

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE TURKEY ANTITRUST LITIGATION

This Document Relates To:

Direct Purchaser Plaintiff Actions

No. 1:19-cv-08318

Hon. Sunil R. Harjani

Hon. Keri L. Holleb Hotaling

**DECLARATION OF DIRECT PURCHASER PLAINTIFF CO-LEAD COUNSEL
BRIAN D. CLARK IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION
FOR INTERIM PAYMENT OF ATTORNEYS' FEES, REIMBURSEMENT OF
LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS**

I, Brian D. Clark, declare and state:

1. I am a partner with the law firm Lockridge Grindal Nauen PLLP (“LGN”). I submit this Declaration in support of Direct Purchaser Plaintiffs’ Motion for Interim Payment of Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards (the “Motion.”)

2. The Court appointed my firm, together with the firm of Hagens Berman Sobol Shapiro LLP, as Interim Co-Lead Counsel of the putative Direct Purchaser Plaintiff (“DPP”) class at the outset of the litigation (*see* ECF No. 143) and as Co-Lead Counsel for the certified DPP Class on January 22, 2025 (*see* ECF No. 1107). Co-Lead Counsel, with the assistance of 2 other firms (collectively, “Class Counsel”), have vigorously and efficiently prosecuted this complex antitrust case. At all times, the work of Class Counsel was directed by Co-Lead Counsel.

3. In this Declaration, I describe four aspects of this litigation:

- I. Class Counsel’s efforts in prosecuting this litigation;
- II. Class Counsel’s time and expense reporting to Co-Lead Counsel;
- III. Class Representatives’ contribution to the prosecution of this case; and
- IV. Time and expenses incurred by LGN in this litigation.

I. CLASS COUNSEL’S EFFORTS IN PROSECUTING THIS LITIGATION

4. Co-Lead Counsel filed the first antitrust complaint on behalf of turkey purchasers on December 19, 2019. The complaint was the product of Co-Lead Counsel’s extensive preparation, independent investigation, and research into the turkey industry. Co-Lead Counsel conceived and brought this case without the benefit of any related government investigation or enforcement action. Indeed, it was the government that piggy-backed on Co-Lead Counsel’s case: on September 28, 2023, the United States Department of Justice (“DOJ”) filed *U.S. et al. v. Agri Stats, Inc.*, Case No. 0:23-cv-03009 (D. Minn.), alleging that Agri Stats allowed turkey processors

and other meat producers to exchange competitively sensitive information in violation of the antitrust laws. Many of the allegations in the DOJ's complaint regarding turkey mirror DPPs' allegations in this case. Class Counsel believed in DPPs' case, invested extensive amounts of their time, effort, and money into it, and prosecuted it vigorously. Co-Lead Counsel filed the complaint despite the risk of no recovery and declined other opportunities because of the complexity, time, and expense this case demanded.

5. Class Counsel developed numerous case management plans and worked cooperatively with indirect purchaser class counsel, direct action plaintiffs, and Defendants to implement those plans.

6. Once the Court denied each of Defendants' multiple motions to dismiss (*see* ECF No. 173), DPPs turned to litigating the case against 11 Defendants families. Class Counsel served 569 requests for production, eventually negotiating more than 1.7 million documents and millions of telephone calls and messages. Class Counsel prepared for and took over 75 depositions of Defendant and non-party fact witnesses, served 26 subpoenas on non-parties, and served 111 interrogatories on Defendants to develop the factual record. Class Counsel took the lead in coordinating this discovery with Defendants, one other indirect purchaser class, and counsel for two Direct Action Plaintiffs. Class Counsel amended DPPs' complaint to add a *per se* Sherman Act violation claim and facts learned through discovery (*see* ECF No. 380), which resulted in a second joint motion to dismiss from Defendants (*see* ECF No. 500). Class Counsel successfully opposed Defendants' motion to dismiss their *per se* claims, except as to the Prestage Defendants. (*See* ECF No. 639.) DPPs and Class Counsel also fulfilled their own discovery obligations, in response to fulsome discovery by Defendants.

7. Class Counsel consulted with experts during their pre-suit investigation and during the discovery phase of this case. This includes economic experts who prepared a 250-page report, a 154-page reply report, and a 97-page sur-reply report in support of DPPs' motion for certification.

8. DPPs then began preparing and briefing their motion for class certification. This process involved numerous attorneys and staff to craft the factual and legal bases for the motion. Once DPPs filed their motion in September 2023, Defendants marshalled the full force of their top-tier law firms in opposition. Like their motions to dismiss, Defendants challenged each and every aspect of DPPs' case factually, procedurally, and legally. Defendants presented their own experts to bolster their arguments and discredit DPPs' arguments. After extensive briefing and argument (including many expert opinion reports, evidence relating to class certification issues, and a two-day evidentiary hearing), the Court certified the DPP Class. (*See* ECF No. 1107.) The Court of Appeals denied Defendants' Rule 23(f) petition for interlocutory appeal of the decision within two business days of the completion of briefing. *See In re Turkey Antitrust Litig.*, No. 25-8004 (7th Cir. Mar. 4, 2025). Co-Lead Counsel have deferred notice of the Court's order on class certification so as to realize the cost savings and efficiency resulting from combining that notice with the notice of future settlements.

9. Even after class certification, the DPP Class continues to face significant risks, including at summary judgment and trial. In the face of all these risks, Class Counsel have achieved significant recoveries on behalf of the DPP Class.

10. Class Counsel have engaged in extensive arm's-length and hard-fought settlement negotiations which have resulted in DPPs reaching the monetary settlements at issue in the Motion:

the Tyson settlement and the Cargill settlement. These settlements total \$37,125,000.00 as set out in the table below.

<u>Defendant Family</u>	<u>Settlement Amount</u>	<u>Status</u>
Tyson	\$4,625,000.00	Finally Approved (ECF No. 406), pending combined distribution with the Cargill settlement
Cargill	\$32,500,000.00	Preliminarily Approved (ECF No. 1128), the notice plan has commenced
<u>TOTAL</u>	<u>\$37,125,000.00</u>	

11. DPPs have also reached proposed settlements with Defendants Cooper Farms, Inc. and Farbest Foods, Inc. (*See* ECF No. 1202-1206.) For purposes of the Motion, DPPs have not included the Cooper Farms and Farbest Foods settlement funds. Pending final approval of the Cargill, Cooper Farms, and Farbest Foods settlements, seven Defendants remain in the DPP case.

12. Upon payment of any settlement proceeds by a settling Defendant, the money is held in an interest-bearing escrow account. To date the Tyson and Cargill settlements have earned \$60,909.26 in interest. (*See Exhibit 12.*) DPPs propose the interest earned on the settlements be distributed to the DPP Class *pro rata* along with the net principal amounts of the settlements. This is consistent with the settlement agreements. (*See* ECF No. 262-1 (Tyson) at 15; *see also* ECF No. 1100-1 (Cargill) at 20-21.)

13. In addition to the monetary component, each of these settlements contains cooperation provisions that will assist DPPs as this case proceeds to trial.

14. Co-Lead Counsel have prepared and executed the class notice and settlement distribution plan for the Tyson and Cargill settlements preliminarily approved by the Court (*see* ECF No. 1128).

15. Class Counsel are seeking attorneys' fees, reimbursement of litigation expenses, an ongoing litigation expense fund, and class representative service awards from the proceeds of the Tyson and Cargill settlements only. Class Counsel will seek attorneys' fees, reimbursement of litigation expenses, and class representative service awards related to the Cooper Farms and Farbest Foods settlements at a later date.

16. Apart from the four settlements discussed in paragraphs 10-11 above, seven Defendants remain in DPPs' case. Class Counsel will continue to vigorously litigate this case against the remaining Defendants as the case proceeds to trial. With respect to the four settlements, Class Counsel will seek preliminary and final approval from this Court, supervise all aspects of settlement and claims administration, and supervise the final distribution of settlement proceeds to qualified DPP Class members.

17. The retainer agreements between Class Counsel and the named DPP Plaintiffs do not specify the amount of attorneys' fees owed to Class Counsel but simply say that counsel would receive fees as a percentage of any recovery awarded by the Court. The fee request here—for 33 and 1/3 percent of the settlement proceeds of the Tyson and Cargill settlements plus interest less expenses (the "Net Settlement Fund")—is consistent with the actual agreements between Class Counsel and named DPP Plaintiffs. Moreover, it is consistent with the common practice of courts in the Seventh Circuit (*See Exhibit 13.*). As such, Class Counsel submit that the present request is appropriate.

II. CLASS COUNSEL'S TIME AND EXPENSE REPORTING TO CO-LEAD COUNSEL

18. Among the Co-Lead Counsel firms, my firm is responsible for collecting all Class Counsel's contemporaneously prepared attorney and paralegal time and expense reports.

19. Shortly after being appointed Interim Co-Lead Counsel, we submitted and the Court approved a Time and Expense Protocol. (*See* Exhibit B to Declaration of W. Joseph Bruckner in Support of Plaintiffs’ Motion for Appointment of Interim Co-Lead Counsel (ECF No. 138); *see also* Order Granting Plaintiffs’ Motion for Appointment of Interim Co-Lead Counsel (ECF No. 143).) We subsequently sent that Time and Expense Protocol to all Class Counsel in July 2020, and thereafter as appropriate, and instructed them to abide by it. (*See* **Exhibit 1**.) We also provided each Class Counsel with templates of the required Microsoft Excel reporting form.

20. The Time and Expense Protocol requires each firm to contemporaneously record and transmit to us each month, via email, a detailed, task-based spreadsheet with their time entries. The reports contain a chronological listing of time reported for work performed by attorneys and paralegals in specified activity categories, a complete and accurate categorization of work performed, the name and title of the person who performed the work, the hourly rate associated with each attorney and paralegal at the time the work was performed (*i.e.*, the professional’s “historical” rate), and the firm’s resulting lodestar reported for that month.

21. To control Class Counsel’s lodestar, the Time and Expense Protocol instructed Class Counsel not to submit time for work not requested by Co-Lead Counsel, for duplicative work, reading and reviewing, preparing time and expense reports, routine clerical tasks, or for work related to any client not retained. Additionally, the Time and Expense Protocol required that each firm submit, via email, all litigation-related expenses incurred by the firm for the month (“Firm Costs”). Finally, time included in this fee petition that was spent on first-tier document review has been capped at \$350.00 per hour.

22. To ensure that time and expense entries submitted by each firm are reported in a uniform matter, the Time and Expense Protocol requires that all reports be submitted to Co-Lead

Counsel in a Microsoft Excel format, by the 20th day of each month for time and expenses incurred in the preceding month. This uniform, electronic monthly reporting facilitated our review of each firm's reports.

23. Each month, upon receipt, Co-Lead Counsel review the monthly time and expense reports from Class Counsel, and request adjustments and revisions as appropriate, to ensure compliance with the Time and Expense Protocol.

24. All monthly attorney and paralegal time and expense reports submitted to my firm by Class Counsel are retained and preserved on a computer server and on back-up media at my office.

a. Class Counsel's Total Record Lodestar

25. In preparing this petition, we asked all Class Counsel to review their monthly reported hours and expenses, and to submit a declaration attesting to the total of their allowed time and expenses incurred from inception of the case through February 28, 2025. In addition, once again we reviewed their monthly reported hours and expenses in preparing this submission in support of DPPs' Motion. Co-Lead Counsel have worked diligently to ensure that throughout the case, Class Counsel's efforts have been coordinated, detailed, vigorous, and efficient.

26. Attached as **Exhibits 2-4**, as well as **Exhibit 5** for LGN's time and expenses, are those declarations from Class Counsel attesting that the time and expenses they reported to Co-Lead Counsel are true, accurate, and comply with the Time and Expense Protocol. Each declarant also identifies the attorneys and paralegals from the firm that have worked on the case and submitted time in the monthly reports, and the historic hourly rates for each professional that has submitted time.

27. Since the inception of the case through February 28, 2025, Class Counsel have invested 52,882.60 hours of attorney and other legal professional time. Class Counsel's base

lodestar using historical rates is \$25,991,034.50. The average hourly rate for Class Counsel and their associated professional staff is \$491.50 (with a cap of \$350.00 per hour for tier-one document review). The interim attorney fee award proposed by DPPs—33 and 1/3 percent of the total Net Settlement Fund or \$10,509,888.01—would result in a *negative* multiplier of 0.4043. This rate is comparable to rates charged by other law firms with similar experience, expertise, and reputation, for similar services in the nation’s leading legal markets. All Class Counsel performed this work on an entirely contingent basis. To date, Class Counsel have not been paid for the time they have invested in this case.

28. Attached as **Exhibit 6** to this Declaration is a summary chart with lodestar figures for attorney and paralegal time reported by each firm for their efforts on behalf of the Class from inception of the litigation through February 28, 2025. The total lodestar figure for each firm is reflected in the right-hand column of the chart, and at the end of that column is the combined lodestar for all firms. Based on the data available to me and my firm, I hereby attest that the lodestar amounts reported in **Exhibit 6** accurately reflect the data reported to us by Class Counsel. The underlying data is available for the Court’s *in camera* review, if requested.

29. In notifying DPP Class Members about the distribution of the Tyson and Cargill settlements, Class Counsel informed class members that they would seek attorneys’ fees in an amount not to exceed 33 and 1/3 percent of the proceeds of the Tyson and Cargill settlements plus interest net expenses.¹ The value of the expenses netted out from the Gross Settlement Fund is calculated in paragraph 33 below, which yields the Net Settlement Fund from which DPPs’

¹ See <https://turkeylitigation.com/docs/CourtDocsCargill/Turkey%20-%20Cargill-Long%20Form%20Notice.pdf> (last visited March, 19 2025); see also ECF No. 1101-2 at 6 (proposed Long Form Notice); ECF No. 1128 (Jan. 30, 2025) Order granting DPPs’ motion for preliminary approval of the Cargill settlement and accompanying class notice).

proposed award of one-third fees is calculated. DPPs' propose an award of \$10,509,888.01 in interim attorneys' fees.

b. Expenses incurred by Class Counsel on behalf of the DPP Class

30. Class Counsel have incurred reasonable expenses that were necessary to support this litigation. There are two categories of litigation expenses at issue in the Motion: expenses that Class Counsel pay (Firm Costs, Litigation Fund Expenses, and ongoing litigation expenses) and expenses that are paid directly from the settlement escrow account (Administrative Expenses, and Taxes). Class Counsel has endeavored to keep all expenses reasonable and necessary to support the litigation. In the Motion, Class Counsel seek reimbursement only for unreimbursed Firm Costs and Litigation Fund Expenses and ongoing litigation expenses. DPPs' proposal for an interim award of attorneys' fees requests a one-third free from the Net Settlement Fund, which nets out all the categories of litigation expenses from the Gross Settlement Fund.

31. This Court previously approved reimbursement of incurred and ongoing litigation expenses totaling \$1,000,000 from the Tyson settlement ("First Expense Reimbursement Award"). (See ECF No. 367.) Class Counsel used the First Expense Reimbursement Award to reimburse \$589,880.96 in Firm Costs and Litigation Fund Expenses that the Court found to be reasonable and necessary to support this litigation. (See ECF No. 367 at ¶ 4.) The Court ordered Class Counsel to use the remaining \$410,119.04 to support the litigation as it proceeds to trial. (See *id.* at ¶ 5.) Class Counsel have done this. Attached as **Exhibit 7** to this Declaration is a summary of the litigation expenses Class Counsel incurred and subsequently paid using the balance of the First Expense Reimbursement Award.

