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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THE MORNING STAR PACKING
COMPANY, et al.,

Plaintiffs,

v.

S.K. FOODS, L.P., et al.,

Defendants.

No. 2:09-cv-00208-KJM-KJN

ORDER

This matter is before the court on the motion for partial summary judgment, or, in the alternative, an order interpreting a federal statute “pursuant to the [c]ourt’s inherent authority,” by defendants Ingomar Packing Company and Gregory R. Pruett. Defs.’ Mot., ECF No. 193. Plaintiffs Morning Star Packing Company, Liberty Packing Company, LLC, California Fruit & Tomato Kitchens, LLC, and The Morning Star Company oppose the motion and defendants have replied. ECF Nos. 199, 202. The court decides this matter without a hearing. As explained below, the court construes the motion as a request for determination of whether as a matter of law the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (ACPERA) limits exposure to civil damages, not just for Sherman Act violations, but for alleged RICO violations and in the face of other antitrust claims as well. The court GRANTS defendants’ motion to the extent set forth below.

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1 I. INTRODUCTION

2 A. PROCEDURAL BACKGROUND

3 On January 22, 2009, plaintiffs filed their original complaint containing five
4 claims based on alleged federal antitrust and RICO violations against defendants SK Foods, L.P.,
5 Scott Salyer, Randall Rahal and Intramark USA, Inc. Compl., ECF 1.¹ On December 6, 2010,
6 plaintiffs filed their Second Amended Complaint (SAC), the operative complaint, stating claims
7 against all defendants based on the Robinson-Patman Act (15 U.S.C. § 13(c)); the Sherman Act
8 (15 U.S.C. § 1); the RICO statute (18 U.S.C. § 1962(c)); and asserting conspiracy to violate
9 RICO (18 U.S.C. § 1962). Specifically, the racketeering activity pleaded is: 1) commercial
10 bribery in violation of California Penal Code § 641.3, New Jersey Statutes Annotated § 2C:21-10,
11 Texas Penal Code § 32.43; 2) violations of the federal Travel Act, 18 U.S.C. § 1952; 3) money
12 laundering in violation of 18 U.S.C. § 1956(a)(1)(A)(i) and § 1956(a)(3)(C); and 4) mail fraud
13 and wire fraud in violation of 18 U.S.C. §§ 1341, 1343. SAC, ECF No. 116. On October 15,
14 2014, defendants filed the instant motion. ECF No. 193. On November 7, 2014, plaintiffs filed
15 an opposition, Opp'n, ECF 199, and on November 14, 2014, defendants a reply, ECF No. 202.

16 B. UNDISPUTED FACTUAL BACKGROUND

17 On August 5, 2008, defendants Ingomar and its President, Pruett, entered into a
18 leniency agreement with the United States Department of Justice (DOJ) Antitrust Division
19 regarding “possible price fixing, bid rigging, and market allocation, or other conduct violative of
20 Section 1 of the Sherman Act, 15 U.S.C. § 1, in the processed tomato products industry in the
21 United States.” Leniency Agreement ECF No. 197-1 at 3. A leniency agreement allows the first
22 entity to report illegal activity to be protected by immunity and to benefit from leniency in fines
23 and punishment if the entity fully cooperates in the investigation and takes “prompt and effective
24 action to terminate its part in the activity.” See DOJ Corporate Leniency Policy, Ex. 1, ECF No.
25 196. Under ACPERA, an “antitrust leniency agreement” is defined as “a leniency agreement,
26 whether conditional or final, between a person and the Antitrust Division pursuant to the

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28 ¹ Over the course of the litigation, this case has been related to and consolidated with
several other cases. See ECF Nos. 37, 52, 56.

1 Corporate Leniency Policy of the Antitrust Division.” Pub. L. No. 108-237, § 213 (2004), 118
2 Stat. 661, 665–67 (2004) (codified at 15 U.S.C. § 1 n.1²) (ACPERA).

