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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: PACKAGED SEAFOOD
PRODUCTS ANTITRUST LITIGATION

Case No.: 15-MD-2670 JLS (MDD)

**ORDER APPOINTING INTERIM
LEAD COUNSEL**

Presently before the Court are various Motions recommending the structure by which this multidistrict litigation matter should proceed and requesting appointment of counsel to leadership positions, (*see* ECF Nos. 51, 67, 69, 70, 71, 72, 73), as well as various responses to: these Motions; the Court’s January 20, 2016 Order; and the Court’s orders at the March 10, 2016 hearing, (ECF Nos. 61, 79, 80, 81, 82, 83, 84, 90, 93, 96, 97, 98, 101, 104, 113, 114, 115, 116, 117). The Court held a hearing on these matters on March 10, 2016.

STRUCTURE OF THIS LITIGATION

The Court finds that this litigation will proceed most efficiently with four groups, or “tracks,” of Plaintiffs. The Court hereby designates the following tracks:

- Direct Action Plaintiffs (DAPs), who are direct purchasers proceeding against Defendants individually;
- Direct Purchaser Plaintiffs (DPPs), who are direct purchasers proceeding on behalf

1 of a putative class;

- 2 • Indirect Purchaser Commercial Food Preparer Plaintiffs (CFPs), who are indirect
- 3 purchasers proceeding on behalf of a putative class; and
- 4 • Indirect Purchaser End Payer Plaintiffs (EPPs), who are indirect purchasers
- 5 proceeding on behalf of a putative class.

6 **LEADERSHIP STRUCTURE AND APPOINTMENT OF COUNSEL**

7 Because there are relatively few Defendants and the Court believes they will work
8 collaboratively without an order from this Court to the extent their interests are aligned,
9 the Court finds that appointing a leadership structure at this time would yield little if any
10 efficiency. By contrast, the Plaintiffs and their counsel are more numerous, and Court-
11 designated leadership structure is necessary to efficiently resolve this matter.

12 **I. Legal Standard**

13 Courts may appoint “interim counsel to act on behalf of a putative class” Fed.
14 R. Civ. P. 23(g)(3). In appointing lead counsel, the Court must consider:

- 15 (i) the work counsel has done in identifying or investigating potential claims
 - 16 in the action; (ii) counsel’s experience in handling class actions, other
 - 17 complex litigation, and the types of claims asserted in the action; (iii)
 - 18 counsel’s knowledge of the applicable law; and (iv) the resources that counsel
- will commit to representing the class;

19 Fed. R. Civ. P. 23(g)(1)(A); *see also* Fed. Judicial Ctr, *Manual for Complex Litigation* §
20 10.22 (4th ed. 2004).

21 **II. Direct Action Plaintiffs**

22 The DAPs are “direct purchaser[s] of packaged seafood from one or more
23 Defendants and [are] proceeding separately from the direct purchaser class.” (ECF No. 51,
24 at 2 n.2.)¹ The DAPs have independently retained counsel to pursue this litigation using a
25 “direct attorney-client relationship,” and state that their interests may diverge from those
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28 ¹ Pinpoint citations to docketed materials refer to the CM/ECF page number electronically stamped at the top of each page.

1 of other class members. (*Id.* at 2–3.)

2 DAPs The Kroger Co.; Albertsons Companies, LLC; H.E. Butt Grocery Company;
3 Hy-Vee Inc.; Affiliated Foods, Inc.; Associated Grocers of New England, Inc.; North
4 Central Distributors, LLC; Cash-Wa Distributing Co. of Kearney, Inc.; URM Stores, Inc.;
5 Western Family Foods, Inc.; Associated Food Stores, Inc.; Giant Eagle, Inc.; Associated
6 Grocers, Inc.; McLane Company, Inc.; Meadowbrook Meat Company, Inc.; Wegmans
7 Food Markets, Inc.; Winn-Dixie Stores, Inc.; and Bi-Lo Holding, LLC agree that no
8 attorney should be appointed “lead” counsel for the DAP track because of the importance
9 of their individual attorney-client relationships. Rather, they request that attorney William
10 J. Blechman of Kenny Nachwalter, P.A. be appointed liaison counsel.

11 The Court **GRANTS** the DAPs’ Motion, (ECF No. 51), and appoints William J.
12 Blechman as liaison counsel. Mr. Blechman shall serve as the primary point of contact for
13 the DAPs for purposes of scheduling, coordinating, or conferring with class counsel and
14 Defendants’ counsel for issues common to the DAPs.

