

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

IN RE: BROILER CHICKEN GROWER
ANTITRUST LITIGATION (NO. II)

This document relates to all actions.

Case No. 6:20-MD-02977-RJS-CMR

Chief Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

**PLAINTIFFS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES**

TABLE OF CONTENTS

| | |
|---|-----|
| TABLE OF CONTENTS..... | i |
| TABLE OF AUTHORITIES | iii |
| INTRODUCTION | 1 |
| BACKGROUND | 3 |
| ARGUMENT..... | 6 |
| I. The Court Should Grant an Award of Attorneys’ Fees in the Amount of One-Third of the Settlement Fund | 6 |
| A. A Percentage of the Fund Is the Preferred Method for Awarding Attorneys’ Fees in a Common Fund Case | 6 |
| B. The Requested Fee Award Is Reasonable Under the Tenth Circuit Law | 8 |
| 1. The Result Obtained for the Class Favors the Requested Award..... | 8 |
| 2. Class Counsel Devoted Significant Time and Labor to Prosecuting This Action..... | 9 |
| 3. The Litigation Involves Contested Questions of Fact and Law..... | 11 |
| 4. This Litigation Requires a High Level of Skill..... | 14 |
| 5. Class Counsel Had to Forgo Other Employment to Litigate This Action..... | 15 |
| 6. The One-Third Award Request Is Within the Range Customarily Awarded in Antitrust Cases. | 15 |
| 7. The Fee Is Contingent in Nature..... | 16 |
| 8. There Are No Unusual Time Limitations. | 16 |
| 9. Class Counsel Have Extensive Experience Litigating Antitrust Class Actions. | 16 |
| 10. The “Undesirability” of the Case..... | 16 |
| 11. The Nature and Length of the Professional Relationship with the Clients. | 17 |
| 12. The Requested One-Third Fee Award Is Similar to Awards in Other Complex Cases..... | 17 |

II. The Court Should Award Reimbursement of Class Counsel’s Reasonable and
Necessary Litigation Expenses 18

CONCLUSION..... 19

TABLE OF AUTHORITIES

| | Page(s) |
|---|---------------|
| Cases | |
| <i>Alvarado Partners, L.P. v. Mehta</i> , 723 F. Supp. 540 (D. Colo. 1989)..... | 9 |
| <i>Been v. O.K. Indus., Inc.</i> , No. 02-cv-285, 2011 WL 4478766 (E.D. Okla. Aug. 16, 2011) | 9 |
| <i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)..... | 6 |
| <i>Brown v. Phillips Petroleum Co.</i> , 838 F.2d 451 (10th Cir. 1988) | 6, 7, 8, 14 |
| <i>Brown v. Pro Football, Inc.</i> , 839 F. Supp. 905 (D.D.C. 1993)..... | 19 |
| <i>Cazeau v. TPUSA, Inc.</i> , No. 18-cv-00321, 2021 WL 1688540 (D. Utah Apr. 29, 2021) | <i>passim</i> |
| <i>Cecil v. BP Am. Prod. Co.</i> , No. 16-cv-00410, 2018 WL 8367957 (E.D. Okla. Nov. 19, 2018) | 16, 18 |
| <i>Childs v. Unified Life Ins. Co.</i> , No. 10-cv-23, 2011 WL 6016486 (N.D. Okla. Dec. 2, 2011) | 9 |
| <i>Cimarron Pipeline Const., Inc. v. Nat’l Council on Comp. Ins.</i> , No. 89-cv-1186, 1993 WL 355466 (W.D. Okla. June 8, 1993)..... | 7, 18 |
| <i>Cook v. Rockwell Int’l Corp.</i> , No. 90-cv-00181, 2017 WL 5076498 (D. Colo. Apr. 28, 2017) | 10, 15 |
| <i>Gottlieb v. Barry</i> , 43 F.3d 474 (10th Cir. 1994) | 7 |
| <i>Gudenkauf v. Stauffer Commc’ns, Inc.</i> , 158 F.3d 1074 (10th Cir. 1998) | 8 |
| <i>Harris v. Chevron U.S.A., Inc.</i> , No. 19-cv-00355, 2020 WL 8187464 (E.D. Okla. Feb. 27, 2020) | 7, 9 |
| <i>In re Assicurazioni Generali S.p.A. Holocaust Ins. Litig.</i> , No. MDL-1374, 2009 WL 762438 (S.D.N.Y. Mar. 24, 2009)..... | 10 |

| | |
|---|---------------|
| <i>In re Credit Default Swaps Antitrust Litig.</i> , No. 13-md-2476, 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016)..... | 11, 19 |
| <i>In re Crocs, Inc. Sec. Litig.</i> , No. 07-cv-02351, 2014 WL 4670886 (D. Colo. Sept. 18, 2014)..... | 18 |
| <i>In re DDAVP Direct Purchaser Antitrust Litig.</i> , No. 05-cv-2237, 2011 WL 12627961 (S.D.N.Y. Nov. 28, 2011)..... | 15 |
| <i>In re Flonase Antitrust Litig.</i> , 951 F. Supp. 2d 739 (E.D. Pa. 2013)..... | 15 |
| <i>In re Linerboard Antitrust Litig.</i> , No. MDL 1261, 2004 WL 1221350 (E.D. Pa. June 2, 2004) | 11 |
| <i>In re Lithium Ion Batteries Antitrust Litig.</i> , No. 13-md-2420, 2020 WL 7264559 (N.D. Cal. Dec. 10, 2020) | 11 |
| <i>In re Municipal Derivatives Antitrust Litig.</i> , 2016 WL 11543257 (S.D.N.Y. July 8, 2016) | 15 |
| <i>In re Nifedipine Antitrust Litig.</i> , No. 03-mc-223, 2011 WL 13392312 (D.D.C. Jan. 31, 2011) | 15 |
| <i>In re Parking Heaters Antitrust Litig.</i> , No. 15-mc-0940, 2019 WL 8137325 (E.D.N.Y. Aug. 15, 2019) | 10 |
| <i>In re Skelaxin (Metaxalone) Antitrust Litig.</i> , No. 12-cv-83, 2014 WL 2946459 (E.D. Tenn. June 30, 2014) | 15 |
| <i>In re U.S. Foodservice, Inc. Pricing Litig.</i> , No. 07-md-1894, 2014 WL 12862264 (D. Conn. Dec. 9, 2014) | 15 |
| <i>In re Universal Serv. Fund Tel. Billing Practices Litig.</i> , No. 02-md-1468, 2011 WL 1808038 (D. Kan. May 12, 2011) | 7, 15 |
| <i>In re Urethane Antitrust Litig.</i> , No. 04-md-1616, 2016 WL 4060156 (D. Kan. July 29, 2016)..... | 7, 10, 15 |
| <i>In re Wellbutrin XL Antitrust Litig.</i> , No. 08-cv-2431, 2012 WL 13224382 (E.D. Pa. Nov. 7, 2012) | 15 |
| <i>In re WorldCom, Inc. Sec. Litig.</i> , 388 F. Supp. 2d 319 (S.D.N.Y. 2005)..... | 7 |
| <i>Johnson v. Georgia Highway Express, Inc.</i> , 488 F.2d 714 (5th Cir. 1974) | <i>passim</i> |

| | |
|---|-----------|
| <i>Lazy Oil Co. v. Witco Corp.</i> , 95 F. Supp. 2d 290 (W.D. Pa. 1997)..... | 19 |
| <i>LeBlanc-Sternberg v. Fletcher</i> , 143 F.3d 748 (2d Cir. 1998)..... | 10 |
| <i>Lewis v. Wal-Mart Stores, Inc.</i> , No. 02-cv-0944, 2006 WL 3505851 (N.D. Okla. Dec. 4, 2006) | 7, 18 |
| <i>McNeely v. Nat’l Mobile Health Care, LLC</i> , No. 07-cv-933, 2008 WL 4816510 (W.D. Okla. Oct. 27, 2008)..... | 9 |
| <i>Shaw v. Interthinx, Inc.</i> , No. 13-cv-01229, 2015 WL 1867861 (D. Colo. Apr. 22, 2015) | 7, 10, 17 |
| <i>Uselton v. Commercial Lovelace Motor Freight, Inc.</i> , 9 F.3d 849 (10th Cir. 1993) | 7, 8 |
| <i>Whittington v. Taco Bell of Am., Inc.</i> , No. 10-cv-01884, 2013 WL 6022972 (D. Colo. Nov. 13, 2013)..... | 7, 17-18 |
| <i>Williams v. Sprint/United Mgmt. Co.</i> , No. 03-cv-2200, 2007 WL 2694029 (D. Kan. Sept. 11, 2007)..... | 8, 17 |

Rules

| | |
|--------------------------|-------------|
| Fed. R. Civ. P. 30..... | 2, 4, 5, 12 |
| Fed. R. Civ. P. 33 | 12 |

Other Authorities

| | |
|---|-----|
| 7B Charles Alan Wright & Arthur R. Miller, <i>Fed. Prac. & Proc. Civ.</i> § 1803 (3d ed. 2020) | 6-7 |
|---|-----|

INTRODUCTION

In connection with the latest settlement in this hard-fought, ongoing, complex antitrust litigation—a \$17.75 million settlement (the “Settlement”) with defendant Sanderson¹—Plaintiffs,² individually and on behalf of the Settlement Class (defined below) respectfully request: (1) an award of attorneys’ fees equaling one-third of the Sanderson Settlement fund (plus accrued interest); and (2) reimbursement of the unreimbursed costs and expenses incurred in furtherance of this litigation that Class Counsel incurred in this case to date.³

The Sanderson Settlement is the fourth settlement in this case thus far. It provides for a payment of \$17.75 million to the Settlement Class. Walker Decl. ¶ 124.⁴ The Court previously granted final approval to settlements with the Tyson, Perdue and Koch Defendants,⁵ for a combined \$51.25 million in cash payments. Together with the Sanderson Settlement, the total amount of all four settlements is \$69 million. In addition to the immediate cash benefit and the

¹ “Sanderson” means, collectively, Sanderson Farms, Inc., Sanderson Farms, Inc. (Food Division), Sanderson Farms, Inc. (Processing Division), Sanderson Farms, Inc. (Production Division), and any and all past, present, and future parents, owners, subsidiaries, divisions, and/or departments, including but not limited to Sanderson Farms, LLC, Sanderson Farms, LLC (Food Division), Sanderson Farms, LLC (Processing Division), Sanderson Farms, LLC (Production Division), and Wayne Farms, LLC.

² The term “Plaintiffs” as used in this memorandum and the Settlement Agreement refers to plaintiffs Haff Poultry, Inc., Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles (“Mike”) Weaver, Marc McEntire, Karen McEntire, Mitchell Mason, and Anna Mason. Anna Mason is an individual plaintiff in a case that is part of this multi-district litigation and is not a proposed class representative. Melissa Weaver originally served as a plaintiff and a class representative for the prior settlements, however, after the Court granted preliminary approval of the Koch Settlement, Ms. Weaver withdrew as a plaintiff; her husband, Mike Weaver remains a plaintiff and a class representative in this litigation.

³ By an order dated April 17, 2023, the Court granted preliminary approval of a Settlement Agreement with defendant Sanderson (*Growers* ECF 708). Unless expressly stated otherwise, all references to docket entries, indicated as “*Growers* ECF [docket number],” are to the docket in *In re: Broiler Chicken Grower Litigation*, No. 6:17-cv-0033-RJS (E.D. Okla.) (“*Growers*”). On December 17, 2020, this original action was consolidated with a number of other actions by the Judicial Panel on Multidistrict Litigation as *In re: Broiler Chicken Grower Antitrust Litigation (No. II)*, No. 6:20-md-2977-RJS-CMR (E.D. Okla.). Where filings are docketed solely on the MDL 2977 docket in the Eastern District of Oklahoma they will be identified as “*Growers II* ECF [docket number].”

⁴ The term “Walker Decl.” refers to the Declaration of Daniel J. Walker in Support of Plaintiffs’ Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, which is being filed concurrently.

⁵ *Growers* ECF 532, 650.

avoidance of the risk, expense, and delay of taking this nearly six-and-a-half-year old action to trial against Sanderson and litigating any appeals, the Sanderson Settlement also provides other important non-monetary benefits to the Settlement Class: (1) Sanderson will cooperate in the continuing prosecution of Plaintiffs' claims against the remaining Non-Settling Defendant (Pilgrim's Pride Corp. ("PPC")); and (2) Sanderson will not enforce provisions in its contracts with Settlement Class members that mandate arbitration or bar participation in class actions for a period of five years. Walker Decl. ¶¶ 125-26.

Over the course of obtaining settlements first with Tyson and Perdue, then with Koch, and now with Sanderson, Class Counsel have vigorously litigated on behalf of the Class. Most notably, and as discussed in greater detail herein, Class Counsel have completed fact discovery, including taking 73 depositions pursuant to Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6), and have defended eight class representative depositions. Class Counsel have also concluded expert discovery (*e.g.*, submitting opening and rebuttal reports, defending the deposition of Plaintiffs' economic expert, and deposing Defendants' experts), and briefed offensive and defensive *Daubert* motions, and a motion for class certification. Class Counsel's litigation efforts continue against the Non-Settling Defendant. To date, Class Counsel has expended approximately 54,000 hours litigating this case for six-and-a-half years since the first complaint was filed. *Id.* ¶ 7.

Pursuant to the Court's April 17, 2023 Order, notice to the Settlement Class members, via both direct mailings and the publication of a short form notice, commenced on May 17, 2023. *Id.* ¶¶ 128-30. The notices apprised Settlement Class members that Class Counsel would submit an application for (i) an award of attorneys' fees up to one-third of the gross settlement amount, and (ii) reimbursement of expenses up to \$2.5 million. *Id.* ¶ 130. As of June 30, 2023, Co-Lead Counsel have received seven (7) written responses from Settlement Class members, each requesting exclusion from the Settlement Class, and no objections. *Id.* ¶ 131.

Given Class Counsel's enormous efforts in this case and the substantial recoveries that Class Counsel obtained on behalf of the Class, Plaintiffs' request for attorneys' fees is reasonable and justified. Class Counsel expended tens of thousands of hours of work and advanced hundreds of thousands of dollars in costs without any guarantee of remuneration or reimbursement, over the course of nearly six and a half years of litigation. Specifically, Plaintiffs' request for one-third of the cash component of the Sanderson Settlement, (*i.e.*,

\$5,916,667), which when combined with the prior fee awards from the Tyson, Perdue and Koch settlements, reflects a multiplier of less than 1 (0.731) using Class Counsel's lodestar at current rates (*id.* ¶ 136). This fee request, and the request for an award of litigation expenses incurred in the amount of \$972,341.98, which Class Counsel reasonably incurred (and funded) in prosecuting these claims, are reasonable and justified (*id.* ¶ 140).

BACKGROUND

Plaintiffs filed the first complaint in this case on January 27, 2017. Walker Decl. ¶ 7. Plaintiffs allege that Defendants and seventeen non-defendant Co-Conspirators⁶ engaged in an overarching scheme to reduce Grower compensation. *Id.* ¶ 11. This conspiracy includes two mutually reinforcing courses of anticompetitive conduct: an agreement not to solicit Growers performing Broiler Grow-Out Services for another Integrator (what the cartelists referred to internally as a "no cold call" agreement), and a regular and extensive reciprocal exchange of grower compensation information, which they accomplished through a third-party intermediary, Agri Stats, as well as through direct oral and written interfirm exchanges. *Id.* The purpose and effect of this scheme was to stabilize Grower compensation and reduce Grower mobility, which ultimately reduced Grower compensation below competitive levels, causing Growers to suffer substantial damages in the form of reduced pay for their work. *Id.* ¶ 12.

Since filing the lawsuit, working on Plaintiffs' behalf, Class Counsel have expended nearly 54,000 hours on this case, and advanced more than nine hundred thousand dollars in unreimbursed costs, without any guarantees of compensation or reimbursement. *See id.* ¶¶ 133-41. In the early stages of the case, counsel spent many hours investigating the claims and drafting the complaint, with assistance from Class Representatives. *See id.* Class Counsel then worked to defend the complaint and to consolidate the handful of cases that were ultimately filed. *See generally id.* ¶¶ 13-30, 36-60. Throughout, defense counsel (some of the country's largest firms and most experienced antitrust lawyers) vigorously litigated on behalf of Defendants. *Id.* ¶ 134. In resisting Defendants' efforts, Class Counsel briefed (and where requested, argued) numerous motions before multiple courts, including: motions to dismiss under Rules 12(b)(2), (3), and (6),

⁶ "Co-Conspirator" means the alleged co-conspirators referred to in the complaint, that is: Agri Stats, Inc. ("Agri Stats"), Foster Farms, Mountaire Farms, Wayne Farms, George's, Inc., Peco Foods, Inc., House of Raeford Farms, Simmons Foods, Keystone Foods, Inc., Fieldale Farms Corp., O.K. Industries, Case Foods, Marshall Durbin Companies, Amick Farms, Inc., Mar-Jac Poultry, Inc., Harrison Poultry, Inc., Claxton Poultry Farms, and Norman W. Fries, Inc.

motions to stay discovery, and a motion to compel arbitration before this Court; multiple motions to dismiss or stay Plaintiffs' claims against Sanderson and Koch in the Eastern District of North Carolina; a motion in the bankruptcy court in the Northern District of Texas; and two rounds of briefing in front of the Panel that resulted in the centralization of multiple different cases against Defendants. *See id.* ¶¶ 13-60. The result of these efforts yielded a single consolidated action before this Court that has proceeded efficiently and effectively against all the Defendants.

A substantial portion of Class Counsel's work in this case has focused on the many tasks necessary to collect and develop the record supporting Plaintiffs' claims by obtaining discovery from the five Defendants and 51 nonparties who possess relevant information, including the sixteen alleged Integrator Co-Conspirators, alleged Co-Conspirator Agri Stats, numerous other non-conspirator integrators, various trade associations, and other individuals with knowledge of the alleged unlawful conduct. *Id.* ¶¶ 67-68. For each of these entities and persons, Plaintiffs served discovery requests, many via subpoena, and then negotiated the scope of discovery, the appropriate custodians, and the search methodologies to be used to identify and collect relevant, responsive documents. *Id.* ¶¶ 69-70, 90, 133. This process involved thousands of hours of attorney time, scores of letters and telephone calls, and dogged attention to detail. Additionally, for Co-Lead Counsel, this meant supervising and managing the work of multiple other Class Counsel to ensure effective and efficient litigation. *Id.* The result has been the collection of over 1.76 million documents (consisting of tens of millions of pages), as well as massive amounts of structured transactional data on over 650,000 Broiler flocks. *Id.* ¶¶ 70, 133.