3 In its agreement with DOJ, Ingomar represents it “desires to report”
4 anticompetitive activity and “took prompt and effective action to terminate its part . . .,” “did not
5 coerce any other party to participate . . . [and] was not the leader in . . . [or] originator of [] the
6 anticompetitive activity. . . .” *Id.* at 1. The agreement requires “full, continuing and complete
7 cooperation [with] the Antitrust Division” by providing documents, information and responses to
8 questions, making grand jury appearances, and making reasonable efforts to pay restitution. *Id.* at
9 1–2. In exchange for full compliance with the agreement, the Antitrust Division promises to not
10 prosecute Ingomar or any director, officer or employee of Ingomar for participation in
11 anticompetitive activity. *Id.* at 3. It is undisputed the leniency agreement is “conditional,” and it
12 has yet to be determined whether Ingomar will be eligible for ACPERA immunity. Defs.’ Mot. at
13 4 n.1; Opp’n at 3.

14 Under ACPERA, damages recoverable from a leniency applicant “in a civil action
15 alleging a violation . . . of the Sherman Act . . . or any similar state law” “based on conduct
16 covered by a currently effective leniency agreement” . . . “shall not exceed the portion of the
17 actual damages sustained by such claimant which is attributable to the commerce done by the
18 applicant in the goods or services affected by the violation.” ACPERA § 213. This cap on
19 damages is contingent upon the leniency applicant’s providing “satisfactory cooperation” to a
20 claimant in a civil action. *Id.* § 213(b). Here, as noted, the civil action involves conduct alleged
21 to have violated the Sherman Act, as well as federal RICO laws, and the Robinson-Patman Act.
22 *See* SAC at 24-33.

23 It is undisputed that, in an effort to comply with its ACPERA obligations, Ingomar
24 has made itself available to plaintiffs to answer any questions or offer additional information

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27 ² That the statute is codified as a note does not change its force as law. “The Statutes at
28 Large provide the evidence of the laws of the United States.” *Conyers v. Merit Sys. Prot. Bd.*,
388 F.3d 1380 & n.2, 1382 (Fed. Cir. 2004) (considering the Aviation and Transportation
Security Act (ATSA), codified as a note to 49 U.S.C. § 44935).

1 related to anticompetitive activity and alleged unlawful behavior violations generally. Defs.’
2 Mot. at 6; Opp’n at 2.

3 C. REQUEST FOR JUDICIAL NOTICE

4 Ingomar requests that the court take judicial notice of the following documents:

5 (1) DOJ Corporate Leniency Policy (1994); (2) DOJ Frequently Asked Questions Regarding the
6 Antitrust Division’s Leniency Program and Model Leniency Letters (November 19, 2008);
7 (3) Congressional Record, 150 Cong. Rec. 45, 3614 (2004); (4) Congressional Record, 155 Cong.
8 Rec. 85, 6329–30 (2009); (5) Congressional Record, 156 Cong. Rec. 82, 4559–360 (2010).

9 Request for Judicial Notice, ECF No. 196. Ingomar contends these documents are susceptible to
10 the taking of judicial notice because they are “readily determinable information.” *Id.* at 2.

11 Plaintiffs oppose the request with respect to documents (1) and (2) because they have “no factual
12 bearing” on the matter. Objection to Judicial Notice, ECF No. 199-4.

13 Under the Federal Rules of Evidence, “[t]he court may judicially notice a fact that
14 is not subject to reasonable dispute because it can be accurately and readily determined from
15 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201. The court finds all
16 of the documents covered by Ingomar’s request are relevant to the question before it, as framed
17 above. They either are “accurately and readily determined” by reference to a trusted source, the
18 DOJ’s website, *Jarvis v. JP Morgan Chase Bank, N.A.*, No. CV 10-4184, 2010 WL 2927276, at
19 *1 (C.D. Cal. July 23, 2010) (“Judicial notice may be taken of documents available on
20 government websites.”), or are official records of the legislative branch. *Paralyzed Veterans of*
21 *Am. v. McPherson*, 2006 WL 3462780 (N.D. Cal. Nov. 28, 2006) (taking judicial notice of
22 Congressional Record). Accordingly, the request for judicial notice is granted.³

23 II. FEDERAL COURTS’ INHERENT AUTHORITY

24 Federal courts are invested with inherent powers that are “governed not by rule or
25 statute but by the control necessarily vested in courts to manage their own affairs so as to achieve
26

27 ³ The court takes judicial notice of the DOJ FAQ, while noting the exhibit submitted is
28 only a portion of the full FAQ. The court has reviewed the full document, publicly available on
the DOJ website at <http://www.justice.gov/atr/public/criminal/239583.htm>.

