claims are (a) any
9 and all claims for personal injury, wrongful death, and/or emotional distress arising from personal
10 injury, (b) any claims of any person or entity that purchased StarKist Products for purposes of resale
11 or commercial food preparation and not for his/her/its own consumption (*i.e.*, "Resellers"), and
12 (c) any antitrust claim arising from a conspiracy among, or collusive agreement between, StarKist
13 and one or more of its competitors. In addition, upon the Final Settlement Approval Date, the
14 Released Claims are hereby compromised, settled, released, discharged and dismissed as against the
15 Released Parties on the merits by virtue of the proceedings herein and this Amended Settlement
16 Approval Order and Final Judgment.

17 11. Neither the Settlement Agreement, nor any of its terms and provisions, nor any of
18 the negotiations or proceedings connected with it, nor any of the documents or statements referred
19 to therein shall be:

20 (a) offered by any person or received against the Defendant as evidence or
21 construed as or deemed to be evidence of any presumption, concession, or admission by the
22 Defendant of the truth of the facts alleged by the Representative Plaintiff or any Settlement Class
23 Member or the validity of any claim that has been or could have been asserted in the Action or in
24 any litigation, or other judicial or administrative proceeding, or the deficiency of any defense that
25 has been or could have been asserted in the Action or in any litigation, or of any liability,
26 negligence, fault or wrongdoing of the Defendant;

27 (b) offered by any person or received against the Defendant as evidence of a
28 presumption, concession or admission of any fault, misrepresentation or omission with respect to

1 any statement or written document approved or made by the Defendant or any other wrongdoing by
2 the Defendant;

3 (c) offered by any person or received against the Defendant or as evidence of a
4 presumption, concession, or admission with respect to any liability, negligence, fault, or
5 wrongdoing, or in any way referred to for any other reason against any of the settling parties, in any
6 civil, criminal, or administrative action or proceeding; provided, however, that nothing contained in
7 this paragraph shall prevent the Settlement Agreement from being used, offered, or received in
8 evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement or the
9 Amended Settlement Approval Order and Final Judgment, or in which the reasonableness, fairness,
10 or good faith of the parties in participating in the Settlement (or any agreement or order relating
11 thereto) is an issue, or to enforce or effectuate provisions of the Settlement, the Amended
12 Settlement Approval Order and Final Judgment, the releases as to the Released Persons.

13 12. Without affecting the finality of the Amended Settlement Approval Order and Final
14 Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) the disposition of
15 the settlement benefits; (b) the settling parties for purposes of construing, enforcing and
16 administering the Stipulation Agreement; and (c) enforcement of the Stipulation and Order
17 Regarding Undertaking Re: Attorneys' Fees and Costs.

18 13. Without further order of the Court, the settling parties may agree to reasonably
19 necessary extensions of time to carry out any of the provisions of the Settlement Agreement.

20 14. In the event that the Final Settlement Approval Date does not occur, this Amended
21 Settlement Approval Order and Final Judgment shall automatically be rendered null and void and
22 shall be vacated and, in such event, all orders entered in connection herewith, except the Stipulation
23 and Order Regarding Undertaking Re: Attorneys' Fees and Costs, shall be null and void.

24 DONE this ___ day of _____, 2016.

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26
27 _____
Hon. Haywood S. Gilliam, Jr.