In addition to their work to secure relevant documents, Class Counsel have prepared for, taken, and defended numerous depositions. These depositions include percipient witness depositions under Fed. R. Civ. P. 30(b)(1), and corporate testimony from Defendants and their alleged Co-Conspirators under Fed. R. Civ. P. 30(b)(6). *Id.* ¶ 78. After delays imposed by the noticed witnesses, witness availability, and disruptions from a related criminal trial, Plaintiffs took 68 depositions under Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6) of witnesses associated with Defendants and their alleged Co-Conspirators, as well as cross-noticed depositions of five absent class members noticed by Defendants. *Id.* The Rule 30(b)(6) deposition requests to both Defendants and nonparty alleged Co-Conspirators were vigorously contested and Plaintiffs engaged in months-long meet and confers with those entities to reach an agreeable scope for those depositions. *Id.* In total, Plaintiffs took 73 depositions under Rules

30(b)(1) and 30(b)(6) and defended eight class representative depositions. *Id.*

On a parallel track with document and deposition discovery, Co-Lead Counsel have worked with expert economists to digest documents and the structured transactional data to prepare economic analyses supporting Plaintiffs' claims, their widespread impact across the class, and their estimated damages. *Id.* ¶ 92. This economic analysis is a critical component of any antitrust case, and Co-Lead Counsel have overseen the expert work to ensure the work is done effectively and with optimal efficiency. *Id.* Leading up to the submission of his opening report in August 2022, Co-Lead Counsel worked extensively with their economic expert, Dr. Hal J. Singer, and then reviewed and analyzed the opposing expert reports of Defendants' three experts. *Id.* ¶ 93. After taking the depositions of Defendants' experts, Co-Lead Counsel continued to work with Dr. Singer on his rebuttal report, submitted in January 2023, and defended his deposition in February 2023. *Id.* ¶ 95.

Following the conclusion of expert discovery, the parties submitted *Daubert* motions on March 17, 2023. *Id.* ¶ 96. Also on that date, Co-Lead Counsel filed Plaintiffs' motion for class certification. *Id.* ¶ 98. On April 28, 2023, the parties filed response briefs to the opposing party's *Daubert* motions and PPC filed its opposition to class certification. *Id.* ¶¶ 97-98. The parties' respective reply papers in support of their *Daubert* motions or class certification were filed on June 2 and 9, 2023, respectively. *Id.* A hearing on these motions is scheduled for July 13-14, 2023. *Id.* ¶ 99.

In addition to their efforts to obtain discovery from Defendants and numerous nonparties, Co-Lead Counsel have worked with the Class Representatives, who have made significant contributions to prosecuting the case. *Id.* ¶¶ 142-153. Co-Lead Counsel have met telephonically with the Class Representatives many times to assist with discovery and settlement efforts, including responding to document requests, providing access to the more than 10,000 hard copy and electronic files produced to Defendants, preparing written responses to interrogatories, consulting on facts, preparing and sitting for their depositions, and discussing settlement negotiations and outcomes. *Id.*

While these activities—investigation, motion practice, and discovery—have yielded documents and data that substantiate Plaintiffs' claims, reaching the settlement with Sanderson, as before with the Tyson, Perdue and Koch settlements, provides an immediate benefit to the Settlement Class, including the fact that the cash settlement fund would become immediately

available. The principles of joint and several liability, however, provide that this immediate benefit to the Settlement Class will not preclude Plaintiffs from recovering their full damages, trebled, against the Non-Settling Defendant.

To Co-Lead Counsel's knowledge, the Sanderson Settlement, together with the Tyson, Perdue and Koch settlements, represent the largest recovery ever on behalf of a class or group of Growers. These Settlements qualify as a meaningful and significant success on behalf of the Settlement Class. Meanwhile, the case continues against PPC, and, as another benefit of the Sanderson Settlement, Sanderson has agreed to cooperate with Plaintiffs in the continuing litigation. Plaintiffs believe cooperation will benefit the Settlement Class.

ARGUMENT

I. The Court Should Grant an Award of Attorneys' Fees in the Amount of One-Third of the Settlement Fund

A fee award of one-third of the gross amount of the Sanderson Settlement (plus accrued interest) is appropriate here. Through their efforts to date, Class Counsel have produced a common fund of \$69 million, plus interest accrued, for the benefit of the Settlement Class, along with important cooperation agreements from Sanderson, as well as Sanderson's agreement not to enforce any arbitration or class action waiver clause for a period of five years. As discussed below, the requested fee award of one-third of the settlement fund (plus accrued interest) is consistent with Tenth Circuit precedent and is reasonable in the context of this litigation.

A. A Percentage of the Fund Is the Preferred Method for Awarding Attorneys' Fees in a Common Fund Case

It is well-established that awarding a percentage of a common fund is the preferred method for calculating attorneys' fees in a class action.⁷ "The court's authority for . . . attorney fees stems from the fact that the class-action device is a creature of equity and the allowance of

⁷ The Supreme Court has recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) ("Common fund fees derive in part from the common law premise that a trustee is entitled to reimbursement from the fund administered.") (citation omitted). The Tenth Circuit instructs that "[a]n award of attorneys' fees is a matter uniquely within the discretion of the trial judge who 'has intimate knowledge of the efforts expended and the value of the services rendered.'" *Brown*, 838 F.2d at 453 (quoting *United States v. Anglin & Stevenson*, 145 F.2d 622, 630 (10th Cir. 1944)).

attorney-related costs is considered part of the historic equity power of the federal courts.” 7B Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc. Civ.* § 1803 (3d ed. 2020). “Attorneys’ fees are appropriately awarded from that fund, on the theory ‘that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant’s expense.’” *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994) (quoting *Boeing Co.*, 444 U.S. at 478). “Courts prefer the percentage of the recovery method because it eliminates disputes about the reasonableness of rate and hours, conserves judicial resources, and aligns the interest of class counsel and the class members to maximize recovery.” *Harris v. Chevron U.S.A., Inc.*, No. 19-cv-00355, 2020 WL 8187464, at *2 (E.D. Okla. Feb. 27, 2020); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (percentage method provides “appropriate financial incentives” necessary to “attract well-qualified plaintiffs’ counsel who are able to take a case to trial, and who defendants understand are able and willing to do so”).

The Tenth Circuit expressly prefers the percentage of the fund method in determining the award of attorneys’ fees in common fund cases. *See Gottlieb*, 43 F.3d at 483; *Brown*, 838 F.2d at 454; *Uelton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849, 853 (10th Cir. 1993). The Tenth Circuit further instructs that where, as here, “federal common law is used to determine the reasonableness of the attorneys’ fee under Rule 23(h), neither a lodestar analysis nor a lodestar cross check is required.” *Harris*, 2020 WL 8187464, at *2 (collecting cases). “Rather, the court may make general findings regarding the expenditure of time and labor based on the record as a whole.” *Id.* Further, as this Court has observed, an award of “one-third of the settlement fund” is “customary” in class action litigation. *Cazeau v. TPUSA, Inc.*, No. 18-cv-00321, 2021 WL 1688540, at *9 (D. Utah Apr. 29, 2021) (Shelby, J.); *see also In re Urethane Antitrust Litig.*, No. 04-md-1616, 2016 WL 4060156, at *1, *8 (D. Kan. July 29, 2016) (awarding fees of one-third of antitrust settlement of \$835 million).⁸

⁸ *See also, e.g., Shaw v. Interthinx, Inc.*, No. 13-cv-01229, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) (“The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class.”) (internal quotation marks omitted); *In re Universal Serv. Fund Tel. Billing Practices Litig.*, No. 02-md-1468, 2011 WL 1808038, at *2 (D. Kan. May 12, 2011) (“[A]n award of one-third of the fund falls within the range of awards deemed reasonable by courts.”); *Lewis v. Wal-Mart Stores, Inc.*, No. 02-cv-0944, 2006 WL 3505851, at *1 (N.D. Okla. Dec. 4, 2006) (awarding one-third of the settlement

B. The Requested Fee Award Is Reasonable Under the Tenth Circuit Law

The sought fee is reasonable under the factors the Tenth Circuit uses to evaluate a requested fee under the percentage of the fund method. The factors are:

(1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee—this is helpful but not determinative; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Brown, 838 F.2d at 454-55 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

The weight given to each factor varies, and “rarely are all of the *Johnson* factors applicable” to the analysis. *Uselton*, 9 F.3d at 854 (quoting *Brown*, 838 F.2d at 456); *see also Gudenkauf v. Stauffer Commc’ns, Inc.*, 158 F.3d 1074, 1083 (10th Cir. 1998) (“We have never held that a district court abuses its discretion by failing to specifically address each *Johnson* factor. To the contrary, we have stated that not all of them need be considered.” (citation omitted)).

The fee requested here is well supported by the *Johnson* factors.

1. The Result Obtained for the Class Favors the Requested Award.

The factor frequently given the most weight in determining the amount of a fee award is the result achieved for the Class (*i.e.*, the 8th *Johnson* factor). *See Brown*, 838 F.2d at 456. In fact, the result obtained may be given greater weight as a *Johnson* factor where, as here,

fund in case settling after three years of litigation and noting that “[a] contingency fee of one-third is relatively standard in lawsuits that settle before trial”); *Whittington v. Taco Bell of Am., Inc.*, No. 10-cv-01884, 2013 WL 6022972, at *6 (D. Colo. Nov. 13, 2013) (“Together the fees and costs amount to approximately 39% of the fund as a whole. This is within the normal range for a contingent fee award.”); *Williams v. Sprint/United Mgmt. Co.*, No. 03-cv-2200, 2007 WL 2694029, at *6 (D. Kan. Sept. 11, 2007) (finding 35% fee award “fair and reasonable” for \$57 million settlement reached after four years and before trial); *Cimarron Pipeline Const., Inc. v. Nat’l Council on Comp. Ins.*, No. 89-cv-1186, 1993 WL 355466, at *2 (W.D. Okla. June 8, 1993) (awarding one-third fee for settlement reached before trial; “Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingent fee basis”).

“recovery was highly contingent and [] the efforts of counsel were instrumental in realizing recovery on behalf of the class.” *Id.*

Here, the Sanderson Settlement, like the prior settlements with Tyson, Perdue and Koch, provides significant benefits for the Settlement Class. The monetary component of the Sanderson Settlement alone is \$17.75 million, which brings the total settlements in the case to \$69 million from four of the five Defendants. The non-monetary component includes important cooperation agreements from Sanderson which will benefit Plaintiffs and the Settlement Class as the case proceeds through class certification, summary judgment, and trial. Additionally, Sanderson agreed not to enforce its compulsory arbitration and class action waiver provisions in Grower contracts for a five-year period following final judgment. Walker Decl. ¶¶ 124-26.

For those reasons, recoveries well before trial are favored by courts. *See, e.g., Cazeau*, 2021 WL 1688540, at *5 (“the value of an immediate recovery outweighs the possibility of a greater recovery after protracted litigation”); *Childs v. Unified Life Ins. Co.*, No. 10-cv-23, 2011 WL 6016486, at *13 (N.D. Okla. Dec. 2, 2011) (“settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation”) (quotation marks omitted); *McNeely v. Nat’l Mobile Health Care, LLC*, No. 07-cv-933, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008) (noting that the class was “better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted”); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 547 (D. Colo. 1989) (“It has been held prudent to take a bird in the hand instead of a prospective flock in the bush.”) (internal quotation marks omitted).

In sum, the combination of some substantial monetary relief now with the additional non-monetary components, including cooperation provisions and relief from compulsory arbitration constitute significant benefit to the Settlement Class, and therefore, this factor supports the requested fee award.

2. Class Counsel Devoted Significant Time and Labor to Prosecuting This Action.

As noted above, a cross-check of counsel’s lodestar is not required under the percentage of the fund approach, and instead, the Court should make a general finding on counsel’s expenditure of time and labor. *See, e.g., Harris*, 2020 WL 8187464, at *2. Nonetheless, a lodestar cross check supports Plaintiffs’ fee request.

Class Counsel have performed approximately 54,000 hours of work in this litigation, which at current billing rates,⁹ from inception through June 16, 2023, amounts to over \$31 million of billable time. *See* Walker Decl. ¶¶ 133, 135 (Class Counsel hours worked total 53,987.95 and lodestar totals \$31,458,032.30).¹⁰ The requested fee of \$5,916,667 is far less than the \$31 million of billable time, even when the prior fees awarded to Class Counsel by the Court in connection with the Tyson, Perdue and Koch settlements are taken into consideration. *See Growers* ECF 531 (Order Granting Plaintiffs’ Motion for Award of Attorneys’ Fees, awarding \$11,916,667 in fees, plus any interest accrued); *Growers* ECF 649 (Order Granting Plaintiffs’ Motion for Award of Attorneys’ Fees, awarding \$5,166,667 in fees, plus any interest accrued). If this motion is granted, Class Counsel will have received \$23,000,001 in fees on nearly \$31 million of accrued lodestar (for a multiplier of 0.731).

Thus, when considered in the context of a lodestar cross-check, the requested fee is well within the acceptable range. “Typical multipliers range from one to four depending on the facts, with many courts awarding multipliers larger than four on case-specific grounds.” *Cook v. Rockwell Int’l Corp.*, No. 90-cv-00181, 2017 WL 5076498, at *4 (D. Colo. Apr. 28, 2017) (citing cases and awarding one of the Co-Lead Counsel here a 2.41 multiplier from a \$375 million fund); *see also Urethane Antitrust Litig.*, 2016 WL 4060156, at *7 (approving a fee yielding a multiplier of approximately 3.2, and noting that a multiplier of up to 4 or 5 “would fall within the range of multipliers accepted by a number [of] courts”); *Shaw*, 2015 WL 1867861, at *8 (finding multiplier of 1.37 to be “significantly lower than lodestar multipliers . . . courts consistently have approved in other class action cases”); *In re Parking Heaters Antitrust Litig.*, No. 15-mc-0940, 2019 WL 8137325, at *8 (E.D.N.Y. Aug. 15, 2019) (finding lodestar of 2.35 to be “well within what has been deemed reasonable for common fund settlements in antitrust cases

⁹ *See Urethane Antitrust Litig.*, 2016 WL 4060156, at *7 n.7 (applying current rates to account for “the long delay in receiving payment for past work”); *Been v. O.K. Indus., Inc.*, No. 02-cv-285, 2011 WL 4478766, at *11 (E.D. Okla. Aug. 16, 2011), *report and recommendation adopted*, 2011 WL 4475291 (E.D. Okla. Sept. 26, 2011) (applying current rates as an appropriate adjustment for delay) (citing *Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989)); *see also LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (applying current rates to account for “the delay in payment”); *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litig.*, No. MDL-1374, 2009 WL 762438, at *4, n.10 (S.D.N.Y. Mar. 24, 2009) (“Courts have upheld use of ‘current’ rates to compensate for inflation and delay in payment.”).

¹⁰ Only Co-Lead Counsel have submitted updated figures for hours, lodestar, and firm unreimbursed expenses with this submission. *See* Walker Decl. ¶ 141.

in this circuit,” and citing cases with multipliers ranging from 3-4).

Here, the requested award of one-third of the Sanderson Settlement fund (plus accrued interest), together with the fees awarded from the earlier Tyson, Perdue and Koch settlements, *amounts to a multiplier of less than one*, which is well within the bounds of reasonableness.

Courts are particularly interested in making sure attorneys litigating complex antitrust cases are compensated for their efforts, as one recent court explained:

It is important to encourage top-tier litigators to pursue challenging antitrust cases such as this one. Our antitrust laws address issues that go to the heart of our economy. Our economic health, and indeed our stability as a nation, depend upon adherence to the rule of law and our citizenry’s trust in the fairness and transparency of our marketplace.

In re Credit Default Swaps Antitrust Litig., No. 13-md-2476, 2016 WL 2731524, at *18 (S.D.N.Y. Apr. 26, 2016) (awarding multiplier of just over six).

3. The Litigation Involves Contested Questions of Fact and Law.

This case, like most antitrust class actions has been hard fought. *See, e.g., In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004) (finding an antitrust class action “is arguably the most complex action to prosecute”) (quotation marks omitted); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-md-2420, 2020 WL 7264559, at *15 (N.D. Cal. Dec. 10, 2020) (“Antitrust cases are particularly risky, challenging, and widely acknowledged to be among the most complex actions to prosecute.”) (collecting cases).

As discussed above, Plaintiffs filed this case against five Defendants, but the claims involve seventeen Co-Conspirators. Initially, this meant briefing and arguing numerous important motions in several federal courts. *See Walker Decl.* ¶¶ 13-60, 133. Since then, most of the efforts of this case have focused on obtaining and analyzing documents and data from Defendants and 51 nonparties. *Id.* ¶¶ 67-77. The discovery process has been an enormous endeavor, including crafting appropriate discovery requests and subpoenas, negotiating the scope of discovery, appropriate custodial and noncustodial data and document sources, and acceptable search terms and other search methodologies for each. *Id.* Thousands of hours of attorney time and scores of meet-and-confer calls and letters were needed to obtain the documents and data needed to litigate this case successfully. To date, these parties and nonparties collectively have produced over 1.76 million documents (amounting to tens of millions of pages), as well as large amounts of structured transactional data covering 650,000 Broiler flocks. *Id.* ¶¶ 70, 133. The data

productions have required work with expert econometricians and repeated follow up correspondence with the producing parties as Plaintiffs' work to understand and interpret the structured data productions. *Id.* ¶ 92. Plaintiffs have also issued several rounds of interrogatories and requests for admission to all Defendants, which have required many rounds of follow up and meeting and conferring regarding the sufficiency of Defendants' responses and the review of lengthy Fed. R. Civ. P. 33(d) designations and other supplemental responses flowing from Plaintiffs' meet and confers. *See id.* ¶¶ 72-75. Plaintiffs have also collected and produced their own documents, totaling more than 10,000 pages, which is a substantial number for Plaintiffs in an antitrust class action. *Id.* ¶ 71. Plaintiffs also responded to Defendants' interrogatories. *Id.* ¶ 73.

Plaintiffs also spent thousands of hours searching through and reviewing the documents and other discovery they obtained, including reviewing dozens of deposition and trial transcripts from related litigation involving Defendants and their Co-Conspirators and the Broiler industry. *Id.* ¶ 77.

