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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FOUR IN ONE COMPANY, INC., et al.,  
Plaintiffs,  
v.  
S.K. FOODS, L.P., et al.,  
Defendants.

No. 2:08-cv-3017 KJM EFB

ORDER

This case was on calendar on June 6, 2014 for a hearing on plaintiffs’ motion for an award of attorneys’ fees and reimbursement of expenses and the final approval of the class settlements in this case. Steig Olson of Quinn Emanuel Urquhart & Sullivan LLP and Arthur Bailey of Hausfeld LLP appeared for plaintiffs; George Nicoud and Steve Zovickian of Gibson, Dunn & Crutcher, LLP appeared for defendants.

I. PROCEDURAL BACKGROUND

This case arises from defendants’ alleged conspiracy to fix the prices of tomato paste, tomato sauce, and diced tomatoes (“processed tomato products”). Plaintiffs Four in One Company, Inc., Diversified Foods & Seasonings, Inc., Bruce Foods Corporation, and Cliffstar Corporation (collectively “plaintiffs”) are food products manufacturers that purchased processed tomato products directly from SK Foods, L.P., Ingomar Packing Company, Los Gatos Tomato

1 Products, Scott Salyer, Stuart Woolf and Greg Pruett (collectively “defendants”), beginning as  
2 early as 2005 and continuing until at least December 2008. Consolidated Class Action Compl.  
3 (“Compl.”) at 1, ECF No. 113. Defendants are in the business of manufacturing processed  
4 tomato products. *Id.* at 2.

5 Plaintiffs brought five separate actions in 2008 and 2009: *Four in One Co., Inc. v.*  
6 *SK Foods, L.P., et al.*, Case No. 2:08-cv-3017-KJM-EFB; *Diversified Food & Seasonings, Inc.*  
7 *v. SK Foods, L.P.*, Case No. 2:08-cv-3074-KJM-EFB; *Bruce Foods Corp. v. SK Foods, L.P.,*  
8 *et al.*, Case No. 2:09-cv-0027-KJM-EFB; *The Morning Star Packing Co. v. SK Foods, L.P.,*  
9 Case No. 2:09-cv-00208-KJM-EFB; *Cliffstar Corp. v. SK Foods, L.P., et al.*, Case  
10 No. 2:09-cv-0442-KJM-EFB. On March 12, 2009, the court consolidated four of the lawsuits  
11 into a single action, excluding The Morning Star Packing Co.’s lawsuit. ECF No. 88.

12 Plaintiffs’ consolidated class action complaint alleges the following. Plaintiffs  
13 were overcharged for processed tomato products as a result of defendants’ anticompetitive  
14 conduct. Compl. ¶ 3. Plaintiffs paid a higher price for the processed tomato products than they  
15 would have paid absent the alleged unlawful activity. *Id.* Defendants thereby substantially  
16 increased their profits. *Id.* Defendants restrained competition in violation of federal antitrust  
17 laws. *Id.* ¶¶ 129–134. The complaint contains a single cause of action for violation of section 1  
18 of the Sherman Act and section 4 of the Clayton Act. *Id.* ¶ 129.

19 On May 8, 2009, the court permitted the United States government, through the  
20 Antitrust Division of the U.S. Department of Justice (DOJ) and the U.S. Attorney’s Office for the  
21 Eastern District of California, to intervene in this action for the purpose of seeking to limit  
22 discovery due to a related criminal matter. ECF No. 100.

23 On May 11, 2009, SK Foods, L.P. filed a notice of the pendency of its bankruptcy  
24 filing. ECF No. 102.

25 On June 5, 2009, *L’Ottavo Ristorante, et. al. v. Ingomar Packing Co., et al.*, Case  
26 No. 1:09-cv-00932-OWW-SMS, was identified as a related case. ECF No. 103.

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1                   On September 13, 2013, plaintiffs filed a motion to certify the class and for  
2 preliminary approval of settlements between and among plaintiffs and defendants Ingomar,  
3 Pruett, Los Gatos and Woolf (“settling defendants”). ECF No. 206.

4                   On January 2, 2014, the court appointed Hausfeld LLP and Quinn Emanuel  
5 Urquhart & Sullivan LLP as class counsel. It also granted preliminary certification of the listed  
6 class and collective action, preliminary approval of the settlements, and approval of the proposed  
7 notice. ECF No. 222. Despite the court’s preliminary finding that the proposed settlements were  
8 within the range of possible approval under Rule 23(e), the court raised several concerns for the  
9 parties to address prior to final approval. *Id.* at 14. First, the court directed the parties to provide  
10 evidentiary support demonstrating how the monetary terms related to the merits of the class  
11 members’ antitrust claims. *Id.* at 15. Second, the court required evidence concerning the  
12 mediation and negotiations of the proposed settlement agreements. *Id.* at 15–16. Third, the court  
13 requested a summary or copy of the individual settlement agreement between Red Gold and  
14 Ingomar. *Id.* at 16. Fourth, the court signaled its intent, absent further explanation and support,  
15 to decline to consider the effects of an arbitration provision in the fundamental fairness analysis.  
16 The court also required support for class counsel’s “extensive experience in class action antitrust  
17 cases.” *Id.* at 14. In addition, the court required testimonial or documentary evidence pertaining  
18 to the relationship between the settlement amounts, defendants’ total sales and the damages pool  
19 for the settling defendants. *Id.* at 15.

20                   On March 10, 2014, plaintiffs filed a motion for award of attorneys’ fees and  
21 reimbursement of expenses. ECF No. 224. On May 6, 2014, plaintiffs filed a motion for final  
22 approval of class settlements. ECF No. 233. Plaintiffs’ motion is joined by the settling  
23 defendants. ECF Nos. 229, 231–32. Also on May 6, 2014, plaintiffs and the settling defendants

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1 submitted documents in support of the motion for final approval for *in camera* review.<sup>1</sup> ECF  
2 Nos. 230, 232-1, 234, 235.