32. Class Counsel have incurred additional Firm Costs and Litigation Fund Expenses, as well as ongoing litigation expenses, for which they now seek reimbursement. In notifying DPP Class members about the claims process for the Tyson and Cargill settlements, Class Counsel

informed class members that they would seek a second reimbursement of incurred not to exceed \$4,500,000.00.²

33. This paragraph summarizes the litigation costs at issue in the Motion. The total amount of the expenses at issue here is \$5,656,245.21 which DPPs propose to net out from the Gross Settlement Fund to calculate their proposal for an interim award of attorneys' fees off of the Net Settlement Fund. This total amount of expenses consists of the following six categories of expenses: (1) unreimbursed expenses incurred individually by specific Class Counsel ("Firm Costs") from October 1, 2021 through February 28, 2025; (2) unreimbursed common cost litigation fund expenses ("Litigation Fund Expenses") from November 4, 2021, through March 31, 2025; (3) reimbursed Firm Costs and Litigation Fund Expenses; (4) Administrative Expenses (authorized in each of the monetary settlements and paid directly from the respective settlement fund to the Court-appointed administrator) from inception of the case through March 31, 2025; (5) Taxes from inception the case through March 31, 2025; and (6) ongoing litigation expenses.³ The chart below provides amounts for each category of expenses. Class Counsel are only seeking reimbursement for unreimbursed Firm Costs and Litigation Fund Expenses.

² *See id.*

³ On January 10, 2021, the Court approved Class Counsel's request for reimbursement of \$159,498.95 in Firm Costs incurred from the inception of the litigation through September 30, 2021. *See* ECF Nos. 323, 367. At the same time, the Court approved Class Counsel's request for reimbursement of \$430,382.01 in Litigation Fund Expenses incurred from the inception of the case through November 3, 2021. *Id.*

<u>Expense Category</u>	<u>Amount</u>	<u>Reference</u>
Unreimbursed Firm Costs	\$106,313.46	Exhibit Nos. 2-5, 8
Unreimbursed Litigation Fund Expenses	\$4,277,874.68	Exhibit Nos. 9 ⁴
Reimbursed Firm Costs and Litigation Fund Expenses	\$1,000,000.00	ECF No. 367
Settlement Administration Expenses	\$94,766.21	Exhibit No. 12 ⁵
Taxes	\$61,479.00	Exhibit No. 12
Ongoing Litigation Expenses	\$115,811.86	<i>See infra</i> ¶ 41.
<u>Total Expenses</u>	\$5,656,245.21	

i. Unreimbursed Firm Costs

34. Class Counsel have incurred \$106,313.46 in recorded expenses in this litigation on behalf of the Class for which they now seek reimbursement. This total is based on monthly expense reports submitted to Co-Lead Counsel for the period from October 1, 2021, through February 28, 2025. The Firm Costs described in this Declaration and supporting exhibits, overall and by category, include expenses incurred separately by all Class Counsel. The allowed expense categories were contained in the Time and Expense Protocol sent to all Class Counsel by Co-Lead Counsel in July 2020, shortly after this litigation commenced. Each Class Counsel has submitted

⁴ The amount sought by Class Counsel for unreimbursed Litigation Costs excludes the remaining balance of the First Expense Reimbursement Award (\$410,119.04) discussed above. *See* ¶ 31.

⁵ Because Administrative Expenses are directly paid from the respective settlement fund to the Court-appointed administrator, Class Counsel are not seeking reimbursement for Administrative Expenses. Class Counsel include Administrative Expenses as an expense category here because Administrative Expenses are netted out of the settlement proceeds for purposes of calculating Class Counsel's fee request. *See supra* ¶ 27.

a declaration confirming they abided by the Time and Expense Protocol, and that their time and expense submission comports with the Protocol.

35. **Exhibit 8**, attached hereto, summarizes the Firm Costs reported as having been incurred by all Class Counsel and paid by those firms; these do not include costs paid out of the Litigation Fund. (*See infra* § II(b)(ii).) These Firm Costs are from October 1, 2021, through February 28, 2025. These Firm Costs include categories such as online legal research, travel, shipping and mailing, and document imaging and copying. The primary expenses incurred by Class Counsel relate to preparing for and attending depositions and hearings (*e.g.*, travel, exhibit copy, and exhibit shipping expenses) and legal research (*e.g.*, Westlaw charges). Class Counsel paid invoices for these Firm Costs totaling \$106,313.46 from October 1, 2021, through February 28, 2025. Class Counsel anticipate similar Firm Costs as this case proceeds to trial.

36. Class Counsel have itemized their costs separately in their requests for reimbursement accompanying this motion (see **Exhibits 2-4** and **Exhibit 5** for LGN's expenses) and have thereby attested to the reasonableness and accuracy thereof.

ii. Unreimbursed Litigation Fund Expenses

37. On behalf of all Class Counsel, my firm established, monitored, and administered the Litigation Fund. The Litigation Fund is a common cost fund from which to pay ongoing litigation expenses for the case overall on behalf of the DPP Class. The Litigation Fund initially was funded, and is replenished as required, by assessment payments from Class Counsel. Expenditures from the Litigation Fund are separate from, and in addition to, the Firm Costs incurred individually by each Class Counsel, described above. (*See supra* § II(b)(i).)⁶

⁶ To avoid any double counting, individual firms' request for reimbursement of their recorded Firm Costs do not include their assessment payments to the Litigation Fund. Instead, those

38. The Litigation Fund expenses are summarized in **Exhibit 9** attached hereto and total \$4,687,993.72. These expenses were paid from the Litigation Fund between November 4, 2021, and March 31, 2025. All expenses paid from the Litigation Fund were reasonable and necessary to the prosecution of this case.

39. The Litigation Fund expenses summarized in **Exhibit 9** fall into six categories: (a) Experts (Testifying and Non-Testifying), (b) Document Database Vendor, (c) Mediators, (d) Phone Records Vendor & Phone Record Subpoena Costs, (e) Deposition Vendor Invoices, and (f) Miscellaneous Costs. Each of these six categories is described in more detail below.⁷

- (a) ***Experts (Testifying and Non-Testifying):*** Antitrust class action litigation is complex. It requires extensive analyses of data and the dedicated work of economic and industry experts to help prove defendants' liability, the impact on the class resulting from the alleged conspiracy, and the damages suffered by the class that result from the alleged conspiracy. Such expert work is also essential to demonstrate that a purported plaintiff class should be certified. This case is no exception. Co-Lead Counsel engaged experts to support DPPs' class certification efforts and to provide other economic analysis in support of DPPs' claims. From November 4, 2021, through March 31, 2025, Class Counsel incurred expert invoices totaling \$4,251,996.38 from the Litigation Fund. This work was critical to, among other things, DPPs' successful motion for class certification.

assessment payments are accounted for in Class Counsel's request for reimbursement of expenses incurred by the Litigation Fund.

⁷ Upon request by the Court, Class Counsel will provide the Court further detail and documentation concerning any category but request that such information be submitted *in camera* to protect Class Counsel's work product from disclosure to Defendants.

Class Counsel are continuing to work with experts as this case proceeds to trial, and, thus, Class Counsel will receive additional invoices from experts for work related to merits expert reports.

- (b) ***Document Database Vendor:*** In connection with discovery in this case, Class Counsel retained a vendor with expertise in designing and maintaining electronic databases (“Document Database Vendor”). DPPs’ Document Database Vendor provided the database that enabled Class Counsel to search, review, analyze, and code documents and other records produced by Defendants and various third parties. The review, analysis, and coding of documents has been integral to Class Counsel’s efforts relating to fact and expert discovery and class certification. DPPs also provided certain third parties to whom they had sent Rule 45 subpoenas for documents access, at DPPs’ cost, to a separate database with DPPs’ Database Vendor that permitted the third parties to quickly, efficiently, and without further objection produce the discovery DPPs needed to obtain. From November 4, 2021, through March 31, 2025, Class Counsel have received invoices from the Document Database Vendor totaling \$314,165.95. Class Counsel will continue to use these databases as the case proceeds to trial, and, thus, Class Counsel will receive additional invoices from the Document Database Vendor.
- (c) ***Mediators:*** To reach their proposed settlement with the Cargill Defendants, Class Counsel retained the services of mediator Greg Lindstrom. *See* ECF

No. 1099 at 10. From November 4, through March 31, 2025, Class Counsel have spent \$20,093.75 for mediators.

- (d) ***Phone Records Vendor & Phone Record Subpoena Expenses:*** Another critical element of Class Counsel’s discovery effort has been the services provided by a vendor that has expertise in processing and analyzing phone records (“Phone Records Vendor”). Class Counsel obtained the phone records of Defendants’ employees pursuant to subpoenas to phone service providers such as AT&T and Verizon. These phone records were provided to DPPs’ Phone Records Vendor, who in turn analyzed the data and provided Class Counsel with information establishing an extraordinary number of direct inter-company communications – phone calls and text messages – between Defendants’ employees. The review and analysis of Defendants’ phone records has been integral to Class Counsel’s discovery efforts and proving Defendants engaged in unlawful conduct. From November 4, 2021, through March 25, 2025, Class Counsel received invoices from the Phone Records Vendor totaling \$21,595.00; additionally, Class Counsel incurred costs totaling \$10,254.00 in connection with the production of records by the phone service providers who charge a fee for obtaining the phone records. Therefore, in total, the cost for the Phone Records Vendor & Subpoena Costs category from November 4, 2021, through March 31, 2025, is \$31,849.00.
- (e) ***Deposition Vendor Invoices:*** A critical element of fact and expert discovery in this case has been Rule 30(b)(1), 30(b)(6), and expert depositions taken

by all parties. Class Counsel retained a deposition vendor with expertise in providing deposition transcription services in complex antitrust litigation. The services of provided by the Deposition Vendor have been critical to Class Counsel's efforts to prosecute DPPs' claims. None of these cost items are contingent and will be paid by Class Counsel regardless of the outcome of the Motion or this case. From November 4, 2021, to February 28, 2025, Class Counsel received invoices from the Deposition Vendor totaling \$47,748.94.

- (f) **Miscellaneous Costs:** Co-Lead Counsel have paid other miscellaneous invoices not referenced above from the inception of this matter to the present from a shared Litigation Fund. In addition to those expenses listed above, Class Counsel paid invoices paid from the Litigation Fund totaling \$22,139.70 from November 4, 2021, through March 31, 2025. These costs include costs for ordering hearing and deposition transcripts, payment to a third-party case investigator, payment for local counsel in a discovery dispute, printing costs, and banking fees.

40. The total Litigation Fund expenses paid from the Litigation Fund from November 4, 2021, through March 31, 2025, is \$4,687,993.72. Class Counsel have already received reimbursement for \$410,119.04 for these costs. *See* Order (ECF No. 367) (approving \$410,119.04 in ongoing litigation expenses). As such, Class Counsel are seeking reimbursement for \$4,277,874.68 for Litigation Fund Costs.

41. As this case proceeds to trial, Class Counsel anticipate ongoing litigation expenses related to merits discovery, summary judgment, and trial preparation of at least \$115,811.86. Class

Counsel will continue to receive invoices for current and ongoing litigation costs as the case proceeds to trial. Class Counsel will endeavor to keep costs at a minimum.

42. The total amount of Class Counsel's current and ongoing litigation expenses is \$4,500,000.00 (*i.e.*, the total of unreimbursed Firm Costs (\$106,313.46) plus Litigation Fund Expenses (\$4,277,874.68), plus ongoing litigation expenses (\$115,811.86). Class Counsel respectfully request that the Court approve these expenses in total, and that the Court presently award current and ongoing litigation expenses in the amount of \$4,500,000.00.

III. CLASS REPRESENTATIVES' CONTRIBUTION TO THE PROSECUTION OF THIS CASE

43. The Class Representatives in this case are Maplevale Farms, Inc. and John Gross and Company, Inc. Their help was critical to the outstanding results for the DPP Class. The Class Representatives have not received a service award in this litigation, and Co-Lead Counsel submit that an interim service award of \$25,000 each is warranted now. The Class Representatives continue to support this litigation as it moves toward trial.

44. Throughout this litigation, the Class Representatives have advised Class Counsel and approving pleadings, reviewed and responded to written discovery, searched for, gathered and preserved, and produced documents, prepared and sat for their depositions, kept up to date on the progress of the case, and performed other similar activities. Their declarations in support of DPPs' motion for class certification can be found at ECF Nos. 829-8 and 829-9.

45. Each of the Class Representatives has provided a declaration in support of the Motion. Those declarations describe the contributions they have made to this litigation over the past five years, including estimates of time since 2019. These declarations are attached as **Exhibit 10** (Maplevale Farms, Inc.) and **Exhibit 11** (John Gross and Company, Inc.).

46. The Class Representatives were never promised that they would receive any additional compensation for leading this case. Rather, they devoted their time and efforts solely to recover some portion of their own overcharges and to enable other DPP Class Members to recover theirs. The time and effort dedicated to this case by Class Representatives was, and continues to be, instrumental to the success of this litigation.

IV. TIME AND EXPENSES INCURRED BY LGN IN THIS LITIGATION

47. Since the inception of this case, my firm, Lockridge Grindal Nauen PLLP has directly represented Maplevale Farms, Inc. and John Gross and Company, Inc. Moreover, since the Court appointed my firm as Co-Lead Counsel, we have led the prosecution of this matter in all regards.

48. The schedule attached hereto as **Exhibit 5** is a detailed summary of the time spent by the partners, attorneys, and other professional support staff of my firm who were involved in this litigation, and the lodestar calculation based on my firm's historic billing rates from inception through February 28, 2025. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm.

49. The hourly rates for the partners, attorneys and professional support staff in my firm included in **Exhibit 5** are our usual hourly rates customarily charged and routinely awarded in litigation of this nature.

50. As detailed in **Exhibit 5**, the total number of hours my firm expended on this litigation from inception through February 28, 2025, is 23,681.40 hours. The total lodestar for my firm is \$13,337,405.00. My firm's lodestar figures are based on the firm's historic billing rates.

51. Also, as detailed in **Exhibit 5**, my firm has incurred a total of \$40,851.99 in unreimbursed expenses from October 1, 2021, through February 28, 2025, in connection with the prosecution of this litigation.

52. In July 2020, shortly after this litigation commenced, my firm, as Co-Lead Counsel, sent all Class Counsel the Court's approved Time and Expense Reporting Protocol. (See **Exhibit 1**.) In the course of this litigation, my firm has abided by this Protocol as we performed work in this case, incurred expenses, and submitted monthly reports of our time and expenses. My firm's submission of its compensable time and reimbursable expenses in this Declaration and its exhibits comports with the Court-approved Time and Expense Protocol.

53. The expenses my firm incurred in this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate record of the expenses incurred.

54. Attached to this Declaration as **Exhibit 13** is a true and correct copy of *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, ECF No. 5048-1 (N.D. Ill., Nov. 30, 2021) (Declaration of Brian T. Fitzpatrick Regarding Direct Purchaser Plaintiffs' Motion for Attorney's Fees).

55. LGN has not submitted any bids in auctions in antitrust cases or decreasing attorney fee recovery as the case proceeds and reaches certain litigation milestones. LGN previously confirmed this fact for the Court in *Broilers* on May 24, 2024. See *Broilers*, No. 1:16-cv-08637, ECF No. 7259-3 at ¶¶ 3, 8.