Plaintiffs began issuing deposition notices and requesting proposed dates in June 2021. *Id.* ¶ 78. By the close of fact discovery, Plaintiffs took 68 depositions under Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6) of witnesses associated with Defendants and their alleged Co-Conspirators, as well as cross-noticed depositions of five absent class members noticed by Defendants. *Id.* The Rule 30(b)(6) deposition requests to both Defendants and nonparty alleged Co-Conspirators were vigorously contested and Plaintiffs engaged in months-long meet and confers with those entities to reach an agreeable scope for those depositions. In total, Plaintiffs took 73 depositions under Rules 30(b)(1) and 30(b)(6) and defended eight class representative depositions. *Id.* Before the first deposition could be conducted, the parties also negotiated a remote deposition protocol stipulation, with one minor issue resolved in a conference with Magistrate Judge Cecilia M. Romero, to provide witnesses, court reporters, and counsel options for remote examinations in a safe manner due to the ongoing pandemic. *Id.* ¶ 79. Judge Romero approved the remote deposition protocol on September 8, 2021. *Growers* ECF 455.

On two occasions, Plaintiffs participated in emergency conferences before Magistrate Judge Romero concerning scheduled depositions. On May 19, 2022, counsel for Tim Stiller, a former PPC executive, informed the parties that Mr. Stiller was under federal indictment and would invoke his Fifth Amendment right at the deposition scheduled for the next day, May 20,

2022. Defendants PPC and Sanderson sought to stay the deposition to file a motion for a protective order. Plaintiffs argued that they had prepared for the deposition and that the parties had been aware of Mr. Stiller's indictment in July 2021. Magistrate Judge Romero found that the moving Defendants could have addressed the need for a protective order earlier in the litigation and ordered the deposition to proceed. *Growers* ECF 590.

On July 27, 2022, Plaintiffs requested an emergency conference before Magistrate Judge Romero during the deposition of William Lovette, a former PPC executive who had been federally indicted and tried and acquitted of criminal charges relating to conspiring in the poultry industry. Mr. Lovette stated at the outset of the deposition that he would be invoking his Fifth Amendment right against self-incrimination during the deposition. However, in responding to questions, Mr. Lovette would only state that he would not answer the question on advice of counsel without stating that the basis for his refusal to respond was the invocation of his Fifth Amendment right against self-incrimination. Magistrate Judge Romero found that Mr. Lovette must specifically invoke the privilege against self-incrimination and directed that the deposition continue with that instruction to the witness. *Growers* ECF 628.

A number of issues also required motion practice, including a motion to compel nonparty Co-Conspirator House of Raeford, a motion to compel PPC to supplement its privilege log claims, motions to quash deposition subpoenas filed by two PPC executives, Jayson Penn and William Lovette (who had been criminally tried in an action brought by the Department of Justice), a motion by PPC to shield conversations its counsel had with a non-party witness a week prior to the individual's deposition, a motion to compel Agri Stats to produce documents responsive to Plaintiffs' subpoena, and a motion to compel the production of documents produced in another litigation (involving the sale of broilers to consumers) that Defendants Koch, PPC, and Sanderson indicated their experts intend to rely upon in this litigation. Walker Decl. ¶¶ 84-91.

In addition to fact discovery, Plaintiffs also worked closely with experts to analyze documents and structured transactional data to support Plaintiffs' claims, their widespread impact across the class, and their estimated damages. *Id.* ¶ 92. Plaintiffs worked closely with their economic expert, Dr. Singer, who submitted both opening and rebuttal reports, and defended Dr. Singer at his deposition. *Id.* ¶¶ 93-95. Plaintiffs also analyzed three reports submitted by Defendants' three proffered experts and deposed each of these experts. *Id.* ¶ 95.

Expert discovery also resulted in *Daubert* motions submitted by the parties, one of which will be argued at a hearing scheduled for July 13-14, 2023. *Id.* ¶¶ 96-97, 99.

Plaintiffs have also been engaged in the process of obtaining valuable cooperation from Tyson, Perdue and Koch afforded by the Settlements. *Id.* ¶¶ 103, 115.

Plaintiffs continue to prepare for the many other issues that await as the parties proceed through class certification (which is now fully briefed and will be addressed at the July 13-14, 2023 hearing (*id.* ¶ 99)), summary judgment and trial. This factor also weighs in favor of the requested fee award.

4. This Litigation Requires a High Level of Skill.

The litigation required—and continues to require—expertise in both antitrust matters and knowledge of federal civil procedure and substantial experience in litigating and managing nationwide antitrust class actions. *See, e.g., Cazeau*, 2021 WL 1688540, at *9 (recognizing that “class actions tend to involve a specialized area of the law which is often complex and difficult, and where some degree of extra skill is needed to litigate the cases properly”) (internal quotation marks omitted).

Co-Lead Counsel—experienced class action litigators who have collectively recovered billions of dollars for injured plaintiffs and class members over the course of their careers—have zealously and skillfully represented the interests of Plaintiffs and the Settlement Class through nearly six and a half years of hotly contested litigation. Class Counsel (*i.e.*, Co-Lead Counsel and the firms working on the litigation at Co-Lead Counsel’s direction) will continue to pursue the litigation against the Non-Settling Defendant, now with the benefit of cooperation agreements as part of the Settlements obtained to date. Class Counsel devoted the requisite skills to prosecute this action and their collective background and experience are a measure of the significant resources devoted to the litigation.

“[T]he number of adverse parties and the quality of opposing counsel” also weigh in favor of the fee application. *Brown*, 838 F.2d at 455. Here, Class Counsel was opposed by highly skilled attorneys from some of the largest law firms in the country, with substantial resources at their disposal and recognized antitrust expertise, who have vigorously litigated this case. This *Johnson* factor supports Class Counsel’s requested award.

5. Class Counsel Had to Forgo Other Employment to Litigate This Action.

As discussed above, this action involves numerous complex issues of fact and law, which have been vigorously contested at all stages of the action by opposing counsel. Class Counsel have—and will continue to—devote considerable resources to achieve further benefits for the Settlement Class. As a result, Class Counsel have forgone other matters in order to pursue this litigation, which they undertook at the outset with no guarantee of compensation. This factor weighs in favor of the requested award.

6. The One-Third Award Request Is Within the Range Customarily Awarded in Antitrust Cases.

Class Counsel seeks an award of one-third of the Settlement fund (plus accrued interest). Courts in this Circuit have found that even a fee award request as high as “a forty percent fee falls within an acceptable range of fee awards.” *Cook*, 2017 WL 5076498, at *1 & n.1 (citing cases awarding fees from one-third to 40%, including cases awarding one-third of the fund).

Numerous courts presiding over antitrust cases have awarded a one-third fee in class action common fund cases, including in antitrust cases. *See, e.g., Urethane Antitrust Litig.*, 2016 WL 4060156, at *8 (awarding one-third of \$835 million settlement); *Universal Serv. Fund Tel. Billing Pracs. Litig.*, 2011 WL 1808038, at *2 (“an award of one-third of the fund falls within the range of awards deemed reasonable by courts”) (citing *Brown*, 838 F.2d at 455 & n.2); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (“in the last two-and-a-half years, courts in eight direct purchaser antitrust actions approved one-third fees”) (collecting cases); *see also* Part A *supra*. Accordingly, the one-third fee request (plus accrued interest) is reasonable relative to fee awards customarily awarded in antitrust and other complex class actions. This *Johnson* factor supports the requested fee award.¹¹

¹¹ *See also In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 12-cv-83, 2014 WL 2946459, at *1 (E.D. Tenn. June 30, 2014) (one-third of \$73 million fund); *In re Wellbutrin XL Antitrust Litig.*, No. 08-cv-2431, 2012 WL 13224382, at *4 (E.D. Pa. Nov. 7, 2012) (one-third of \$37.5 million fund); *In re Nifedipine Antitrust Litig.*, No. 03-mc-223, 2011 WL 13392312, at *2 (D.D.C. Jan. 31, 2011) (one-third of \$35 million fund); *In re Municipal Derivatives Antitrust Litig.*, No. 08-cv-02516, 2016 WL 11543257, at *1 (S.D.N.Y. July 8, 2016) (one-third fee from \$101 million settlement fund); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05-cv-2237, 2011 WL 12627961, at *5 (S.D.N.Y. Nov. 28, 2011) (one-third fee from \$20.25 million settlement fund); *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 07-md-1894, 2014 WL 12862264, at *3 (D.

7. The Fee Is Contingent in Nature.

Class Counsel agreed to pursue this complex antitrust matter on a contingent fee basis, with all the attendant risks to counsel and benefits to clients that such arrangements entail. There was a chance that, despite their best efforts, no recovery would be achieved. Class Counsel have so far incurred near \$31 million in lodestar (through June 16, 2023) and a total of \$972,341.98 in unreimbursed expenses. Walker Decl. ¶¶ 133-41. All of this was incurred at the risk of no compensation or reimbursement absent a recovery. This factor weighs in favor of the requested award. *See, e.g., Cazeau*, 2021 WL 1688540, at *10 (“the contingent nature of Class Counsel’s representation supports the requested fee award”).

8. There Are No Unusual Time Limitations.

The *Johnson* factor concerning the presence of any unusual time limitations is not a factor here. While Plaintiffs, and the Settlement Class, desire a speedy recovery, it is well known that antitrust cases involve protracted litigation.

9. Class Counsel Have Extensive Experience Litigating Antitrust Class Actions.

Class Counsel have decades of extensive experience litigating antitrust class actions, including leading and managing other counsel to assist them, and have recovered billions of dollars for class members. A detailed discussion of Co-Lead Counsel’s experience can be found at their firm websites and in their firm resumes (previously submitted at *Growers II* ECF 214-18 and 214-19 respectively).¹² This factor supports the requested fee award.

10. The “Undesirability” of the Case.

This factor considers the complexity and challenges associated with a case and whether attorneys would be willing to bring the case to a resolution. *See, e.g., Cecil v. BP Am. Prod. Co.*, No. 16-cv-00410, 2018 WL 8367957, at *8 (E.D. Okla. Nov. 19, 2018). As discussed above, this case presents issues that require counsel to dedicate considerable resources in terms of attorney time and litigation expenses over a period of years with no guarantee of remuneration. Indeed, while the consumer/purchaser end of this case proceeding in the District of Illinois attracted

Conn. Dec. 9, 2014) (one-third fee from \$297 million settlement fund in a case that settled before summary judgment).

¹² *See* Hausfeld LLP <https://www.hausfeld.com>; Berger Montague PC, <https://bergermontague.com>.

hundreds of filings by parties and firms, very few parties and firms initially saw fit to bring these particular claims on behalf of Growers around the country. Thus, this factor weighs in favor of the requested award. *See, e.g., Shaw*, 2015 WL 1867861, at *7 (emphasizing the exposure to counsel in time, money, and resources in choosing to represent the plaintiffs and class); *Cazeau*, 2021 WL 1688540, at *10 (“the significant time commitment and financial investment coupled with risk of no payment enhances the undesirability of this case”).

11. The Nature and Length of the Professional Relationship with the Clients.

The *Johnson* court described this factor in terms of whether a “lawyer in private practice may vary his fee for similar work in the light of the professional relationship of the client with his office.” *Johnson*, 488 F.2d at 719. In the context of class action litigation, it is unlikely that the same class representatives or class members will seek additional or extended representation from counsel beyond the class litigation. *See Shaw*, 2015 WL 1867861, at *7 (“Unlike corporate clients, who may need future legal services from their counsel, the likelihood that many class members will be seeking additional representation from Class Counsel is slim.”). To the extent the Court considers the relationship between counsel and the Class Representatives, here, Class Counsel have worked closely with the Class Representatives throughout this litigation. Class Counsel consulted with Class Representatives at important stages of the litigation, including to obtain information to understand the Broiler market and industry, assistance with developing the complaints, and to provide responses to Defendants’ document requests and interrogatories. *See Walker Decl.* ¶¶ 142-53. This factor weighs in favor of the requested award.

12. The Requested One-Third Fee Award Is Similar to Awards in Other Complex Cases.

As discussed above, Class Counsel’s request for a fee award of one-third of the \$17.75 million Sanderson Settlement fund (plus accrued interest) falls within the range of fee awards granted in antitrust class actions. The requested fee award is also comparable to awards in other class actions granted by courts in this Circuit. *See, e.g., Cazeau*, 2021 WL 1688540, at *9 (recognizing a contingent fee of one-third of the settlement “is customary and consistent with fee arrangements in similar cases”); *Shaw*, 2015 WL 1867861, at *6 (finding one-third award “is well within the percentage range approved in similar cases”) (collecting cases); *Whittington*, 2013 WL 6022972, at *6 (“Together the fees and costs amount to approximately 39% of the fund

as a whole. This is within the normal range for a contingent fee award.”); *Williams*, 2007 WL 2694029, at *6 (finding 35% fee award “fair and reasonable” for \$57 million settlement reached after four years and before trial); *Lewis*, 2006 WL 3505851, at *1 (“A contingency fee of one-third is relatively standard in lawsuits that settle before trial and, given the length [four years] and complexity of this lawsuit, it is a reasonable percentage for a contingency fee.”); *Cimarron Pipeline*, 1993 WL 355466, at *2 (awarding one-third fee for settlement before trial; “Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingent fee basis.”).

In light of this precedent, an award of one-third of the Sanderson Settlement is fair and reasonable as Class Counsel have obtained the Sanderson Settlement of \$17.75 million (plus accrued interest), in addition to the earlier Tyson, Perdue and Koch settlements, after litigating the case for nearly six and a half years and engaging in significant discovery and litigation. Through their efforts, Class Counsel also obtained cooperation from Sanderson to aid them in pursuing further relief on behalf of the Settlement Class from the Non-Settling Defendant, as well as additional valuable relief from Sanderson concerning compulsory arbitration. *See generally* Walker Decl. ¶¶ 125-26. The requested fee award is reasonable when considering this *Johnson* factor.

II. The Court Should Award Reimbursement of Class Counsel’s Reasonable and Necessary Litigation Expenses

Class Counsel respectfully request that the Court also award reimbursement of reasonable costs and expenses incurred. “As with attorney fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred . . . in addition to the attorney fee percentage.” *Cecil*, 2018 WL 8367957, at *9 (quotation marks omitted). Courts routinely award class counsel out-of-pocket costs such as “computer research, investigation, and experts/consultants.” *In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02351, 2014 WL 4670886, at *5 (D. Colo. Sept. 18, 2014).

Since the Tyson, Perdue and Koch settlements, Class Counsel incurred reasonable costs and expenses, in relation to the tasks involved, in the amount of \$81,889.65, paid expenses from the litigation fund in the amount of \$756,871.08, and have outstanding due and owing invoices in the amount of \$133,581.25 for a total of \$972,341.98. *See* Walker Decl. ¶¶ 137-40. These unreimbursed expenses include items typically billed to fee-paying clients, such as computer-

based research costs, copying costs, expert fees, travel expenses, and other typical litigation expenses. The bulk of these expenses are for the work of economic experts. Economic and econometric analysis are critical components for any successful antitrust action, particularly with respect to antitrust merits analyses and certification of a class. Co-Lead Counsel have worked closely with the economic experts to ensure that the expenses incurred are reasonably necessary to the success of the case.¹³

All of these reasonable costs and expenses were directly related and necessary to Class Counsel's efforts to litigate this matter and to achieve the best possible result for the Settlement Class. Class Counsel advanced all of these costs on behalf of the Settlement Class over many years with no guarantee of every getting that money back. An award covering these expenses, advanced by Class Counsel for the benefit of the Settlement Class, is appropriate.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their request for an award of attorneys' fees of one-third of the Sanderson Settlement amount of \$17.75 million plus accrued interest (that is, an award of \$5,916,667 plus one-third of any accrued interest), an award of litigation expenses incurred in the amount of \$972,341.98, and authorize Co-Lead Counsel to distribute the attorneys' fees in a manner that, in their judgment, fairly compensates each firm in view of its contribution to the prosecution of the Plaintiffs' claims.

Dated: July 3, 2023

Respectfully submitted,

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¹³ See also *Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *18 (awarding \$10 million in expenses, most of which was for expert expenses); *Brown v. Pro Football, Inc.*, 839 F. Supp. 905, 916 (D.D.C. 1993) ("Plaintiffs' out-of-pocket costs for telephone, telecopier, air and local couriers, postage, photocopying, W[estlaw] research, secretarial overtime, and counsels' travel expenses are routinely billed to fee-paying clients, and thus are all compensable as part of a reasonable attorney's fee") (collecting cases); *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 344 (W.D. Pa. 1997) (awarding costs for "copying expenses, travel and lodging expenses, telephone and telecopy expenses and other litigation expenses").

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***Additional Class Counsel for Plaintiffs and
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* admitted *pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on July 3, 2023, I electronically filed the foregoing Plaintiffs' Motion for an Award of Attorneys' Fees And Reimbursement of Litigation Expenses with the Clerk of this Court via ECF which will send notification of such filing to all counsel of record.

/s/ Daniel J. Walker
Daniel J. Walker (admitted *pro hac vice*)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

IN RE: BROILER CHICKEN GROWER
ANTITRUST LITIGATION (NO. II)

This document relates to all actions.

Case No. 6:20-MD-02977-RJS-CMR

Chief Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

**DECLARATION OF DANIEL J. WALKER IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES**

I, Daniel J. Walker, declare and state as follows:

1. I am a shareholder of the law firm Berger Montague PC, one of the two Court-appointed Interim Co-Lead Counsel (“Co-Lead Counsel”) for Plaintiffs¹ in the above-captioned action. I am a member in good standing of the Bars of the State of New York and the District of Columbia.

2. I submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees And Reimbursement of Litigation Expenses, which is being filed concurrently herewith. By an order dated April 17, 2023, the Court granted preliminary approval of a Settlement Agreement (or “Settlement”) with defendant Sanderson.² *Growers* ECF 708.³

3. This is the fourth settlement in this case. The Settlement provides a payment of \$17.75 million, and, if approved, would resolve Plaintiffs’ claims against Sanderson. The

¹ The term “Plaintiffs” as used in the Settlement Agreement refers to plaintiffs Haff Poultry, Inc., Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles (“Mike”) Weaver, Marc McEntire, Karen McEntire, Mitchell Mason, and Anna Mason. Anna Mason is an individual plaintiff in a case that is part of this multi-district litigation and is not a proposed class representative. Melissa Weaver originally served as a plaintiff and a class representative for the prior settlements, however, after the Court granted preliminary approval of the Koch Settlement, Ms. Weaver withdrew as a plaintiff; her husband, Mike Weaver remains a plaintiff and a class representative in this litigation.

² “Sanderson” means, collectively, Sanderson Farms, Inc., Sanderson Farms, Inc. (Food Division), Sanderson Farms, Inc. (Processing Division), Sanderson Farms, Inc. (Production Division), and any and all past, present, and future parents, owners, subsidiaries, divisions, and/or departments, including but not limited to Sanderson Farms, LLC, Sanderson Farms, LLC (Food Division), Sanderson Farms, LLC (Processing Division), Sanderson Farms, LLC (Production Division), and Wayne Farms, LLC.