1 the orderly and expeditious disposition of cases.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43
2 (1991) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962)). “The broad and
3 inherent power of the District Court to regulate litigation before it is supported by abundant
4 authority” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 951 (9th Cir. 1976). Here,
5 determining whether defendants may be in a position to benefit from ACPERA’s damages
6 limitation provision will clarify certain questions at this stage of the litigation, can be effected on
7 the record before the court, and will aid in the orderly and expeditious resolution of this matter.

8 Federal courts are empowered to interpret leniency agreements, determine their
9 applicability, and enforce them. *See* ACPERA § 213(b) (providing that an amnesty applicant
10 may receive reduced civil liability only “if the court in which the civil action is brought
11 determines, after considering any appropriate pleadings from the claimant, that the applicant . . .
12 has provided satisfactory cooperation to the claimant with respect to the civil action”); *cf. Stolt-*
13 *Nielsen, S.A. v. United States*, 442 F.3d 177, 182 (3d Cir. 2006), *as amended* (May 16, 2006)
14 (making determination in criminal case). For example, in *In re Aftermarket Automotive Lighting*
15 *Products Antitrust Litigation*, 2013 WL 4536569 (C.D. Cal. 2013), another district court issued
16 an order in exercise of its inherent authority in a civil case to determine whether defendants had
17 satisfied their ACPERA obligations before trial. *Id.* at *6.

18 Here, while this case is not ready for trial, the court decides the issue of the
19 potential scope of Ingomar’s ACPERA protections as a matter of law, though it does not at this
20 stage decide Ingomar’s actual eligibility for the ACPERA damages cap. The scope of ACPERA
21 protection is an issue of statutory interpretation; the judiciary is the final authority on issues of
22 statutory construction. *Fed. Election Comm’n v. Ted Haley Cong. Comm.*, 852 F.2d 1111, 1113–
23 14 (9th Cir. 1988).

24 III. DISCUSSION

25 Defendants seek to establish as a matter of law that they may benefit from the
26 strict limitation on damages applicable to leniency applicants under ACPERA. Specifically,
27 defendants ask the court to find the actions underlying plaintiff’s alleged RICO and other antitrust
28 claims were committed “in connection with” those underlying the Sherman Act antitrust claims

1 such that the cap applies to all claims in this action. Defs.' Mot. at 4. Defendants contend they
2 present a narrow question of statutory interpretation based on undisputed facts. Reply at 2–3.

3 Plaintiffs, while opposing an order as an exercise of the court's inherent authority,
4 also oppose summary judgment as premature, a position with which the court agrees in part.
5 Opp'n at 5. To the extent plaintiffs argue that an ACPERA determination would not narrow
6 issues for trial or that, as a matter of law, the leniency agreement does not cover all of plaintiffs'
7 claims, the court disagrees. In making the determination set forth below, the court relies on the
8 second amended complaint as pled and engages in statutory construction.

9 As relevant here, ACPERA provides:

10 (a) In General.--Subject to subsection (d), in any civil action
11 alleging a violation of section 1 or 3 of the Sherman Act, or
12 alleging a violation of any similar State law, based on conduct
13 covered by a currently effective antitrust leniency agreement, the
14 amount of damages recovered by or on behalf of a claimant from an
15 antitrust leniency applicant who satisfies the requirements of
16 subsection (b), together with the amounts so recovered from
17 cooperating individuals who satisfy such requirements, shall not
18 exceed that portion of the actual damages sustained by such
19 claimant which is attributable to the commerce done by the
20 applicant in the goods or services affected by the violation.

21 (b) Requirements.--Subject to subsection (c), an antitrust
22 leniency applicant or cooperating individual satisfies the
23 requirements of this subsection with respect to a civil action
24 described in subsection (a) if the court in which the civil action is
25 brought determines that the applicant or cooperating individual, as
26 the case may be, has provided satisfactory cooperation to the
27 claimant with respect to the civil action, which cooperation shall
28 include--

(1) providing a full account to the claimant of all facts
known to the applicant or cooperating individual, as the case may
be, that are potentially relevant to the civil action;

(2) furnishing all documents or other items potentially
relevant to the civil action that are in the possession, custody, or
control of the applicant or cooperating individual, as the case may
be, wherever they are located; and

(3)(A) in the case of a cooperating individual--

(i) making himself or herself available for interviews,
depositions, or testimony in connection with the civil action as the
claimant may reasonably require; and

1 (ii) responding completely and truthfully, without making
2 any attempt either falsely to protect or falsely to implicate any
3 person or entity, and without intentionally withholding any
4 potentially relevant information, to all questions asked by the
5 claimant in interviews, depositions, trials, or any other court
6 proceedings in connection with the civil action; or

7 (B) in the case of an antitrust leniency applicant, using its
8 best efforts to secure and facilitate from cooperating individuals
9 covered by the agreement the cooperation described in paragraphs
10 (1) and (2) and subparagraph (A).