## 3 II. THE SETTLEMENT AGREEMENTS

4 The proposed settlement agreements contain the following provisions.  
5 Defendants Ingomar Packing Company, LLC and Greg Pruett (collectively “Ingomar”) agree to  
6 pay \$3.5 million for a complete release of all class members’ antitrust claims against Ingomar,  
7 Pruett, and all current and former employees and agents, successors and assigns of Ingomar.  
8 Bailey Decl. Ex. A, ¶¶ 21–24, ECF No. 208-1 (“Ingomar Agreement”). Defendants Los Gatos  
9 Tomato Products and Stuart Woolf (collectively “Los Gatos”) agree to pay \$2.9 million for a  
10 release of all class members’ antitrust claims against Los Gatos, Woolf, and all current and  
11 former employees and agents, successors, and assigns of Los Gatos. Bailey Decl. Ex. B,  
12 ¶¶ 21-24, ECF No. 208-2 (“Los Gatos Agreement”). The funds were to be deposited into a  
13 settlement fund in one lump sum no later than January 3, 2014, to be held in escrow until the  
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15 <sup>1</sup> In light of the court’s reliance on the parties’ *in camera* submissions in approving the  
16 settlement agreements, the court has determined the *in camera* submissions should be filed on the  
17 docket under seal. Although there is a presumption in favor of maintaining public access to court  
18 records, *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006), settlement  
19 negotiations and communications exchanged therein are inherently confidential, *see, e.g., Cook v.*  
20 *Yellow Freight Sys., Inc.*, 132 F.R.D. 548, 554 (E.D. Cal. 1990) (precluding discovery of  
21 settlement discussion documents, noting “[s]ettlement negotiations are typically punctuated with  
22 numerous instances of puffing and posturing since they are ‘motivated by a desire for peace rather  
23 than from a concession of the merits of the claim’” (quoting *United States v. Contra Costa Cnty.*  
24 *Water Dist.*, 678 F.2d 90, 92 (9th Cir. 1982))), *overruled on other grounds by Jaffee v. Redmond*,  
25 518 U.S. 1 (1996); *see also Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d  
26 976, 980 (6th Cir. 2003) (explaining “there exists a strong public interest in favor of secrecy of  
27 matters discussed by parties during settlement negotiations”), *citing with approval Cook*, 132  
28 F.R.D. at 554. Moreover, settlement negotiations in this action, if accessed by the public, have  
the potential of being used, for example, to gratify public spite or promote public scandal. *See*  
*Kamakana*, 447 F.3d at 1179 (“In general, ‘compelling reasons’ sufficient to outweigh the  
public’s interest in disclosure and justify sealing court records exist when such ‘court files might  
become a vehicle for improper purposes,’ such as the use of records to gratify private spite,  
promote public scandal, circulate libelous statements, or release trade secrets.” (quoting *Nixon v.*  
*Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978))). Considering these factors, the court finds  
the need to protect the parties’ settlement negotiations outweighs any necessity for disclosure.  
Plaintiffs and the settling defendants shall have seven days from the date of this order to file  
objections to the court’s plan to file under seal to preserve the record. If no objections are  
received, the submissions will be filed under seal by the Clerk of the Court.

1 settlement agreements are finally approved and eventually distributed to class members as  
2 approved by the court. Ingomar Agreement ¶¶ 24–26; Los Gatos Agreement ¶¶ 24–26. “The  
3 Settlement Amount shall not be reduced because of any potential Class members who choose to  
4 exclude themselves from the Class.” Ingomar Agreement ¶ 24; Los Gatos Agreement ¶ 24.

5           After final approval of the settlement agreements, class counsel will distribute  
6 funds to the class members as approved by the court. The settlement agreements direct class  
7 counsel to “seek to obtain an order approving administration of claims and distributions to class  
8 members.” They establish a limiting principle such that class counsel should avoid giving any  
9 claimant or group of claimants a “windfall,” reciting as an example a “per pound purchased cap  
10 on the recovery of any individual claimant.” “Class Counsel must also use their best efforts to  
11 use direct notice instead of notice by publication.” *See generally* Ingomar Agreement ¶ 26; Los  
12 Gatos Agreement ¶ 26.

13           The releasors will have no recovery against the settling defendants other than the  
14 settlement fund. Furthermore, the settlement amounts will not be reduced if potential class  
15 members opt out. *See* Ingomar Agreement ¶ 24; Los Gatos Agreement ¶ 24. “[U]ntil final  
16 judgment is entered in this Action against all Defendants, the sales of Processed Tomato Products  
17 by Pruett and Ingomar” and “Woolf and Los Gatos” “shall remain in the case against the  
18 Non-Settling Defendants in the Action as a basis for damage claims . . . .” Ingomar Agreement  
19 ¶ 40; Los Gatos Agreement ¶ 40.

20           The settling defendants also agree they “shall be enjoined from engaging in any  
21 conduct that constitutes a violation of the Sherman Antitrust Act, 15 U.S.C. § 1, for a period of  
22 five (5) years following the date of the order granting preliminary approval of the settlement[s].”  
23 Ingomar Agreement ¶ 31; Los Gatos Agreement ¶ 31.

24           In addition to releasing the settling defendants from antitrust claims, the settlement  
25 agreements also provide the following:

26           In addition to the effect of any final judgment entered into in  
27 accordance with this Agreement, upon this Agreement becoming  
28 Finally Approved, and for other valuable consideration described  
herein, the Releasees shall be completely released, acquitted, and  
forever discharged from any and all claims, demands, actions, suits

1 and causes of action, whether class, individual or otherwise in  
2 nature, that Releasors, or each of them, ever had, now has, or  
3 hereafter can, shall, or may have on account of or arising out of,  
4 any and all known and unknown, foreseen and unforeseen,  
5 suspected or unsuspected injuries or damages, and the  
6 consequences thereof, arising out of or resulting from conduct  
7 concerning any agreement among Defendants, the reduction of  
8 restraint of supply, the reduction of or restrictions on production  
9 capacity, the allocation of markets or customers, the rigging of bids,  
10 or the pricing, selling, discounting, marketing, or distributing of  
11 Processed Tomato Products in the United States or elsewhere,  
12 including but not limited to any conduct alleged, and causes of  
13 action asserted, or that could have been alleged or asserted, whether  
14 or not concealed or hidden, in the Complaints filed in the  
15 Action . . . , which arise from or are predicated on the facts and/or  
16 actions described in the Complaints under any federal, state or  
17 foreign antitrust, unfair competition, unfair practices, price  
18 discrimination, unitary pricing, trade practice, consumer protection,  
19 fraud, RICO, civil conspiracy law, or similar laws, including,  
20 without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*,  
21 from the beginning of time to the date of this Agreement . . . . The  
22 Releasors shall not, after the date of this agreement, seek to recover  
23 against any of the releases for any of the Released Claims. This  
24 Release is made without regard to the possibility of subsequent  
25 discovery or existence of different or additional facts.

14 Ingomar Agreement ¶ 21; Los Gatos Agreement ¶ 21.

15 The release provisions contain plaintiffs’ certification that they are “hereby  
16 expressly and fully, finally and forever waiv[ing] and relinquish[ing], and forever settl[ing] and  
17 releas[ing] any known or unknown, suspected or unsuspected, contingent or non-contingent,  
18 claim whether or not concealed or hidden, without regard to the subsequent discovery or  
19 existence of such different or additional fact, as well as any and all rights existing under . . .  
20 Section 1542 [of the California Civil Code]” or any equivalent present or future law or principle  
21 of law in any jurisdiction. Ingomar Agreement ¶ 21; Los Gatos Agreement ¶ 21. The release and  
22 discharge do not, however, include claims “relating to payment disputes in the ordinary course of  
23 business, physical harm, defective product or bodily injury.” Ingomar Agreement ¶ 23; Los  
24 Gatos Agreement ¶ 23.