³ Unless expressly stated otherwise, all references to docket entries, indicated as “*Growers* ECF [docket number],” are to the docket in *In re: Broiler Chicken Grower Litigation*, No. 17-cv-0033-RJS (E.D. Okla.) (“*Growers*”). On December 17, 2020, this original action was consolidated with a number of other actions, *see* Part E *infra*, by the Judicial Panel on Multidistrict Litigation as *In re: Broiler Chicken Grower Antitrust Litigation (No. II)*, No. 6:20-md-2977-RJS-CMR (E.D. Okla.). Where filings are docketed solely on the MDL 2977 docket in the Eastern District of Oklahoma they will be identified as “*Growers II* ECF [docket number].”

Court previously granted final approval to settlements with the Tyson, Perdue and Koch Defendants (*Growers* ECF 532, 650), for a combined \$51.25 million in cash payments, and with final approval of the Sanderson Settlement, the total amount of all four settlements is \$69 million.

4. This Settlement offers an immediate cash benefit to the Settlement Class while avoiding the risk, expense, and delay of taking this nearly 6.5-year old action (since the first complaint was filed) to trial against Sanderson and litigating any appeals. The Settlement also provides for Sanderson's cooperation in the continuing prosecution of Plaintiffs' claims against the remaining Non-Settling Defendant,⁴ and the Settlement includes an agreement that for a period of five years Sanderson will not include or enforce provisions in its contracts with Settlement Class members that mandate arbitration or bar participation in class actions.

5. The Settlement is the product of hard-fought, arm's-length negotiations among experienced counsel. Based on Co-Lead Counsel's extensive pre-suit investigation, and a thorough analysis of the extensive evidentiary record, Co-Lead Counsel believe the Settlement is an outstanding result for the Settlement Class.

6. In the following sections, this declaration describes the work of Class Counsel (*see* ¶¶ 7-141) in prosecuting the action in support of their requests for: (i) an award of fees in the amount of one-third of the \$17.75 million fund created by the Settlement (including any accrued interest), which equals \$5,916,667 (plus one-third of any accrued interest); and (ii) an award for unreimbursed expenses incurred in the amount of \$972,341.98.

⁴ The "Non-Settling Defendant" is Pilgrim's Pride Corporation ("PPC"). The term "Defendants" will refer to Koch, PPC, Sanderson, Tyson and Perdue (*i.e.*, the defendant integrators named in Plaintiffs' Complaint).

I. CLASS COUNSEL’S PROSECUTION OF THE ACTION

A. The Initial Complaints

7. On January 27, 2017, certain of the Plaintiffs filed the first complaint in this action. Additional Plaintiffs filed a related action in this Court on March 27, 2017, which this Court consolidated with the first action on June 14, 2017.⁵ Plaintiffs filed a Consolidated Amended Class Action Complaint (the “Complaint”) on July 10, 2017 (*Growers* ECF 137).

8. Plaintiffs are Broiler⁶ farmers. This Court certified for settlement purposes a Settlement Class defined as follows:

All individuals and entities in the United States and its territories that were compensated for Broiler Grow-Out Services by a Defendant or Co-Conspirator, or by a division, subsidiary, predecessor, or Affiliate of a Defendant or Co-Conspirator, at any time during the period January 27, 2013 through December 31, 2019 (the “Class Period”).

(*Growers* ECF 708)

9. Plaintiffs allege that Defendants engaged in a nationwide conspiracy to suppress compensation to Plaintiffs and similarly situated members of the Settlement Class in violation of (a) Section 1 of the Sherman Act (“Section 1”) and (b) Section 202 of the Packers and Stockyards Act (“PSA”).

⁵ *Triple R. Ranch, LLC, et al. v. Tyson Foods, Inc., et al.*, No. 6:17-cv-00112-RJS (E.D. Okla.).

⁶ For ease of reference, Broilers, as defined in this Settlement (and the prior settlements), means young chickens bred for meat. Broilers exclude specialty chicken that is grown, processed, and sold according to halal, kosher, free range, pasture-raised, or organic standards. Specialty chicken, however, does not include chicken raised without antibiotics, such as No Antibiotics Ever (“NAE”) or Antibiotic Free (“ABF”) standards. Broilers as used herein includes NAE and ABF chicken.

10. Defendants are five of the largest vertically integrated Broiler processors (“Integrators”) in the United States, who contract with Growers for Broiler Grow-Out Services, *i.e.*, the management and care of Broilers until they reach slaughtering age. The Complaint also identifies fifteen Co-Conspirators (two were later added by amendment, for a total of seventeen Co-Conspirators),⁷ who, with one exception, are Integrators. The non-Integrator Co-Conspirator is Agri Stats, which is a third-party data aggregation service.

11. Plaintiffs allege that Defendants and their Co-Conspirators entered into an overarching agreement to suppress Grower compensation (the “Conspiracy”), supported by at least two mutually reinforcing agreements. First, Plaintiffs allege that the Co-Conspirators agreed to and did exchange current, non-public, confidential business information at a granular level, including data from which the conspiring Integrators can ascertain each other’s Grower compensation. The conspiring Integrators exchanged such information directly and used Agri Stats to collect, distribute, and effectuate the exchange of confidential business data. Second, Plaintiffs allege that Defendants and their Co-Conspirators agreed not to solicit or “poach” one another’s Growers, which (together with the other elements of the Conspiracy) limited Grower mobility and suppressed Grower compensation.

12. As a result of the Conspiracy, Plaintiffs allege that the Defendants and their

⁷ “Co-Conspirators” means: Agri Stats, Inc. (“Agri Stats”), Foster Farms, Mountaire Farms, Wayne Farms, George’s, Inc., Peco Foods, Inc., House of Raeford Farms, Simmons Foods, Keystone Foods, Inc., Fieldale Farms Corp., O.K. Industries, Case Foods, Marshall Durbin Companies, Amick Farms, Inc., Mar-Jac Poultry, Inc., Harrison Poultry, Inc., Claxton Poultry Farms, and Norman W. Fries, Inc., including each of their past, present, and future, direct and indirect, corporate parents (including holding companies), owners, subsidiaries, related entities, Affiliates, associates, divisions, departments, joint ventures, predecessors, and/or successors. Two Co-Conspirators, Mar-Jac and Harrison, were added by amendment on February 19, 2021 (*Growers* ECF 368).

Co-Conspirator Integrators paid Growers less for their provision of Broiler Grow-Out Services than they would have paid absent the Conspiracy. Plaintiffs seek to recover damages measured by the artificial underpayments caused by the Conspiracy for themselves and all other similarly situated Growers that raised Broilers for Defendants and their Co-Conspirator Integrators.

B. Defendants' Motions to Stay Discovery and Dismiss the Action

13. On July 24, 2017, Defendants filed a motion to stay discovery in the case until the Court ruled on forthcoming motions to dismiss (*Growers* ECF 144). Plaintiffs opposed this motion on August 7, 2017 (*Growers* ECF 151), and Defendants submitted a reply on August 21, 2017 (*Growers* ECF 186), as well as a supplemental submission on August 28, 2017 (*Growers* ECF 187). The Court granted the motion to stay on September 1, 2017 and stayed discovery in the case pending resolution of the motions to dismiss (*Growers* ECF 190).

14. On September 8, 2017, Defendants filed four separate motions. Defendants Sanderson and Koch each filed its own motion to dismiss for lack of jurisdiction and improper venue (*Growers* ECF 191, 194-95). Perdue filed a motion to compel arbitration of Plaintiffs' claims or, in the alternative, to stay the claims against Perdue (*Growers* ECF 192). And all Defendants jointly moved to dismiss under Rules 12(b)(3) and (6) (*Growers* ECF 193).

15. Plaintiffs filed three opposition briefs (consolidating their opposition to the Sanderson and Koch jurisdiction and improper venue motions) and a supporting affidavit on October 23, 2017 (*Growers* ECF 200-03).

16. Defendants filed their four respective reply briefs on November 22, 2017 (*Growers* ECF 205-08).

17. On January 19, 2018, the Court held a hearing addressing the two jurisdiction motions, which the Court granted by dismissing without prejudice Plaintiffs' claims against Sanderson and Koch (*Growers* ECF 216-17). Plaintiffs were afforded an opportunity to decide how they wished to proceed against the remaining Defendants (PPC, Perdue, and Tyson), and on February 2, 2018, Plaintiffs filed a notice indicating they would move forward before this Court against those Defendants (*Growers* ECF 219).

18. In order to pursue their claims against Sanderson and Koch, on February 21, 2018, Plaintiffs filed a class action complaint raising the same Section 1 and PSA claims against Sanderson and Koch in the Eastern District of North Carolina.⁸ The proceedings in that matter are discussed in Part D below.

19. Because Plaintiffs' claims were at that point effectively broken out into two separate proceedings, Plaintiffs filed, on March 8, 2018, a motion for transfer and consolidation of both matters before this Court with the Judicial Panel on Multidistrict Litigation (the "Panel").⁹ Defendants joined in Plaintiffs' 2018 request to consolidate the two cases for pre-trial proceedings. This motion and a second proceeding before the Panel are discussed in Part E below.

20. On March 13, 2018, Defendant PPC filed a notice alerting the Court to a March 12, 2018 order entered by the United States Bankruptcy Court of the Northern District of Texas enjoining Plaintiffs from further pursuing their allegations against PPC as

⁸ *In re: Sanderson & Koch Broiler Chicken Grower Litig.*, No. 7:18-cv-00031-D (E.D.N.C. Feb. 21, 2018) ("*Sanderson*").

⁹ *In re Broiler Chicken Grower Litig.*, MDL No. 2838 (J.P.M.L.) ("*MDL 2838*").

alleged in the July 10, 2017 Complaint (*Growers* ECF 221). Plaintiffs' litigation efforts in the PPC bankruptcy proceedings¹⁰ are discussed in Part C below.

21. Defendants Perdue and Tyson then filed, on March 23, 2018, a second motion to stay proceedings pending a decision by the Panel on Plaintiffs' motion to consolidate the two cases (*Growers* ECF 222-23). The Court denied this motion on March 26, 2018 (*Growers* ECF 224), and this Court held a hearing on the pending joint motions to dismiss and Perdue's motion to compel arbitration or stay proceedings on April 20, 2018 (*Growers* ECF 228).

22. On May 1, 2018, Defendants Tyson and Perdue (in light of the bankruptcy injunction concerning PPC) sought leave to file a supplemental brief in support of their joint motion to dismiss that addressed Plaintiffs' relevant market allegations (*Growers* ECF 230), which the Court granted the next day (*Growers* ECF 231). These Defendants submitted an additional seven pages of briefing solely on the issue of whether the Complaint pled a plausible relevant market (the corrected version of this brief is at *Growers* ECF 234).

23. Plaintiffs responded to this supplemental submission on June 1, 2018 (*Growers* ECF 239). In their ten-page brief, Plaintiffs rebutted each of Defendants' arguments, explaining that the Complaint plausibly alleged a nationwide market for Broiler Grow-Out Services, which were standardized across the country, and that Defendants and their Co-Conspirators shared Grower compensation on a nationwide basis.

¹⁰ *In re: Pilgrim's Pride Corp.*, No. 08-45664 (Bankr. N.D. Tex. Oct. 12, 2017) ("*Pilgrims*").

24. On October 15, 2019, Plaintiffs moved to lift the discovery stay as to Defendants Perdue and Tyson (*Growers* ECF 253). Plaintiffs noted that the original reasons favoring a brief discovery stay—PPC’s bankruptcy, Perdue’s arbitration demand, the personal jurisdiction motions by Sanderson and Koch, and the joint motion to dismiss—were either resolved or the Court had already provided its preliminary views on pending motions such that it was generally understood that the case would proceed against the remaining Defendants. Defendants Perdue and Tyson submitted an opposition to the request to lift the stay on October 29, 2019 (*Growers* ECF 261).

25. The Court held a telephonic status conference on November 20, 2019, at which it denied without prejudice Plaintiffs’ motion to lift the stay and also indicated that it would offer an oral ruling on the two pending motions to dismiss at a hearing that was later set for January 6, 2020 (*Growers* ECF 263-64).

26. At the January 6, 2020 hearing, the Court issued an oral ruling denying Defendants’ joint motion to dismiss and Perdue’s motion to compel arbitration (*Growers* ECF 266, 268).

27. Also on January 6, 2020, the Court directed Plaintiffs to file a motion seeking leave to amend the complaint, *inter alia*, to come into compliance with the PPC bankruptcy order, which motion Plaintiffs filed on January 27, 2020 (*Growers* ECF 269).

28. A notice of non-opposition to this motion was submitted by PPC (*Growers* ECF 286), and the Court granted leave to amend the complaint on February 18, 2010 (*Growers* ECF 287).

29. Plaintiffs’ Second Consolidated Amended Class Action Complaint (“SCAC”) was docketed on February 21, 2020 (*Growers* ECF 288). Defendants Perdue,

Tyson and PPC filed their Answers on March 6, 2020 (*Growers* ECF 299-300).

30. Following the Panel's December 15, 2020 transfer and consolidation order (*see* Part D *infra*), Plaintiffs filed the Consolidated Class Action Complaint, alleging claims against all five Defendants on February 19, 2021 (*Growers* ECF 368). The Defendants filed their respective Answers on March 31, 2021 (*Growers* ECF 374, 375, 381, 382; *Growers II* ECF 67). These are the current operative pleadings in the action.

C. The Bankruptcy Proceedings

31. On August 29, 2017, PPC filed a motion in the United States Bankruptcy Court for the Northern District of Texas to enforce the Confirmation Order of its Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code against the Plaintiffs (*Pilgrims* ECF 7222). PPC argued that because it filed for bankruptcy on December 1, 2008 and issued a Publication Notice of Bankruptcy Filing with a May 8, 2009 deadline to file claims against PPC, that Plaintiffs were barred from any claim against PPC that was based upon any act or omission prior to the Effective Date of the Confirmation Order approving the bankruptcy plan (December 21, 2009). Because Plaintiffs' complaint had alleged that PPC and its Co-Conspirators had engaged in antitrust violation since at least 2008 (through the date the complaint was filed in 2017), PPC argued that the Plaintiffs' claims had been discharged and asked the Bankruptcy Court to enjoin them from pursuing this lawsuit.

32. In order to respond to PPC's motion, Co-Lead Counsel retained the services of experienced bankruptcy counsel at Klee, Tuchin, Bogdanoff & Stern LLP. On September 22, 2017, Plaintiffs filed their opposition to PPC's motion, arguing that they were only seeking damages from 2013 forward based on conduct that occurred after the Confirmation

Order, and that their complaint specifically alleged affirmative acts of anticompetitive conduct that occurred in the last few years (*Pilgrims* ECF 7227).

33. On October 10, 2017, PPC replied to Plaintiffs' opposition (*Pilgrims* ECF 7230), and on October 12, 2017, the Bankruptcy Court held a hearing on PPC's motion. Co-Lead Counsel Melinda R. Coolidge and Plaintiffs' bankruptcy counsel Tom Patterson of Klee, Tuchin, Bogdanoff & Stern LLP traveled to Texas to represent Plaintiffs and the proposed class in this case and present argument at the hearing. At the hearing, the Court acknowledged that it was "not comfortable with dismissing the complaint, because it does talk a lot about post-confirmation actions," but that "Pilgrim's should [not] have to defend itself against actions that may have taken place prior to December of 2009" (*Pilgrims* ECF 7234, at Tr. 28:9-18).

34. On March 1, 2018, the Bankruptcy Court held a second hearing on PPC's motion, again attended by Co-Lead Counsel Melinda R. Coolidge who presented Plaintiffs' argument. At the hearing, counsel for both parties addressed a draft stipulation that they had exchanged and had been unable to agree upon. The court questioned both parties as to the applicable case law on various issues of antitrust and bankruptcy law and took the matter under advisement.

35. On March 8, 2018, the Bankruptcy Court held a telephonic hearing to issue an oral ruling on the motion (*see Pilgrims* ECF 7245). The court denied PPC's motion to the extent it sought to enjoin Plaintiffs from pursuing claims that sought to hold PPC liable based upon post-effective date conduct (*see id.* at Tr. 10:15-17; 11:15-19). The court granted PPC's motion to the extent Plaintiffs pursued claims that sought to hold PPC liable based upon pre-effective date conduct (*see id.* at Tr. 10:18-24; 11:20-12:1). The court held

that “based on these findings and conclusions, the Growers cannot proceed with the Antitrust Lawsuit currently pending against PPC’s based on the currently-filed complaint” and “[left] it up to the Growers to determine how to proceed with pursuing” the “non-discharged claims against [PPC]” (*see id.* at Tr. 13:13-18). As discussed above, Co-Lead Counsel amended the complaint and PPC served its Answer.

D. The Sanderson Action Proceedings

36. As discussed above, on February 21, 2018, Plaintiffs filed a complaint alleging the same Section 1 and PSA claims against Sanderson and Koch in the Eastern District of North Carolina, before the Honorable James C. Dever, III, after this Court granted (without prejudice) Sanderson and Koch’s motion to dismiss on jurisdictional grounds in the *Growers* action.

37. On March 23, 2018, Sanderson and Koch, with Plaintiffs’ consent, moved to stay the case pending a decision by the Panel on Plaintiffs’ motion to transfer and consolidate the *Sanderson* action to the Eastern District of Oklahoma before this Court (*Sanderson* ECF 29-30), which Judge Dever granted on March 27, 2018 (*Sanderson* ECF 31). *See also* Part E *infra*.

38. After the Panel denied Plaintiffs’ motion to transfer this case (on June 6, 2018), the parties jointly moved, on June 19, 2018, to lift the stay to permit Sanderson and Koch to file a Rule 12(b)(6) motion, appoint Co-Lead Counsel as interim co-lead counsel for this action, appoint a liaison counsel, and provide the parties an opportunity to meet and confer regarding the propriety of a stay of discovery (*Sanderson* ECF 41). On June 26, 2018, Judge Dever granted the motion and entered a briefing schedule for the defendants’ motion to dismiss (*Sanderson* ECF 44).

39. Sanderson and Koch filed a joint motion to dismiss for failure to state a claim on July 13, 2018 (*Sanderson* ECF 52-53).

40. Sanderson and Koch also argued that this complaint should be dismissed under the first-filed rule. Despite having moved to dismiss the *Growers* action on jurisdictional grounds, Sanderson and Koch argued before Judge Dever that the *Sanderson* action should be dismissed in favor of allowing the former action to proceed—leaving no forum for claims to proceed against Sanderson and Koch.

41. On August 13, 2018, Plaintiffs filed their opposition brief (*Sanderson* ECF 55).

42. Sanderson and Koch filed their reply brief in support of their motion to dismiss on September 4, 2018 (*Sanderson* ECF 61).