* * *

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

Executed on this 7th day of April, 2025 in Minneapolis, Minnesota.

s/ Brian D. Clark

Brian D. Clark

EXHIBIT 1

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VIA E-MAIL

To All Plaintiffs' Counsel

Re: *Olean Wholesale Grocery Cooperative, et al. v. Agri Stats, Inc., et al.*
Time & Expense Reporting Instructions

Dear Counsel:

As Plaintiffs' Interim Co-Lead Class Counsel we are writing to provide you with forms and protocols for reporting your time and expenses for this litigation. To efficiently manage and direct the prosecution of this case, Plaintiffs' Interim Co-Lead Counsel will collect time and expense reports from each firm on a monthly basis. Attached is an Excel spreadsheet time and expense report form to use for reporting your firm's time and expense data. Please submit your time and expense reports along with the detailed back up reports to Sherri Juell at sljuell@locklaw.com; Brian Clark at bdclark@locklaw.com; and Rio Pierce riop@hbsslaw.com. Sherri and Brian may also be reached at 612-339-6900.

Your first time and expense report should cover the time period from inception through June 30, 2020. This initial report is due on August 7, 2020. Your subsequent reports should be done on a monthly basis and submitted by the 20th of the month for the preceding month. All time is to be reported at the billing rates in effect at the time the work was performed. Please keep your time and expense reporting current. Failure to do so may be grounds for denying any subsequent request for fees or expense reimbursement.

Below are the task codes to use for time entry:

- P1 = Legal Research
- P2 = Investigation / Factual Research
- P3 = Discovery (Written, Deposition Taking & Defending, Meet & Confer, etc.)
- P4 = Document Review Tier 1 – subject to rate cap

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July 15, 2020
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P5 = Document Review Tier 2 & Depo Prep – subject to rate cap¹
P6 = Pleadings, Briefs & Motions (Drafting, Research, Serving & Filing)
P7 = Class Certification & Class Notice
P8 = Summary Judgment
P9 = Appeals
P10 = Court Appearances & Prep
P11 = Experts
P12 = Settlement & Mediation
P13 = Case Management
P14 = Trial Prep (Exhibit & Witness List, Jury Instructions, Voir Dire, Opening & Closing Statements, Arguments, Demonstratives, etc.)
P15 = Trial

In your time and expense reports please adhere to these guidelines:

1. Time is to be reported in tenths of an hour.
2. Time is to be recorded by task with a specific amount of time for each task described; do not submit “block billing” with one undifferentiated total time for multiple tasks
3. Time is to be recorded at the billing rate in effect when the work is performed.
4. Time spent on Tier 1 document review is capped at \$350 per hour.
5. Time spent on Tier 2 document review & deposition preparation is capped at \$500 per hour. Tier 2 document review is generally for higher level QC or other review beyond straight review of assigned document batches.
6. Please do not submit time for any of the following. It will not be compensated or included in any fee petition:
 - work not performed at the request or under the direction of co-lead counsel;
 - duplication of efforts within a firm;
 - time spent in preparing and submitting time and expense reports;
 - “read and review” time unrelated to preparation for or performance of work specifically assigned by co-lead counsel;
 - routine clerical tasks (such as “file maintenance” by a paralegal or clerical staff); or

¹ Unless co-lead counsel has expressly approved use of the P5 task code for a specific attorney, then it may not be used.

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- time associated with work relating to any client or potential client that did not retain your firm for this case.
7. Your expense report should itemize your out-of-pocket, case-related expenses. If you have a "Miscellaneous/Other" expense item on a report, please describe it with sufficient detail to identify the expense and its relation to the case.
 8. Routine office supplies and regular secretarial time should *not* be included as a case expense.
 9. No surcharges should be reflected in or applied to any expenses, including telephone, faxes, and copying.
 10. Each expense claim must be properly documented by a sufficiently detailed receipt or some other form of proof of payment acceptable for ultimate presentation to and approval by the Court. Each firm is to maintain and preserve all detailed receipts and expense documentation for production to Plaintiffs' Interim Co-Lead Counsel upon request. Cash advances will not be considered for reimbursement without evidence of payment made for an expense related to the case.
 11. Travel expenses should follow these guidelines:
 - Flights of less than six hours should be submitted at coach class rates; flights exceeding six hours may be submitted at business class rates;
 - All flights are to be booked at the lowest fare available;
 - First class airfare should not be submitted and will not be reimbursed; and
 - For overnight travel, counsel is to be mindful in selecting reasonable hotel accommodations and restaurants.

Please feel free to contact us if you have any questions.

All Plaintiffs' Counsel
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Thank you,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

/s Brian D. Clark

W. Joseph Bruckner
Brian D. Clark

BDC/ssl
Attachment(s)

HAGENS BERMAN SOBOL SHAPIRO LLP

/s Shana E. Scarlett

Steve Berman
Shana E. Scarlett

EXHIBIT 2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE TURKEY ANTITRUST LITIGATION

Civil Action No. 19-cv-08318

This Documents Relates To:

Hon. Sunil R. Harjani

Hon. Keri L. Holleb Hotaling

Direct Purchaser Plaintiff Actions

**DECLARATION OF DIRECT PURCHASER PLAINTIFF CO-LEAD COUNSEL
SHANA E. SCARLETT IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS’
MOTION FOR INTERIM PAYMENT OF ATTORNEYS’ FEES, REIMBURSEMENT
OF LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS**

I, Shana E. Scarlett, declare under oath, as follows:

1. I am a Partner in the law firm of Hagens Berman Sobol Shapiro LLP (“Hagens Berman”). I submit this Declaration in support of Direct Purchaser Plaintiffs’ (“DPPs”) Motion for Interim Payment of Attorneys’ Fees, Reimbursement of Litigation Expenses, and Class Representative Awards (the “Motion”).

2. The Court appointed Hagens Berman and Lockridge Grindal Nauen PLLP as Interim Co-Lead Counsel at the outset of the litigation (*see* ECF No. 143) and as Co-Lead Counsel for the certified DPP Class when it granted DPPs’ motion for class certification (ECF No. 1107). Co-Lead Counsel, with the assistance of 2 other firms (collectively, “Class Counsel”), have vigorously and efficiently prosecuted this complex antitrust case. At all times, the work of Class Counsel was directed by Co-Lead Counsel.

3. The work performed, fees incurred, costs paid from the Litigation Fund, and costs incurred by individual Class Counsel firms are generally set forth in the Motion and the concurrently filed Declaration of Brian D. Clark. To avoid duplication, this declaration primarily focuses on Hagens Berman’s time and expenses throughout this litigation.

4. In its role as Court-appointed Co-Lead Counsel, Hagens Berman has been directly involved in the management of the entire case and participated in all facets of the litigation from inception through the present. Hagens Berman has performed a considerable amount of work and incurred substantial expenses over the course of over five years without any compensation. These efforts have resulted in the recovery of over \$37 million for the DPP Class. Hagens Berman will continue to fulfill its duties as Co-Lead Counsel through the completion of this litigation.

5. Throughout the course of this litigation, Hagens Berman has maintained contemporaneous billing records, which have been summarized submitted to Co-Lead Counsel in time and expense reports that comport with the Court-approved Time and Expense Protocol in this litigation. In preparing this declaration Hagens Berman conducted a further review of its billing records to ensure accuracy.

6. The summary attached hereto as **Exhibit 1** is a detailed report indicating the amount of time spent and the respective lodestar of the partners, attorneys and other professional support staff of Hagens Berman for the work they performed in this case. The lodestar calculation is based on Hagens Berman's historic hourly billing rates, except for work done on first tier document review which is capped at \$350 per hour, from inception of the case through February 28, 2025.

7. The total number of hours expended on this litigation by Hagens Berman from inception of the case through February 28, 2025, is 28,415.60 hours. The total lodestar for Hagens Berman is \$12,228,385.50. The hourly rates for the partners, attorneys and professional support staff are the same as the usual and customary hourly rates charged for their services in contingent billable matters. The hourly rates for Hagens Berman have been approved by courts in multiple other class action lawsuits across the country and in this District. The total hours were determined

by the examination of contemporaneous, daily time records regularly prepared and maintained by Hagens Berman.

8. The expenses incurred in this action are reflected on the books and records of Hagens Berman. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred. Prior to submitting this declaration my firm conducted a further review of our expense records, to ensure accuracy.

9. As detailed in **Exhibit 2**, my firm has incurred a total of \$64,708.35 in unreimbursed litigation expenses during the period from October 1, 2021, through February 28, 2025. These expenses do not include my firm's assessment payments to the common cost Litigation Fund maintained by Co-Lead Counsel, which are reflected in the concurrently filed declaration of Brian D. Clark.

10. Beyond the fee bids at issue in the *Broilers* case, my law firm has not submitted any bids in auctions in antitrust cases or decreasing attorney fee recovery as the case proceeds and reaches certain litigation milestones.

* * *

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

Executed on April ^{7th} ___, 2025, at Berkeley, California _____.

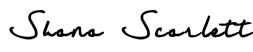
DocuSigned by:

s/ _____
E325E33926474DB...
Shana E. Scarlett

EXHIBIT 1

TURKEY ANTITRUST LITIGATION - Olean Wholesale Grocery Cooperative, et al. v. AgriStats, Inc., et al.																															
TIME REPORT - (To be submitted on the 20th of every month)																															
Firm Name:	HAGENS BERMAN SOBOL SHAPIRO LLP										Reporting Period:			01/01/2025 through 02/28/2025																	
Categories:	1) Legal Research 2) Investigation / Factual Research 3) Discovery (Written / Deposition Taking & Defending / Meet & Confer / etc) 4) Document Review Tier 1 - Subject to rate cap (\$350)						5) Document Review Tier 2 & Deposition Preparation - Subject to rate cap (\$500) 6) Pleadings, Briefs & Motions (Drafting, Research, Serving & Filing) 7) Class Certification & Class Notice 8) Summary Judgment						9) Appeals 10) Court Appearances & Preparation 11) Experts 12) Settlements & Mediation 13) Case Management						14) Trial Prep (Exhibit & Witness List/Jury Instructions/Vior Dire/Opening & Closing Statements/Arguments/ Demonstratives/etc.) 15) Trial						TITLE: (P) Partner (A) Associate (SA) Staff Attorney (CA) Contract Attorney (LC) Law Clerk (SPL) Senior Paralegal (PL) Paralegal						
ATTORNEYS (P, A)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	PREVIOUS HOURS	CURRENT HOURS	CUMULATIVE HOURS	HOURLY RATE	PREVIOUS LODESTAR	CURRENT LODESTAR	CUMULATIVE LODESTAR									
Steve Berman (P)							1.00		0.50							43.20	1.50	44.70	\$1,425.00	\$48,784.00	\$2,137.50	\$50,921.50									
Shana Scarlett (P)						8.70	1.10	16.60	60.50	3.40	8.00	6.90	4.90			861.70	110.10	971.80	\$1,150.00	\$788,371.50	\$126,615.00	\$914,986.50									
Ivy Arai Tabbara (P)																63.60	0.00	63.60	\$625.00	\$39,750.00	\$0.00	\$39,750.00									
Barbara Mahoney (P)																7.10	0.00	7.10	\$900.00	\$4,082.50	\$0.00	\$4,082.50									
Breanna Van Engelen (P)																111.10	0.00	111.10	\$850.00	\$48,255.00	\$0.00	\$48,255.00									
Elaine Byszewski (P)																919.20	0.00	919.20	\$1,150.00	\$843,670.00	\$0.00	\$843,670.00									
Rio Pierce (P)							3.00		1.80	0.60			0.80			1,602.20	6.20	1,608.40	\$1,000.00	\$1,110,070.00	\$6,200.00	\$1,116,270.00									
Mark Vazquez (P)																16.70	0.00	16.70	\$775.00	\$8,350.00	\$0.00	\$8,350.00									
Patrick Ryan (SA)			2.50													3,801.20	2.50	3,803.70	\$525.00	\$1,388,135.00	\$1,312.50	\$1,389,447.50									
Chris O'Hara (P)												1.00				5.50	1.00	6.50	\$900.00	\$3,712.50	\$900.00	\$4,612.50									
Helen Hsu (SA)																619.30	0.00	619.30	\$525.00	\$243,590.00	\$0.00	\$243,590.00									
Craig Spiegel (P)																50.50	0.00	50.50	\$1,025.00	\$40,400.00	\$0.00	\$40,400.00									
Jason Stowe (SA)																79.50	0.00	79.50	\$525.00	\$27,825.00	\$0.00	\$27,825.00									
Crystal Collier (CA)				146.50												2,453.00	146.50	2,599.50	\$350.00	\$858,550.00	\$51,275.00	\$909,825.00									
Bhavesh Patel (CA)																390.00	0.00	390.00	\$350.00	\$136,500.00	\$0.00	\$136,500.00									
Allan Lundsgaarde (SA)			165.10													2,684.60	165.10	2,849.70	\$525.00	\$1,014,117.50	\$86,677.50	\$1,100,795.00									
Abby Wolf (A)	15.00	0.30	14.40			10.70		6.60	26.90	1.60	31.90	8.30	5.70			3,254.40	121.40	3,375.80	\$800.00	\$1,695,845.00	\$97,120.00	\$1,792,965.00									
James O'Donoghue (CA)																635.80	0.00	635.80	\$350.00	\$222,530.00	\$0.00	\$222,530.00									
Patricia Simon (CA)																2,042.60	0.00	2,042.60	\$350.00	\$698,230.00	\$0.00	\$698,230.00									
Hannah Song (A)																101.90	0.00	101.90	\$475.00	\$42,417.50	\$0.00	\$42,417.50									
Garth Wojtanowicz (P)																5.50	0.00	5.50	\$900.00	\$3,712.50	\$0.00	\$3,712.50									
Michele Jarrouj (CA)																1,712.00	0.00	1,712.00	\$350.00	\$599,200.00	\$0.00	\$599,200.00									
Whitney Siehl (A)																0.30	0.00	0.30	\$575.00	\$135.00	\$0.00	\$135.00									
Linda Walden (CA)																1,026.70	0.00	1,026.70	\$350.00	\$359,345.00	\$0.00	\$359,345.00									
Jongguk Choi (SA)			154.70													752.00	154.70	906.70	\$525.00	\$282,000.00	\$81,217.50	\$363,217.50									