25 The two proposed settlement agreements are substantially similar with a few  
26 differences. First, the Los Gatos Agreement contains a “blow-out” clause. *See* MANUAL ON  
27 COMPLEX LITIGATION § 22.922 (4th ed. 2004) (defining the term as an optional condition used by  
28 defendants in a Rule 23(b)(3) class action settlement requiring the number of opt-outs to remain

1 at or below a certain percentage or number of absent class members). The agreement states, “in  
2 the event that class members representing 25% or more of the total sales of Processed Tomatoes  
3 [sic] Products . . . requests exclusion . . ., Woolf and Los Gatos may elect to terminate this  
4 settlement at their discretion and receive a refund of all monies paid, less any monies paid for  
5 class notice, by giving notice thereof within twenty-one (21) days of receipt . . .” Los Gatos  
6 Agreement ¶ 32. Sales to Heinz and Red Gold are excluded from the total sales calculation. *Id.*

7           Second, the Los Gatos Agreement contains a contingency clause specifically  
8 enumerating a reservation of rights in the event any of the following occur: “the Ingomar  
9 Settlement is not approved or is terminated,” “the order and final judgment approving the  
10 Ingomar Settlement is entered but is substantially reversed, modified, or vacated,” a “Bankruptcy  
11 Action Settlement [against either Salyer or S.K. Foods] is terminated,” or “the order and final  
12 judgment approving the Bankruptcy Action is substantially reversed, modified, or vacated.” Los  
13 Gatos Agreement ¶¶ 39–40.

14           Third, the Ingomar Agreement contains a “cooperation agreement” in which Pruett  
15 and Ingomar agree to continue to cooperate to the extent required by the Antitrust Criminal  
16 Penalty Enhancement and Reform Act of 2004, Pub. L. No. 108–237, tit. II, 118 Stat. 661 (2004).  
17 Also, the Ingomar Agreement contains an express agreement by Pruett, Ingomar, class counsel,  
18 and plaintiffs’ counsel that there has been no waiver of attorney-client privilege, work product  
19 immunity or any other privilege or protection. Ingomar Agreement ¶¶ 35–36.

20           Attorneys’ fees and expenses awarded by the court shall be paid from the  
21 settlement fund. Ingomar Agreement ¶ 20; Los Gatos Agreement ¶ 20. “[A]ny costs incurred in  
22 providing any notice of the proposed settlement to Class Members, in claims administration, and  
23 any past or future litigation expenses award by the Court may be paid from the Settlement Fund.”  
24 Ingomar Agreement ¶ 30; Los Gatos Agreement ¶ 30. The settling defendants also agree they  
25 will “take no position on any application for attorneys’ fees, reimbursement of costs and expenses  
26 or representative plaintiff service awards.” Ingomar Agreement ¶ 19; Los Gatos Agreement ¶ 19.  
27 In addition, the agreements state class counsel will not seek attorneys’ fees in excess of 25  
28 percent of the settlement amount. Ingomar Agreement ¶ 15; Los Gatos Agreement ¶ 15.

1 III. CERTIFICATION

2 A party seeking to certify a class must demonstrate it has met the requirements of  
3 Federal Rule of Civil Procedure 23(a) and at least one of the requirements of Rule 23(b).

4 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997); *Ellis v. Costco Wholesale Corp.*,  
5 657 F.3d 970, 979–80 (9th Cir. 2011). Although the parties in this case have stipulated that a  
6 class exists for purposes of settlement, the court must nevertheless undertake the Rule 23 inquiry  
7 independently. *West v. Circle K Stores, Inc.*, No. CIV. S-04-0438 WBS GGH, 2006 WL  
8 1652598, at \*2 (E.D. Cal. June 13, 2006).

9 Under Rule 23(a), before certifying a class, the court must be satisfied that:

10 (1) the class is so numerous that joinder of all members is  
11 impracticable (the “numerosity” requirement);

12 (2) there are questions of law or fact common to the class (the  
13 “commonality” requirement);

14 (3) the claims or defenses of representative parties are typical of the  
15 claims or defenses of the class (the “typicality” requirement); and

16 (4) the representative parties will fairly and adequately protect the  
17 interests of the class (the “adequacy of representation” inquiry).

18 *Collins v. Cargill Meat Solutions Corp.*, 274 F.R.D. 294, 300 (E.D. Cal. 2011) (quoting *In re Itel*  
19 *Sec. Litig.*, 89 F.R.D. 104, 112 (N.D. Cal. 1981)); accord Fed. R. Civ. P. 23(a).

20 The court must also determine whether the proposed class satisfies Rule 23(b)(3),  
21 on which plaintiffs rely in this action. To meet the requirements of this subdivision of the rule,  
22 the court must find that “questions of law or fact common to class members predominate over  
23 any questions affecting only individual members, and that a class action is superior to other  
24 available methods for fairly and effectively adjudicating the controversy.” *Wal-Mart Stores, Inc.*  
25 *v. Dukes*, 131 S. Ct. 2541, 2558 (2011) (quoting Fed. R. Civ. P. 23(b)(3)). “The matters pertinent  
26 to these findings include: (A) the class members’ interests in individually controlling the  
27 prosecution or defense of separate actions; [and] (B) the extent and nature of any litigation  
28 concerning the controversy already begun by or against class members . . . .” Fed. R. Civ. P.  
23(b)(3)(A)–(B).

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1                   On September 13, 2013, plaintiffs filed a motion for certification of the following  
2 settlement class:

3                   All persons and entities that purchased tomato paste, tomato sauce,  
4 diced tomatoes or any other processed tomato product (“Processed  
5 Tomato Products”) directly from Ingomar Packing Company, Los  
6 Gatos Tomato Products, or SK Foods, L.P. (collectively  
7 “Defendants”) where the purchase was made pursuant to a contract  
8 made between February 1, 2005 and December 31, 2008.

9                   Excluded from the class are any judicial officer who is assigned to  
10 hear any aspect of the *Four in One Company* action or any related  
11 action, governmental entities, defendants, co-conspirators,  
12 purchasers who have an Individual Settlement Agreement (as  
13 defined in the Settlement Agreement) with Defendant(s), the  
14 present and former parents, predecessors, subsidiaries and affiliates  
15 of any of the foregoing, and the Plaintiffs in Case No. 09-cv-00208  
16 pending in the United States District Court for the Eastern District  
17 of California.