11 (c) Timeliness.--If the initial contact by the antitrust
12 leniency applicant with the Antitrust Division regarding conduct
13 covered by the antitrust leniency agreement occurs after a civil
14 action described in subsection (a) has been filed, then the court
15 shall consider, in making the determination concerning satisfactory
16 cooperation described in subsection (b), the timeliness of the
17 applicant's initial cooperation with the claimant.

18 (d) Continuation.--Nothing in this section shall be construed
19 to modify, impair, or supersede the provisions of sections 4, 4A,
20 and 4C of the Clayton Act relating to the recovery of costs of suit,
21 including a reasonable attorney's fee, and interest on damages, to
22 the extent that such recovery is authorized by such sections.

23 ACPERA § 213.

24 The court looks first to the plain language of the statute to determine whether it is
25 clear and unambiguous, as such language must ordinarily be regarded as conclusive. *United*
26 *States v. Alvarez-Sanchez*, 511 U.S. 350, 356 (1994); *see I.N.S. v. Cardoza-Fonseca*, 480 U.S.
27 421, 433 n.12 (1987) (there is a “strong presumption that Congress expresses its intent through
28 the language it chooses”). If the language is plain, no further construction of the statute is
required, for there is nothing to construe. *Id.*; *see also Chevron, U.S.A. v. Natural Resources*
Defense Council, Inc., 467 U.S. 837, 842–43 (1984).

The plain language of the statute here provides that for a leniency applicant to be
eligible for the damages cap in a civil action, the civil action must allege a Sherman Act violation,
15 U.S.C. §§ 1, 3, based on conduct covered by a leniency agreement. ACPERA § 213(a). The
plain language does not say the civil action must allege only a Sherman Act violation. It also
does not exclude actions that include other antitrust claims as well, including RICO violations,
prosecuted under a different federal statute. *Id.* The statute’s damages limitation language is not
tied expressly to Sherman Act damages but rather references “the amount of damages recovered

1 by or on behalf of a claimant from a [qualifying] antitrust leniency applicant,” and notes those
2 damages “shall not exceed that portion of the actual damages” sustained by a claimant and
3 “attributable to the commerce done by the applicant in the goods or services affected by the
4 violation.” *Id.* While this language requires a connection to a leniency applicant’s commercial
5 activities “affected by the violation,” referring back to the predicate Sherman Act or similar state
6 law violation, it does not restrict the limitation to the amount of damages recovered by or on
7 behalf of a claimant for a Sherman Act violation alone. The rest of the statute references “a civil
8 action” generally, without limiting the action to one that contains only a Sherman Act or related
9 state law claim. *See* ACPERA § 213(b)(1) & (2), (b)(3)(A)(i) & (ii), (c). Congress, of course, is
10 presumed to know how to say what it means. Here its meaning, upon a close reading, seems
11 clear.

12 The legislative history is consistent with this reading and does not reflect a “clearly
13 expressed legislative intention” contrary to the plain language of the statute. *Cardoza-Fonseca*,
14 480 U.S. at 433 n.12. The DOJ’s Corporate Leniency Program began in 1993, eleven years
15 before ACPERA was adopted, and provided that a cartel participant who was first to report a
16 criminal Sherman Act violation and subsequently cooperated with the investigation would receive
17 immunity from the resulting criminal prosecution. DOJ Corporate Leniency Program, Ex. 1, ECF
18 No. 196. The leniency program originally did not protect against the treble damages imposed
19 upon a finding of antitrust civil liability, which Congress found chilled participation. Senator
20 Orrin Hatch (R-UT), in sponsoring ACPERA, explained during the bill’s 2004 Senate hearing
21 that it was intended to “address[] this disincentive to self-reporting” for “corporations and their
22 executives if they provide adequate and timely cooperation to the Government investigators as
23 well as any subsequent private plaintiffs bringing a civil suit based on the covered criminal
24 conduct.” 150 Cong. Rec. S3610, S3614 (Apr. 2, 2004); *see also Oracle Am., Inc. v. Micron*
25 *Tech., Inc.*, 817 F. Supp. 2d 1128, 1132 (N.D. Cal. 2011) (citing 150 Cong. Rec. S3613 (2004)
26 (statement of sponsor Senator Hatch that ACPERA was enacted to provide “increased incentives
27 for participants in illegal cartels to blow the whistle on their co-conspirators and cooperate with
28 the Justice Department’s Antitrust Division” by limiting “a cooperating company’s civil liability