Abigail Pershing (A)																45.50	0.00	45.50	\$550.00	\$14,830.00	\$0.00	\$14,830.00
Ted Wojcik (P)																0.20	0.00	0.20	\$825.00	\$82.50	\$0.00	\$82.50
Allison Berk (A)																129.70	0.00	129.70	\$450.00	\$55,122.50	\$0.00	\$55,122.50
Gayne Kalustian-Carrier (A)																5.30	0.00	5.30	\$650.00	\$2,517.50	\$0.00	\$2,517.50
Sarah Dupree (A)																6.80	0.00	6.80	\$550.00	\$3,740.00	\$0.00	\$3,740.00
Reed Kathrein (P)			2.50													0.00	2.50	2.50	\$1,275.00	\$0.00	\$3,187.50	\$3,187.50
Laura Pedersen (A)													1.00			0.00	1.00	1.00	\$675.00	\$0.00	\$675.00	\$675.00
SUB-TOTAL	15.00	0.30	339.20	146.50	0.00	19.40	5.10	23.20	89.70	5.60	39.90	16.20	12.40	0.00	0.00	23,427.10	712.50	24,139.60		\$10,583,870.50	\$457,317.50	\$11,041,188.00
NON-ATTORNEYS (LC, SPL, PL)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	PREVIOUS HOURS	CURRENT HOURS	CUMULATIVE HOURS	HOURLY RATE	PREVIOUS LODESTAR	CURRENT LODESTAR	CUMULATIVE LODESTAR
Jeaneth Decena (PL)																247.40	0.00	247.40	\$350.00	\$83,725.00	\$0.00	\$83,725.00
Brian Miller (PL)			0.50						1.80				5.40			349.50	7.70	357.20	\$425.00	\$129,452.50	\$3,272.50	\$132,725.00
Jennifer Conte (PL)																509.70	0.00	509.70	\$400.00	\$194,550.00	\$0.00	\$194,550.00
Nicolle Huerta (PL)																5.70	0.00	5.70	\$425.00	\$1,585.00	\$0.00	\$1,585.00
Chan Lovell (PL)													18.60			637.60	18.60	656.20	\$325.00	\$130,662.50	\$6,045.00	\$136,707.50
Carrie Flexer (SPL)																0.50	0.00	0.50	\$450.00	\$162.50	\$0.00	\$162.50
Hannah Song (LC)																3.00	0.00	3.00	\$150.00	\$450.00	\$0.00	\$450.00
Amy Elder (PL)			143.30													1,686.70	143.30	1,830.00	\$425.00	\$335,660.00	\$60,902.50	\$396,562.50
Dianne Grant (PL)																49.90	0.00	49.90	\$375.00	\$18,005.00	\$0.00	\$18,005.00
Bill Stevens (PL)			0.70				3.60		2.20				2.30			340.20	8.80	349.00	\$425.00	\$126,295.00	\$3,740.00	\$130,035.00
Kevin Naughton (I)																50.50	0.00	50.50	\$425.00	\$15,150.00	\$0.00	\$15,150.00
Wendy Okada (PL)																41.50	0.00	41.50	\$250.00	\$10,375.00	\$0.00	\$10,375.00
Radha Kerzan (PL)																1.80	0.00	1.80	\$375.00	\$540.00	\$0.00	\$540.00
Shelby Taylor (PL)																8.70	0.00	8.70	\$375.00	\$2,627.50	\$0.00	\$2,627.50
Megan Meyers (PL)			0.50					1.70	16.00				1.60			128.40	19.80	148.20	\$425.00	\$49,710.00	\$8,415.00	\$58,125.00
Anastasia Grant (PL)													1.10			15.60	1.10	16.70	\$375.00	\$5,460.00	\$412.50	\$5,872.50
SUB-TOTAL	0.00	0.00	145.00	0.00	0.00	0.00	3.60	1.70	20.00	0.00	0.00	0.00	29.00	0.00	0.00	4076.70	199.30	4,276.00		\$1,104,410.00	\$82,787.50	\$1,187,197.50
GRAND TOTAL:	15.00	0.30	484.20	146.50	0.00	19.40	8.70	24.90	109.70	5.60	39.90	16.20	41.40	0.00	0.00	27503.80	911.80	28,415.60		\$11,688,280.50	\$540,105.00	\$12,228,385.50

EXHIBIT 2

TURKEY ANTITRUST LITIGATION**EXPENSE REPORT - (To be submitted on the 20th of each month)****FIRM NAME: HAGENS BERMAN SOBOL SHAPIRO LLP**

REPORTING PERIOD: 10/01/2021 - 2/28/2025

CATEGORY	DESCRIPTION (If necessary)	CUMULATIVE COSTS
Court Costs - Filing Fees		\$300.00
Experts/Consultants		\$0.00
Federal Express / UPS /Ontrac		\$11,197.66
Postage / U.S. Mail		\$0.00
Service of Process		\$0.00
Messenger/Delivery		\$51.22
Hearing Transcripts		\$0.00
Investigation		\$0.00
Lexis/Westlaw		\$15,404.56
Photocopies - In House		\$20,909.00
Photocopies - Outside		\$71.02
Telephone/Telecopier		\$0.00
Travel - Transportation (Airplanes - Coach Fares Only)		\$7,625.65
Travel - Meals (\$75 per person / day cap)		\$2,336.91
Travel - Hotels		\$6,777.38
Miscellaneous		\$34.95
TOTAL EXPENSES		\$64,708.35

EXHIBIT 3

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE TURKEY ANTITRUST LITIGATION

Civil Action No. 19-cv-08318

This Documents Relates To:

Hon. Sunil R. Harjani

Hon. Keri L. Holleb Hotaling

Direct Purchaser Plaintiff Actions

**DECLARATION OF CHRISTOPHER LE IN SUPPORT OF
DIRECT PURCHASER PLAINTIFFS' MOTION FOR INTERIM PAYMENT OF
ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND CLASS
REPRESENTATIVE SERVICE AWARDS**

I, Christopher Le, declare under oath, as follows:

1. I am a Partner in the law firm of BoiesBattin LLP. I submit this Declaration in support of Direct Purchaser Plaintiffs' ("DPPs") Motion for Interim Payment of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards (the "Motion").

2. My firm has acted as Class Counsel to the DPPs and Direct Purchaser Plaintiff Class. During the period from the inception of the case through February 28, 2025, my firm worked on assignments that it was specifically directed to perform by the Court-appointed Co-Lead Counsel in this litigation.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating that amount of time spent by the lawyers and other professional support staff of my firm who have been involved in this litigation and the lodestar calculation based on my firm's historic hourly billing rates (except for work done on document review which is capped at \$350 per hour) from the inception of the case through February 28, 2025.

4. As detailed in **Exhibit 1**, the total number of hours expended on this litigation by my firm from the inception of the litigation through February 28, 2025, is 669.70 hours. The lodestar for my firm for that same period is \$372,991.00. The hourly rates for the lawyers and professional support staff in my firm are the same as the usual and customary hourly rates charged for their services in contingent billable matters. I determined my firm's total hours and lodestar by examining contemporaneous, daily time records regularly prepared and maintained by my firm.

5. As detailed in **Exhibit 2**, my firm has incurred a total of \$446.80 in unreimbursed reasonable and necessary litigation expenses during the period from October 1, 2021, through February 28, 2025. These expenses do not include my firm's assessment payments to the common cost Litigation Fund maintained by Co-Lead Counsel.

6. The expenses my firm incurred in this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials, and represent accurate records of the expenses incurred.

7. In May 2022, shortly after my firm began representing the DPP Class, Co-Lead Counsel sent us the Court-approved Time and Expense Protocol. In the Court of this litigation, my firm has abided by this Protocol as we have performed work and incurred expenses in the case. During this litigation, my firm regularly reported our time, lodestar, and expenses to Co-Lead Counsel. My firm's submission of its compensable time and reimbursable expenses in this Declaration and its exhibits comport with the Court-approved Time and Expense Protocol.

* * *

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

Executed on April ²____, 2025 at Fairfax, VA.

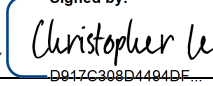
Signed by:

S/_____
D947C308D4494DF...
Christopher Le

EXHIBIT 1

TURKEY ANTITRUST LITIGATION - Olean Wholesale Grocery Cooperative, et al. v. AgriStats, Inc., et al.																										
TIME REPORT - (To be submitted on the 20th of every month)																										
Firm Name:	BoiesBattin LLP										Reporting Period:		02/01/2025 through 02/28/2025													
Categories:	1) Legal Research 2) Investigation / Factual Research 3) Discovery (Written / Deposition Taking & Defending / Meet & Confer / etc.) 4) Document Review Tier 1 - Subject to rate cap					5) Document Review Tier 2 & Deposition Preparation - Subject to rate cap 6) Pleadings, Briefs & Motions (Drafting, Research, Serving & Filing) 7) Class Certification & Class Notice 8) Summary Judgment								9) Appeals 10) Court Appearances & Preparation 11) Experts 12) Settlements & Mediation 13) Case Management			14) Trial Prep (Exhibit & Witness List/Jury Instructions/Vior Dire/Opening & Closing Statements/Arguments/ Demonstratives/etc.) 15) Trial				TITLE: (P) Partner (A) Associate (LC) Law Clerk (SPL) Senior Paralegal (PL) Paralegal					
ATTORNEYS (P, A)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	PREVIOUS HOURS	CURRENT HOURS	CUMULATIVE HOURS	HOURLY RATE	PREVIOUS LODESTAR	CURRENT LODESTAR	CUMULATIVE LODESTAR				
Timothy Battin (P)																0.00	0.00	0.00	\$850.00	\$0.00	\$0.00	\$0.00				
Nathan Cihlar (P)																0.00	0.00	0.00	\$725.00	\$0.00	\$0.00	\$0.00				
Christopher Le (P)																0.50	0.00	0.50	\$725.00	\$362.50	\$0.00	\$362.50				
Christopher Le (P)																455.40	0.00	455.40	\$650.00	\$305,110.00	\$0.00	\$305,110.00				
Shinae Kim-Helms (P)																0.00	0.00	0.00	\$600.00	\$0.00	\$0.00	\$0.00				
Josh Callister (A)																0.00	0.00	0.00	\$500.00	\$0.00	\$0.00	\$0.00				
Brian Drockton (A)																112.70	0.00	112.70	\$385.00	\$43,389.50	\$0.00	\$43,389.50				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
SUB-TOTAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	568.60	0.00	568.60		\$348,862.00	\$0.00	\$348,862.00				
NON-ATTORNEYS (LC, SPL, PL)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	PREVIOUS HOURS	CURRENT HOURS	CUMULATIVE HOURS	HOURLY RATE	PREVIOUS LODESTAR	CURRENT LODESTAR	CUMULATIVE LODESTAR				
Ashim Bhandari (LC)																52.10	0.00	52.10	\$240.00	\$12,504.00	\$0.00	\$12,504.00				
Segev Kanik (LC)																40.00	0.00	40.00	\$240.00	\$9,600.00	\$0.00	\$9,600.00				
Connor Grant (PL)																9.00	0.00	9.00	\$225.00	\$2,025.00	\$0.00	\$2,025.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00				
SUB-TOTAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	101.10	0.00	101.10		\$24,129.00	\$0.00	\$24,129.00				
GRAND TOTAL:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	669.70	0.00	669.70		\$372,991.00	\$0.00	\$372,991.00				

EXHIBIT 2

IN RE TURKEY ANTITRUST LITIGATION**EXPENSE REPORT - (To be submitted on the 20th of each month)****FIRM NAME: BoiesBattin LLP****REPORTING PERIOD: 02/01/2025 through 02/28/2025**

CATEGORY	DESCRIPTION (If necessary)	PRIOR COSTS	CURRENT COSTS	CUMULATIVE COSTS
Litigation Assessment				\$0.00
Court Costs - Filing Fees		\$150.00		\$150.00
Experts/consultants				\$0.00
Federal Express / UPS /Ontrac				\$0.00
Postage / U.S. Mail				\$0.00
Service of Process				\$0.00
Messenger/delivery				\$0.00
Hearing Transcripts				\$0.00
Investigation				\$0.00
Lexis/westlaw				\$0.00
Photocopies - in House	Depo Prep Binder	\$296.80		\$296.80
Photocopies - Outside				\$0.00
Telephone/telecopier				\$0.00
Travel - Transportation (Airplanes - Coach Fares Only)				\$0.00
Travel - Meals (\$75 per person / day cap)				\$0.00
Travel - Hotels				\$0.00
Miscellaneous				\$0.00
TOTAL EXPENSES		\$446.80	\$0.00	\$446.80
TOTAL LODESTAR				\$372,991.00
TOTAL EXPENSES & LODESTAR		\$446.80	\$0.00	\$373,437.80

EXHIBIT 4

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE TURKEY ANTITRUST LITIGATION

Civil Action No. 19-cv-08318

This Documents Relates To:

Hon. Sunil R. Harjani

Hon. Keri L. Holleb Hotaling

Direct Purchaser Plaintiff Actions

**DECLARATION OF MARCO CERCONI IN SUPPORT OF
DIRECT PURCHASER PLAINTIFFS' MOTION FOR INTERIM PAYMENT OF
ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND CLASS
REPRESENTATIVE SERVICE AWARDS**

I, Marco Cercone, declare under oath, as follows:

1. I am a Partner in the law firm of Rupp Pfalzgraf LLC. I submit this Declaration in support of Direct Purchaser Plaintiffs' ("DPPs") Motion for Interim Payment of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards (the "Motion").
2. My firm has acted as Class Counsel to the DPPs and Direct Purchaser Plaintiff Class. During the period from the inception of the case through February 28, 2025, my firm worked on assignments that it was specifically directed to perform by the Court-appointed Co-Lead Counsel in this litigation.
3. The schedule attached hereto as **Exhibit 1** is a detailed summary indicating that amount of time spent by the lawyers and other professional support staff of my firm who have been involved in this litigation and the lodestar calculation based on my firm's historic hourly billing rates (except for work done on document review which is capped at \$350 per hour) from the inception of the case through February 28, 2025.

4. As detailed in **Exhibit 1**, the total number of hours expended on this litigation by my firm from the inception of the litigation through February 28, 2025, is 115.90 hours. The lodestar for my firm for that same period is \$52,253.00. The hourly rates for the lawyers and professional support staff in my firm are the same as the usual and customary hourly rates charged for their services in contingent billable matters. I determined my firm's total hours and lodestar by examining contemporaneous, daily time records regularly prepared and maintained by my firm.

5. As detailed in **Exhibit 2**, my firm has incurred a total of \$9.52 in unreimbursed reasonable and necessary litigation expenses during the period from October 1, 2021, through February 28, 2025. These expenses do not include my firm's assessment payments to the common cost Litigation Fund maintained by Co-Lead Counsel.

6. The expenses my firm incurred in this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source materials, and represent accurate records of the expenses incurred.

7. In July 2020, shortly after this litigation commenced, Co-Lead Counsel sent us the Court-approved Time and Expense Protocol. In the Court of this litigation, my firm has abided by this Protocol as we have performed work and incurred expenses in the case. During this litigation, my firm regularly reported our time, lodestar, and expenses to Co-Lead Counsel. My firm's submission of its compensable time and reimbursable expenses in this Declaration and its exhibits comport with the Court-approved Time and Expense Protocol.

* * *

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

Executed on April ²____, 2025 at ^{1:44pm}_____.


