

**UNITED STATES DISTRICT COURT
DISTRICT COURT OF MINNESOTA**

IN RE PORK ANTITRUST
LITIGATION

This Document Relates To:

THE DIRECT PURCHASER
PLAINTIFF ACTION

Case No. 0:18-cv-01776 (JRT-HB)

**DECLARATION OF MICHAEL
H. PEARSON IN SUPPORT OF
MOTION FOR FINAL
APPROVAL OF THE CLASS
ACTION SETTLEMENT
BETWEEN DIRECT
PURCHASER PLAINTIFFS AND
SEABOARD FOODS LLC**

I, Michael H. Pearson, declare and state:

1. I am a Partner of the law firm of Pearson Warshaw, LLP. This Court has appointed my firm, together with Lockridge Grindal Nauen P.L.L.P., as Co-Lead Class Counsel for the Direct Purchaser Plaintiff Class (“DPPs”) in this litigation.

2. I submit this Declaration in support of the concurrently filed Motion For Final Approval of the Class Action Settlement Between Direct Purchaser Plaintiffs and Seaboard Foods LLC.

3. On behalf of DPPs, I, my firm, and my Co-Lead Class Counsel personally conducted settlement negotiations with counsel for Seaboard beginning in June 2021. Pursuant to the Settlement Agreement, Seaboard paid \$9.75 million in monetary relief and will provide cooperation to DPPs, as defined in the Agreement. Combined with DPPs’ earlier settlements with the JBS and Smithfield Defendants, this brings the total settlements to date to \$111,614,300.

4. Since the initial complaint was filed, DPPs have continued their factual investigation into the conspiracy alleged in their complaint, and once the Court largely denied Defendants’ motions to dismiss Plaintiffs’ complaints, DPPs commenced extensive discovery.

5. During discovery, DPPs obtained responses to multiple sets of interrogatories, and received millions of documents in response to their requests for production and third-party subpoenas. DPPs, along with other plaintiffs, have taken dozens depositions of the Defendants and third parties. DPPs have also provided responses to

written discovery, produced documents, and appeared for depositions noticed by the Defendants.

6. On November 17, 2020, DPPs and the JBS Defendants entered into a settlement that provided for a payment of \$24,500,000 and meaningful cooperation. The Court granted final approval of that settlement on July 26, 2021. *See* ECF No. 838. On June 29, 2021, DPPs and the Smithfield Defendants entered into a settlement that provided for a payment of \$83 million and meaningful cooperation. The Smithfield settlement was subject to a \$5,635,700 reduction based on the opt-outs received during the settlement administration process. The total net amount paid by Smithfield equaled \$77,364,300. The Court granted final approval of that settlement on January 31, 2022. *See* ECF No. 1154.

7. In October 2023, Co-Lead Class Counsel and the Claims Administrator commenced the initial distribution of settlement proceeds from the JBS and Smithfield settlements to qualified claimants.

8. DPPs thoroughly investigated the facts underlying DPPs' claims prior to reaching the Settlement and were well informed by the time the parties agreed to settle. During the litigation, Co-Lead Class Counsel researched, analyzed, and evaluated many contested legal and factual issues. Based on that analysis, and the information obtained from discovery and cooperation, Co-Lead Class Counsel were well informed of the facts and the benefits, risks, and consequences of the proposed settlement with Seaboard. Co-Lead Class Counsel thoroughly evaluated the relative strengths and weaknesses of our respective litigation positions in relation to this settlement.

9. The proposed settlement comes after extensive confidential, protracted arm's-length negotiations between the parties. These discussions commenced after the Court mostly denied all Defendants' second motion to dismiss in October 2020. ECF No. 520. During the subsequent two years the parties completed fact discovery, litigated class certification, and engaged in highly confidential, extensive arm's-length negotiations. The hard-fought negotiations were kept confidential, and often stalled as the parties vigorously litigated the case. Throughout all of these settlement discussions, counsel for DPPs focused on obtaining the best possible result for the DPP class.

10. The negotiations included many conferences and written exchanges between counsel, and the parties ultimately utilized the assistance of experienced mediator Gregory Lindstrom. The parties and Mr. Lindstrom held a full day remote mediation on May 18, 2023. While the parties made substantial progress during that session, they did not reach agreement on all material terms.

11. The DPPs and Seaboard ultimately signed the Settlement Agreement on June 12, 2023. ECF No. 1936-1.

12. The Settlement Agreement allowed (but did not obligate) Seaboard to terminate the Settlement Agreement if potential members of the Certified Class representing more than a specified portion of relevant transactions opt out of the Certified Class. Settlement Agreement ¶ 20. The threshold number of opt outs was not met, and therefore the termination option was not triggered.

13. There was no collusion or preferential treatment at any time during the negotiations. To the contrary, the negotiations were contentious, hard fought, and fully

informed. DPPs sought to obtain the greatest monetary benefit possible from Seaboard. Furthermore, there was no discussion or agreement at any time regarding the amount of attorneys' fees Co-Lead Class Counsel would ask the Court to award in this case.

14. At this time, Plaintiffs and their counsel are not seeking attorneys' fees, reimbursement of litigation expenses, or class representative service awards from the Settlement proceeds. However, they will do so in the future, and will notify the Class and file a motion with the Court at an appropriate time. At this time, DPPs also are not seeking to distribute the net Settlement proceeds from the Seaboard Settlement to qualified class members.

15. There are thousands of direct purchasers of Pork products in the United States who are putative members of the Class. DPPs have enlisted the services of an experienced class action administrator, A.B. Data Ltd., to administer notice to the Class members. As set forth in the Motion and supporting Declaration of Eric Schachter, the Court-approved Notice Plan has been successfully implemented and Class members have been notified of the Settlement.

16. No Class member has objected to the proposed Settlement or to any other aspect of the litigation. With regard to the deadline to request exclusion from the Settlement, 7 entities (plus affiliates) transmitted their requests two days after the deadline. Given the proximity to the deadline and the fact that the deadline ran concurrently with the Thanksgiving holiday, it is the opinion of Co-Lead Class Counsel and the Claims Administrator that these late requests be included.

17. I have practiced law since 2011, I specialize in antitrust class action law, and I have prosecuted numerous antitrust class actions as lead counsel or other leadership positions. I have negotiated many settlements during those years. In my opinion, and in that of my Co-Lead Class Counsel, the proposed settlement agreement is fair, reasonable, and adequate. The settlement provides substantial benefits to the Certified Class, and avoids the delay and uncertainty of continuing protracted litigation with Seaboard, and should be approved by the Court.

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 13th day of February, 2024 at Sherman Oaks, California.

/s/ Michael H. Pearson

Michael H. Pearson