18 ECF No. 206-1 at 2.

19                   On January 2, 2014, the court preliminarily certified the proposed class, finding  
20 the class satisfied the numerosity, commonality, typicality and adequacy of representation  
21 requirements of Rule 23(a), ECF No. 222 at 6–8, as well as the predominance and superiority  
22 requirements of Rule 23(b)(3), *id.* at 9–10.

23                   No party or class member has objected to certification of the settlement class, and  
24 there is nothing before the court to suggest this prior certification was improper. The court  
25 therefore finds certification of the class for the purpose of final approval of the settlement  
26 agreements is appropriate.

#### 27 IV. NOTICE TO, RESPONSE FROM, AND PAYMENT TO CLASS MEMBERS

28                   The number of potential class members in this action is 476. ECF No. 233-2 at 2.  
On February 13, 2014, the class administrator mailed notices and claim forms to potential class  
members informing them of the settlements. ECF No. 233-2 at 2. Of the 476 notice packets  
mailed to potential class members, 76 were returned as undeliverable without a forwarding  
address. *Id.* The parties explained at the June 6, 2014 hearing that this number is not surprising  
considering many of the purchases at issue were made approximately six-and-a-half to nine-and-  
a-half years ago. Potential class members’ exclusions were to be postmarked by March 30, 2014.

1 ECF No. 222 at 18. To participate in the settlements, potential class members must have  
2 completed and submitted a claim form by May 30, 2014. ECF No. 233-2 at 9.

3           During the hearing on the motion for final approval, class counsel explained that  
4 of the 400 notice packets successfully mailed to potential class members, the class administrator  
5 received 110 completed claim forms, which represents a 27.5 percent response rate. The parties  
6 explained that the 110 returned claim forms represent the biggest purchasers, comprising  
7 79 percent of Ingomar’s total sales and 85 percent of Los Gatos’s sales. The class administrator  
8 received no requests to opt out of the settlements.

9 V. THE SETTLEMENT AND FAIRNESS

10 A. Legal Framework

11           When the parties reach settlement of a class action, the court cannot simply accept  
12 the parties’ resolution but must also satisfy itself that the proposed settlement is “fundamentally  
13 fair, adequate, and reasonable.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).  
14 After the initial certification and notice to the class, the court conducts a fairness hearing before  
15 finally approving any proposed settlement. *Narouz v. Charter Commc’ns, Inc.*, 591 F.3d 1261,  
16 1267 (9th Cir. 2010); Fed. R. Civ. P. 23(e)(2) (“If the proposal would bind class members, the  
17 court may approve it only after a hearing and on finding that it is fair, reasonable, and  
18 adequate.”). The court must balance a number of factors in determining whether the proposed  
19 settlement is fair, adequate and reasonable:

20                     the strength of the plaintiffs’ case; the risk, expense, complexity,  
21                     and likely duration of further litigation; the risk of maintaining class  
22                     action status throughout the trial; the amount offered in settlement;  
23                     the extent of discovery completed and the stage of the proceedings;  
                      the experience and views of counsel; the presence of a  
                      governmental participant; and the reaction of the class members to  
                      the proposed settlement.

24 *Hanlon*, 150 F.3d at 1026; *Adoma v. Univ. of Phx.*, 913 F. Supp. 2d 964, 974–75 (E.D. Cal.  
25 2012). The list is not exhaustive and the factors may be applied differently in different  
26 circumstances. *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.*, 688 F.2d 615,  
27 625 (9th Cir. 1982).

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1           The court must consider the settlement as a whole, rather than its component parts,  
2 in evaluating fairness and it “must stand or fall in its entirety.” *Hanlon*, 150 F.3d at 1026.  
3 Ultimately, the court must reach “a reasoned judgment that the agreement is not the product of  
4 fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement,  
5 taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice*, 688 F.2d  
6 at 625.

7           B.       Strength of Plaintiff’s Case

8           When assessing the strength of plaintiff’s case, the court does not reach “any  
9 ultimate conclusions regarding the contested issues of fact and law that underlie the merits of this  
10 litigation.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1388 (D. Ariz.  
11 1989). The court cannot reach such a conclusion, because evidence has not been fully presented  
12 and the “settlements were induced in large part by the very uncertainty as to what the outcome  
13 would be, had litigation continued.” *Id.* Instead, the court is to “evaluate objectively the  
14 strengths and weaknesses inherent in the litigation and the impact of those considerations on the  
15 parties’ decisions to reach these agreements.” *Id.*

16           While plaintiffs believe they have a strong case, they affirm discovery revealed  
17 several issues favoring settlement. For example, plaintiffs point to the risks that the class may not  
18 have obtained certification, or a favorable damages award from a jury may not have been  
19 realized. ECF No. 233-1 at 15. With regard to a favorable jury award, plaintiffs note after  
20 hearing expert witness testimony, a jury might determine there were little or no damages. *Id.*  
21 This risk favors settlement considering in antitrust litigation actions, such as this one, plaintiffs  
22 are faced with the challenging task of proving damages at trial. *See Rodriguez v. W. Publ’g*  
23 *Corp.*, No. CV05–3222 R(MCx), 2007 WL 2827379, at \*7 (C.D. Cal. Sept. 10, 2007) (noting  
24 “[c]laims for violation of federal antitrust laws are notoriously difficult to prove” (citing *Palmer*  
25 *v. BRG*, 498 U.S. 46, 48 (1990))), *aff’d in part, rev’d in part*, 563 F.3d 948 (9th Cir. 2009); *see*  
26 *also In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 207–08, 213  
27 (D. Me. 2003) (explaining the difficulty in proving antitrust damage causation at trial).

28       /////

1 Another burden plaintiffs face in developing the strength of their case is the court-  
2 ordered limit on discovery. In light of an ongoing investigation into criminal conduct in the  
3 tomato processing industry involving the same conduct alleged in this action, the court granted  
4 the DOJ's motion to intervene to limit certain discovery. ECF No. 100. The court's limit has  
5 been extended several times while the criminal investigation proceeded. *See, e.g.*, ECF Nos. 167,  
6 186. As a result, plaintiffs have been unable to conduct depositions in an effort to bolster or test  
7 the strength of their case. *See, e.g., Shames v. Hertz Corp.*, No. 07-CV-2174-MMA(WMC),  
8 2012 WL 5392159, at \*5 (S.D. Cal. Nov. 5, 2012) (finding an immunity argument that would  
9 have shielded evidence from the plaintiffs posed a risk to the strength of the plaintiffs' case).  
10 While the court's limit on discovery presumably would lift once the criminal proceeding  
11 concluded, there currently is no indication of when that will be, and the passage of time could  
12 impact potential deponents' memories and availability. Moreover, the continued cost of  
13 maintaining their action while waiting for the opportunity to conduct discovery could have  
14 hindered plaintiffs' progress.