43. On January 15, 2019, Judge Dever denied Sanderson's and Koch's attempt to dismiss the case under Rule 12(b)(6) and the first-filed rule (*Sanderson* ECF 64). The court, however, did stay the case under the first-filed rule until final resolution of the action against Tyson, Pilgrim's, and Perdue pending in the Eastern District of Oklahoma.

44. After this Court denied the joint motion to dismiss in the *Growers* action, Sanderson filed a second motion to dismiss the *Sanderson* action under the first-filed rule on May 27, 2020 (*Sanderson* ECF 68-69).

45. Plaintiffs filed their opposition brief on June 17, 2020 (*Sanderson* ECF 70). Plaintiffs pointed out that with this second attempt to dismiss the complaint, Sanderson was now complaining that its own procedural machinations were causing it harm. Plaintiffs argued that (i) the motion was an improper successive Rule 12(b)(6) motion that was barred by Rule 12(g), (ii) that Sanderson was wrong to contend that it was immune from antitrust

liability simply because Plaintiffs could hold its co-conspirators liable instead under joint and several principles, (iii) that granting dismissal under the first-filed rule would effectively turn a Rule 12(b)(2) jurisdictional motion into a dismissal on the merits, and (iv) any claims of potential prejudice to Sanderson were both speculative and the product of Sanderson's own motion to stay the case under the first-filed rule. Plaintiffs explained that Sanderson could avoid all of its claimed potential problems by simply agreeing to transfer back to the Eastern District of Oklahoma.

46. Sanderson filed its reply brief on July 1, 2020 (*Sanderson* ECF 71). Judge Dever did not rule on this motion.

47. On October 9, 2020, Plaintiffs docketed a notice that they had submitted a second motion to consolidate and transfer this action, and others, to the Eastern District of Oklahoma (*Sanderson* ECF 72).

48. On December 17, 2020, the Panel issued an order transferring the *Sanderson* case (as well as *Growers*, *McEntire*, *Colvin*, and *Mason* cases, as discussed in the next section) to the Eastern District of Oklahoma (*Sanderson* ECF 41).

E. Proceedings Before the Panel to Consolidate the Actions

49. With their claims proceeding against two groups of defendants in two separate proceedings, Plaintiffs filed a motion to transfer and consolidate, pursuant to 28 U.S.C. § 1407, the *Sanderson* action with the *Growers* action before the Panel on March 8, 2018 (*MDL 2838* ECF 1).

50. Plaintiffs argued that consolidation was warranted because the two actions involved the same group of plaintiffs, bringing the same claims against the same group of

alleged Co-Conspirators, covering the same facts and time period, and thus it would be more efficient for these claims to be before the same judge for pre-trial purposes.

51. On March 30, 2018, the Defendants, except for PPC, filed a joint response stating they agreed with Plaintiffs that consolidation for pretrial purposes was appropriate (*MDL 2838* ECF 24). PPC did not join in the motion because at that time the Bankruptcy Court had enjoined Plaintiffs from proceeding on the basis of the allegations in their July 10, 2017 Consolidated Amended Class Action Complaint (*see Growers* ECF 221).

52. The Panel denied the motion to transfer and consolidate on June 6, 2018 (*MDL 2838* ECF 31). The Panel's opinion explained that because there were only two actions, brought by the same Plaintiffs with the same counsel, it was preferable to rely on informal cooperation among the relatively few attorneys and coordination among the two courts involved. The Panel's opinion suggested this approach would be feasible and would be sufficient to minimize any potential for duplicative discovery or inconsistent pretrial rulings.

53. As discussed in Part C above, after the Panel denied the motion to consolidate, Sanderson and Koch filed, on July 13, 2018, their motion to dismiss under Rule 12(b)(6) and in reliance on the first-filed rule (*see Sanderson* ECF 52-53), and Judge Dever stayed that case on January 1, 2019 (*Sanderson* ECF 64). For more than 23 months, discovery involving Sanderson and Koch occurred only in the context of limited third-party discovery in the *Growers* action.

54. Beginning in the fall of 2020, a number of other plaintiffs also filed actions in different courts bringing the same claims on behalf of the same class of Growers,

following the Department of Justice’s June 2020 announced indictment of several Broiler industry executives for allegedly conspiring in violation of the antitrust laws.¹¹

55. In light of the changed circumstances since the Panel denied consolidation—new actions filed and the stay of the *Sanderson* action—Co-Lead Counsel filed a second motion before the Panel, on October 6, 2020, to transfer and consolidate all of the actions for pretrial proceedings before this Court (*MDL 2977* ECF 1).¹²

56. Despite having supported the earlier motion to centralize for pre-trial proceedings, Defendants opposed the second motion on October 30, 2020 (*MDL 2977* ECF 28).¹³ Defendants explained that they had moved to dismiss two of the newly filed actions, *McEntire* and *Colvin*, in reliance on the first-filed rule. (At the time of their opposition, Defendants did not then have an opportunity to file a similar motion in the third action, *Mason*). Arguing that consolidation should be considered as a last resort after all other options had been pursued, Defendants urged the Panel to dismiss Plaintiffs’ transfer motion in favor of allowing all of their motions to dismiss to proceed in each of the separate newly filed cases.

57. Plaintiffs filed a reply in support of their motion on November 6, 2020 (*MDL 2977* ECF 46). Plaintiffs argued that transfer and consolidation was appropriate

¹¹ See *McEntire v. Tyson Foods, Inc.*, No. 1:20-cv-2764-PAB-NYW (D. Colo. Sept. 11, 2020) (“*McEntire*”); *Colvin v. Tyson Foods, Inc.*, 2:20-cvb-2464 (D. Kan. Sept. 18, 2020) (“*Colvin*”); *Mason v. Tyson Foods, Inc.*, 5:20-cv-07049-BLF (N.D. Cal. Oct. 8, 2020) (“*Mason*”).

¹² *In re: Broiler Chicken Grower Antitrust Litigation (No. II)*, No. 6:20-md-2977 (J.P.M.L. Oct. 6, 2020) (“*MDL 2977*”).

¹³ At the time of the first consolidation motion, Plaintiffs were enjoined from pursuing their claims against PPC due to a ruling in the Bankruptcy Court. On February 21, 2020, Plaintiffs filed the SCAC (*Growers* ECF 288), which allowed for their claims to proceed against PPC and, as a result, PPC joined the other Defendants in opposing the second consolidation motion.

under the usual guidelines applied by the Panel. Moreover, should all the motions be granted, the result would frustrate the prosecution of Plaintiffs' claims and potentially insulate two defendants, Sanderson and Koch, from antitrust liability through the application of a prudential procedural doctrine intended to help choose among available but competing venues—not to deny claims from being heard against certain defendants in *any* venue.

58. On December 15, 2020, the Panel granted Plaintiffs' motion and centralized four of the filed actions (*Growers*, *Sanderson*, *McEntire* and *Colvin*) in this Court for pretrial proceedings (*MDL 2977 ECF 59*). The Panel found that circumstances had changed significantly from the time of the first motion to consolidate and that centralization was now appropriate.

59. On December 17, 2020, the Panel issued its Conditional Transfer Order (CTO-1) transferring a fifth action, *Mason*, to this Court for pretrial proceedings (*MDL 2977 ECF 62*).

60. Beginning on December 17, 2020, the *Growers II* action proceeded as MDL No. 2977 in the Eastern District of Oklahoma.

F. Plaintiffs' Discovery Efforts

61. In the period following the February 21, 2020 filing of the SCAC (*Growers ECF 288*), the parties—at that point, Plaintiffs and Defendants PPC, Tyson and Perdue—began a series of extensive negotiations concerning the management of the litigation and forthcoming discovery.

62. On March 30, 2020, the parties submitted a joint status report that provided a statement of the case from each side, attached four case management proposed orders,

identified areas where the parties had reached agreement, and described the parties' impasse concerning a proposed pre-trial schedule, including dueling proposals to bifurcate class and merits fact and expert discovery (*Growers* ECF 305).

63. The four orders were stipulations governing key aspects of discovery: (i) a stipulation governing expert discovery (*Growers* ECF 308); (ii) an agreed confidentiality order (ECF 309); (iii) a stipulation concerning Federal Rule of Evidence 502(d) to manage any inadvertent disclosure of privileged information (*Growers* ECF 310); and (iv) a stipulation regarding the production of documents and electronically stored information (*Growers* ECF 311). These orders were entered on April 7, 2020.

64. Areas where the parties were able to negotiate an agreement included: (i) the timing to exchange initial disclosures; (ii) a limit of 45 interrogatories with no party subject to more than 25 interrogatories; (iii) a limit of 250 hours of party depositions and 500 hours of total deposition time for both party and nonparty depositions, with no party subject to more than 13 depositions; (iii) an agreement for each party to endeavor not to propound more than two sets of requests for production; and (iv) an agreement that each party may submit up to 50 requests for admission.

65. On April 13, 2020, the Court entered Case Management Order No. 1 (*Growers* ECF 312), which set a schedule for fact and expert discovery consistent with the schedule Plaintiffs had proposed (and Defendants opposed), which consolidated class and merits fact and expert discovery for efficiency purposes, and other key pre-trial events, including class certification briefing, *Daubert* motions, and summary judgment motions. This order also included the parties' negotiated agreements on interrogatories, depositions, requests for production, and requests for admission.

66. Plaintiffs have engaged in substantial discovery, which is described in more detail below.

1. Document and Written Discovery

67. Plaintiffs served requests for the production of documents on defendants PPC, Tyson and Perdue. With respect to Sanderson and Koch, Plaintiffs first pursued requests for production from them as third parties via subpoenas, which entailed a separate set of complex negotiations, and then later as parties following the Panel's December 17, 2020 centralization of the five actions.

68. Plaintiffs issued over fifty subpoenas to nonparties, which included the seventeen alleged Co-Conspirators, industry trade associations, and non-colluding Integrators. Plaintiffs also issued subpoenas relating to current and former executives and employees of Defendants, including individuals presently under indictment for criminal antitrust violations.

69. The meet and confer negotiations for these requests for production, both party and nonparty, were involved and lengthy, spanning months.

70. Plaintiffs' efforts resulted in substantial document productions from parties and nonparties. Plaintiffs have received more than 1.7 million documents from Defendants and 525,000 documents from Defendants' alleged Co-Conspirators, consisting of tens of millions of pages, as well as massive amounts of structured transactional data on over 650,000 Broiler flocks that was used in connection with expert econometric analysis supporting Plaintiffs' claims. Plaintiffs have paid to store these documents and electronic information on a sophisticated e-Discovery platform, allowing for efficient searching, review, and analysis of this information. To that end, Plaintiffs have spent thousands of

hours searching, reviewing, and analyzing documents produced in discovery to identify relevant evidence and witnesses to advance their claims.

71. Plaintiffs have also produced over 10,000 pages of documents in response to Defendants' requests for production, which required complicated remote collection procedures in the midst of the COVID-19 pandemic. Specifically, Plaintiffs made productions of documents in response to requests from Defendants on the following dates:

- a. December 8, 2020;
- b. January 3, 2021;
- c. January 25, 2021;
- d. February 9, 2021;
- e. February 24, 2021;
- f. February 25, 2021;
- g. March 8, 2021;
- h. April 6, 2021;
- i. April 7, 2021;
- j. May 10, 2021;
- k. May 18, 2021;
- l. June 28, 2021;
- m. June 30, 2021;
- n. June 3, 2022;
- o. June 14, 2022;
- p. June 17, 2022; and
- q. July 12, 2022.

72. Plaintiffs and Defendants have also propounded interrogatories and served responses. Plaintiffs served their First Set of Interrogatories on Tyson, Perdue, and PPC on December 4, 2020, and those three Defendants responded on February 16, 2021. Plaintiffs served their First Set of Interrogatories on Sanderson and Koch on April 29, 2021, to which Sanderson responded on July 1, 2021, and Koch responded on July 9, 2021. Plaintiffs served their Second Set of Interrogatories on PPC, Sanderson, and Koch on September 20, 2021, to which PPC, Sanderson, and Koch responded on October 20, 2021. Co-Lead Counsel met and conferred with each of the five Defendants on numerous occasions to obtain more complete interrogatory responses. Plaintiffs served their Third Set of Interrogatories on December 10, 2021, to which Defendants responded, by agreement of the parties, on February 21, 2022. Plaintiffs served their Fourth Set of Interrogatories on June 17, 2022, to which Defendants responded by agreement of the parties on August 1, 2022.

73. Defendants also served their First Set of Interrogatories to Plaintiffs on April 19, 2021, to which Plaintiffs responded on June 25, 2021 and on June 28, 2021. The parties also met and conferred on these responses, and some of the Plaintiffs served supplemental responses in 2022. Defendants served their Second Set of Interrogatories on Plaintiffs on June 17, 2021, to which Plaintiffs responded by agreement of the parties on August 1, 2022. Plaintiffs served supplemental and amended responses on September 16, 2022.

74. Plaintiffs propounded requests for admission to Tyson, Perdue, and PPC on December 4, 2020, and to Sanderson and Koch on April 29, 2021. Tyson, Perdue, and PPC responded to Plaintiffs' requests for admission on January 4, 2021, Sanderson responded on

July 1, 2021, and Koch responded on July 9, 2021. Plaintiffs propounded their second requests for admissions on September 20, 2021 on all parties, and received responses from the non-settling Defendants on October 20, 2021. Plaintiffs served their Third Set of Requests for Admission on Defendants on June 17, 2021, to which Defendants responded by agreement of the parties on August 1, 2022.

75. On June 17, 2021, Defendants served their First Set of Requests for Admission on Plaintiffs, to which Plaintiffs responded on August 1, 2022, by agreement of the parties.

76. In addition, following a July 29, 2021 notice from Defendants indicating that they intended to make use of downstream materials to advance certain defenses to Plaintiffs' claims, Co-Lead Counsel engaged in a multi-faceted response involving, *inter alia*, (a) researching the law and economics on the relevance of downstream materials and the legal validity of related defenses, and (b) analyzing the scope of materials available from the downstream litigation *In re Broiler Chicken Antitrust Litig.*, No. 16-cv-8637 (N.D. Ill.) (the "Downstream Litigation"). Based on these efforts, Co-Lead Counsel identified core discovery and materials to which Plaintiffs are entitled from the downstream litigation, and they negotiated responsive productions with Defendants over the course of more than two months—a process that involved numerous calls (both bilateral and multilateral) and written correspondence justifying Plaintiffs' entitlement to such materials. However, not all the parties in the Downstream Litigation consented to the production of these materials and Plaintiffs were forced to move for an order compelling Defendants Koch, PPC, and Sanderson to produce the materials (Tyson and Perdue had settled by the time of the motion). *See* ¶ 91 *infra*.

77. Co-Lead Counsel have also reviewed dozens of deposition and trial transcripts from related litigation involving Defendants and their Co-Conspirators and the Broiler industry.

2. Depositions of Fact Witnesses

78. As Plaintiffs reviewed and analyzed the documents and written discovery responses received, they identified fact witnesses for depositions. Plaintiffs began issuing deposition notices and requesting proposed dates in June 2021. As of the submission of this Declaration, all fact deposition discovery is completed. Plaintiffs took 68 depositions under Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6) of witnesses associated with Defendants and their alleged Co-Conspirators, as well as cross-noticed depositions of 5 absent class members noticed by Defendants. One of the Rule 30(b)(6) depositions of a nonparty co-conspirator was taken on August 19, 2022, by agreement of the parties. The Rule 30(b)(6) deposition requests to both Defendants and nonparty alleged Co-Conspirators were vigorously contested and Plaintiffs engaged in months-long meet and confers with those entities to reach an agreeable scope for those depositions. In total, Plaintiffs took 73 depositions under Rules 30(b)(1) and 30(b)(6) and defended eight class representative depositions.

79. Before the first deposition could be conducted, the parties also negotiated a remote deposition protocol stipulation, with one minor issue resolved in a conference with Magistrate Judge Cecilia M. Romero, to provide witnesses, court reporters, and counsel options for remote examinations in a safe manner due to the ongoing pandemic. Judge Romero approved the remote deposition protocol on September 8, 2021 (*Growers* ECF 453).

80. On two occasions, Plaintiffs participated in emergency conferences before Magistrate Judge Romero concerning scheduled depositions. On May 19, 2022, counsel for Tim Stiller, a former PPC executive, informed the parties that Mr. Stiller was under federal

indictment and would invoke his Fifth Amendment right at the deposition scheduled for the next day, May 20, 2022. Defendants PPC and Sanderson sought to stay the deposition to file a motion for a protective order. Plaintiffs argued that they had prepared for the deposition and that the parties had been aware of Mr. Stiller's indictment in July 2021. Magistrate Judge Romero found that the moving Defendants could have addressed the need for a protective order earlier in the litigation and ordered the deposition to proceed (*Growers* ECF 590).

81. On July 27, 2022, Plaintiffs requested an emergency conference before Magistrate Judge Romero during the deposition of William Lovette, a former PPC executive who had been federally indicted and tried and acquitted of criminal charges relating to conspiring in the poultry industry. Mr. Lovette stated at the outset of the deposition that he would be invoking his Fifth Amendment right against self-incrimination during the deposition. However, in responding to questions, Mr. Lovette would only state that he would not answer the question on advice of counsel without stating that the basis for his refusal to respond was the invocation of his Fifth Amendment right against self-incrimination. Magistrate Judge Romero found that Mr. Lovette must specifically invoke the privilege against self-incrimination and directed that the deposition continue with that instruction to the witness (*Growers* ECF 628).

3. Discovery-Related Motion Practice

82. Beginning on March 30, 2020, after the Court denied the motions to dismiss, the parties started to submit joint status reports to the Court on a periodic basis. On many occasions, Plaintiffs successfully engaged in negotiations and resolved disputes with Defendants and nonparties in the days preceding submission of these status reports. With these reports, the parties addressed current or potential disputes on discovery and case management issues. Often, a conference with the Court would follow the submission of the joint status report. Through this

process, the parties have been able to resolve or work through numerous issues with the Court's assistance or guidance. To date, the parties have submitted sixteen joint status reports (*See Growers* ECF 305, 319, 320, 327, 355, 370, 394, 416, 433, 457, 486, 515, 629, 644, 662, 668).

83. A number of issues did require motion practice, including a motion to compel nonparty Co-Conspirator House of Raeford, a motion to compel PPC to supplement its privilege log claims, motions to quash deposition subpoenas filed by two PPC executives, Jayson Penn and Bill Lovette (who had been criminally tried in an action brought by the Department of Justice), a motion by PPC to shield conversations its counsel had with a non-party witness a week prior to the individual's deposition, a motion to compel Agri Stats to produce documents responsive to Plaintiffs' subpoena, and a motion to compel the production of documents produced in another litigation (involving the sale of broilers to consumers) that certain Defendants indicated their experts intended to rely upon in this litigation.