1 to actual, rather than treble, damages in return for the company’s cooperation in both the resulting
2 criminal case as well as any subsequent civil suit based on the same conduct.”)). *See also* 150
3 Cong. Rec. H3654, H3657 (2004) (statement of Rep. Jim Sensenbrenner (R-Wis.), that “The bill
4 creates an additional incentive for corporations to disclose antitrust violations by limiting their
5 liability in related civil claims to actual damages.”). Senator Patrick Leahy (D-VT) explained that
6 under ACPERA, “to qualify for amnesty, a party must provide substantial cooperation . . . in any
7 civil case brought by private parties that is based on the same unlawful conduct.” *Id.* It is
8 significant that lawmakers did not limit their statements in favor of limiting liability to Sherman
9 Act actions, but used the more expansive language of “civil action,” “civil suit,” and “civil
10 liability.”

11 In hearings on ACPERA’s renewal in 2009, Rep. Henry Johnson (D-Ga.)
12 reiterated that ACPERA was originally enacted to “address[] this shortcoming in the criminal
13 leniency program by also limiting the cooperating party’s exposure to liability with respect to
14 civil litigation.” 155 Cong. Rec. H.R. 2675 (June 9, 2009). Rep. Johnson co-sponsored the
15 renewal of the bill in the House with Rep. John Conyers (D-Mich.), Rep. Lamar Smith (R-TX),
16 and Rep. Howard Coble (R-NC). House Congressional Record at 4, Ex. 4, ECF No. 196-4.
17 During the 2009 renewal proceedings, the sponsoring representatives shared ACPERA’s success
18 in providing incentives to destabilize cartels. Rep. Johnson’s testimony emphasized the
19 importance of incentivizing reporting as a key to destabilizing cartels and the success of
20 ACPERA since 2004, as well as ACPERA’s role in helping to secure jail sentences in 85 percent
21 of individual prosecutions and over \$900 million in criminal fines. *Id.* at 3–4. Given this
22 legislative history, ACPERA should be read with the understanding it was enacted to incentivize
23 stakeholders to report any anticompetitive behavior, and intended to prioritize criminal
24 investigations and limit civil antitrust liability.

25 In clarifying congressional intent, the court may also look to the interpretation of
26 the statute by the agency charged with its administration. *Brock v. Writers Guild of Am., W., Inc.*,
27 762 F.2d 1349, 1353 (9th Cir. 1985). An agency’s interpretation is entitled to deference so long
28 as the agency’s interpretation “is based on a permissible construction of the statute.” *See*

1 *Chevron*, 467 U.S. at 843. “When a statute is ambiguous or leaves key terms undefined, a court
2 must defer to the federal agency's interpretation of the statute, so long as such interpretation is
3 reasonable.” *Peck v. Cingular Wireless, LLC*, 535 F.3d 1053, 1056 (9th Cir. 2008) (citing
4 *Metrophones Telecomms., Inc. v. Global Crossing Telecomms., Inc.*, 423 F.3d 1056, 1067 (9th
5 Cir. 2005)). An agency’s interpretation of a statute is permissible, unless “arbitrary, capricious,
6 or manifestly contrary to the statute.” *Chevron*, 467 U.S. at 844.