Signed by:

s/ 32AB3A5BBB65433
Marco Cercone

EXHIBIT 1

TURKEY ANTITRUST LITIGATION - Olean Wholesale Grocery Cooperative, et al. v. AgriStats, Inc., et al.**TIME REPORT - (To be submitted on the 20th of every month)**

Firm Name:	RUPP PFALZGRAF, LLC					Reporting Period:					Inception - 02/2025													
Categories:	1) Legal Research 2) Investigation / Factual Research 3) Discovery (Written / Deposition Taking & Defending / Meet & Confer / etc.) 4) Document Review Tier 1 - Subject to rate cap					5) Document Review Tier 2 & Deposition Preparation - Subject to rate cap 6) Pleadings, Briefs & Motions (Drafting, Research, Serving & Filing) 7) Class Certification & Class Notice 8) Summary Judgment					9) Appeals 10) Court Appearances & Preparation 11) Experts 12) Settlements & Mediation 13) Case Management				14) Trial Prep (Exhibit & Witness List/Jury Instructions/Vior Dire/Opening & Closing Statements/Arguments/ Demonstratives/etc.) 15) Trial				TITLE: (P) Partner (A) Associate (LC) Law Clerk (SPL) Senior Paralegal (PL) Paralegal					
ATTORNEYS (P, A)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	PREVIOUS HOURS	CURRENT HOURS	CUMULATIVE HOURS	HOURLY RATE	PREVIOUS LODESTAR	CURRENT LODESTAR	CUMULATIVE LODESTAR		
Arthur N. Bailey (P)*																106.80	0.00	106.80	\$495.00	\$48,258.00	\$0.00	\$48,258.00		
Marco Cercone (P)*																8.70	0.00	8.70	\$475.00	\$3,895.00	\$0.00	\$3,895.00		
Name (A)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (A)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (A)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
SUB-TOTAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	115.50	0.00	115.50		\$52,153.00	\$0.00	\$52,153.00		
*ANB's rate increased to \$495 in Jan 2023; MC's rate increased to \$475 in Jan 2023.																								
NON-ATTORNEYS (LC, SPL, PL)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	PREVIOUS HOURS	CURRENT HOURS	CUMULATIVE HOURS	HOURLY RATE	PREVIOUS LODESTAR	CURRENT LODESTAR	CUMULATIVE LODESTAR		
Theresa Hobbs (PL)																0.40	0.00	0.40	\$250.00	\$100.00	\$0.00	\$100.00		
Name (LC)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (LC)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (SPL)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (SPL)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (SPL)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (PL)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (PL)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (PL)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
Name (PL)																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
																0.00	0.00	0.00	\$0.00	\$0.00	\$0.00	\$0.00		
SUB-TOTAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.40	0.00	0.40		\$100.00	\$0.00	\$100.00		
GRAND TOTAL:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	115.90	0.00	115.90		\$52,253.00	\$0.00	\$52,253.00		

EXHIBIT 2

IN RE TURKEY ANTITRUST LITIGATION

EXPENSE REPORT - (To be submitted on the 20th of each month)

FIRM NAME: RUPP PFALZGRAF, LLC

REPORTING PERIOD: Inception - 02/2025

CATEGORY	DESCRIPTION (If necessary)	PRIOR COSTS	CURRENT COSTS	CUMULATIVE COSTS
Litigation Assessment				\$0.00
Court Costs - Filing Fees				\$0.00
Experts/consultants				\$0.00
Federal Express / UPS /Ontrac				\$0.00
Postage / U.S. Mail				\$0.00
Service of Process				\$0.00
Messenger/delivery				\$0.00
Hearing Transcripts				\$0.00
Investigation				\$0.00
Lexis/westlaw				\$0.00
Photocopies - in House		\$9.52		\$9.52
Photocopies - Outside				\$0.00
Telephone/telecopier				\$0.00
Travel - Transportation (Airplanes - Coach Fares Only)				\$0.00
Travel - Meals (\$75 per person / day cap)				\$0.00
Travel - Hotels				\$0.00
Miscellaneous				\$0.00
TOTAL EXPENSES		\$9.52	\$0.00	\$9.52
TOTAL LODESTAR				\$52,253.00
TOTAL EXPENSES & LODESTAR		\$9.52	\$0.00	\$52,262.52

EXHIBIT 5

TURKEY ANTITRUST LITIGATION - Olean Wholesale Grocery Cooperative, et al. v. AgriStats, Inc., et al.

TIME REPORT - (To be submitted on the 20th of every month)

Firm Name:	Lockridge Grindal Nauen P.L.L.P.					Reporting Period:	Inception - 2/28/2025														
Categories:	1) Legal Research					5) Document Review Tier 2 & Deposition Preparation - Subject to rate cap					9) Appeals					14) Trial Prep (Exhibit & Witness List/Jury Instructions/Vior Dire/Opening & Closing Statements/Arguments/Demonstratives/etc.)					TITLE:
	2) Investigation / Factual Research					6) Pleadings, Briefs & Motions (Drafting, Research, Serving & Filing)					10) Court Appearances & Preparation					15) Trial					(P) Partner
	3) Discovery (Written / Deposition Taking & Defending / Meet & Confer / etc.)					7) Class Certification & Class Notice					11) Experts										(A) Associate
	4) Document Review Tier 1 - Subject to rate cap					8) Summary Judgment					12) Settlements & Mediation										(LC) Law Clerk
											13) Case Management										(SPL) Senior Paralegal
																					(PL) Paralegal

ATTORNEYS (P, A)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	PREVIOUS HOURS	CURRENT HOURS	CUMULATIVE HOURS	HOURLY RATE	PREVIOUS LODESTAR	CURRENT LODESTAR	CUMULATIVE LODESTAR
W. Joseph Bruckner (P) (2021)																117.80	0.00	117.80	\$1,050.00	\$118,390.00	\$0.00	\$118,390.00
W. Joseph Bruckner (P) (2022)																38.60	0.00	38.60	\$1,150.00	\$44,390.00	\$0.00	\$44,390.00
W. Joseph Bruckner (P) (2023)																59.60	0.00	59.60	\$1,175.00	\$70,030.00	\$0.00	\$70,030.00
W. Joseph Bruckner (P) (2024)																195.30	0.00	195.30	\$1,225.00	\$239,242.50	\$0.00	\$239,242.50
W. Joseph Bruckner (P) (2025)						2.00	3.00		4.50	0.80	2.00	4.10	1.90	9.20		10.50	27.50	38.00	\$1,275.00	\$13,387.50	\$35,062.50	\$48,450.00
Brian D. Clark (P) (2021)																296.40	0.00	296.40	\$850.00	\$240,930.00	\$0.00	\$240,930.00
Brian D. Clark (P) (2022)																395.60	0.00	395.60	\$925.00	\$365,930.00	\$0.00	\$365,930.00
Brian D. Clark (P) (2023)																35.70	0.00	35.70	\$975.00	\$34,807.50	\$0.00	\$34,807.50
Brian D. Clark (P) (2024)																158.50	0.00	158.50	\$1,100.00	\$174,350.00	\$0.00	\$174,350.00
Brian D. Clark (P) (2025)			2.10			27.90		6.60	0.80	9.60	3.70	31.20	1.90			42.30	83.80	126.10	\$1,175.00	\$49,702.50	\$98,465.00	\$148,167.50
Maureen K. Berg (A)																90.40	0.00	90.40	\$700.00	\$63,280.00	\$0.00	\$63,280.00
Craig S. Davis (A)																158.10	0.00	158.10	\$700.00	\$111,770.00	\$0.00	\$111,770.00
Rick N. Linsk(A)																50.00	0.00	50.00	\$650.00	\$32,500.00	\$0.00	\$32,500.00
Simeon A. Morbey (A) (2021)																1,391.00	0.00	1,391.00	\$675.00	\$935,665.00	\$0.00	\$935,665.00
Simeon A. Morbey (A) (2022)																1,833.60	0.00	1,833.60	\$800.00	\$1,466,880.00	\$0.00	\$1,466,880.00
Simeon A. Morbey (A) (2023)																403.60	0.00	403.60	\$850.00	\$343,060.00	\$0.00	\$343,060.00
Simeon A. Morbey (A) (2024)																265.80	0.00	265.80	\$925.00	\$245,865.00	\$0.00	\$245,865.00
Simeon A. Morbey (A) (2025)			0.70			1.40		0.80		1.60	0.10	3.10				80.80	7.70	88.50	\$1,000.00	\$80,800.00	\$7,700.00	\$88,500.00
Charles N. Nauen (P)																1.80	0.00	1.80	\$950.00	\$1,710.00	\$0.00	\$1,710.00
Heidi M. Sifton (P)																4.00	0.00	4.00	\$925.00	\$3,700.00	\$0.00	\$3,700.00
Justin R. Erickson (A)																190.20	0.00	190.20	\$550.00	\$109,460.00	\$0.00	\$109,460.00
Kevin T. Ravenscroft (A)																450.50	0.00	450.50	\$350.00	\$157,675.00	\$0.00	\$157,675.00
Daniel R. Josephson																1.60	0.00	1.60	\$425.00	\$680.00	\$0.00	\$680.00
Daniel R. Josephson (2023)																94.00	0.00	94.00	\$450.00	\$42,300.00	\$0.00	\$42,300.00
Michael D. Winston																3,277.50	0.00	3,277.50	\$350.00	\$1,147,125.00	\$0.00	\$1,147,125.00
Steven E. Serdikoff (2021)																404.90	0.00	404.90	\$750.00	\$303,675.00	\$0.00	\$303,675.00
Steven E. Serdikoff																94.00	0.00	94.00	\$350.00	\$32,900.00	\$0.00	\$32,900.00
Steven E. Serdikoff																120.80	0.00	120.80	\$500.00	\$60,400.00	\$0.00	\$60,400.00
Steven E. Serdikoff (2022)																1,450.50	0.00	1,450.50	\$800.00	\$1,160,400.00	\$0.00	\$1,160,400.00
Steven E. Serdikoff (2025)														71.80		0.00	71.80	71.80	\$975.00	\$0.00	\$70,005.00	\$70,005.00
Leona B. Ajavon (2021)																481.80	0.00	481.80	\$600.00	\$289,080.00	\$0.00	\$289,080.00
Leona B. Ajavon																26.50	0.00	26.50	\$500.00	\$13,250.00	\$0.00	\$13,250.00
Leona B. Ajavon (2022)																298.10	0.00	298.10	\$640.00	\$190,784.00	\$0.00	\$190,784.00

Stephanie A. Chen																1.50	0.00	1.50	\$600.00	\$900.00	\$0.00	\$900.00
Kevin T. Ravenscroft (A)																2,485.00	0.00	2,485.00	\$350.00	\$875,787.50	\$0.00	\$875,787.50
Ryan R. Chittum (A)																46.50	0.00	46.50	\$300.00	\$13,950.00	\$0.00	\$13,950.00
Joseph C. Bourne																0.40	0.00	0.40	\$750.00	\$300.00	\$0.00	\$300.00
Joseph C. Bourne 2022																0.80	0.00	0.80	\$800.00	\$640.00	\$0.00	\$640.00
Joseph C. Bourne 2024																0.50	0.00	0.50	\$925.00	\$462.50	\$0.00	\$462.50
Kyle J. Pozan																0.20	0.00	0.20	\$750.00	\$150.00	\$0.00	\$150.00
Gregg M. Fishbein																10.50	0.00	10.50	\$950.00	\$9,975.00	\$0.00	\$9,975.00
Gregg M. Fishbein (2022)																656.50	0.00	656.50	\$975.00	\$640,087.50	\$0.00	\$640,087.50
Cynthia L. Diekrager (2021)																179.90	0.00	179.90	\$425.00	\$76,457.50	\$0.00	\$76,457.50
Cynthia L. Diekrager (2022)																1,948.50	0.00	1,948.50	\$435.00	\$847,597.50	\$0.00	\$847,597.50
Cynthia L. Diekrager (2023)																950.50	0.00	950.50	\$450.00	\$427,725.00	\$0.00	\$427,725.00
Cynthia L. Diekrager (2024)																301.00	0.00	301.00	\$475.00	\$142,975.00	\$0.00	\$142,975.00
Cynthia L. Diekrager (2025)					46.00											0.00	46.00	46.00	\$485.00	\$0.00	\$22,310.00	\$22,310.00
Erik B. Diekrager (2025)					105.50											0.00	105.50	105.50	\$485.00	\$0.00	\$51,167.50	\$51,167.50
Derek Waller																1.00	0.00	1.00	\$375.00	\$375.00	\$0.00	\$375.00
Caitlin Keiper (2022)																1,163.50	0.00	1,163.50	\$425.00	\$494,487.50	\$0.00	\$494,487.50
Stephen Owen (2022)																583.90	0.00	583.90	\$650.00	\$379,535.00	\$0.00	\$379,535.00
Stephen Owen (2024)																17.70	0.00	17.70	\$775.00	\$13,717.50	\$0.00	\$13,717.50
Cate D. Crowe (2022)																4.60	0.00	4.60	\$600.00	\$2,760.00	\$0.00	\$2,760.00
Rachel A. Kitz Collins (2022)																293.00	0.00	293.00	\$700.00	\$205,100.00	\$0.00	\$205,100.00
Antonia Konkoly (2024)																79.80	0.00	79.80	\$925.00	\$73,815.00	\$0.00	\$73,815.00
Arielle Wagner (2024)																0.20	0.00	0.20	\$800.00	\$160.00	\$0.00	\$160.00
Consuela M. Abotsi-Kowu (A) 2025					3.20											0.00	3.20	3.20	\$760.00	\$0.00	\$2,432.00	\$2,432.00
Laura Matson																3.10	0.00	3.10	\$650.00	\$2,015.00	\$0.00	\$2,015.00
SUB-TOTAL	0.00	0.00	2.80	0.00	151.50	34.50	3.00	7.40	5.30	12.00	5.80	38.40	3.80	81.00	0.00	21,248.40	345.50	21,593.90		12,353,091.50	287,142.00	12,640,233.50
NON-ATTORNEYS (LC, SPL, PL)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	PREVIOUS HOURS	CURRENT HOURS	CUMULATIVE HOURS	HOURLY RATE	PREVIOUS LODESTAR	CURRENT LODESTAR	CUMULATIVE LODESTAR
Sherri L. Juell (PL)																347.60	0.00	347.60	\$325.00	\$102,930.00	\$0.00	\$102,930.00
Elizabeth M. Sipe (PL) (2021)																12.30	0.00	12.30	\$325.00	\$3,697.50	\$0.00	\$3,697.50
Elizabeth M. Sipe (PL) (2022)																0.80	0.00	0.80	\$375.00	\$300.00	\$0.00	\$300.00
Amber M. Raak (PL) (2021)																216.50	0.00	216.50	\$325.00	\$70,312.50	\$0.00	\$70,312.50
Amber M. Raak (PL) (2022)																458.40	0.00	458.40	\$375.00	\$196,537.50	\$0.00	\$196,537.50
Amber M. Raak (PL) (2023)																50.50	0.00	50.50	\$400.00	\$20,200.00	\$0.00	\$20,200.00
Amber M. Raak (PL) (2024)																56.10	0.00	56.10	\$430.00	\$24,123.00	\$0.00	\$24,123.00
Amber M. Raak (PL) (2025)			5.50			1.50						0.50	6.10	4.40		12.80	18.00	30.80	\$475.00	\$6,080.00	\$8,550.00	\$14,630.00
Greg A. Loeding (2021)																251.30	0.00	251.30	\$225.00	\$56,702.50	\$0.00	\$56,702.50
Greg A. Loeding (2022)																272.50	0.00	272.50	\$275.00	\$81,042.50	\$0.00	\$81,042.50
Greg A. Loeding (2023)																15.50	0.00	15.50	\$285.00	\$4,417.50	\$0.00	\$4,417.50
Greg A. Loeding (2024)																3.00	0.00	3.00	\$315.00	\$945.00	\$0.00	\$945.00
Develyn J. Ferguson (LC) (2021)																5.10	0.00	5.10	\$250.00	\$1,275.00	\$0.00	\$1,275.00
Develyn J. Ferguson (LC) (2022)																36.50	0.00	36.50	\$300.00	\$10,950.00	\$0.00	\$10,950.00
Elizabeth A. Schindler (PL) (2021)																73.00	0.00	73.00	\$225.00	\$16,425.00	\$0.00	\$16,425.00
Elizabeth A. Schindler (PL) (2022)																129.80	0.00	129.80	\$300.00	\$44,520.00	\$0.00	\$44,520.00
Elizabeth A. Schindler (PL) (2023)																7.20	0.00	7.20	\$345.00	\$2,484.00	\$0.00	\$2,484.00
Elizabeth A. Schindler (PL) (2024)																60.30	0.00	60.30	\$375.00	\$22,612.50	\$0.00	\$22,612.50
Elizabeth A. Schindler (PL) (2025)			4.90			5.60						2.90	4.50			11.60	17.90	29.50	\$450.00	\$5,220.00	\$8,055.00	\$13,275.00
Tyler Blackmon (LC) 2022																4.00	0.00	4.00	\$300.00	\$1,200.00	\$0.00	\$1,200.00
C. Abotsi-Kowu (LC) 2023																7.00	0.00	7.00	\$335.00	\$2,345.00	\$0.00	\$2,345.00
E. Bingham (LC) 2024																1.20	0.00	1.20	\$335.00	\$402.00	\$0.00	\$402.00