84. On March 1, 2021, Plaintiffs filed a motion to compel House of Raeford Farms, Inc. ("HRF"), a nonparty Co-Conspirator, to produce documents responsive to subpoenas requesting documents that Plaintiffs served on June 17, 2020 and July 20, 2020 (*Growers* ECF 369). Despite Plaintiffs' numerous inquiries, HRF refused to provide meaningful disclosures about possible custodial and non-custodial document sources, refused to agree to produce identified documents that were indisputably relevant to Plaintiffs' requests, and refused to agree to provide structured data regarding HRF's Grower compensation.

85. After Plaintiffs filed their motion to compel, HRF engaged in meet and confer discussions with Plaintiffs, and on March 12, 2021, Plaintiffs filed a notice with the Court stating that the parties had reached a tentative agreement on a schedule for HRF to produce documents and information responsive to Plaintiffs' subpoenas (*Growers* ECF 371). Plaintiffs stated they

would file a status report on March 18, 2021 with the Court on whether a final negotiated resolution had been reached. Plaintiffs submitted the status report, stating that the parties were continuing their negotiations on Plaintiffs' subpoenas, and that HRF had begun to produce responsive documents (*Growers* ECF 372).

86. During discovery, PPC provided Plaintiffs with several privilege logs that together contained more 24,800 entries. After two rounds of letters and two meet and confers, PPC continued to refuse to provide additional information Plaintiffs requested for certain types of entries, including those reflecting (i) communications with third parties and (ii) attachments to purported attorney-client communications. On July 2, 2021, Plaintiffs moved to compel PPC to either supplement its privilege claims for the challenged categories of documents or be ordered to produce them for failure to meet its burden to establish each claimed privilege (*Growers* ECF 403). PPC filed its opposition brief on July 20, 2021 (*Growers* ECF 409), and Plaintiffs filed their reply brief on August 3, 2021 (*see Growers II* ECF 112).

87. On August 23, 2021, a hearing was held before Magistrate Judge Romero on Plaintiffs' motion. Judge Romero directed Plaintiffs to list for which of the 24,800-plus privilege log entries they sought additional information from PPC by August 30, 2021, and upon receipt of this list, directed PPC to meet and confer with Plaintiffs on the requested information (*Growers* ECF 435). Plaintiffs issued their letter to PPC on August 30, 2021, identifying more than 13,000 suspect entries, and the parties held a meet and confer discussion where PPC indicated it would review the list of entries and either supply additional information or produce the documents. PPC subsequently produced approximately 9,000 documents from its log and provided an updated log after completing this review of its privilege claims. On February 6, 2023, Plaintiffs identified ten PPC documents that were either improperly redacted or withheld

as privileged based, in part, on testimony relating to one of the documents. Following a brief meet and confer process, PPC agreed to produce the documents in their entirety or with limited redaction by agreement among the parties.

88. Among the individuals for whom Plaintiffs sought to schedule depositions are two PPC personnel, Jayson Penn and Bill Lovette, who were defendants in a criminal proceeding brought by the DOJ. Plaintiffs entered into negotiations with counsel representing these two individuals but were unable to reach an agreement on deposition dates. On August 30, 2021, Messrs. Penn and Lovette filed motions to quash Plaintiffs' third-party deposition subpoenas or for a protective order delaying the depositions until after their criminal trials (*Growers II* ECF 158, 161). Plaintiffs opposed the motions on September 24, 2021 (*Growers II* ECF 173), and Messrs. Penn and Lovette filed their replies on October 8, 2021 (*Growers II* ECF 194, 196). On October 20, 2021, Judge Romero granted the motion for a protective order and enjoined Plaintiffs from deposing these two individuals until one week after December 23, 2021 (*Growers II* ECF 208). After much back and forth with PPC's counsel, Plaintiffs deposed Messrs. Penn and Lovette on July 29, 2022 and July 27, 2022 respectively, at which both deponents exercised their Fifth Amendment rights not to provide incriminating testimony.

89. On November 24, 2021, PPC moved for a protective order to bar Plaintiffs from asking questions about a meeting its counsel had with a non-party witness James "Fred" Heatherly about a week prior to his deposition (*Growers* ECF 493). Mr. Heatherly previously worked for Tyson and PPC, but he retired in 2015, and he had his own counsel at the deposition. About a week prior to his deposition, he participated in a meeting where PPC's counsel was also present. When Plaintiffs asked questions about what transpired at this meeting, PPC's counsel directed Mr. Heatherly not to respond on the basis of the attorney-client privilege. Plaintiffs

opposed this motion on December 8, 2021 (*Growers* ECF 499), and PPC filed its reply on December 22, 2021 (*Growers* ECF 506). Magistrate Judge Romero denied PPC's motion on January 10, 2022, finding that PPC failed to demonstrate it had standing to move for a protective order (*Growers* ECF 510), and Mr. Heatherly was required to respond to questions about his meeting with counsel for PPC.

90. On December 21, 2021, Plaintiffs moved to compel non-party Agri Stats to produce documents responsive to Plaintiffs' April 14, 2020 subpoena (*Growers* ECF 504). For more than thirteen months, Plaintiffs engaged in extensive negotiations with Agri Stats about a search protocol to identify responsive documents, but Agri Stats failed to disclose that it would use technology assisted review ("TAR") to narrow the documents it would review for responsiveness. Because Agri Stats did not negotiate in good faith on all the culling techniques it would use, Plaintiffs moved to compel Agri Stats to produce all non-privileged documents identified with the search terms Plaintiffs had agreed to. On February 7, 2022, Magistrate Judge Romero granted in part Plaintiffs' motion and ordered the parties to meet and confer (*Growers II* ECF 276). Based on that order, Plaintiffs and Agri Stats met and conferred on the parameters of a further production by Agri Stats consisting of approximately 5,800 documents (*Growers II* ECF 331).

91. On December 23, 2021, Plaintiffs moved the Court for an order compelling Defendants Koch, PPC, and Sanderson to produce certain data and documents that their experts intended to rely on and that had been produced in *In re Broiler Chicken Antitrust Litig.*, No. 16-cv-8637 (N.D. Ill.) (the "Downstream Litigation") (*Growers* ECF 507). While these Defendants did not challenge Plaintiffs' request for this downstream information, they informed Plaintiffs that not all the parties in the Downstream Litigation had consented to the production of the

materials at issue and, as a result, they would not produce the documents. These Defendants filed a response on January 6, 2022, stating that they did not take a position on Plaintiffs' motion, but that they could not produce the documents absent consent from the parties in the Downstream Litigation (*Growers* ECF 508). On January 13, 2022, Magistrate Judge Romero granted Plaintiffs' motion to compel (*Growers* ECF 511).

4. Expert Discovery

92. On a parallel track with document and deposition discovery, Co-Lead Counsel have worked with expert economists to digest documents and the structured transactional data to prepare economic analyses supporting Plaintiffs' claims, their widespread impact across the class, and their estimated damages. This economic analysis is a critical component of any antitrust case, and Co-Lead Counsel have overseen the expert work to ensure the work is done effectively and with optimal efficiency.

93. Co-Lead Counsel worked extensively with their economic expert, Dr. Hal J. Singer, leading up to the submission of his opening report on August 19, 2022.

94. On November 19, 2022, Defendants served Plaintiffs with reports from three proffered experts: Drs. John B. Carey, Justin McCrary, and Celeste Saravia.

95. After reviewing the reports and taking the depositions of Defendants' three experts, Co-Lead Counsel continued to work with Dr. Singer on his rebuttal report, which was submitted on January 23, 2023. Co-Lead Counsel subsequently defended Dr. Singer's deposition on February 24, 2023.

G. Post-Discovery Motion Practice

96. Following the conclusion of expert discovery, the parties submitted their respective *Daubert* motions on March 17, 2023. *See Growers* ECF 672, 674. (These motions

were provisionally filed under seal while the parties addressed confidentiality designations for submitting redacted versions of these filings, which are not yet docketed. The sealed versions were docketed on March 28 and 29, 2023. *Growers* ECF 681, 682.)

97. The parties' respective responsive briefs were submitted on April 28, 2023. *See Growers* ECF 721, 723. (These motions were provisionally filed under seal while the parties addressed confidentiality designations for submitting redacted versions of these filings, which are not yet docketed. The sealed versions were docketed on May 4 and 5, 2023. *Growers* ECF 726, 727.) The parties submitted reply briefs on June 2, 2023. *See Growers* ECF 729, 730. (PPC filed a corrected version of its reply brief on June 5, 2023. *Growers* ECF 732.)

98. Concurrently with the *Daubert* briefing, Plaintiffs also submitted their motion for class certification on March 17, 2023. *Growers* ECF 671. (This motion was also provisionally filed under seal, and the sealed version was docketed on March 28, 2023. *Growers* ECF 680.) PPC filed its responsive brief on April 28, 2023. *Growers* ECF 723. (This responsive brief was provisionally filed under seal, and the sealed version was docketed on May 5, 2023. *Growers* ECF 728.) Plaintiffs filed their reply brief in support of class certification on June 9, 2023. *Growers* ECF 734. (This reply was also provisionally filed under seal, and the sealed version was docketed on June 23, 2023. *Growers* ECF 739.)

99. The Court has scheduled a hearing on the parties' *Daubert* motions and Plaintiffs' motion for class certification for July 13-14, 2023. *Growers II* ECF 515-16.

II. THE TYSON AND PERDUE SETTLEMENTS

100. Co-Lead Counsel engaged in separate settlement discussions directly with Tyson and Perdue. The negotiations were rigorous and time-intensive, with counsel engaging in

telephonic negotiations and exchanging proposals and counter proposals, often several times in a single day, including late into the night and on weekends.

101. Plaintiffs ultimately reached agreements with Tyson and Perdue that culminated in separate settlement agreements. On June 14, 2021, Plaintiffs filed a notice informing the Court that a settlement had been reached with Tyson (*Growers* ECF 401), and another notice informing the Court that a settlement had been reached with Perdue was filed on July 23, 2021 (*Growers* ECF 412). The settlement with Tyson was executed on June 30, 2021 (*see Growers* ECF 415), and a separate settlement with Perdue was executed on August 11, 2021 (*see Growers* ECF 427).

102. Both settlements provide monetary and non-monetary considerations. Tyson agreed to pay \$21 million and Perdue agreed to pay \$14.75 million.

103. The non-monetary components of both settlements provide further benefits in the form of cooperation in the litigation, which includes providing information about principal facts relevant to Plaintiffs' claims, providing witnesses for deposition and at trial, authenticating documents, resolving issues relating to these two Defendants' structured data, and other cooperation.

104. Perdue also agreed that, for a period of five years following final judgment as to it, Perdue will not (a) require that any class member arbitrate any claims against Perdue or any alleged Co-Conspirator or Defendant, (b) add a provision to any agreements with any class member requiring that any claims against Perdue be arbitrated, (c) argue that any class members are required to arbitrate claims against Perdue or against any alleged Co-Conspirator or Defendant based on principles of estoppel, or (d) enforce any provisions in any agreements with one or more Growers purporting to ban collective or class actions against Perdue. This is a

further benefit to class members should one or more of the Co-Conspirators continue to engage in illicit anticompetitive conduct in the future.

105. Plaintiffs filed their motion for preliminary approval of the Tyson settlement on July 30, 2021 (*Growers* ECF 415), which the Court granted on August 23, 2021 (*Growers* ECF 439), following a conference with the Court on the motion held that day. As part of that order, the Court certified the Tyson Settlement Class, designated Interim Co-Lead Class Counsel Hausfeld LLP and Berger Montague PC as Settlement Class Counsel for the Tyson Settlement Class, appointed class representatives¹⁴ on behalf of the Tyson Settlement Class, and appointed an escrow agent for the settlement payment.

106. Plaintiffs filed their motion for preliminary approval of the Perdue settlement on August 19, 2021 (*Growers* ECF 427), which the Court also granted on August 23, 2021 (*Growers* ECF 440), during the same conference with the Court addressing the Tyson settlement. As part of that Order, the Court certified the Perdue Settlement Class, designated Interim Co-Lead Class Counsel Hausfeld LLP and Berger Montague PC as Settlement Class Counsel for the Perdue Settlement Class, appointed class representatives (*see* fn. 14) on behalf of the Perdue Settlement Class, and appointed an escrow agent for the settlement payment.

107. On August 19, 2021, Plaintiffs filed a motion to approve the form and manner of notice to the approved settlement classes, and to appoint a settlement administrator to manage that process (*Growers* ECF 429). The Court also granted this motion on August 23, 2021

¹⁴ For the Tyson and Perdue settlements the term “class representatives” refers to the Plaintiffs in this action that are proposed class representatives for those settlements: Haff Poultry, Inc., Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles B. Weaver, Melissa Weaver, Marc McEntire, Karen McEntire, Mitchell Mason, and Anna Mason.

(*Growers* ECF 441), following the conference concerning preliminary approval of the two settlements.

108. For both settlements, the Court: (a) appointed Angeion Group, LLC as the settlement administrator; and (b) set a single schedule that set deadlines for issuing notices, objections, opt outs, claims, and briefing for final approval and fees, as well as set a fairness hearing date (*Growers* ECF 441).

109. The process for sending notice to the class members, via both direct mailings and the publication of a short form notice, commenced on September 22, 2021. The notices apprised class members that Class Counsel would submit an application for (i) an award of attorneys' fees up to one-third of the gross settlement amount, (ii) reimbursement of expenses up to \$3 million, and (iii) service awards to the class representatives¹⁵ up to \$50,000 each (*see Growers* ECF 429).

110. The Court granted final approval of the Tyson and Perdue settlements on February 18, 2022 (*Growers* ECF 532), and final judgment for these Defendants was entered on April 1, 2022 (*Growers* ECF 554).

111. The Court also granted Plaintiffs' motion for an award of attorneys' fees, the reimbursement of litigation expenses, and an award of interim service awards to the class representatives on February 18, 2022 (*Growers* ECF 531).

III. THE KOCH SETTLEMENT

112. Over a period of ten months, Co-Lead Counsel engaged in rigorous and time-intensive negotiations with Koch, which included counsel engaging in telephonic negotiations

¹⁵ With respect to the interim service awards sought in connection with the Tyson and Perdue settlements, class representatives with a familial relationship ((1) Myles B. Weaver and Mellissa Weaver, (2) Marc McEntire and Karen McEntire, and (3) Mitchell Mason and Anna Mason) were treated as a single class representative. An interim service award is not requested in connection with the Sanderson Settlement.

and exchanging proposals and counter proposals, often several times in a single day, including late into the night and on weekends.

113. Plaintiffs ultimately reached agreement with Koch. On May 2, 2022, Plaintiffs filed a notice informing the Court that a settlement had been reached with Koch (*Growers* ECF 574). A settlement agreement with Koch was executed on May 20, 2022 (*see Growers* ECF 594).

114. The settlement with Koch provides both monetary and non-monetary considerations. Koch agreed to pay \$15.5 million.

115. The non-monetary components of the Koch settlement provide further benefits in the form of cooperation in the litigation, which includes providing information about principal facts relevant to Plaintiffs' claims, cooperating by providing witnesses for deposition and at trial, authenticating documents, and other forms of cooperation.

116. Koch also agreed that, for a period of five years following final judgment as to the claims against it, Koch will not (a) require that any member of the Settlement Class to arbitrate any claims against Koch or any alleged Co-Conspirator or Defendant; (b) add a provision to any agreement with any class member requiring that any claims against Koch be arbitrated; (c) argue that any class members are required to arbitrate claims against Koch or against any alleged Co-Conspirator or Defendant based on principles of estoppel; or (d) enforce any provisions in any agreements with one or more Growers purporting to ban collective or class actions against Koch. This is a further benefit to class members should one or more of the Co-Conspirators continue to engage in illicit anticompetitive conduct in the future.

117. Plaintiffs filed their motion for preliminary approval of the Koch Settlement on May 27, 2022 (*Growers* ECF 594), which the Court granted on June 10, 2022 (*Growers* ECF 602), following a conference with the Court on the motion held that day. As part of that order,

the Court certified the Koch Settlement Class, designated Interim Co-Lead Class Counsel Hausfeld LLP and Berger Montague PC as Settlement Class Counsel for the Koch Settlement Class, appointed class representatives¹⁶ on behalf of the Koch Settlement Class, and appointed an escrow agent for the settlement payment.

118. Also on May 27, 2022, Plaintiffs filed a motion to approve the form and manner of notice to the Koch Settlement Class, and to appoint a settlement administrator to manage that process (*Growers* ECF 595). The Court also granted this motion on June 10, 2022 (*Growers* ECF 601), following the conference concerning preliminary approval of the settlement.

119. The Court further (a) appointed Angeion Group, LLC as the Koch settlement administrator; and (b) set deadlines for issuing notices, objections, opt outs, claims, and briefing for final approval and fees, as well as set a fairness hearing date (*Growers* ECF 601).

120. The process for sending notice to the class members, via both direct mailings and the publication of a short form notice, commenced on July 11, 2022. The notices apprised class members that Class Counsel would submit an application for (i) an award of attorneys' fees up to one-third of the gross settlement amount, and (ii) reimbursement of expenses up to \$3 million (*see Growers* ECF 595).

121. The Court granted final approval of the Koch settlement and entered final judgment for Koch on October 28, 2022 (*Growers* ECF 650).

122. The Court also granted Plaintiffs' motion for an award of attorneys' fees and the reimbursement of litigation expenses on October 28, 2022 (*Growers* ECF 649).

¹⁶ For the Koch Settlement the term "Class Representatives" refers to the Plaintiffs in this action that are the class representatives for the Koch Settlement: Haff Poultry, Inc., Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles B. Weaver, Marc McEntire, Karen McEntire, and Mitchell Mason. *See also* n.1 *supra*.

IV. THE SANDERSON SETTLEMENT

123. Settlement negotiations occurred directly between counsel for Plaintiffs and Sanderson. The negotiations, which began in earnest in October 2022, were extensive, with counsel regularly engaging in telephonic negotiations and exchanging proposals and counterproposals. Plaintiffs reached agreement with Sanderson which culminated in a long form settlement agreement executed on February 28, 2023 (*see Growers II* ECF 435-1; *Growers* ECF 666).

124. The settlement with Sanderson provides both monetary and non-monetary considerations. Sanderson agreed to pay \$17.75 million for the benefit of the Settlement Class.

125. The non-monetary components of the Sanderson settlement provide further benefits to the Settlement Class in the form of cooperation in the litigation, which includes reasonable efforts to authenticate documents and responding to reasonable requests for additional information about Plaintiffs' Claims that will benefit Plaintiffs and the Settlement Class as the litigation proceeds through class certification, summary judgment, and trial against the remaining, non-settling Defendants.