15 This factor favors approving the settlements.

16 C. Risk, Expense, Complexity and Likely Duration of Further Litigation; Risk of  
17 Maintaining Class Status

18 "Approval of settlement is 'preferable to lengthy and expensive litigation with  
19 uncertain results.'" *Morales v. Stevco, Inc.*, No. 1:09-cv-00704 AWI JLT, 2011 WL 5511767, at  
20 \*10 (E.D. Cal. Nov. 10, 2011) (quoting *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*  
21 (*DIRECTV*), 221 F.R.D. 523, 526 (C.D. Cal. 2004)). The Ninth Circuit has explained "there is a  
22 strong judicial policy that favors settlements, particularly where complex class action litigation is  
23 concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (citing *Class*  
24 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). "[I]t must not be overlooked  
25 that voluntary conciliation and settlement are the preferred means of dispute resolution. This is  
26 especially true in complex class action litigation . . . ." *Id.* (quoting *Officers for Justice*, 688 F.2d  
27 at 625).

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1           Plaintiffs explain the effort and expense necessary to litigate this complex antitrust  
2 action through trial could well yield a damages award comparable to the proposed settlements.  
3 At the same time, plaintiffs would risk not being able to collect a higher damages award. This  
4 risk is especially probable in light of the related criminal and bankruptcy proceedings, as outlined  
5 in plaintiffs' memorandum in support of their motion for preliminary approval of settlements.  
6 ECF No. 207 at 12–14. In the related proceedings, defendant Salyer entered a plea agreement and  
7 pled guilty to racketeering and price-fixing charges on March 23, 2012. *Id.* at 12. Other  
8 individuals have been indicted on similar charges as recently as December 17, 2013. *Id.* at 13.  
9 Ingomar and Pruett received leniency under the DOJ's antitrust leniency program. *Id.* at 12. As a  
10 result, these two defendants would not be subject to treble damages or joint and several liability.  
11 *Id.* at 21. SK Foods filed for chapter 11 bankruptcy on May 5, 2009. *Id.* at 13. Plaintiffs filed  
12 class proofs of claims with the bankruptcy court; and the bankruptcy court certified a settlement  
13 class. *Id.* Plaintiffs confirmed at the final approval hearing the class will receive approximately 9  
14 to 10 percent of the claimed amount of \$70 million, but the amount will not be distributed  
15 immediately. Finally, plaintiffs note Los Gatos credibly asserted a financial condition that would  
16 "greatly preclude[e]" its ability to pay a larger damages award. ECF No. 233-1 at 15.

17           Given the complexity of the action and related criminal and bankruptcy  
18 proceedings, the risk and expense of litigating this action through trial and possibly subsequent  
19 appeals is apparent. *See* ECF No. 233-1 at 18. While the proposed settlements were reached  
20 fairly early in the litigation process, before any dispositive motions were filed, if the settlements  
21 are not approved, the parties will be faced with expensive, ongoing litigation. Considering the  
22 already high costs incurred by plaintiffs' counsel at this juncture, the risk factor weighs in favor  
23 of approval.

24           The court also considers the risk that the proposed class may not be certified or  
25 may face decertification. *See Rodriguez*, 563 F.3d at 966 ("A district court may decertify a class  
26 at any time." (citing *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147 (1982))). While the court may  
27 have maintained certification of the proposed class, there remains a risk defendants will challenge

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1 the certification and the court may decertify the class before trial, as evidenced by the parties' *in*  
2 *camera* submissions. See ECF No. 233-1 at 15.

3 These factors weigh in favor of approving the settlements.

4 D. Amount Offered in Settlement

5 Plaintiffs sought compensatory and treble damages and reached proposed  
6 settlements of \$3.5 million with Ingomar and \$2.9 million with Los Gatos, for a total of  
7 \$6.4 million.

8 In the court's order granting preliminary approval of the settlements, the court  
9 directed the parties to provide the court with substantial corroborating evidence in support of the  
10 settlement amounts. ECF No. 222 at 15–16. Specifically, the parties were to address the court's  
11 reservations regarding: (1) plaintiffs' statement that the settlement amounts to 1 percent of  
12 defendants' total sales and 2.4 percent or more of the damages pool for each of the settling  
13 defendants; (2) how "the monetary settlement terms, of \$3.5 and \$2.9 million, relate to the merits  
14 of the class members' antitrust claims"; (3) "the mediation and negotiations of the proposed  
15 settlement agreements" including mediation statements and related e-mails; and (4) the individual  
16 settlement agreement between Ingomar and Red Gold. *Id.*

17 In response, plaintiffs Ingomar and Los Gatos provided several documents for *in*  
18 *camera* review. The documents include plaintiffs' preliminary damages estimate, copies of the  
19 parties' mediation statements, e-mails between the parties related to settlement negotiations, the  
20 Red Gold settlement agreement and a summary of Ingomar's and Los Gatos' total sales.

21 With regard to plaintiffs' statement that the settlement amounts to 1 percent of  
22 defendants' total sales, the parties provided a summary of the settling defendants' total sales.<sup>2</sup>  
23 The declaration of Arthur Bailey, submitted with plaintiffs' *in camera* documents, articulates the  
24 parties' calculations. Mr. Bailey's *in camera* declaration also explains how the parties  
25 determined the settlement amounts as 2.4 percent or more of the damages pool. The court finds

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26 <sup>2</sup> In accordance with the court's order granting preliminary approval, defendants' total  
27 sales include "mandatory arbitration provisions." See ECF No. 222 at 16 (noting "an arbitration  
28 agreement would simply vary the forum from a judicial to an arbitral setting and would have no  
impact on the amount of recovery" (citing *Am. Express Co. v. Italian Colors Rest.*, \_\_\_ U.S. \_\_\_,  
133 S. Ct. 2304, 2312 (2013))).

1 the parties' estimates are sufficiently corroborated by supporting documentation.

2           Finally, while the settlement amount represents a small fraction of the estimated  
3 damages, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the  
4 potential recovery will not per se render the settlement inadequate or unfair.” *Officers for Justice*,  
5 688 F.2d at 628. “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful  
6 and expensive litigation that induce consensual settlements. The proposed settlement is not to be  
7 judged against a hypothetical or speculative measure of what might have been achieved by the  
8 negotiators.” *Id.* at 625 (citations omitted); *see also Collins*, 274 F.R.D. at 302 (a court must  
9 “consider plaintiffs’ expected recovery balanced against the value of the settlement offer”  
10 (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007))); *In re*  
11 *Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 336 (D.N.J. 2002) (approving  
12 settlement representing less than two percent of the maximum possible recovery), *cited in Hopson*  
13 *v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at \*8 (N.D. Cal. Apr. 3, 2009).  
14 The court finds the settlement amount weighs slightly in favor of approval in light of the  
15 uncertainties involved in litigating this action.