E. Bingham (LC) 2025																2.60	0.00	2.60	\$375.00	\$975.00	\$0.00	\$975.00
J. Sguirguis (LC) 2024																2.00	0.00	2.00	\$335.00	\$670.00	\$0.00	\$670.00
Eura Chang (LC) (2022)																14.00	0.00	14.00	\$300.00	\$4,200.00	\$0.00	\$4,200.00
SUB-TOTAL	0.00	0.00	10.40	0.00	0.00	7.10	0.00	0.00	0.00	0.00	0.00	3.40	10.60	4.40	0.00	2,051.60	35.90	2,087.50		\$680,566.50	\$16,605.00	\$697,171.50
GRAND TOTAL:	0.00	0.00	13.20	0.00	151.50	41.60	3.00	7.40	5.30	12.00	5.80	41.80	14.40	85.40	0.00	23,300.00	381.40	23,681.40		\$13,033,658.00	\$303,747.00	\$13,337,405.00

*AgriStats, Inc., et al.***EXPENSE REPORT - (To be submitted on the 20th of each month)****FIRM NAME: Lockridge Grindal Nauen, P.L.L.P.**

REPORTING PERIOD: 10/01/2021 - 2/28/2025

CATEGORY	DESCRIPTION (If necessary)	CUMULATIVE COSTS
Court Costs - Filing Fees		\$488.00
Experts/consultants		\$0.00
Federal Express / UPS /Ontrac		\$0.00
Postage / U.S. Mail		\$3,289.50
Service of Process		\$1,466.20
Messenger/delivery		\$134.61
Hearing Transcripts		\$0.00
Investigation		\$0.00
Lexis/westlaw		\$14,011.50
Photocopies - in House		\$10,502.25
Photocopies - Outside		\$520.27
Telephone/telecopier		\$0.00
Travel - Transportation (Airplanes - Coach Fares Only)		\$7,293.98
Travel - Meals (\$75 per person / day cap)		\$355.91
Travel - Hotels		\$2,399.66
Miscellaneous		\$390.11
TOTAL EXPENSES		\$40,851.99

EXHIBIT 6

***TURKEY ANTITRUST LITIGATION - Olean Wholesale Grocery
Cooperative, et al. v. AgriStats, Inc., et al.***

TIME REPORT - (To be submitted on the 20th of every month)

All Firms Summary: Inception - 2/28/2025

Law Firm	CUMULATIVE HOURS	CUMULATIVE LODESTAR
LOCKRIDGE GRINDAL NAUEN PLLP	23,681.40	\$13,337,405.00
HAGENS BERMAN SOBOL SHAPIRO LLP	28,415.60	\$12,228,385.50
RUPP PFALZGRAF, LLC	115.90	\$52,253.00
BOIES BATTIN LLP	669.70	\$372,991.00
GRAND TOTAL:	52,882.60	\$25,991,034.50

EXHIBIT 7

<i>EXHIBIT 7 - Summary of Costs Reimbursed from the First Expense Reimbursement Award</i>	
(A) Experts (Testifying and Non-Testifying)	\$ 317,418.90
(B) Document Database Vendor	\$ 69,310.63
(C) Mediators	\$ -
(D) Phone Records Vendor & Phone Record Subpoena Cost	\$ 19,744.00
(E) Miscellaneous Costs	\$ 3,645.51
TOTAL	\$ 410,119.04

EXHIBIT 8

***TURKEY ANTITRUST LITIGATION - Olean Wholesale Grocery Cooperative, et al.
v. AgriStats, Inc., et al.***

EXPENSE REPORT - (To be submitted on the 20th of each month)

FIRM NAME: All Firm Summary

REPORTING PERIOD: 10/01/2021 - 2/28/2025

CATEGORY	CURRENT COSTS
Court Costs - Filing Fees	\$938.00
Experts/consultants	\$0.00
Federal Express / UPS /Ontrac	\$11,197.66
Postage / U.S. Mail	\$3,289.50
Service of Process	\$1,466.20
Messenger/delivery	\$185.83
Hearing Transcripts	\$0.00
Investigation	\$0.00
Lexis/westlaw	\$29,712.86
Photocopies - in House	\$31,717.57
Photocopies - Outside	\$591.29
Telephone/telecopier	\$0.00
Travel - Transportation (Airplanes - Coach Fares Only)	\$14,919.63
Travel - Meals (\$75 per person / day cap)	\$2,692.82
Travel - Hotels	\$9,177.04
Miscellaneous	\$425.06
TOTAL EXPENSES	\$106,313.46

EXHIBIT 9

<i>EXHIBIT 9 - Total Litigation Fund Summary Report November 04, 2021 - March 31, 2025</i>	
(A) Experts (Testifying and Non-Testifying)	\$ 4,251,996.38
(B) Document Database Vendor	\$ 314,165.95
(C) Mediators	\$ 20,093.75
(D) Phone Records Vendor & Phone Record Subpoena Cost	\$ 31,849.00
(E) Deposition Vendor Invoices	\$ 47,748.94
(F) Miscellaneous Costs	\$ 22,139.70
TOTAL	\$ 4,687,993.72

EXHIBIT 10

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE TURKEY ANTITRUST LITIGATION

Civil Action No. 19-cv-08318

This Documents Relates To:

Hon. Sunil R. Harjani

Hon. Keri L. Holleb Hotaling

Direct Purchaser Plaintiff Actions

**DECLARATION OF DOUGLAS NECKERS OF MAPLEVALE FARMS, INC. IN
SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR INTERIM
PAYMENT OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES,
AND CLASS REPRESENTATIVE SERVICE AWARDS**

I, Douglas Neckers, declare as follows:

1. I am Chief Executive Officer of Maplevale Farms, Inc. ("Maplevale"), a named Direct Purchaser Plaintiff ("DPP") in this class action. I make this declaration in support of Direct Purchaser Plaintiffs' Motion for Interim Payment of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards. I have personal knowledge of the facts stated in this declaration, and, if called as a witness, I could competently testify to them.

2. I live in the State of New York and have worked for Maplevale for over 30 years.

3. During the Class Period in this case, Maplevale purchased Turkey directly from one or more of the Defendants in this lawsuit.

4. On February 3, 2022, the Court granted DPPs' Motion for Final Approval of DPPs' Settlement with the Tyson Defendants. (*See* ECF No. 406.) Additionally, on January 30, 2025, the Court granted DPPs' Motion for Preliminary Approval of DPPs' Settlement with the Cargill Defendants. (*See* ECF No. 1128.) Maplevale has acted as a Settlement Class Representative for both the Tyson and Cargill settlements.

5. Maplevale has participated fully in the litigation and acted in the best interests of the entire DPP Class. These activities have included retaining the attorneys appointed as Class Counsel, advising attorneys, approving pleadings and settlements, reviewing and responding to written discovery, preparing for and participating in two full day depositions, searching for, collecting, preserving, and producing documents, and preparing a declaration in support of DPPs' Motion for Class Certification, which the Court certified on January 22, 2025 (ECF No. 1107). Since its inception, Maplevale has dedicated 73.0 hours to this litigation.

6. Maplevale respectfully requests the Court to grant Direct Purchaser Plaintiffs' Motion for Interim Payment of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards in its entirety.

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

Executed: 4/1/2025 _____.

Signed by:

16D22E1526CD4ED
Douglas Neckers

EXHIBIT 11

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE TURKEY ANTITRUST LITIGATION

Civil Action No. 19-cv-08318

This Documents Relates To:

Hon. Sunil R. Harjani

Hon. Keri L. Holleb Hotaling

Direct Purchaser Plaintiff Actions

**DECLARATION OF SCOTT WAGNER OF JOHN GROSS AND COMPANY, INC. IN
SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR INTERIM
PAYMENT OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES,
AND CLASS REPRESENTATIVE SERVICE AWARDS**

I, Scott Wagner, declare as follows:

1. I am Vice President for John Gross and Company, Inc. ("John Gross"), a named Direct Purchaser Plaintiff ("DPP") in this class action. I make this declaration in support of Direct Purchaser Plaintiffs' Motion for Interim Payment of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards. I have personal knowledge of the facts stated in this declaration, and, if called as a witness, I could competently testify to them.

2. I live in Dillsburg, Pennsylvania and have worked for John Gross for 46 years.

3. During the Class Period in this case, John Gross purchased Turkey directly from one or more of the Defendants in this lawsuit.

4. On February 3, 2022, the Court granted DPPs' Motion for Final Approval of DPPs' Settlement with the Tyson Defendants. (*See* ECF No. 406.) Additionally, on January 30, 2025, the Court granted DPPs' Motion for Preliminary Approval of DPPs' Settlement with the Cargill Defendants. (*See* ECF No. 1128.) John Gross has acted as a Settlement Class Representative for both the Tyson and Cargill Settlements.

5. John Gross has participated fully in the litigation and acted in the best interests of the entire DPP Class. These activities have included retaining the attorneys appointed as Class Counsel, advising attorneys, approving pleadings and settlements, reviewing and responding to written discovery, preparing for and participating in two depositions, searching for, collecting, preserving, and producing documents, and preparing a declaration in support of DPPs' Motion for Class Certification, which the Court certified on January 22, 2025 (ECF No. 1107). Since the inception of the litigation, John Gross has spent 51.25 hours dedicated to these activities.

6. John Gross respectfully requests the Court to grant Direct Purchaser Plaintiffs' Motion for Interim Payment of Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Awards in its entirety.

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

Executed 3/28/2025.

DocuSigned by:
Scott Wagner
57006E1D91BB437...
Scott Wagner

EXHIBIT 12

Breakdown of Settlement Funds at Issue as of 03/31/2025, Subject to Further Update							
Defendant Family	Settlement Amount	Interest Earned (March 25, 2025)	Taxes Paid	Settlement Admin Expenses	First and Second Cost Motion	Current Motion Attorney's Fees (Incl. Interest) Pro Rata	Current Motion Service Award Pro Rata
Tyson	\$4,625,000.00	\$6,308.70	\$61,479.00	\$83,734.53	\$1,000,000.00	\$1,162,031.72	\$ 6,229.00
Cargill	\$32,500,000.00	\$54,600.56	\$0.00	\$11,031.68	\$4,500,000.00	\$9,347,856.29	\$ 43,771.00
TOTAL	\$37,125,000.00	\$60,909.26	\$61,479.00	\$94,766.21	\$5,500,000.00	\$10,509,888.02	\$ 50,000.00

EXHIBIT 13

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE BROILER CHICKEN ANTITRUST
LITIGATION

This Document Relates To:

THE DIRECT PURCHASER PLAINTIFF
ACTION

Case No.: 1:16-cv-08637

The Honorable Thomas M. Durkin

Magistrate Judge Jeffrey T. Gilbert

**DECLARATION OF BRIAN T. FITZPATRICK REGARDING
DIRECT PURCHASER PLAINTIFFS' MOTION FOR ATTORNEYS' FEES**

I. BACKGROUND AND QUALIFICATIONS

1. I am the Milton R. Underwood Chair in Free Enterprise and Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from the University of Notre Dame in 1997 and Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the United States Supreme Court. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit 1. I was paid a flat fee for this declaration and it is in no way dependent on the outcome of Direct Purchaser Plaintiffs' fee petition. I speak only for myself and not for Vanderbilt.

2. My teaching and research at Vanderbilt have focused on class action litigation. I teach the Civil Procedure, Federal Courts, and Complex Litigation courses. In addition, I have published a number of articles on class action litigation in such journals as the University of

Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the Fordham Law Review, the NYU Journal of Law & Business, and the University of Arizona Law Review. My work has been cited by numerous courts, scholars, and media outlets such as the New York Times, USA Today, and Wall Street Journal. I have also been invited to speak at symposia and other events about class action litigation, such as the ABA National Institutes on Class Actions in 2011, 2015, 2016, 2017, and 2019; and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. In 2015, I was elected to the membership of the American Law Institute. Earlier this year, I became the co-author of *The Cambridge Handbook of Class Actions: An International Survey* (with Randall Thomas).

3. In December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter “Empirical Study”). This article is still what I believe to be the most comprehensive examination of federal class action settlements and attorneys’ fees that has ever been published. Unlike other studies of class actions, which have been confined to one subject matter or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every* class action settlement approved by a federal court over a two-year period (2006-2007). *See id.* at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is also several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 79 from the Seventh Circuit alone. *See id.* at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of

Southern California School of Law in 2009, the Meeting of the Midwestern Law and Economics Association at the University of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. Since then, this study has been relied upon regularly by a number of courts, scholars, and testifying experts.¹

¹ See, e.g., *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); *In re Wells Fargo & Co. S'holder Derivative Litig.*, 2020 WL 1786159 at *11 (N.D. Cal. Apr. 7, 2020) (same); *Arkansas Teacher Ret. Sys. v. State St. Bank & Trust Co.*, 2020 WL 949885 at *52 (D. Mass. Feb. 27, 2020) (same); *In re Equifax Inc. Customer Data Sec. Breach Litig.*, 2020 WL 256132, at *34 (N.D. Ga. Jan. 13, 2020) (same); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, 2019 WL 6327363, at *4-5 (N.D. Cal. Nov. 26, 2019) (same); *Espinal v. Victor's Cafe 52nd St., Inc.*, 2019 WL 5425475, at *2 (S.D.N.Y. Oct. 23, 2019) (same); *James v. China Grill Mgmt., Inc.*, 2019 WL 1915298, at *2 (S.D.N.Y. Apr. 30, 2019) (same); *Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 407 (S.D.N.Y. 2019) (same); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at *2 (S.D.N.Y. Nov. 29, 2018) (same); *Rodman v. Safeway Inc.*, 2018 WL 4030558, at *5 (N.D. Cal. Aug. 23, 2018) (same); *Little v. Washington Metro. Area Transit Auth.*, 313 F. Supp. 3d 27, 38 (D.D.C. 2018) (same); *Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, 2017 WL 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 1629349, at *17 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Prods. Distrib. Mkt. Antitrust Litig.*, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at *12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Mktg. and Sales Practices Litig.*, 2014 WL 5810625, at *3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Fed. Nat'l Mortg. Assoc. Sec., Derivative, and "ERISA" Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Prod. Liab. Litig.*, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

4. In addition to my empirical works, I have also published many law-and-economics papers on the incentives of attorneys and others in class action litigation. *See, e.g.*, Brian T. Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 Fordham L. Rev. 1151 (2021) (hereinafter “A Fiduciary Judge”); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043 (2010); Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623 (2009). Much of this work was discussed in a book I recently published with the University of Chicago Press entitled *THE CONSERVATIVE CASE FOR CLASS ACTIONS* (2019). The thesis of the book is that the so-called “private attorney general” is superior to the public attorney general in the enforcement of the rules that free markets need in order to operate effectively and that courts should provide proper incentives to encourage such private attorney general behavior. This work, too, has been relied upon by courts and scholars.² I have attached the most recent piece—*A Fiduciary Judge*—as Exhibit 2 and will draw upon it in this declaration.

II. SUMMARY OF OPINIONS

5. I have been asked by Direct Purchaser Plaintiffs (DPPs) to opine on the two questions put to them by this Court’s August 4, 2021, Order (ECF No. 4915). The documents I reviewed to do so are listed in Exhibit 3. My opinions are as follows:

- First, the best existing evidence suggests that parties in the legal market overwhelmingly reject the so-called “sliding scale” method to pay lawyers who work on contingency in favor of flat percentages of one-third and the like or a

² *See, e.g.*, *Briseno v. Henderson*, 998 F.3d 1014, 1025, 1029 (9th Cir. 2021); *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 960 (11th Cir. 2020) (Jordan, J., dissenting); *Tershakovec v. Ford Motor Co.*, 2021 WL 2700347, at *18 (S.D. Fla. July 1, 2021); *Vita Nuova, Inc. v. Azar*, 2020 WL 8271942, at *3 n.5 (N.D. Tex. Dec. 2, 2020).

formula where the percentage increases even further depending on the procedural maturity of the case when it is resolved. This is true even among very sophisticated clients like large corporations and it is true even in large cases like patent infringement litigation. This should not be surprising: economic models of rational actors show that the sliding-scale method has serious drawbacks.