15 **III. Direct Purchaser Plaintiffs**

16 Having considered the moving papers and heard arguments with respect to
17 appointment of leadership for the DPPs, the Court finds that Hausfeld LLP satisfies the
18 requirements of Rule 23(g), and hereby **GRANTS** Olean Wholesale Grocery Cooperative,
19 Inc.’s Motion with respect to appointment of lead counsel. (ECF No. 73.) The Court
20 **GRANTS IN PART** Olean’s Motion with respect to the steering committee, but adds
21 attorney Jason S. Hartley of Stueve Siegel Hanson LLP to this committee. Accordingly,
22 the DPP steering committee shall consist of Bernstein Liebhard LLP; Block & Leviton
23 LLP; Cera LLP; Lowey Dannenberg Cohen & Hart, P.C.; Quinn Emanuel Urquhart &
24 Sullivan, LLP; and Jason S. Hartley of Stueve Siegel Hanson LLP. The Court therefore
25 **DENIES** Trepcos Imports and Distribution LTD’s Motion. (ECF No. 72.)

26 It is hereby **ORDERED** that Interim Lead Counsel shall, in consultation with the
27 Steering Committee, be responsible for the overall conduct of the litigation on behalf of
28 the DPPs as follows:

1 a. To brief and argue motions and file opposing briefs in proceedings initiated
2 by other parties, and to present (by a designee) to the Court and opposing parties the
3 position of all DPPs for all matters arising during all pretrial and trial proceedings;

4 b. To designate attorneys to act as spokespersons at pretrial conferences;

5 c. To conduct or coordinate discovery on behalf of the DPPs consistent with the
6 requirements of the Federal Rules of Civil Procedure, including the preparation of joint
7 interrogatories, requests for production of documents, requests for admissions, and the
8 examination of witnesses in depositions;

9 d. To designate an attorney to enter into stipulations with opposing counsel
10 necessary for the conduct of the litigation;

11 e. To monitor the activities of co-counsel and to implement procedures to ensure
12 that schedules are met and unnecessary expenditures of time and funds by counsel are
13 avoided;

14 f. To collect time, lodestar, and expense reports from each of the law firms
15 working on behalf of the class of DPPs, including paralegals and any other staff members
16 whose time is expected to be included in any fee petition;

17 g. To ensure that work assignments are not given to any firm that has not
18 promptly submitted its time and expense records or paid its assessments;

19 h. To sign any consolidated complaint, motions, briefs, discovery requests or
20 objections, subpoenas, stipulations, or notices on behalf of the class of DPPs or those DPPs
21 filing particular papers;

22 i. To conduct all pre-trial, trial, and post-trial proceedings on behalf of the class
23 of DPPs;

24 j. To employ and consult with experts;

25 k. To call meetings of the law firms representing the class of DPPs when deemed
26 appropriate and to assign work to these law firms;

27 l. To conduct settlement negotiations with defense counsel on behalf of the class
28 of DPPs; and

1 m. To assure that all counsel for the class of DPPs are kept informed of the
2 progress of this litigation.

3 **IV. Commercial Food Preparer Plaintiffs**

4 Having considered the moving papers and heard arguments with respect to
5 appointment of leadership for the CFPs, the Court finds that Cuneo Gilbert & LaDuca LLP
6 satisfies the requirements of Rule 23(g), and hereby **GRANTS** Plaintiffs Capitol Hill
7 Supermarket, Dutch Village Restaurant, A-1 Diner, and Thyme Café & Market, Inc.'s
8 Motion, (ECF No. 69), and appoints Cuneo Gilbert & LaDuca LLP Interim Lead Counsel
9 and the Del Mar Law Group LLP Liaison Counsel.

10 It is hereby **ORDERED** that Interim Lead Counsel shall be responsible for the
11 overall conduct of the litigation on behalf of the CFPs as follows:

12 a. To brief and argue motions and file opposing briefs in proceedings initiated
13 by other parties, and to present (by a designee) to the Court and opposing parties the
14 position of all CFPs for all matters arising during all pretrial and trial proceedings;

15 b. To designate attorneys to act as spokespersons at pretrial conferences;

16 c. To conduct or coordinate discovery on behalf of the CFPs consistent with the
17 requirements of the Federal Rules of Civil Procedure, including the preparation of joint
18 interrogatories, requests for production of documents, requests for admissions, and the
19 examination of witnesses in depositions;

20 d. To designate an attorney to enter into stipulations with opposing counsel
21 necessary for the conduct of the litigation;

22 e. To monitor the activities of co-counsel and to implement procedures to ensure
23 that schedules are met and unnecessary expenditures of time and funds by counsel are
24 avoided;

25 f. To collect time, lodestar, and expense reports from each of the law firms
26 working on behalf of the class of CFPs, including paralegals and any other staff members
27 whose time is expected to be included in any fee petition;

28 g. To ensure that work assignments are not given to any firm that has not

1 promptly submitted its time and expense records or paid its assessments;

2 h. To sign any consolidated complaint, motions, briefs, discovery requests or
3 objections, subpoenas, stipulations, or notices on behalf of the class of CFPs or those CFPs
4 filing particular papers;

5 i. To conduct all pre-trial, trial, and post-trial proceedings on behalf of the class
6 of CFPs;

7 j. To employ and consult with experts;

8 k. To call meetings of the law firms representing the class of CFPs when deemed
9 appropriate and to assign work to these law firms;

10 l. To conduct settlement negotiations with defense counsel on behalf of the class
11 of CFPs;

12 m. To assure that all counsel for the class of CFPs are kept informed of the
13 progress of this litigation; and

14 o. To appoint an executive committee to assist Interim Lead Counsel in litigating
15 the CFP actions.

