

**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-JFD)

Honorable John R. Tunheim

**DECLARATION OF MICHAEL
H. PEARSON IN SUPPORT OF
DIRECT PURCHASER
PLAINTIFFS' MOTION FOR
INTERIM PAYMENT OF
LITIGATION EXPENSES**

I, Michael H. Pearson, declare and state:

1. I am a Partner of the law firm of Pearson Warshaw, LLP (“PW”). I submit this Declaration in support of the concurrently filed Motion for Interim Payment of Litigation Expenses.

2. This Court has appointed my firm, together with Lockridge Grindal Nauen P.L.L.P. (“LGN”), as Co-Lead Class Counsel for the Direct Purchaser Plaintiff Class (“DPPs”) in this litigation. (Memorandum Opinion and Order dated March 29, 2023, ECF No. 1887, at 68.) Before that appointment, PW and LGN were appointed as Interim Co-Lead Counsel for DPPs. (ECF No. 149.) PW and LGN have committed thousands of hours of work to develop and advance this complex case. Co-Lead Class Counsel, with the assistance of 14 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 Class Counsel.

3. 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. 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 and other plaintiffs have taken dozens of depositions of the Defendants and third parties. DPPs have also provided responses to written discovery, produced documents, and DPP’s named representatives have appeared for depositions noticed by the Defendants.

4. 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. (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. (ECF No. 1154.) On June 12, 2023, DPPs and Seaboard Foods LLC entered into a settlement that provided for a payment of \$9,750,000 and meaningful cooperation. The Court granted final approval of that settlement on March 5, 2024. (ECF No. 2137.) On March 29, 2024, DPPs and Hormel Foods Corporation entered into a settlement that provided for a payment of \$4,856,000. The Court granted preliminary approval of that settlement on May 6, 2024. (ECF No. 2218.) In total, Co-Lead Class Counsel have secured settlements totaling \$116,470,300 for the DPPs.

5. Notice to the DPP Class of these settlements was approved by the Court and successfully implemented by A.B. Data, Ltd. (the Court-appointed Settlement Administrator, *see* ECF Nos. 631, 845, 2014, 2218) each time. (ECF Nos. 838, 1154, 2137.)

6. There have been no objections to any of the settlements in this case.

7. On August 25, 2023, this Court approved the DPPs' Motion for First Distribution of Net Settlement Proceeds. (ECF No. 2015.) Since that time, A.B. Data, in

consultation with Co-Lead Class Counsel, disseminated notice, diligently processed thousands of claims, determined each claimant's eligibility, and sent a *pro rata* payment to each qualified claimant.

8. On July 22, 2022, this Court approved reimbursement of DPPs' litigation expenses, together with an interim payment of attorney's fees and Class Representative service awards. (ECF No. 1424) In that Order, the Court approved the establishment of a future litigation expense fund in the amount of \$2,494,494.25. (*Id.* ¶ 9.) As of the filing of this motion, that litigation expense fund is exhausted.

9. All DPP Class members have received notice of this motion. In the Court-approved notice for the Hormel Foods settlement, Co-Lead Class Counsel informed Class members that they would seek reimbursement of up to \$1,460,600.00 in litigation expenses, that this motion would be posted to the case website (<http://www.porkantitrustlitigation.com>), and that they would be allowed to object to this motion. (ECF No. 2180-2.) Co-Lead Class Counsel also informed DPPs that the Court will determine the amount of the litigation expenses to be reimbursed from the settlement funds.

10. From May 1, 2022 through May 31, 2024, DPPs have incurred reasonable and necessary Litigation Fund expenses of \$3,065,434.44:

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Litigation Fund Expenses, May 1, 2022 through May 31, 2024	
Category	Amount
1. Investigators & Consultants	\$ 29,813.14
2. Experts	\$ 2,696,844.21
3. Document Database Vendor	\$ 259,962.48
4. Mediators	\$ 17,056.25
5. Phone Records Vendor & Subpoena Costs	\$ 9,794.34
6. Deposition Costs	\$ 26,342.35
7. Court Transcripts	\$ 241.20
8. Miscellaneous Costs	\$ 25,380.47
Total	\$ 3,065,434.44

11. The Class Representative service award to Plaintiff Olean Wholesale Grocery Cooperative, Inc. (ECF No. 1424) inadvertently was paid instead to an entity owned by one of Olean's former principals. Upon discovery of the error, Co-Lead Class Counsel immediately contacted the other entity, who agreed to return the funds. In the interim, Co-Lead Class Counsel promptly paid Plaintiff Olean \$25,000 from the Litigation Fund (this amount is included in the "Miscellaneous Costs" category). When the inadvertently paid funds were repaid, they were deposited in the Smithfield settlement escrow account, instead of in the Litigation Fund. DPPs now request approval from the Court to transfer the repaid \$25,000 from the Smithfield settlement funds set for redistribution to the Litigation Fund as reimbursement. This transfer has no impact on the DPP Class or the recently completed distribution.

12. These expenses were reasonably necessary to advance the interests of the Certified Class and to obtain the favorable results achieved to date. Many of the costs described above and in the accompanying memorandum are not one-time expenses; they are ongoing. The same and similar expenses will be incurred as DPPs continue to prosecute

this case, and they also will be reasonable and necessary to support this litigation. As with the already-incurred expenses, these funds will only be used for reasonable expenses incurred in the ongoing litigation against the remaining Defendants.

13. The deadline for Class members to object to this request is August 3, 2024. Prior to the Court's fairness hearing on September 19, 2024, Co-Lead Class Counsel will report to the Court and address any objections received.

14. In any future petition for reimbursement of expenses, or at the Court's request, Co-Lead Class Counsel will provide an accounting to the Court of their payment of future costs from this award. If funds from this requested award of future expenses are not fully used by the time the case is resolved in its entirety, Co-Lead Class Counsel will so report to the Court at that time and propose a method to return any such remaining funds to the benefit of the Class.

15. Co-Lead Class Counsel will continue to vigorously litigate this case against the remaining Defendants, including seeking discovery and handling all other necessary motion and litigation practice, including trial. Co-Lead Class Counsel will also continue to supervise all aspects of settlement and claims administration, and supervise the final distribution of settlement proceeds to qualified claimants.

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 3rd day of July, 2024 at Sherman Oaks, California.

/s/ Michael H. Pearson
Michael H. Pearson