16           On balance, the settlement amount factor weighs in favor of approving the  
17 settlements.

18           E.     Extent of Discovery and Stage of the Proceedings

19           “In the context of class action settlement, ‘formal discovery is not a necessary  
20 ticket to the bargaining table’ where the parties have sufficient information to make an informed  
21 decision about settlement.” *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir.  
22 1998) (quoting *In re Chicken Antitrust Litig.*, 669 F.2d 228, 241 (5th Cir. 1982)).

23           Here, the parties conducted document discovery resulting in the production of  
24 240,000 pages of documents as well as additional documents obtained through bankruptcy  
25 proceedings. ECF No. 233-1 at 21. While the court prohibited the parties from engaging in  
26 depositions due to the related criminal proceedings, the document production facilitated  
27 meaningful negotiations between the parties and enabled them to make an informed decision  
28 regarding settlement. *See, e.g., Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 454 (E.D.

1 Cal. 2013) (“approval of a class action settlement is proper as long as discovery allowed the  
2 parties to form a clear view of the strengths and weaknesses of their cases” (citation omitted)).  
3 Moreover, as revealed by plaintiffs’ *in camera* submission, plaintiffs’ counsel conducted  
4 significant independent investigation and research, which further informed the parties’  
5 discussions.

6 This factor weighs in favor of approving the settlement agreements.

7 F. Experience and Views of Counsel

8 In the court’s order preliminarily approving the settlements, the parties were  
9 directed to provide the court with evidence of class counsel’s experience in class action antitrust  
10 cases. ECF No. 222 at 14. The two firms representing the class, Quinn Emanuel and Hausfeld  
11 submitted declarations that sufficiently establish their experience in class action antitrust  
12 litigation. ECF No. 224-3 at 1–2; ECF No. 224-6 at 1–4. Given the experience of counsel, this  
13 factor favors approving the settlements. *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D.  
14 431, 447 (E.D. Cal. 2013).

15 G. Reaction of the Class

16 “It is established that the absence of a large number of objections to a proposed  
17 class action settlement raises a strong presumption that the terms of a proposed class settlement  
18 action are favorable to the class members.” *DIRECTV*, 221 F.R.D. at 529 (citations omitted).

19 During the final approval hearing, the parties confirmed the class administrator  
20 received no opt out forms or objections from potential class members. As noted, of the 400  
21 notice packets that were successfully mailed to potential class members, the class administrator  
22 received 110 claim forms, which equates to a 27.5 percent response rate. These 110 returned  
23 claim forms represent the biggest purchasers, comprising 79 percent of Ingomar’s total sales and  
24 85 percent of Los Gatos’ sales. The response rate was not surprising to the parties who explained  
25 during the hearing the rate is in fact high compared to other response rates considered by courts.  
26 *See, e.g., Touhey v. United States*, No. EDCV 08–01418–VAP (RCx), 2011 WL 3179036, at \*7–  
27 8 (C.D. Cal. Jul. 25, 2011) (finding a two percent response rate did not render settlement unfair);  
28 *In re Packaged Ice Antitrust Litig.*, No. 08–MDL–01942, 2011 WL 6209188, at \*14 (E.D. Mich.

1 Dec. 13, 2011) (finding settlement fair even when only one percent responded to notices when  
2 that one percent represented forty-six percent of defendant’s total sales). Defendant Ingomar  
3 joins plaintiffs’ motion, specifically asserting that not one of the potential class members,  
4 comprised of “many of the largest and most sophisticated food companies in the world,” objected  
5 or opted out strongly favors approval of the settlements. ECF No. 231 (citing *In re Art Materials*  
6 *Antitrust Litig.*, 100 F.R.D. 367, 372 (N.D. Ohio 1983)).

7           Considering the relatively favorable response rate and the percentage of sales  
8 represented by the claim forms received, the court finds this factor weighs in favor of approving  
9 the settlements. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal.  
10 2008) (“By any standard, the lack of objection of the Class Members favors approval of the  
11 Settlement.” (citations omitted)).

#### 12           H.     Possibility of Collusion

13           Before approving a settlement, the court must consider whether it is the product of  
14 collusion. *Hanlon*, 150 F.3d at 1026; *Monterrubio*, 291 F.R.D. at 453–54.

15           Here, the parties engaged in extensive settlement negotiations involving telephonic  
16 and e-mail communications between June 2009 and April 2013. *See* ECF No. 207 at 20; *see also*  
17 ECF No. 233-1 at 13–14. The parties finally reached settlement agreements following an eleven-  
18 hour joint mediation session on April 29, 2013. ECF No. 233-1 at 14; *see In re Bluetooth*  
19 *Headset Prods. Liability Litig. (Bluetooth)*, 654 F.3d 935, 948 (9th Cir. 2011) (participation of  
20 mediator is not dispositive, but is “a factor weighing in favor of a finding of non-collusiveness”).  
21 The parties’ private mediation took place before a neutral mediator, the Honorable Layn R.  
22 Phillips of the California Academy of Distinguished Neutrals, an experienced mediator. In  
23 advance of the mediation session, the parties prepared detailed confidential mediation statements  
24 and draft settlement terms. ECF No. 233-1 at 14. The court class reviewed the parties’  
25 negotiations, including mediation statements and e-mail communications, which were submitted  
26 for *in camera* review. The court finds no objective signs of collusion in this action. Accordingly,  
27 this factor weighs in favor of approving the settlement. *In re Toys R Us-Delaware, Inc.--Fair &*  
28 *Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 457–58 (C.D. Cal. 2014).

1           After carefully reviewing the parties’ submissions in light of the relevant factors,  
2 for the reasons discussed above, the motion for final approval of class settlements is GRANTED.

3 VI. ATTORNEYS’ FEES AND COSTS

4           Plaintiffs’ counsel seek an award of attorneys’ fees in the amount of \$1.6 million,  
5 which represents 25 percent of the \$6.4 million settlement fund. ECF No. 224-1 at 6. Plaintiffs’  
6 counsel also seek an award of costs in the amount of \$267,926.23. *Id.*

7 A. Class Counsels’ Request for Attorneys’ Fees

8           Rule 23 permits a court to award “reasonable attorney’s fees . . . that are  
9 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Even when the parties  
10 have agreed on an amount, the court must award only reasonable attorneys’ fees in a class action  
11 settlement. *Bluetooth*, 654 F.3d at 941. “Where a settlement produces a common fund for the  
12 benefit of the entire class, courts have discretion to employ either the lodestar method or the  
13 percentage-of-recovery method.” *Id.* at 942. If the court employs the percentage-of-recovery  
14 method, “calculation of the lodestar amount may be used as a cross-check to assess the  
15 reasonableness of the percentage award.” *Adoma*, 913 F. Supp. 2d at 981. The court must  
16 employ the method that will produce a reasonable result. *Bluetooth*, 654 F.3d at 942.