16 It is further **ORDERED** that Interim Liaison Counsel shall have the administrative
17 duty of receiving and sending pleadings and communications with the Court and with
18 Defendants and disseminating the same among class counsel.

19 **V. End Payer Plaintiffs**

20 Having considered the moving papers and heard arguments with respect to
21 appointment of leadership for the EPPs, the Court finds that Wolf Haldenstein Adler
22 Freeman & Herz LLP satisfies the requirements of Rule 23(g), and hereby **GRANTS** the
23 Motion of Plaintiffs Evelyn Olive, et al., (ECF No. 71), and appoints Wolf Haldenstein
24 Adler Freeman & Herz LLP Interim Lead Counsel. Accordingly, the Motions of Sandra
25 Powers, Edy Lee, and Kathy Vangemert, (ECF No. 67), and Louise Ann Davis Mathews,
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1 et al., (ECF No. 70), are **DENIED**.²

2 It is hereby **ORDERED** that Interim Lead Counsel shall be responsible for the
3 overall conduct of the litigation on behalf of the EPPs as follows:

4 a. To brief and argue motions and file opposing briefs in proceedings initiated
5 by other parties, and to present (by a designee) to the Court and opposing parties the
6 position of all EPPs for all matters arising during all pretrial and trial proceedings;

7 b. To designate attorneys to act as spokespersons at pretrial conferences;

8 c. To conduct or coordinate discovery on behalf of the EPPs consistent with the
9 requirements of the Federal Rules of Civil Procedure, including the preparation of joint
10 interrogatories, requests for production of documents, requests for admissions, and the
11 examination of witnesses in depositions;

12 d. To designate an attorney to enter into stipulations with opposing counsel
13 necessary for the conduct of the litigation;

14 e. To monitor the activities of co-counsel and to implement procedures to ensure
15 that schedules are met and unnecessary expenditures of time and funds by counsel are
16 avoided;

17 f. To collect time, lodestar, and expense reports from each of the law firms
18 working on behalf of the class of EPPs, including paralegals and any other staff members
19 whose time is expected to be included in any fee petition;

20 g. To ensure that work assignments are not given to any firm that has not
21 promptly submitted its time and expense records or paid its assessments;

22 h. To sign any consolidated complaint, motions, briefs, discovery requests or
23 objections, subpoenas, stipulations, or notices on behalf of the class of EPPs or those EPPs
24 filing particular papers;

25 i. To conduct all pre-trial, trial, and post-trial proceedings on behalf of the class
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27 ² The Court is persuaded that all of the proposed leadership groups comprised skilled counsel who could
28 ably lead this litigation, but the Court honors the requests by various counsel that the Court not fashion its
own leadership structure distinct from one of the three presented in the EPPs' Motions.

1 of EPPs;

2 j. To employ and consult with experts;

3 k. To call meetings of the law firms representing the class of EPPs when deemed
4 appropriate and to assign work to these law firms;

5 l. To conduct settlement negotiations with defense counsel on behalf of the class
6 of EPPs;

7 m. To assure that all counsel for the class of EPPs are kept informed of the
8 progress of this litigation; and

9 o. To appoint an executive committee to assist Interim Lead Counsel in litigating
10 the EPP actions.

11 **CONCLUSION**

12 The Court hereby **ORDERS** that:

13 1. This MDL matter shall proceed with the following four tracks of plaintiffs:
14 (1) Direct Action Plaintiffs or DAPs; (2) Direct Purchaser Plaintiffs or DPPs; (3) Indirect
15 Purchaser Commercial Food Preparer Plaintiffs or CFPs; and (4) Indirect Purchaser End
16 Payer Plaintiffs or EPPs. The leadership structure designated for each track applies to
17 additional actions transferred to this Court and consolidated in this MDL matter.

18 2. For the DAPs, attorney William J. Blechman of Kenny Nachwalter, P.A., is
19 Liaison Counsel, but Direct Action Plaintiffs may continue to proceed individually through
20 their own counsel.

21 3. For the DPPs, Hausfeld LLP is Interim Lead Counsel and the steering
22 committee shall consist of Bernstein Liebhard LLP; Block & Leviton LLP; Cera LLP;
23 Lowey Dannenberg Cohen & Hart, P.C.; Quinn Emanuel Urquhart & Sullivan, LLP; and
24 Jason S. Hartley of Stueve Siegel Hanson LLP.

25 4. For the CFPs, Cuneo Gilbert & LaDuca LLP is Interim Lead Counsel and the
26 Del Mar Law Group LLP is Liaison Counsel.

27 5. For EPPs, Wolf Haldenstein Adler Freeman & Herz LLP is Interim Lead
28 Counsel.