7 The DOJ, specifically the Antitrust Division, the agency that administers leniency
8 agreements in criminal antitrust cases is identified as such in ACPERA. *See* ACPERA § 212(1)
9 & (2). While the DOJ is not charged with administration of ACPERA’s civil provisions, its
10 interpretation of the import of a criminal leniency agreement is instructive. It is the DOJ which is
11 charged with the authority to enter into leniency agreements and designate an entity as a
12 “leniency applicant” that may be subject to ACPERA’s requirements and protections. In order
13 for ACPERA to apply, an applicant must have a continual, meaningful relationship with the DOJ
14 and cooperate in both criminal and civil investigations. This relationship supports a finding that
15 the DOJ’s interpretation of leniency agreements is significant in understanding ACPERA.

16 The DOJ has issued a document explaining corporate leniency agreements, styled
17 as answers to “frequently asked questions,” commonly known as “FAQ.” *See* DOJ Antitrust
18 Division Frequently Asked Questions (“DOJ FAQ”), ECF 196-2. Courts have considered agency
19 FAQs when engaged in statutory interpretation. *See, e.g., Ellenberg v. New Mexico Military Inst.*,
20 572 F.3d 815, 822 (10th Cir. 2009) (noting Department of Education FAQ supports court’s
21 reading of the regulation defining “qualified handicapped person” for purposes of eligibility
22 under Section 504 of the Rehabilitation Act); *Peterson v. Islamic Republic of Iran*, No. 10 4518,
23 2013 WL 1155576, at *9 (S.D.N.Y. Mar. 13, 2013) (referencing Treasury Department FAQ in
24 determining requirements of Executive Order issued subject to International Emergency
25 Economic Powers Act), *aff’d*, 758 F.3d 185 (2d Cir. 2014). The DOJ FAQ confirms that criminal
26 offenses other than Sherman Act violations, including bribery and mail fraud, when occurring in
27 connection with a “bid-rigging scheme” as alleged here, are covered by a leniency agreement
28 when “committed in connection with the antitrust violation.” DOJ FAQ, ECF 196-2 at 7. This

1 explanation parallels the language of ACPERA, which provides coverage “in any civil action”
2 “based on conduct covered by a currently effective antitrust leniency agreement.” ACPERA §
3 213(a). The DOJ also explains that a leniency agreement “provides leniency from the Antitrust
4 Division not only for a criminal antitrust violation, but also for other offenses committed in
5 connection with antitrust violation.” DOJ FAQ at 7. To determine what unlawful activity may
6 also be covered by a leniency agreement, DOJ offers the following guidance: “For example,
7 conduct that is usually integral to the commission of a criminal antitrust violation, such as
8 mailing, faxing, or emailing bids agreed upon with competitors, can constitute other offenses,
9 such as mail or wire fraud violations or conspiracies to defraud.” *Id.* 7.

10 As noted, plaintiffs’ second amended complaint alleges bribery, money
11 laundering, violations of the Robinson-Patman Act, 15 U.S.C. § 13, violations of the Travel Act,
12 18 U.S.C. § 1952, mail fraud and wire fraud, and conspiracy, all violations of RICO, 8 U.S.C.
13 § 1962(c) and (d), in addition to the Sherman Act violations. *See* SAC at 27-32, ECF No. 116.
14 Assuming all of plaintiffs’ allegations are true, the facts pled support all of the antitrust claims
15 because the actions were committed in furtherance of anticompetitive behavior. Based on the
16 legislative intent to extend the type of leniency available in criminal cases to civil cases, as well
17 as the facts as pled in the second amended complaint, the court finds as a matter of law that all of
18 plaintiff’s claims, including the alleged RICO violations, are covered by the leniency agreement’s
19 damages limitations.

20 The court does not find that Ingomar has fully complied with the leniency
21 agreement; rather the full extent of Ingomar’s cooperation has yet to be determined. “[T]he
22 language of ACPERA suggests that the [c]ourt’s assessment of an applicant’s cooperation occurs
23 at the time of imposing judgment or otherwise determining liability and damages.” *In re TFT-*
24 *LCD (Flat Panel) Antitrust Litig.*, 618 F. Supp. 2d 1194, 1196 (N.D. Cal. 2009). Ingomar’s
25 actual eligibility for ACPERA protection will be resolved at a later stage in the litigation.

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1 IV. CONCLUSION

2 The claims pled in plaintiff's second amended complaint are covered by
3 ACPERA's damages limitation provisions as a matter of law.

4 IT IS SO ORDERED.

5 DATED: June 18, 2015.

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UNITED STATES DISTRICT JUDGE