- Second, one of the drawbacks of the sliding-scale method is it is extremely difficult to set the inflection points in the formula at the outset of a case: to do this intelligently, we would need to know what the outcome of the litigation would be at each additional unit of effort by the lawyer. No one knows this. That is, it is my opinion that it is impossible to create a decreasing scale that is representative of the rate that would have been agreed to in the market in this case. If the court wishes to use a variable rather than a flat percentage, the one that has the most support from market data and economic models of rational clients is one that escalates based on procedural maturity—*i.e.*, one that pays a higher percentage if the case goes to trial, to appeal, etc.

III. CASE BACKGROUND

6. This litigation was filed by DPPs in September 2016 as a putative class action against some of the largest corporations in the world accusing them of conspiring to fix prices on certain chicken products in the United States. Counsel for DPPs discovered the predicate for these allegations on their own; this litigation did not follow on a government investigation; indeed, the government investigation followed on this litigation (and has now led to criminal indictments). The allegations in the complaint survived the Defendants' motions to dismiss and the parties have since engaged in considerable discovery (until it was stayed, in whole and then in part, by the

Department of Justice’s follow-on investigation). DPP Counsel have litigated this case for five years without any payment of attorneys’ fees or reimbursement of significant expenses incurred in the litigation. The docket and history of the case shows that this is an extremely hard-fought and adversarial case. At the time DPPs petitioned for attorneys’ fees, six of the twenty Defendants had settled. Those settlements total some \$170 million, the majority of which (approximately \$155 million) was from the most recent settlements with Tyson and Pilgrim’s. Litigation against the other fourteen Defendants is ongoing, including a pending motion for class certification. In light of the settlements obtained to date, DPPs have now sought an interim fee award.

IV. THE SEVENTH CIRCUIT’S MARKET-BASED APPROACH TO FEE AWARDS IN CLASS ACTIONS

7. The Seventh Circuit is unique among federal circuits in that it requires district courts to replicate the market for legal services when it sets fees in class actions. *See, e.g., Americana Art China v. Foxfire Printing & Packaging, Inc.*, 743 F.3d 243, 246 (7th Cir. 2014) (“[W]e always seek to replicate the market value of an attorney’s services”); *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 957 (7th Cir. 2013) (“[A]ttorneys’ fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services.”); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) (“When attorney’s fees are deducted from class damages, the district court must try to assign fees that mimic a hypothetical *ex ante* bargain between the class and its attorneys.”); *Sutton v. Bernard*, 504 F.3d 688, 693 (7th Cir. 2007) (“Because the court chose to wait until the end of litigation, it was required to set the fee by estimating what the parties would have agreed to had negotiations occurred at the outset.”); *In re Synthroid Marketing Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) (“*Synthroid I*”) (“We have held repeatedly that, when deciding on appropriate fee levels in

common-fund cases, courts must do their best to award counsel the market price for legal services”). It is well known that the market for legal services in the United States virtually always pays lawyers who work on contingency like class counsel with a percentage of the client’s recovery. *See* Fitzpatrick, *A Fiduciary Guide*, *supra*, at 1159-61.

8. In theory, judges could determine the market fee percentage in class action cases by holding an auction for the class counsel position at the start of litigation. *See id.* at 1164. In practice, though, this is difficult to do for a variety of reasons. *See id.* at 1165-66. Indeed, the obstacles are so severe that experimentation with auctions has all but ceased. *See id.* For example, I suspect it would have been impossible to conduct an auction in this case given that DPP Lead Counsel were the only attorneys who applied to lead the case.

9. Instead, district courts in the Seventh Circuit and elsewhere almost always set fees *ex post* when a fee petition accompanies settlements or when judgment has been entered for plaintiffs. In these situations, the Seventh Circuit has instructed district courts to estimate what the *ex ante* market percentage would have been for the legal services rendered by class counsel by looking at a number of circumstantial factors. These factors include (1) fee contracts that any large-stakes class members signed with their attorneys in this litigation, *see In re Synthroid Marketing Litig.*, 325 F.3d 974, 976 (7th Cir. 2003) (“*Synthroid II*”) (analyzing fee contracts from large-stakes class members who “hired law firms to conduct this litigation”); *Synthroid I*, 264 F.3d at 719-20 (instructing courts to examine “actual agreements” between large-stakes class members and their attorneys in that very litigation); (2) fee contracts large-stakes plaintiffs sign with attorneys in similar litigation, *see Rohm & Haas*, 658 F.3d at 635 (““actual fee contracts that were privately negotiated for similar litigation””), *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005) (same); (3) fee percentages awarded by other district court judges trying to mimic the market

rate for class action lawyering in similar cases, *see Taubenfeld*, 415 F.3d at 599 (affirming award where “the court considered awards made by courts in other class action cases . . . in the Northern District of Illinois”); *see also Rohm & Haas*, 658 F.3d at 635 (“‘information from other cases’”)³; and how the (4) risks, (5) quality of lawyering, (6) work required, and (7) stakes would have affected the *ex ante* contingency fee percentage. *See Silverman*, 739 F.3d at 958 (affirming above-average fee percentage because district court could have found that the “suit was unusually risky” and “[t]he greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel”); *Rohm & Haas*, 658 F.3d at 636 (affirming award where district court “assessed the amount of work involved, the risks of nonpayment, and the quality of representation”); *Sutton*, 504 F.3d at 693 (“We have said the market price for legal fees ‘depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case.’”); *Taubenfeld*, 415 F.3d at 600 (affirming fee award where “[t]he district court also evaluated other factors,” including “the quality of legal services rendered” and “degree of risk”).

V. SHOULD THE COURT USE A SLIDING-SCALE PERCENTAGE FORMULA IN THIS CLASS ACTION?

10. Let me address the first question asked by this Court’s order: should the Court use a sliding scale fee formula? A so-called “sliding scale” percentage formula pays the lawyer

³ In years past, the Seventh Circuit also instructed district courts to examine fee contracts that resulted from auctions for class counsel in similar cases. *See Rohm & Haas*, 658 F.3d at 635; *Sutton*, 504 F.3d at 692 n.2; *Taubenfeld*, 415 F.3d at 599; *Synthroid I*, 264 F.3d at 719. Because auctions are not really used anymore (and were never used much even in past years), the Seventh Circuit has since cast doubt on that factor. *See Silverman*, 739 F.3d at 957-58 (“In many markets competition proceeds by auction. But . . . solvent litigants do not select their own lawyers by holding auctions, because auctions do not work well unless a standard unit of quality can be defined and its delivery verified. There is no ‘standard quantity’ of legal services, and verification is difficult if not impossible.”).

different marginal percentages of the client's recovery rather than a flat percentage. For example, an increasing sliding scale might pay the lawyer 33% of the first \$10 million recovered, 40% of the next \$10 million, and so on; a decreasing sliding scale might pay the lawyer 33% of the first \$10 million recovered, 25% of the next \$10 million, and so on. In my opinion, none of the circumstantial factors the Seventh Circuit directs district courts to examine to estimate the *ex ante* fee arrangement in this case suggests that a sliding-scale formula based on the size of the recovery would have been used here.

11. Let me begin with factor (1): *ex ante* fee agreements with large-stakes class members in this litigation. According to DPP Class Counsel, the representative class members signed retainer agreements that did not specify a fee percentage; they specified only that any fees would be awarded by the Court. This is not uncommon in litigation that the parties intend to go forward as a class action. Even when such agreements exist, I do not usually give them great weight unless the class representatives qualify as "large scale" class members with significant stakes in the litigation. *See In re Trans Union Corp. Priv. Litig.*, 629 F.3d 741, 744 (7th Cir. 2011). Nonetheless, we have a clear indication that the class members view the fee award as being reasonable: DPP Class Counsel have notified all of the class members—some of whom are very large companies with very large stakes—that they are seeking a flat fee of 33⅓%, and not a single one of them objected. In light of the sophistication of the class members, all of whom are businesses and some of whom are quite large, the conclusion that can be drawn from their decision not to object is that they favor the flat fee proposed by DPPs—not a sliding-scale fee. Although this is technically *ex post* acquiescence rather than *ex ante* affirmative agreement, the Seventh Circuit has said that is probative nonetheless. *See Silverman*, 739 F.3d at 959 (affirming fee award

because “none of the institutional” class members “protested” the fee request even though they have “in-house counsel” who could have earned them a “tidy sum” if the fee had been reduced).

12. I use the word “technically” above because I believe the *ex post* acquiescence in this case is actually equivalent to *ex ante* agreement. The reason is because this litigation is ongoing. Thus, the large class members that did not object have to worry about DPP Class Counsel’s incentives against the remaining Defendants; the last thing they would want to do at this point is signal that they will nickel and dime them at the end. Rather, they are telling DPP Class Counsel that they are happy to pay a flat one-third. But if the large class members are willing to pay counsel a flat one-third now, then it is hard to see why they would not have been willing to pay them one-third at the outset of the litigation for the very same reason: they would have been worried about DPP Class Counsel’s incentives. Thus, I think this factor fully supports the conclusion that the market rate here would have been a flat 33⅓%—not a sliding scale formula.

13. Consider next factor (2): fee contracts large-stakes plaintiffs sign with attorneys in similar litigation. In a recent article in the Fordham Law Review, I canvassed the data that exists on fee agreements that sophisticated corporations enter into when they hire lawyers on contingency. *See Fitzpatrick, A Fiduciary Guide, supra*, at 1159-63. There is admittedly not much systematic data, but the data that does exist suggests that they use the same fee arrangements that personal injury plaintiffs use: flat fee percentages of one-third and the like or percentages that escalate even higher based on procedural maturity—not scales that slide based on recovery size. *See id.* The best study comes from patent litigation. *See David L. Schwartz, The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335 (2012). Patent lawsuits can involve billions of dollars and the most sophisticated corporations in the world. Yet, Professor Schwartz found that the two main ways of setting the fees for contingent fee lawyers in these cases

are a flat rate (most cases) or a rate that escalates based on procedural maturity. *Id.* at 360. Of the agreements using a flat fee, the mean rate was 38.6% of the recovery. *Id.* Of the agreements he reviewed that escalated based on procedural maturity, the average percentage upon filing was 28% and the average through appeal was 40.2%. *Id.* No one used a sliding scale based on the size of recovery.

14. It is true that patent litigation is not the same as antitrust litigation. But, in the Fordham article, I also gathered data from a series of antitrust class actions that suggests that large, sophisticated corporations prefer flat fees there as well. *See Fitzpatrick, A Fiduciary Guide, supra*, at 1161-62. The class members in these cases were the same two dozen or so drug wholesalers. Many were large companies—several were of Fortune 500 size or bigger—and most or all had in-house or personal counsel monitoring the litigations. The potential damages were enormous. In just one of the cases, *King Drug Company of Florence, Inc. v. Cephalon, Inc.*, No. 2:06-cv-1797-MSG (E.D. Pa. Oct. 8, 2015), the class recovered over \$500 million. In the series as a whole—which is still ongoing but spanned almost 20 years in my data—they recovered more than \$2 billion. As I show in my article, class counsel requested—and received—a flat 33⅓% in almost every one of these cases. *See Fitzpatrick, A Fiduciary Guide, supra*, at 1161-62, 1172-78. To the extent I was able to find the *ex ante* fee agreements with the representative plaintiffs, they, too, called for a flat 33⅓%. *See id.* But most tellingly of all in my opinion: *not a single class member ever objected* to the fee request in any of these cases; again, these cases spanned 20 years. It is hard to draw any conclusion from this other than that, even in antitrust cases, sophisticated corporations are happy to play flat fees of 33⅓% and they are happy to do so even in the largest cases. It is true that this is only one set of corporations in one series of antitrust cases, but it is a strong indicator. Thus, I think this factor, too, fully supports the conclusion that the market rate

here would have been a flat 33⅓% (or perhaps a percentage that escalated based on procedural maturity)—not a sliding-scale formula based on the size of recovery.

15. Consider next factor (3): fee awards from other district courts in the Seventh Circuit seeking to calculate the market rate for class action lawyering in similar cases; I focus on the Seventh Circuit because that is the only Circuit where district courts are instructed to approximate the *ex ante* market rate for lawyering when setting fees in class actions. In my empirical study of all class action fee awards in 2006 and 2007, I did not record how often district courts used a sliding scale as opposed to a flat percentage. To my knowledge, no one has ever investigated this matter. But I have been unable to find any data from anyone that suggests even indirectly that the sliding scale is being used frequently in the Seventh Circuit. For example, the mean and median fee percentages in the Seventh Circuit are higher than those of other circuits. *See Fitzpatrick, Empirical Study, supra*, at 836 (finding mean and median of 27.4% and 29% in the Seventh Circuit); Eisenberg-Miller 2017, *supra*, at 951 (finding the Seventh Circuit’s mean and median from 2009 to 2013 to be 28% and 30%). If sliding scales were common in the Seventh Circuit, I doubt this would be the case—unless they were *increasing* rather than decreasing sliding scales. Moreover, although it is true that nationwide data shows that some courts award lower fee percentages when recoveries are greater, *see Fitzpatrick, Empirical Study, supra*, at 828 (noting a statistically significant effect nationwide, largely in settlements above \$100 million); Eisenberg-Miller 2017, *supra*, at 947 (same), when I separated my Seventh Circuit data from the other Circuits and examined it for this declaration, there was no statistically significant relationship between fee percentage and settlement size in the Seventh Circuit ($p = .167$);⁴ this, too, suggests

⁴ The “*p* value” is the probability that the relationship between fee percentage and recovery size exists by random chance in a given statistical model—in this case, the model is simple least-squares linear regression. “If *p* is smaller than 5%, the result is said to be ‘statistically significant.’” Federal Judicial Center, Reference Manual on Scientific Evidence 168 (2d ed. 2000). When a

sliding scales are not often used in the Seventh Circuit—or that, again, if they are, *increasing* scales are used as frequently as decreasing scales. I am unaware of any study since mine that has found to the contrary. But to whatever extent sliding scales have been used in the Seventh Circuit, neither I nor DPP Class Counsel could find any examples in antitrust cases, which, of course is the particular market that we are trying to assess here.⁵ Thus, I think this factor, too, supports the conclusion that the market would not have used a sliding scale in this case.

16. Consider finally factors (4-7), where the Seventh Circuit instructs district courts to assess how the risks, quality, work required, and stakes at issue in this case might have affected the *ex ante* market. None of these factors suggest that a sliding scale would have been used here. Rather, they suggest that the parties would have demanded the same percentages they demand in the *most* complex, *most* risky, *most* significant contingency litigation; as I noted above, the best evidence of what those would have been are a flat 33⅓% (or perhaps percentages that escalate based on procedural maturity).

relationship is statistically significant, we can reject the hypothesis that the relationship exists by random chance. In this case, *p* is larger than .05, so we cannot reject the hypothesis that the relationship between fee percentage and recovery size in the Seventh Circuit exists by random chance.