17           In the Ninth Circuit, the benchmark for percentage of recovery awards is  
18 25 percent of the total settlement award, which may be adjusted up or down. *Hanlon*, 150 F.3d at  
19 1029; *Ross v. U.S. Bank Nat’l Ass’n*, No. C 07–02951 SI, 2010 WL 3833922, at \*2 (N.D. Cal.  
20 Sept. 29, 2010) (stating selection of benchmark must be based on all circumstances of the case).

21           Factors that may justify departure from the benchmark include: (1) the result  
22 obtained; (2) counsel’s efforts, experience, and skill; (3) the complexity of the issues; (4) the risks  
23 of non-payment assumed by counsel; (5) the reaction of the class; (6) non-monetary benefits, such  
24 as clarification of certain points of law; and (6) comparison with the lodestar. *Vizcaino v.*  
25 *Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). Additional factors include whether  
26 counsel receives a disproportionate distribution of the settlement, whether the parties have agreed  
27 to a “clear sailing” arrangement whereby defendant will not object to counsel’s request for fees,

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1 and whether any fees not awarded will revert to defendants rather than be added to the class fund.  
2 *Bluetooth*, 654 F. 3d at 947.

3 1. The Result Obtained

4 Class counsel secured a settlement of approximately 1 percent of the settling  
5 defendants' total sales of tomato products during the class period. As noted in the motion for  
6 attorneys' fees, "various facts exist which arguably reduce the amount of damages to the Class  
7 attributable to sales by Los Gatos and Ingomar." ECF No. 224-1 at 12. While the settlement  
8 amount is not extraordinary, the fact that class counsel obtained a settlement early in litigation  
9 and avoided increased costs of litigation weighs in favor of a benchmark award of 25 percent of  
10 the settlement fund.

11 2. The Risks Involved

12 As noted, class counsel believe plaintiffs' case is strong, yet recognize the risk and  
13 expense necessary to litigate this complex class action. ECF No. 224-1 at 12. The settling  
14 defendants believe strongly in their position and would have contested liability. Plaintiffs note  
15 additional risks of continuing to litigate the action include determining damages, which is an  
16 "expert-intensive uncertain process[] often involving conflicting testimony," and the possibility a  
17 jury could find either no damages or a fraction of the damages contended. ECF No. 224-1 at  
18 13-14. Other risks served as obstacles for plaintiffs, including defendants Ingomar and Pruetts  
19 acceptance into the DOJ's amnesty program, and a portion of the settling defendants' sales may  
20 not have been subject to damages because sales were made through contracts entered into outside  
21 the conspiracy period. *Id.* at 14. Finally, as noted, a challenge to class certification, evidenced by  
22 the parties' *in camera* submissions, could potentially have justified decertification at trial.  
23 Accordingly, this factor weighs in favor of a benchmark award of 25 percent of the settlement  
24 fund.

25 3. Counsel's Efforts, Experience and Skill; Complexity of the Issues

26 As discussed above, the two firms representing the class, Quinn Emanuel and  
27 Hausfeld, have substantial experience in antitrust class action litigation. Class counsel confirmed  
28 during the hearing the remaining firms representing plaintiffs also have relevant experience and

1 skills in antitrust class actions. The court is satisfied counsels' experience supports a benchmark  
2 award of 25 percent.

3 The antitrust issues involved in this litigation as well as the investment of time on  
4 the part of the firms involved were substantial. The litigation involves four consolidated actions,  
5 and related bankruptcy and criminal proceedings. Thus, the complexity of the issues and the  
6 efforts required by counsel involved also weigh in favor of a benchmark award of 25 percent of  
7 the settlement fund.

#### 8 4. Lodestar Cross-Check

9 In calculating an attorneys' fee award using the lodestar method, a court must start  
10 by determining how many hours were reasonably expended on the litigation, and then multiply  
11 those hours by the prevailing local rate for an attorney of the skill required to perform the  
12 litigation. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). When a court  
13 uses the lodestar as a cross-check to a percentage claim of fees, it need only make a "rough  
14 calculation." *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL  
15 2117001, at \*22 (E.D. Cal. June 11, 2012).

16 Here, plaintiffs' attorneys claim a lodestar of approximately \$5,136,097.75, which  
17 represents 11,754.70 hours billed by 162 attorneys and professional support staff at various  
18 billing rates from 18 separate law firms. ECF No. 224. The average billing rate used by the firms  
19 is approximately \$436 per hour. This rate was used across the board for the 11,754.70 hours  
20 billed by plaintiffs' attorneys to reach the \$5,136,097.75 lodestar calculation. The firms have not  
21 provided statements in support of their hourly rates, evidence their rates are in line with those in  
22 the community, *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984), or itemized records to support  
23 the number of hours they worked, *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). Nonetheless,  
24 the court finds the "rough calculation" of plaintiffs' attorneys' fee is acceptable in this action.  
25 *Schiller*, 2012 WL 2117001, at \*22; *see also Barbosa*, 297 F.R.D. at 451-52 ("Where the lodestar  
26 method is used as a cross-check to the percentage method, it can be performed with a less  
27 exhaustive cataloguing and review of counsel's hours." (citing *In re Rite Aid Corp. Sec. Litig.*,  
28 396 F.3d 294, 306 (3d Cir. 2005); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1176

1 (S.D. Cal. 2007))). Further, the average hourly rate of \$436 is not extraordinarily high  
2 considering plaintiffs’ counsels’ experience and skill in complex antitrust class action litigation,  
3 and the rates approved in other local class action cases. *See Monterrubio*, 291 F.R.D. at 460  
4 (noting the “‘prevailing hourly rates in the Eastern District of California are in the \$400/hour  
5 range’” (quoting *Bond v. Ferguson Enters., Inc.*, No. 1:09–cv–1662 OWW MJS, 2011 WL  
6 2648879, at \*12 (E.D. Cal. June 30, 2011))). A lodestar cross-check confirms 25 percent of the  
7 \$6.4 million settlement fund is a reasonable fee award for plaintiffs’ counsel here. *Vizcaino*, 290  
8 F.3d at 1050 (“Calculation of the lodestar, which measures the lawyers’ investment of time in the  
9 litigation, provides a check on the reasonableness of the percentage award.”).