126. Sanderson also agreed that for a period of five years following final judgment as to the claims against it, Sanderson will not (a) require that any member of the Settlement Class arbitrate any claims against Sanderson or any alleged Co-Conspirator or Defendant, (b) argue that any Settlement Class members are required to arbitrate claims against Sanderson or against any alleged Co-Conspirator or Defendant based on principles of estoppel, or (c) enforce any provisions in any agreements with one or more Growers purporting to ban collective or class actions against Sanderson. This is a further benefit to the Settlement Class should one or more of the Co-Conspirators continue to engage in illicit anticompetitive conduct in the future.

127. Plaintiffs filed their motion for preliminary approval of the Sanderson Settlement on March 3, 2023 (*Growers* ECF 666), which the Court granted on April 17, 2023 (*Growers* ECF 708), following a conference with the Court on the motion held that day. As part of that order, the Court certified the Settlement Class, designated Interim Co-Lead Class Counsel Hausfeld LLP and Berger Montague PC as Settlement Class Counsel for the Settlement Class, appointed Plaintiffs as Class Representatives¹⁷ on behalf of the Settlement Class, and appointed an escrow agent for the settlement payment.

128. Also on March 3, 2023, Plaintiffs filed a motion to approve the form and manner of notice to the Settlement Class, and to appoint a settlement administrator to manage that process (*Growers* ECF 667). The Court also granted this motion on April 17, 2023 (*Growers* ECF 709), following the conference concerning preliminary approval of the Settlement.

129. The Court further (a) appointed Angeion Group, LLC as the Sanderson settlement administrator; and (b) set deadlines for issuing notices, objections, opt outs, claims, and briefing for final approval and fees, as well as set a fairness hearing date (*Growers* ECF 709).

130. The process for sending notice to the Settlement Class members, via both direct mailings and the publication of a short form notice, commenced on May 17, 2023. The notices apprised Settlement Class members that Class Counsel would submit an application for (i) an award of attorneys' fees up to one-third of the gross settlement amount, and (ii) reimbursement of expenses up to \$2.5 million (*see Growers II* ECF 436-1; *Growers* ECF 667).

¹⁷ For the Sanderson Settlement the term "Class Representatives" refers to the Plaintiffs in this action that are proposed class representatives: Haff Poultry, Inc., Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles B. Weaver, Marc McEntire, Karen McEntire, and Mitchell Mason. *See also* n.1 *supra*.

131. As of June 30, 2023, Co-Lead Counsel have received seven (7) written responses to the Settlement from a Settlement Class member, each requesting exclusion from the Settlement Class. No objections have been received as of June 30, 2023. Settlement Class members have until July 31, 2023 to submit any objections or requests to opt out of the Settlement.

V. CLASS COUNSEL’S SUMMARY OF ATTORNEYS’ FEES AND UNREIMBURSED EXPENSES

132. Co-Lead Counsel are highly skilled and nationally respected law firms and collectively have over seven decades of extensive experience prosecuting and trying complex antitrust actions, including as appointed lead, co-lead, or liaison class counsel, and who have recovered billions of dollars for injured plaintiffs and class members over the course of their careers. Through their management of the litigation, Co-Lead Counsel were assisted by attorneys and staff from other counsel firms who performed work at the direction of Co-Lead Counsel for the benefit of the Settlement Class. Together, Co-Lead Counsel and the firms that worked on this litigation are referred to below as “Class Counsel.”

133. Class Counsel have diligently prosecuted this case for nearly 6.5-years since the first complaint was filed. During this time, as detailed above, Class Counsel have: (i) briefed (and in many cases argued) numerous pre-trial motions in four district courts and one federal bankruptcy court, including, *inter alia*, motions to stay discovery, compel arbitration, dismiss for failure to state a claim, dismiss for improper venue, dismiss for lack of personal jurisdiction, enforce a bankruptcy discharge, dismiss under the first-filed rule, compel a third party’s document production, compel production of purportedly privileged documents, compel the production of documents, offensive and defensive motions to exclude expert opinions under *Daubert*, and class certification; (ii) submitted two petitions to the Panel for centralization and

consolidation of the separate cases filed in different courts; (iii) negotiated five separate stipulations to manage the production of documents and taking of testimony; (iv) served requests for production of documents, including issuing over 50 subpoenas to nonparties; (v) propounded multiple sets of interrogatories and requests for admission and responded to Defendants' interrogatories and requests for admission; (vi) negotiated custodians and search protocols with five Defendants and numerous nonparties; (vii) received and reviewed more than 1.76 million documents consisting of ten million pages; (viii) produced more than 10,000 documents in response to Defendants' requests for production; (ix) taken 68 depositions under Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6) of witnesses from the Defendants and alleged Co-Conspirators, as well as cross-noticed depositions of 5 class members noticed by Defendants; (x) worked extensively with experts to evaluate the four settlements obtained to date against the potential damages in the case and to prepare economic analyses supporting Plaintiffs' claims, their widespread impact across the class, and their estimated damages, including working with Plaintiffs' economic expert, Dr. Hal J. Singer, to serve opening and rebuttal reports, defending Dr. Singer at his deposition, and deposing Defendants' three proffered experts; and (xi) efficiently managed, financed, and oversaw the various firms, attorneys, paralegals, experts, and other professionals over the nearly six and a half years of this litigation. All told, Class Counsel have invested approximately 54,000 hours of attorney time over a nearly 6.5-year period.

134. Defendants are also represented by some of the country's leading law firms who have vigorously defended their clients every step of the way.

135. Litigating this case has involved significant effort on Class Counsel's part, both in terms of time and resources spent. The following table shows the total lodestar reported by Class Counsel¹⁸ from inception through June 16, 2023 at current rates:

| Firm | Hours | Lodestar |
|--|------------------|------------------------|
| BERGER MONTAGUE PC | 14,409.10 | \$10,153,976.75 |
| HAUSFELD LLP | 15,288.70 | \$10,346,359.50 |
| ROBINS KAPLAN, LLP | 6,949.10 | \$3,764,082.50 |
| ROACH LANGSTON BRUNO, LLP | 3,201.60 | \$1,262,685.00 |
| WHITFIELD COLEMAN BULLOCK PLLC | 3,645.50 | \$1,231,070.00 |
| CUNEO GILBERT & LADUCA, LLP | 1,597.95 | \$1,128,626.25 |
| DAMPIER LAW FIRM | 3,068.50 | \$1,077,500.00 |
| BONSIGNORE TRIAL LAWYERS, PLLC | 2,026.70 | \$718,950.50 |
| DAVIS BETHUNE & JONES, LLC | 1,822.40 | \$713,935.00 |
| BUTLER FARM & RANCH LAW GROUP PLLC | 672.60 | \$420,375.00 |
| MITCHELL DECLERK PLLC | 687.70 | \$273,832.50 |
| BURNS CHAREST, LLP | 244.70 | \$169,477.50 |
| VAN WINKLE LAW FIRM | 139.60 | \$82,272.50 |
| GREG DAVIS LAW | 51.90 | \$33,735.00 |
| RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS | 84.55 | \$33,677.00 |
| CHALMERS & ADAMS LLC | 46.85 | \$27,610.00 |
| PUBLIC JUSTICE, PC | 50.50 | \$19,867.30 |
| TOTAL | 53,987.95 | \$31,458,032.30 |

136. Class Counsel's requested fee award of one-third of the \$17.75 million common fund (plus any accrued interest) amounts to a fee of \$5,916,667 (plus one-third of any of the accrued interest). Based on the lodestar set forth above, and taking into consideration the fees previously awarded Class Counsel in connection with the earlier Tyson, Perdue and Koch settlements in this matter, the combined fees (previously awarded fees and the requested fees)

¹⁸ Only Co-Lead Counsel have submitted updated figures for hours, lodestar, and firm unreimbursed expenses with this submission. *See infra* ¶ 141.

would represent a multiplier of 0.731 based on the total lodestar to date (\$17,083,334 prior fee award plus \$5,916,667 requested fee) divided by \$31,458,032.30 total lodestar to date.

137. Class Counsel have also advanced and kept track of their necessary and incidental expenses in the Action. The following table shows Class Counsel's reasonable unreimbursed out-of-pocket expenses (excluding contributions to the litigation fund managed and funded by Class Counsel for joint expenses) from inception of the case:

| Firm | Expenses |
|--------------------|--------------------|
| BERGER MONTAGUE PC | \$24,401.21 |
| HAUSFELD LLP | \$57,488.44 |
| TOTAL | \$81,889.65 |

138. Unreimbursed expenses that have been paid from the litigation fund, which was managed by Co-Lead Counsel and funded exclusively by Class Counsel, from inception are shown below:

| Litigation Fund Disbursements Since Last Fee Application | |
|---|---------------------|
| Expense Category | Amount |
| Expert Consulting Fees | \$581,785.56 |
| E-Discovery Vendor Fees | \$145,435.71 |
| Court Reporting, Process Server, and Transcript Services | \$29,649.81 |
| TOTAL | \$756,871.08 |

139. Unreimbursed expenses that are outstanding and due and owing are shown below:

| Outstanding Invoices | |
|--|---------------------|
| Expense Category | Amount |
| Expert Consulting Fees | \$120,726.35 |
| E-Discovery Vendor Fees | \$12,854.90 |
| Court Reporting, Process Server, and Transcript Services | \$0 |
| TOTAL | \$133,581.25 |

140. The total amount of Class Counsel's requested cost reimbursement is \$972,341.98 which is the total of unreimbursed out-of-pocket expenses, litigation fund expenditures, and outstanding invoices.

141. Attached as Exhibits 1-2 are declarations for each Co-Lead Counsel firm setting forth in more detail each firm's lodestar and expenses. These declarations show the additional lodestar and expenses since the Class Counsel's prior motion for an award of attorney's fees and unreimbursed litigation expenses, filed on August 24, 2022, which attaches exhibits showing lodestar and expenses for each Class Counsel firm. *See Growers* ECF 634. Detailed time records and expense vouchers/receipts will be made available to the Court *in camera* should the Court wish to examine them.

V. THE EFFORTS OF THE CLASS REPRESENTATIVES ON BEHALF OF THE SETTLEMENT CLASS

142. Although at this time, there is no request for an additional incentive award payment to the Class Representatives, they have made and continue to make significant contributions to prosecuting this case against Defendants for the benefit of all members of the Settlement Class. The Class Representatives each actively protected the interests of the Settlement Class by filing the suit on behalf of the Settlement Class and undertaking all the responsibilities involved in being a named plaintiff in a class action, including monitoring the progress of the case, attending hearings in Oklahoma, and responding to discovery requests.

143. Plaintiffs Steve Haff, Johnny Upchurch, and Jonathan Walters each consulted with Co-Lead Counsel and shared relevant facts of their experiences growing broilers for Defendants prior to the filing of the original class action complaint in January 2017.

144. Plaintiffs Steve Haff, Johnny Upchurch, Jonathan Walters, Nancy Butler, and Myles ("Mike") Weaver each consulted with Co-Lead Counsel prior to the filing of the first

amended complaint in the case. They shared details of their personal experiences growing broilers for the Defendants to bolster the claims in the complaint, including by providing copies of their contracts and any existing documentation on their revenue and expenses.

145. Plaintiffs Marc and Karen McEntire and Mitchell Mason filed their own class action complaints in 2020, and after the cases were consolidated into a multidistrict litigation, consulted with Co-Lead Counsel and shared their experiences growing broilers for PPC. They were ultimately added as Class Representatives to the Consolidated Class Action Complaint filed in this Court in February 2021.

146. Each of the Class Representatives met telephonically with Co-Lead Counsel multiple times during the course of document collection efforts and provided access to their hard copy files and computer systems during an in-person document collection during the COVID-19 pandemic.

147. Each of the Class Representatives has also met with Co-Lead Counsel telephonically on multiple additional occasions in order to respond to the Defendants' interrogatories and reviewed and approved those responses prior to service.

148. Each of the Class Representatives has also met with Co-Lead Counsel in this case to discuss potential settlement proposals, including those that culminated in the Sanderson Settlement, as well as the earlier settlements with Tyson, Perdue, and Koch.

149. Several of the Class Representatives have taken additional time out of their schedules to consult on various issues of fact with Co-Lead Counsel.

150. Mr. Haff (the only Class Representatives based in Oklahoma) also attended the Court's in-person and virtual (Zoom) hearings.

151. Class Representative Mr. Weaver quit growing Broilers as a result of his participation in this action after PPC offered him an amended contract that purported to release his claims in this action.

152. All the Class Representatives prepared and sat for depositions taken on the following dates:

- Johnny Upchurch (June 24, 2022)
- Mitchell Mason (June 30, 2022)
- Myles (“Mike”) Weaver (July 12, 2022)
- Karen McEntire (July 13, 2022)
- Marc McEntire (July 14, 2022)
- Nancy Butler (July 15, 2022)
- Steve Haff (Haff Poultry, Inc.) (July 20, 2022)
- Johnathan Walters (July 22, 2022)

153. The Class Representatives were required to expend time and effort over the nearly 6.5-year period of this litigation, and they are prepared to continue to do so.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this July 3, 2023, in Washington, D.C.

/s/ Daniel J. Walker
Daniel J. Walker

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

IN RE: BROILER CHICKEN GROWER
ANTITRUST LITIGATION (NO. II)

This document relates to all actions.

Case No. 6:20-MD-02977-RJS-CMR

Chief Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

**DECLARATION OF ERIC L. CRAMER ON BEHALF OF BERGER MONTAGUE PC
IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES
AND LITIGATION EXPENSES**

I, Eric L. Cramer, declare as follows:

1. I am Chairman of the law firm Berger Montague PC ("BMPC"). I submit this declaration in support of Plaintiffs' motion for an award of attorneys' fees and expenses in connection with the services rendered, and costs and expenses incurred, in *In re: Broiler Chicken Grower Antitrust Litigation (No. II)* (the "Action").

2. BMPC has served as one of the two Court-appointed Interim Co-Lead Class Counsel for Plaintiffs in the Action.

3. The schedule attached as Exhibit A sets forth BMPC's total hours and lodestar, computed at current rates, from the inception of the case through and including June 16, 2023. During that period of time, BMPC spent 14,409.10 hours litigating this case, with a corresponding lodestar (at current rates) of \$10,153,976.75. The schedule in Exhibit A was prepared from contemporaneous, daily time records prepared and maintained by BMPC in the regular course of business. In connection with representing the Plaintiffs in the Action, BMPC performed numerous tasks, including:

- (1) initial case investigation and drafting pleadings;
- (2) briefing the opposition to a motion to stay;

- (3) briefing, and in certain instances presenting argument on, dispositive motions under Rules 12(b)(2), 12(b)(3), and 12(b)(6) and to compel arbitration;
- (4) briefing motions concerning defendant Pilgrim's bankruptcy injunction;
- (5) briefing motions to dismiss in the Eastern District of North Carolina action;
- (6) negotiating pre-trial orders governing the confidentiality of documents, the negotiation and production of electronically stored information, and the discoverability of expert disclosures and work product;
- (7) briefing a disputed case schedule concerning the sequencing and phasing of fact and expert disclosures;
- (8) negotiating search terms, custodians, and search methodologies for structured and unstructured data productions from five corporate defendant families, seventeen alleged co-conspirators, certain executives and employees of Defendants, and multiple non-colluding firms and trade associations, which resulted in more than 1.76 million documents (consisting of tens of millions of pages) being produced from hundreds of custodial sources;
- (9) drafting amended pleadings to comply with an order of the bankruptcy court;
- (10) moving the Judicial Panel on Multidistrict Litigation ("JPML") twice for centralization of related member cases as an MDL;

- (11) working to consolidate all member cases under the same case management order, including drafting consolidated pleadings following centralization by the JPML;
- (12) drafting (and where requested, presenting argument on) discovery motions, including motions to compel productions in connection with non-party subpoenas, a motion to compel production of documents from a privilege log, a motion to compel the production of documents produced in litigation involving the sale of broilers to consumers, and opposition of motions to stay and quash depositions;
- (13) organizing, overseeing, paying for, staffing, and supervising the review of over 1.76 million documents produced in discovery in this action, totaling over ten million pages on a sophisticated eDiscovery platform;
- (14) propounding interrogatories and requests for admission to the Defendants, preparing responses to the Defendants' interrogatories and requests for admission;
- (15) engaging in a multi-faceted response to Defendants' proposal to make use of materials from the downstream *In re Broiler Chicken Antitrust Litig.*, No. 16-cv-8637 (N.D. Ill.) (the "Downstream Litigation.") and securing core discovery materials to which Plaintiffs were entitled, including motion practice concerning these materials;
- (16) organizing, overseeing, and staffing a deposition program that covered approximately 80 depositions (BMPC attorneys took or defended 26 of those depositions), and participating in an emergency conference before

Magistrate Judge Romero concerning a defense witness's invocation of the Fifth Amendment right against self-incrimination;

- (17) negotiating four settlements for an aggregate recovery of \$69 million for the benefit of the Settlement Class in this Action, plus substantial cooperation provisions and other non-monetary benefits, and overseeing the administration of those settlements;
- (18) coordinating with the settling Defendants Tyson, Perdue, Koch and Sanderson to obtain cooperation for the benefit of the Settlement Class and the proposed litigation class;
- (19) preparing joint status reports and attending status conferences on a regular basis to keep the Court apprised of the litigation's status and keep the Action on track;
- (20) working with economic, econometric, and other expert witnesses to prepare Plaintiffs' case for class certification, summary judgment, and trial;
- (21) working extensively with Plaintiffs' economic expert, Dr. Hal J. Singer, who submitted both opening and rebuttal reports, including defending Dr. Singer at his deposition;
- (22) analyzing reports submitted by each of Defendants' three proffered experts, and deposing each of them;
- (23) briefing a *Daubert* motion concerning certain opinions contained in the reports submitted by Defendants' three proffered experts, and opposing Defendants' *Daubert* motion concerning certain opinions in Dr. Singer's reports;

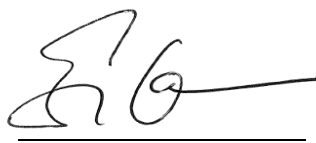
- (24) fully briefing Plaintiffs' motion for class certification; and
- (25) managing, financing, and overseeing the various firms, attorneys, paralegals, experts, and other professionals who assisted Interim Co-Lead Class Counsel with the above tasks over the 6.5-year course of this litigation thus far.

4. The lodestar amount reflected in Exhibit A is for work performed by attorneys and professional staff at BMPC for the benefit of the Settlement Class. The hourly rates for the attorneys and professional staff reflected in Exhibit A are the usual and customary hourly rates charged by BMPC in similar complex litigation matters. The attorneys and paralegals who have devoted their time to this case did so at the expense of time they would have devoted to other matters.