⁵ Indeed, we could barely find any examples in *any* type of case: in the last 20 years, we could find only *seven* sliding-scale fee awards on Westlaw in the entire Seventh Circuit after examining all the cases that cited *Synthroid II* or *Silverman* and using the following searches in the Seventh Circuit database: (fee /4 award & “class action” & “sliding scale” (down! /5 sliding)); (fee /4 award & “class action” “sliding scale” (down! /5 sliding)); (fee /4 award & “class action” & “sliding scale” (increase /5 decrease) (down! /5 sliding)); (attorney /3 fee & “class action” & “sliding scale”); (attorney /3 fee & “class action” & “sliding scale” (increase /5 decrease) or (down! /5 sliding)). Over that same time span, based on my empirical study, I estimate that there have been nearly 800 class action settlements in the Seventh Circuit. *See* ¶ 3, *supra* (finding 79 class action settlements over two years in the Seventh Circuit). Although Westlaw is obviously underinclusive of district court fee orders, I think the most reasonable conclusion to draw from this is that the sliding scale is not just a minority approach in this Circuit, but a very small minority approach at that. *See, e.g., In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 801 (N.D. Ill. 2015) (“*Synthroid II* is the only consumer class action known to this court where the parties (or in this case the court) estimated a downward scaling fee agreement in a consumer class action.”).

17. First, this litigation has transpired longer than the typical antitrust class action and this was perfectly predictable from the outset. According to my empirical study, the average length to final approval of a settlement in an antitrust class action case was approximately three years. *See Fitzpatrick, Empirical Study, supra*, at 820. Yet this case has already transpired for five years and is still not yet fully resolved. In light of the seriousness of the allegations and the resources of the Defendants, this was perfectly predictable. Indeed, the allegations here are so serious they prompted an investigation by the Department of Justice that has led to several criminal indictments and a guilty plea from Pilgrim's. There was little doubt in anyone's mind that the Defendants were going to fight this case long and hard. But the longer a lawyer expects to go unpaid, the higher the percentage the lawyer is likely to charge at the outset.

18. Second, DPP Class Counsel knew this litigation would be riskier than most antitrust cases. Perhaps most importantly, DDP Class Counsel had to undertake this matter without the benefit of a prior government investigation; that obviously made this a riskier and more difficult venture than many antitrust cases. Moreover, even after an extensive—and expensive—investigation, it still was not clear this case would even survive a motion to dismiss; the line between legal “parallel conduct” and illegal “agreement” is a notoriously uncertain one. Indeed, even after surviving the motion to dismiss, it still is not clear this case will survive summary judgment; it will depend on whether DPP Class Counsel were able to find evidence in discovery to support the existence of a conspiracy; it will also depend on the outcome to challenges to their experts. Furthermore, it is not certain that the Court will even certify a litigation class here; victories on the merits questions could be for naught if the Court refuses to do so. But even if DPP Class Counsel prevail on all legal facets of the case, they still must convince a jury to see the facts their way and to award a meaningful amount of damages. And even if DPP Class Counsel do all

of that, all these risks will be multiplied one time over again during any appeal. The riskier the case, the higher the percentage the lawyer is likely to charge at the outset.

19. Third, DPP Class Counsel knew they would have to outlay significant out-of-pocket costs in this case. Indeed, the case isn't even over yet and they have already spent over \$5 million. This is an important consideration for the percentage that a lawyer must charge at the outset because, even if a lawyer eventually wins the case, the lawyer cannot recover any multiplier on costs to compensate for the risk of non-recovery. *See generally* Morris A. Ratner & William B. Rubenstein, *Profit for Costs*, 63 DePaul L. Rev. 587 (2014). Rather, the lawyer must make up for the risk of non-payment of costs on the fee side. This means that the greater the cost outlay, the greater the percentage the lawyer must charge at the outset.

20. In short, in light of the substantial length this litigation was expected to take, the substantial risks this litigation involved, and the substantial outlay of expenses this litigation was expected to require, it is my opinion that all these factors, too, fully support the conclusion that the market rate here would have been the same percentages demanded in the most complex, most risky, most significant contingency litigation: a flat 33⅓% (or perhaps percentages that escalate based on procedural maturity)—not a sliding scale based on recovery size.

21. Let me close this section with a few words about the Seventh Circuit opinions authored by Judge Easterbrook that this Court cited in its order. I think it is fair to say that Judge Easterbrook is single-handedly responsible for any interest in the Seventh Circuit in sliding scale formulae based on recovery size in class action cases. He is also a jurist whose work I cite constantly in my own and one who I admire more than perhaps all but the two for whom I clerked. But these opinions must be read carefully. It is true that Judge Easterbrook sometimes made favorable comments about a decreasing sliding scale based on recovery size, *see Synthroid II*, 325

F.3d at 975 (“[T]he market rate, as a percentage of recovery, likely falls as the stakes increase”); *Silverman*, 739 F.3d at 959 (“[N]egotiated fee agreements regularly provide for a recovery that increases at a decreasing rate.”); *see also Synthroid I*, 264 F.3d at 721 (“Both negotiations and auctions often produce diminishing marginal fees when the recovery will not necessarily increase in proportion to the number of hours devoted to the case.”). But these opinions are hardly ringing endorsements of the declining sliding scale. Judge Easterbrook only went along with the sliding scale in *Synthroid II* to “stick as close as possible to the district court’s approach” in order to avoid “remanding for still a third calculation.” 325 F.3d at 980. Moreover, his favorable comments were brief, passing surmises—he said these arrangements occurred “often” and “regularly” or were “likely” in the market without citing anything but a small handful of class action auctions that produced sliding-scale bids, *see Synthroid I*, 264 F.3d at 721 (citing three auctions). Yet, in the very same opinions, he also explained why a sliding scale based on recovery size might not be optimal, *see id.* (“This is not to say that systems with declining marginal percentages are always best. They also create declining marginal returns to legal work, ensuring that at some point attorneys’ opportunity cost will exceed the benefits of pushing for a larger recovery, even though extra work could benefit the client. This feature exacerbates the agency costs inherent in any percentage-of-recovery system.”), and cast doubt on the relevance of auctions, *see Silverman*, 739 F.3d at 957-58 (“In many markets competition proceeds by auction. But . . . solvent litigants do not select their own lawyers by holding auctions, because auctions do not work well unless a standard unit of quality can be defined and its delivery verified. There is no ‘standard quantity’ of legal services, and verification is difficult if not impossible.”). Moreover, Judge Easterbrook has affirmed many fee awards despite the fact that they did not use a sliding scale, as *Silverman* itself

attests. In my opinion, sliding scales based on recovery size are not as attractive as Judge Easterbrook sometimes thought.

22. Judge Easterbrook thought sliding scales based on recovery size would be attractive to the market because he believed that litigation often presents economies of scale, and, in a competitive market, marginal price will be driven down to marginal cost; thus, as the marginal cost declines, so should the marginal price (in this case, the fee percentage). *See Silverman*, 739 F.3d at 959 (“Many costs of litigation do not depend on the outcome; it is almost as expensive to conduct discovery in a \$100 million case as in a \$200 million case.”). That is a simple and compelling economic model when we are dealing with a product of fixed quality. But the product here—litigation—is not of fixed quality; the quality depends on how hard the lawyer works, as well as the lawyer’s skill and expertise. This is particularly true in antitrust cases in which the complexity and size of the case (and in turn the amount of recovery) require that the attorneys handling the case expend significant effort and have considerable skill.⁶

23. When we assume that quality is not fixed, the economic models become more complicated—as Judge Easterbrook himself acknowledged. *See Synthroid II*, 325 F.3d at 979 (“For legal services, however, it is hard if not impossible to hold the quality dimension constant.”).

⁶ Judge Easterbrook thought a sliding scale based on recovery size would be particularly attractive when the dispute is over liability and the magnitude of damages will not vary with attorney effort. *See Silverman*, 739 F.3d at 959 (“Much of the expense must be devoted to determining liability, which does not depend on the amount of damages; in securities litigation damages often can be calculated mechanically from movements in stock prices.”). This may explain the use of sliding scales in the two TCPA cases cited by this Court, *In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d at 804, and *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 237 (N.D. Ill. 2016). TCPA cases are statutory damages cases and statutory damages cases are paradigmatic examples of cases where damages flow from liability without much marginal effort. But, needless to say, damages are *not* likewise automatic in antitrust cases. Indeed, the TCPA cases explicitly recognized that TCPA litigation is very different from antitrust litigation. *See In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d at 801. This is probably why neither I nor DPP Class Counsel could find a single antitrust case in the Seventh Circuit where a sliding scale was used.

Indeed, I examined the contingency fee models in my recent Fordham article. In particular, I examined the models depicting how rational clients would structure contingency fees *ex ante* in order to maximize their take from the litigation. *See* Fitzpatrick, *A Fiduciary Guide*, *supra*, at 1156-59. The models are indeterminate because they depend on many variables, such as how well the client monitors the lawyer. But almost all of them are devoted to flat percentages and percentages that escalate with procedural maturity. To the extent there is any endorsement of a sliding scale based on recovery size, it is usually an *increasing* scale to mitigate the biggest drawback of paying lawyers a percentage of the recovery: any percentage lower than 100% causes the lawyer to want to underinvest in the case given that they bear all of the investment but only a fraction of the return on investment; the lower the percentage the greater the desire to underinvest. *See id.* at 1158 n.38.

24. The decreasing sliding scale based on recovery size is not popular in the literature because it has one big theoretical drawback and one big practical one. The theoretical drawback is, as Judge Easterbrook himself noted, that it exacerbates rather than mitigates the aforementioned underinvestment problem; this is dangerous if the client is not in a good position to monitor the lawyer well. *See Synthroid I*, 264 F.3d at 721 (“They also create declining marginal returns to legal work, ensuring that at some point attorneys’ opportunity cost will exceed the benefits of pushing for a larger recovery, even though extra work could benefit the client. This feature exacerbates the agency costs inherent in any percentage-of-recovery system.”). The practical drawback is that it requires something approaching clairvoyance to implement because the parties need to know where to set the inflection points at the beginning of the case—*i.e.*, before there has been any discovery or other relevant information elicited by the litigation. *See* Fitzpatrick, *A Fiduciary Guide*, *supra*, at 1166. In other words, in a world with imperfect monitoring and

imperfect information—that is, in the real world—decreasing marginal percentages based on recovery size are hard to pull off.

25. All of this is confirmed by the fact that there is very little evidence that sophisticated clients use sliding scales based on recovery size. Judge Easterbrook did not cite any such evidence; instead, he cited three auctions where decreasing marginal bids had been submitted. But, as he himself acknowledged, auctions are very difficult to pull off when quality is variable; it is for this reason that auctions have been all but abandoned in class actions. *See Synthroid II*, 325 F.3d at 979 (“There is, moreover, considerable question just what is being auctioned in bidding to represent a class. Normally an auction specifies the precise product to be sold (a particular painting, a share of stock in a named corporation, or 5,000 cubic yards of concrete having defined attributes). For legal services, however, it is hard if not impossible to hold the quality dimension constant.”). Thus, I do not believe the best way to mimic the market is to mimic auctions; large, sophisticated corporations do not auction their contingency legal representation—again, as Judge Easterbrook acknowledged: “Large and sophisticated purchasers of legal services, such as Exxon/Mobile and General Motors, do not acquire legal services at auction” *See id.*

26. I tried to shine some light on what sophisticated purchasers of legal services do in my Fordham article; in particular, I examined the only systematic data I could find of how these clients choose to pay lawyers on contingency. There was no evidence they used sliding scales based on recovery size. *See Fitzpatrick, A Fiduciary Guide, supra*, at 1166, 1170. It is true there is *anecdotal* evidence that clients sometimes choose marginally decreasing rates based on recovery size, but there is also anecdotal evidence that clients sometimes choose marginally *increasing* rates. *See, e.g., In re AT & T Corp.*, 455 F.3d 160, 163 (3d Cir. 2006) (describing fee agreement between class counsel and “the lead plaintiff New Hampshire Retirement Systems”: “The formula

provided attorneys' fees would equal 15% of any settlement amount up to \$25 million, 20% of any settlement amount between \$25 million and \$50 million, and 25% of any settlement amount over \$50 million.”). Rather, the systematic data that exists suggests that clients overwhelmingly prefer flat percentages or percentages that vary (and increase) with litigation maturity—not with recovery size; indeed, Judge Easterbrook himself noted how common the latter are. *See Synthroid I*, 264 F.3d at 722 (“Systems where fees rise based on the stage of litigation rather than the calendar are more common in private agreements (indeed they are the norm for contingent-fee contracts in tort suits).”). In short, with the greatest respect to Judge Easterbrook, I think there is very little reason to believe that clients *anywhere* commonly choose decreasing marginal percentages, let alone reason to believe that the plaintiffs in this case would have wanted to use them.⁷

⁷ Judge Easterbrook also suggested that marginally decreasing percentages are consistent with the empirical studies—including my own—showing that some courts award lower fee percentages in bigger class action settlements. *See Silverman*, 739 F.3d at 959 (“The articles we have cited reinforce the observation in the *Synthroid* opinions that negotiated fee agreements regularly provide for a recovery that increases at a decreasing rate.”). But these findings are based on fee awards from other Circuits (*see* ¶ 15, *supra*, reporting no such statistically significant effect in the Seventh Circuit) that are not even trying to capture how clients pay lawyers in the market like the Seventh Circuit does. *See Synthroid I*, 264 F.3d at 718 (“The judge did not explain why she decided to follow decisions of district courts in other jurisdictions, rather than decisions of the United States Court of Appeals for the Seventh Circuit. For the approach that these districts take, . . . cannot be reconciled with the approach our opinions adopt. We have held repeatedly that, when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services.”). Moreover, the lower fee percentages in other Circuits are not even *marginally* declining percentages as required by the sliding scale approach. They are lower *flat* percentage rates when the lawyer recovers more, something that Judge Easterbrook has said are so irrational that no client would structure fees in that way and are therefore forbidden in the Seventh Circuit. *See id.* (“Under the court’s ruling, a \$40 million settlement would have led to the same aggregate fees as the actual \$132 million settlement. Private parties would never contract for such an arrangement, because it would eliminate counsel’s incentive to press for more than \$74 million from the defendants. Under the district court’s approach, no sane lawyer would negotiate a settlement of more than \$74 million and less than \$225 million; even the higher figure would make sense only if it were no more costly to obtain \$225 million for the class than to garner \$74 million.”).

VI. IF THE COURT DOES USE A SLIDING SCALE, WHAT SHOULD THE SCALE BE?

27. This Court’s order also asked what the sliding scale should be if the Court nonetheless decided to use one. In my opinion, it is impossible to answer this question with any degree of confidence. In order to construct the sliding scale that maximized the class’s take from this litigation, we would need to know DPP Class Counsel’s so-called “production function”—essentially, what the outcome of the litigation would be at each additional unit of time invested by counsel. *See, e.g.,* Bruce L. Hay, *Contingent Fees and Agency Costs*, 25 J. Legal Stud. 503, 515-23 (1996). No one knows this, including DPP Class Counsel; for one thing, it depends on what the Defendants will do in response to each additional unit of time invested by DPP Class Counsel. Moreover, even if we knew the production function, it would still be complicated to figure out where to set the inflection points to maximize the class’s take from the litigation in light of the other variables involved in the calculation. *See id.* The only academic papers to attempt this sort of thing have tried to calculate optimal flat contingency percentages, *see, e.g., id.*; I am unaware of any study that has even attempted to calculate optimal marginal percentages.

28. In light of all this, if the Court wishes to use a variable rather than flat percentage, I recommend a formula based on procedural maturity rather than recovery size; *e.g.*, to increase the percentage if the case goes to trial and then again if the trial verdict is appealed. As I noted above, this is the variable-percentage formula that has the most support in the marketplace and the theoretical models of what clients would choose *ex ante*. *See* Fitzpatrick, *A Fiduciary Guide*, *supra*, at 1166; Geoffrey P. Miller, *Some Agency Problems in Settlement*, 16 J. Legal Stud. 189, 201 (1987).

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

Nashville, TN

September 14, 2021

A handwritten signature in black ink, appearing to read "Brian T. Fitzpatrick", with a long horizontal stroke extending to the right.

Brian T. Fitzpatrick