10 Accordingly, class counsels’ motion for attorneys’ fees in the amount of  
11 \$1.6 million is GRANTED.

12 B. Class Counsels’ Request for Litigation Costs

13 The court must determine an appropriate award of costs and expenses. Fed. R.  
14 Civ. P. 23(h). “[I]n evaluating the reasonableness of costs, ‘the judge has to step in and play  
15 surrogate client.’” *FACTA*, 295 F.R.D. at 469 (quoting *Matter of Cont’l Ill. Sec. Litig.*, 962 F.2d  
16 566, 572 (7th Cir. 1992)). “In keeping with this role, the court must examine prevailing rates and  
17 practices in the legal marketplace to assess the reasonableness of the costs sought.” *Id.* (citing  
18 *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 286–87 (1989)).

19 Counsel has submitted records showing plaintiffs’ firms incurred \$267,926.23 in  
20 costs. The largest expenditures are \$46,810.88 for professional services requested by Quinn  
21 Emanuel, and \$46,806.56 for data extraction requested by Hausfeld. ECF Nos. 224-5 at 47,  
22 224-9 at 4–6. During the hearing on the motion for costs, the court questioned class counsel  
23 regarding these expenditures. Class counsel explained these costs covered hosting the database of  
24 the 240,000 discovery documents and expert analysis relied on during the parties’ settlement  
25 negotiations. The court finds these costs reasonable.

26 Another relatively large expenditure is \$30,000 for class administrative services,  
27 requested by Hausfeld. A declaration by the class administrator was provided in support of  
28 plaintiffs’ motion for final approval of class settlement and describes the steps taken to notify the

1 potential class members. *See* ECF No. 233-2. When questioned during the hearing regarding this  
2 expenditure, class counsel explained the fee was negotiated with the claims administrator as a  
3 capped amount guaranteed not to exceed \$30,000. Counsel explained the class administrator is  
4 responsible for administering the settlements over the next six to twelve months, and is an  
5 experienced claims administrator. The court finds the request for class administrative services  
6 reasonable. *See, e.g., Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324-AWI-SKO, 2012  
7 WL 5364575, at \*3 (E.D. Cal. Oct. 31, 2012) (approving \$25,000 administrator fee awarded in  
8 wage and hour case involving 1868 potential class members); *Vasquez v. Coast Valley Roofing,*  
9 *Inc.*, 266 F.R.D. 482, 484 (E.D. Cal. 2010) (approving \$25,000 administrator fee awarded in  
10 wage and hour case involving 177 potential class members).

11 Class counsel also seek reimbursement for the mediation fee in the amount of  
12 \$8,287.50. ECF No. 224-5 at 44. Courts routinely approve reimbursement of this cost. *See, e.g.,*  
13 *Pierce v. Rosetta Stone, Ltd.*, Case No: C 11-01283 SBA, 2013 WL 5402120, at \*6 (N.D. Cal.  
14 Sept. 26, 2013).

15 The court approves the balance of the costs requested by class counsel without  
16 individualized analysis of each cost. *See, e.g., FACTA*, 295 F.R.D. at 469 (“Expenses such as  
17 reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer  
18 legal research, postage, courier service, mediation, exhibits, documents scanning, and visual  
19 equipment are typically recoverable.” (quoting *Rutti v. Lojack Corp., Inc.*, No. SACV 06-350  
20 DOC (JCx), 2012 WL 3151077, at \*12 (C.D. Cal. July 31, 2012))).

21 After carefully reviewing the summary of expenditures and in light of class  
22 counsels’ representations to the court during the final approval hearing, the motion for  
23 reimbursement of costs in the amount of \$267,926.23 is GRANTED.

## 24 VII. CONCLUSION

25 IT IS HEREBY ORDERED that within seven days from the date of this order,  
26 plaintiffs and the settling defendants shall file objections, if any, to the filing under seal of the *in*  
27 *camera* submissions. *See* ECF Nos. 230, 232-1, 234, 235. If no objections are received, the  
28 submissions will be filed under seal by the Clerk of the Court.

1 IT IS FURTHER ORDERED that plaintiffs' motion for final approval of the class  
2 and collective actions settlements is GRANTED as follows:

3 1. Solely for the purpose of the two settlements and based on Federal Rule of  
4 Civil Procedure 23, the court hereby certifies the following class:

5 All persons and entities that purchased tomato paste, tomato sauce,  
6 diced tomatoes or any other processed tomato product ("Processed  
7 Tomato Products") directly from Ingomar Packing Company, Los  
8 Gatos Tomato Products, or SK Foods, L.P. (collectively  
9 "Defendants") where the purchase was made pursuant to a contract  
10 made between February 1, 2005 and December 31, 2008.

11 Excluded from the class are any judicial officer who is assigned to  
12 hear any aspect of the *Four In One Company* action or any related  
13 action, governmental entities, defendants, coconspirators,  
14 purchasers who have an Individual Settlement Agreement (as  
15 defined in the Settlement Agreement) with Defendant(s), the  
16 present and former parents, predecessors, subsidiaries and affiliates  
17 of any of the foregoing, and the Plaintiffs in Case No. 09-cv-00208  
18 pending in the United States District Court for the Eastern District  
19 of California.

20 2. The court hereby approves the terms of the settlement agreements as fair,  
21 reasonable, and adequate as they apply to the class, and directs consummation of all the  
22 agreements' terms and provisions.

23 3. The settlement agreements shall be binding on Ingomar, Los Gatos and all  
24 plaintiffs, including all members of the class, under the settlement agreements.

25 4. The court dismisses on the merits and with prejudice the consolidated class  
26 action complaint as to Ingomar and Los Gatos.

27 5. The plan of allocation providing for a *pro rata* distribution of the net  
28 settlement fund based on verified claimants' volume of qualifying purchases, is fair, adequate,  
and reasonable, and is hereby approved.

6. The court in its discretion declines to maintain jurisdiction to enforce the  
terms of the parties' settlement agreements. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.  
375, 381 (1994); *cf. Collins v. Thompson*, 8 F.3d 657, 659 (9th Cir. 1993). Unless there is some  
independent basis for federal jurisdiction, enforcement of the agreements is for the state courts.  
*Kokkonen*, 511 U.S. at 382.

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7. No later than sixty days after the date of this order the claims administrator shall disburse the settlement amount due to each class member.

8. Class counsel is entitled to fees in the amount of \$1.6 million.

9. Class counsel is entitled to costs in the amount of \$267,926.23.

10. No later than fourteen days after the date of this order the claims administrator shall disburse attorneys' fees and costs.

DATED: August 13, 2014.

  
UNITED STATES DISTRICT JUDGE