5. Excluding contributions to the Litigation Fund, which is accounted for separately in Plaintiffs' submission for the reimbursement of litigation expenses, and other costs reimbursed out of prior settlements in this matter, BMPC has an additional \$24,401.21 in unreimbursed costs and expenses in connection with the prosecution of the Action, from inception of the case through and including June 16, 2023. These costs are set forth in Exhibit B and are reflected in the books and records of BMPC. They were incurred on behalf of Plaintiffs, the Settlement Class, and the proposed Class by BMPC.

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

Dated: Philadelphia, PA
July 3, 2023



Eric L. Cramer

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

IN RE: BROILER CHICKEN GROWER
ANTITRUST LITIGATION (NO. II)

Case No. 6:20-MD-02977-RJS-CMR

Chief Judge Robert J. Shelby

This document relates to all actions.

Magistrate Judge Cecilia M. Romero

**EXHIBIT A TO THE DECLARATION OF ERIC L. CRAMER ON BEHALF OF
BERGER MONTAGUE PC IN SUPPORT OF PLAINTIFFS' MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES**

Reported Hours and Historical Lodestar
Inception through June 16, 2023

| Name | Position | Hours | Blended Rate | Lodestar |
|-----------------------|-----------------|------------------|---------------------|------------------------|
| Eric Cramer | C/S | 1,237 | \$1,160.00 | \$1,434,920.00 |
| Ellen Noteware | S | 811.1 | \$825.00 | \$669,157.50 |
| Daniel Walker | S | 2,861 | \$775.00 | \$2,217,740.00 |
| Patrick Madden | S | 2,559.70 | \$740.00 | \$1,894,178.00 |
| Michaela Wallin | S | 928.3 | \$685.00 | \$635,885.50 |
| Sarah Schalman-Bergen | S | 12.1 | \$645.00 | \$7,804.50 |
| David Langer | SC | 2,290.4 | \$735.00 | \$1,683,444.00 |
| Amanda Trask | SC | 6.4 | \$685.00 | \$4,384.00 |
| Jacob Polakoff | SC | 22.8 | \$670.00 | \$15,276.00 |
| Julia McGrath | A | 18.5 | \$575.00 | \$10,637.50 |
| Mark Suter | A | 50.8 | \$575.00 | \$29,210.00 |
| Christina Black | A | 1,153.2 | \$450.00 | \$518,940.00 |
| Haley Pritchard | A | 853.2 | \$490.00 | \$418,068.00 |
| David Filbert | PL | 234.4 | \$420.00 | \$98,448.00 |
| Max Brandy | PL | 1,177 | \$390.00 | \$459,030.00 |
| Susan Leo | PL | 6.6 | \$375.00 | \$2,475.00 |
| Tamara Stires | PL | 4.6 | \$375.00 | \$1,725.00 |
| Eleanor Magnus | PL | 22.7 | \$260.00 | \$5,902.00 |
| George MacMillan | PL | 141.6 | \$310.00 | \$43,896.00 |
| Sandy McCollum | PL | 13.3 | \$57.50 | \$764.75 |
| Total | | 14,409.10 | | \$10,153,976.75 |

Role Legend

| | |
|----|----------------|
| C | Chairman |
| S | Shareholder |
| SC | Senior Counsel |
| A | Associate |
| PL | Paralegal |

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

IN RE: BROILER CHICKEN GROWER
ANTITRUST LITIGATION (NO. II)

Case No. 6:20-MD-02977-RJS-CMR

Chief Judge Robert J. Shelby

This document relates to all actions.

Magistrate Judge Cecilia M. Romero

**EXHIBIT B TO THE DECLARATION OF DECLARATION OF ERIC L. CRAMER ON
BEHALF OF BERGER MONTAGUE PC IN SUPPORT OF PLAINTIFFS' MOTION
FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES**

**Reported Expenses on Behalf of Plaintiffs
Inception through June 16, 2023**

| Category | Amount |
|---|--------------------|
| Commercial Copies | \$25.39 |
| Internal Reproduction/Copies | \$4,695.00 |
| Computer Research | \$2,975.71 |
| Court Fees (filings, etc.) | \$0.00 |
| Court Reporters/Transcripts | \$1,774.00 |
| Telephone/Fax | \$0.00 |
| Postage/Express Delivery/Messenger | \$1,339.10 |
| Professional Fees (expert, investigator, accountant, etc.) | \$0.00 |
| Witness/Service Fees | \$0.00 |
| Travel: Air Transportation, Ground Travel, Meals, Lodging, etc. | \$12,367.51 |
| Database Hosting Services | \$1,224.50 |
| Miscellaneous | \$0.00 |
| Total | \$24,401.21 |

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

IN RE: BROILER CHICKEN GROWER
ANTITRUST LITIGATION (NO. II)

This document relates to all actions.

Case No. 6:20-MD-02977-RJS-CMR

Chief Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

**DECLARATION OF MELINDA R. COOLIDGE ON BEHALF OF HASUFELD LLP IN
SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES
AND LITIGATION EXPENSES**

I, Melinda R. Coolidge, declare as follows:

1. I am a partner with the law firm Hausfeld LLP. I submit this declaration in support of Plaintiffs' motion for an award of attorneys' fees and expenses in connection with the services rendered, and costs and expenses incurred, in *In re Broiler Chicken Grower Antitrust Litigation* (the "Action").

2. Hausfeld has served as one of two Court-appointed Interim Co-Lead Counsel for Plaintiffs in this Action.

3. The schedule attached as Exhibit A sets forth my firm's total hours and lodestar, computed at current rates, for the period from inception of the case through and including June 16, 2023. The total number of hours spent by my firm during this period was 15,288.7 with a corresponding lodestar (at current rates) of \$10,346,359.50. This schedule was prepared from contemporaneous, daily time records prepared and maintained by my firm. In connection with representing the Plaintiffs in the Action, Hausfeld performed numerous tasks, including:

- a. initial case investigation and pleading drafting;
- b. briefing the opposition to a motion to stay discovery;

- c. briefing, and in certain instances presenting argument on, oppositions to dispositive motions in the original Eastern District of Oklahoma action under Rules 12(b)(2), 12(b)(3), and 12(b)(6) and to compel arbitration;
- d. briefing motions concerning Pilgrim's bankruptcy injunction and presenting argument on those motions in the bankruptcy court;
- e. briefing *seriatim* motions to dismiss in the Eastern District of North Carolina action;
- f. negotiating pre-trial orders governing the confidentiality of documents, the negotiation and production of electronically stored information, the discoverability of expert disclosures and work product;
- g. briefing a disputed case schedule concerning the sequencing and phasing of fact and expert disclosures;
- h. negotiating search terms, custodians, and search methodologies for structured and unstructured data productions from five corporate defendant families, seventeen alleged co-conspirators, certain executives and employees of defendants, and multiple non-colluding firms and trade associations, which resulted in more than 1.76 million documents (consisting of tens of millions of pages) being produced from hundreds of custodial sources;
- i. drafting amended pleadings to comply with an order of the bankruptcy court;
- j. moving the Judicial Panel on Multidistrict Litigation ("JPML") twice for centralization of related member cases as an MDL;

- k. working to consolidate all member cases under the same case management order, including drafting consolidated pleadings following centralization by the JPML;
- l. drafting (and where requested, presenting argument on) discovery motions, including motions to compel productions in connection with non-parties' productions, a motion to compel production of documents from a privilege log, opposition of motions to stay depositions, and a motion to set a remote deposition protocol;
- m. arguing two emergency motions on short notice, including a dispute over the deposition of Pilgrim's witness Timothy Stiller and a dispute over the deposition of Pilgrim's witness William Lovette;
- n. organizing, overseeing, staffing, and supervising a review of over 1.76 million documents produced in discovery in this Action, totaling over ten million pages on a sophisticated eDiscovery platform;
- o. organizing, overseeing, and staffing a deposition program that covered approximately 80 depositions, with Hausfeld having been responsible for first-chair staffing for 37 depositions;
- p. negotiating four settlements for an aggregate recovery of \$69 million for the benefit of the Settlement Classes in this Action, plus substantial cooperation provisions and other non-monetary benefits, and overseeing the administration of those settlements;
- q. coordinating with the settling Defendants to obtain cooperation for the benefit of the Settlement Classes and the proposed litigation class;

- r. preparing joint status reports and attending status conferences on a regular basis to keep the Court apprised of the litigation's status and keep the Action on track;
- s. negotiating and preparing responses to interrogatories and requests for admission served by Defendants, including the preparation of responses to contention interrogatories, as well as negotiating the sufficiency of Defendants' responses to Plaintiffs' interrogatories and requests for admission;
- t. working with economic, econometric, and other expert witnesses to prepare Plaintiffs' case for class certification, summary judgment, and trial, inclusive of the submission of Plaintiffs' expert's Dr. Singer's opening report on August 19, 2022, the submission of Dr. Singer's rebuttal report on January 23, 2023, and the defense of the deposition of Dr. Singer on February 24, 2023;
- u. reviewing and analyzing the opposing expert reports of Defendants' three proffered experts and deposing each of them;
- v. briefing a *Daubert* motion seeking exclusion of certain opinions contained in the reports of Defendants' three proffered experts, and opposing Defendants' *Daubert* motion seeking exclusion of certain opinions in Dr. Singer's reports;
- w. briefing Plaintiffs' motion for class certification; and
- x. managing, financing, and overseeing the various firms, attorneys, paralegals, experts, and other professionals who assisted Interim Co-Lead Class Counsel with the above tasks over the nearly six and a half years of this litigation.

4. The lodestar amount reflected in Exhibit A is for work performed by attorneys and professional staff at or affiliated with my firm for the benefit of the Settlement Class. The hourly

rates for the attorneys and professional staff reflected in Exhibit A are the usual and customary hourly rates charged by my firm in similar complex litigation matters.

5. Excluding contributions to the Litigation Fund, which is accounted for separately in Plaintiffs' submission for the reimbursement of litigation expenses, and other costs reimbursed out of prior settlements in this matter, my firm has expended an additional \$57,488.44 in unreimbursed costs and expenses in connection with the prosecution of the Action, from inception of the case through and including June 16, 2023. These costs are set forth in the Schedule attached as Exhibit B and are reflected on the books and records of my firm. They were incurred on behalf of Plaintiffs by my firm and have not been reimbursed.

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

Dated: July 3, 2023

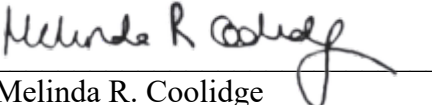

Melinda R. Coolidge

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

IN RE: BROILER CHICKEN GROWER
ANTITRUST LITIGATION (NO. II)

Case No. 6:20-MD-02977-RJS-CMR

Chief Judge Robert J. Shelby

This document relates to all actions.

Magistrate Judge Cecilia M. Romero

**EXHIBIT A TO THE DECLARATION OF MELINDA R. COOLIDGE ON BEHALF OF
HAUSFELD LLP IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND LITIGATION EXPENSES**

Reported Hours and Lodestar
Inception through June 16, 2023

| Name | Position | Hours | Current Rate | Lodestar |
|---------------------|-----------------|--------------|---------------------|-----------------|
| Michael D. Hausfeld | P | 1.5 | \$1,550 | \$2,325.00 |
| Michael P. Lehman | P | 20.7 | \$1,370 | \$28,359.00 |
| Christopher Lebsock | P | 4.3 | \$1,100 | \$4,730.00 |
| Brian A. Ratner | P | 9.5 | \$995 | \$9,452.50 |
| James J. Pizzirusso | P | 120.4 | \$995 | \$119,798.00 |
| Melinda R. Coolidge | P | 1,519.8 | \$920 | \$1,398,216.00 |
| Jeannine Kenney | P | 119.6 | \$890 | \$106,444.00 |
| Gary I. Smith, Jr. | P | 5,128.7 | \$850 | \$4,359,395.00 |
| Swathi Bojedla | P | 39.5 | \$850 | \$33,575.00 |
| Kyle Bates | C | 707.1 | \$690 | \$487,899.00 |
| Samantha Derksen | A | 2,963.1 | \$580 | \$1,718,598.00 |
| Kimberly Fetsick | A | 1,326.0 | \$560 | \$742,560.00 |
| Mandy Boltax | A | 33.0 | \$480 | \$15,840.00 |
| Vashali Johnson | SSA | 456.6 | \$500 | \$228,300.00 |
| William Vasquez | SA | 923.6 | \$460 | \$424,856.00 |
| Suzanne McPhail | PL | 1,656.4 | \$350 | \$579,740.00 |
| Season Shimizu | PL | 12.3 | \$350 | \$4,305.00 |
| Kenya McCune | PL | 34.4 | \$350 | \$12,040.00 |
| Krishna Patel | PL | 56.0 | \$350 | \$19,600.00 |
| Elliot Robinson | PL | 17.5 | \$350 | \$6,125.00 |
| Marilani Huling | PL | 36.7 | \$350 | \$12,845.00 |
| Hazel Berkoh | PL | 15.0 | \$350 | \$5,250.00 |
| Thomas Loughran | PL | 29.1 | \$350 | \$10,185.00 |
| Crystal Liu | LC | 43.4 | \$280 | \$12,152.00 |
| Cody McCracken | LC | 14.5 | \$260 | \$3,770.00 |
| Total | | 15,288.7 | | \$10,346,359.50 |

Role Legend

| | |
|-----|-----------------------|
| A | Associate |
| C | Counsel |
| LC | Law Clerk |
| P | Partner |
| PL | Paralegal |
| SA | Staff Attorney |
| SSA | Senior Staff Attorney |

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

IN RE: BROILER CHICKEN GROWER
ANTITRUST LITIGATION (NO. II)

Case No. 6:20-MD-02977-RJS-CMR

Chief Judge Robert J. Shelby

This document relates to all actions.

Magistrate Judge Cecilia M. Romero

**EXHIBIT B TO THE DECLARATION OF DECLARATION OF MELINDA R.
COOLIDGE ON BEHALF OF HASUFELD LLP IN SUPPORT OF PLAINTIFFS'
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES**

Reported Expenses on Behalf of Plaintiffs

Inception through June 16, 2023, and Excluding Previously Reimbursed Expenses

| Category | Amount |
|---|--------------------|
| Commercial Copies | \$953.59 |
| Internal Reproduction/Copies | \$5,292.72 |
| Computer Research | \$12,559.56 |
| Telephone/Fax | \$469.32 |
| Postage/Express Delivery/Messenger | \$2,416.35 |
| Travel: Air Transportation, Ground Travel, Meals, Lodging, etc. | \$34,961.08 |
| Miscellaneous | \$835.82 |
| Total | \$57,488.44 |

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

| | |
|---|---|
| <p>IN RE BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO. II)</p> <p><i>This document relates to all actions.</i></p> | <p>Case No. 6:20-MD-02977-RJS-CMR</p> <p>Chief Judge Robert J. Shelby</p> <p>Magistrate Judge Cecilia M. Romero</p> |
|---|---|

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

WHEREAS, this matter comes before the Court on Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses;

WHEREAS, the Court, having considered (a) the Settlement Agreement, dated February 28, 2023 (MDL 2977 ECF No. 435-1); (b) the Court's April 17, 2023 Preliminary Approval Order (MDL 2977 ECF No. 482); (c) Plaintiffs' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses and accompanying Memorandum of Law; (d) the supporting Declaration of Daniel J. Walker (the "Walker Decl."); and (e) all other papers and proceedings herein;

WHEREAS, the Court held a Fairness Hearing on August 25, 2023;

WHEREAS, the Court having considered all of the submissions and arguments with respect to the Settlement Agreement, and otherwise being fully informed, and good cause appearing;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. All terms in initial capitalization used in this Order shall have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

I. AWARD OF ATTORNEYS' FEES

2. Upon review of the record, the Court finds that Class Counsel's requested award of attorneys' fees in the amount of one-third of the cash settlement fund of \$17.75 million (plus one-third of accrued interest) created by the Settlement Agreement is well within the applicable range of reasonable attorneys' fees percentage-of-recovery awards established by relevant precedent.

3. The percentage-of-recovery method of calculating attorneys' fees is appropriate in this Action, as the Tenth Circuit expressly prefers that method in determining the award of attorneys' fees in common fund cases.

4. While a lodestar crosscheck is not required in the Tenth Circuit, such a check further supports the reasonableness of the fee award. Class Counsel have spent nearly 54,000 hours litigating the Action, producing a total lodestar amount of \$31,458,032.30 based on each firm's standard current hourly rates. *See* Walker Decl. ¶ 135. Thus, a fee award of one-third of the Settlement Fund, and taking into consideration the fees previously awarded Class Counsel in connection with the earlier Tyson, Perdue and Koch settlements in this matter, would represent a multiplier of approximately 0.731 of this lodestar. *Id.* ¶ 136. This lodestar crosscheck multiplier

is in line with—and indeed, significantly lower than—lodestar multipliers that courts in this Circuit have found to be reasonable in comparable common fund cases.

5. Both the Direct Notice and the Publication Notice indicated that Class Counsel would seek a fee award of up to one-third of the Settlement Fund in addition to reimbursement of costs. *See* Walker Decl. ¶ 130.

6. Accordingly, Class Counsel’s request for an award of one-third of the \$17.75 million cash value of the Settlement Fund (plus one-third of accrued interest), which equals a fee award of \$5,916,667 (plus the amount for one-third of accrued interest), is granted.

II. REIMBURSEMENT OF EXPENSES

7. The Court finds that Class Counsel’s request for reimbursement of their reasonably incurred expenses should be granted. From the inception of litigation, Class Counsel have incurred \$972,341.98 in unreimbursed litigation out-of-pocket expenses, litigation fund disbursements, and outstanding invoices due while prosecuting this Action, the majority of which are for the work of economic experts. *See* Walker Decl. ¶¶ 137-40. These collective expenses were reasonably incurred and expended for the direct benefit of the Settlement Class and should therefore be reimbursed.

8. Accordingly, Class Counsel’s request for reimbursement of litigation costs and expenses in the amount of \$972,341.98 is granted.

III. CO-LEAD COUNSEL IS AUTHORIZED TO DISTRIBUTE THE AWARDED ATTORNEYS’ FEES

9. Co-Lead Counsel shall allocate the fees and expenses among all of the counsel representing Plaintiffs based upon Co-Lead Counsel’s evaluation of the contribution of such counsel to the prosecution and resolution of this litigation.

IV. THE COURT RETAINS JURISDICTION

10. Without affecting the finality of this Order in any respect, this Court reserves jurisdiction over any matters related to or ancillary to this Order.

SO ORDERED.

DATED: _____, 2023

The Honorable Robert J. Shelby
Chief United States District Judge