

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

IN RE: PEANUT FARMERS ANTITRUST  
LITIGATION

Case No. 2:19-cv-00463-RAJ-LRL

**Honorable Raymond A. Jackson  
Honorable Lawrence R. Leonard**

**DECLARATION OF CO-LEAD COUNSEL BRIAN D. CLARK IN SUPPORT  
OF PLAINTIFFS' MOTION FOR PAYMENT OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE  
INCENTIVE AWARDS**

I, Brian D. Clark, declare and state as follows:

1. I am a partner with the law firm Lockridge Grindal Nauen P.L.L.P. ("LGN"). I submit this Declaration in support of Plaintiffs' Motion for an Award of Attorneys' Fees and Expenses and for Class Representative Service Awards in this case.

2. On April 23, 2021, the Court appointed LGN and Freed Kanner London & Millen LLC ("FKLM") as Co-Lead Counsel for Plaintiffs in this litigation (ECF No. 595). Co-Lead Counsel, with the assistance of 4 other firms (collectively, "Class Counsel"), have vigorously and efficiently prosecuted this complex antitrust case. At all times, the work of Class Counsel was directed and authorized by Co-Lead Counsel.

3. In this Declaration, I describe:

- I.** All Class Counsel's efforts in advancing this litigation and the settlements achieved to date as a result of those efforts;
- II.** All Class Counsel's time and expense reporting, total time and expenses incurred, and our maintenance of a common cost litigation fund;
- III.** Class representatives' contribution to the prosecution of this case; and
- IV.** The work of my own firm, LGN, as Co-Lead Counsel and individually, and the time and expenses my firm has incurred in this case.

**I. CLASS COUNSEL’S EFFORTS IN PROSECUTING THIS LITIGATION**

4. Counsel’s efforts in prosecuting this effort can be broken down into the following categories: (A) Pre-lawsuit investigation, (B) Case Management, (C) Fact Discovery, (D) Class Certification and Expert Discovery, (E) Summary Judgment, (F) Pre-Trial Submissions and Trial Preparation, and (G) Settlement Negotiation and Administration. Each category is described in further detail below.

**A. Pre-Lawsuit Investigation**

5. In early 2019, Co-Lead Counsel began an independent investigation into the peanut farming industry. In connection with their investigation, Co-Lead Counsel retained an economist to analyze the pricing of raw, harvested runner peanuts (“Runners”). Based on the results of their investigation and the economic analysis that was done, on September 5, 2019, Co-Lead Counsel filed the initial antitrust complaint in this case on behalf of peanut farmers, alleging that Defendants Golden Peanut Company LLC and Birdsong Corporation conspired to depress prices paid to farmers for Runners. Co-Lead Counsel’s preparation, investigation, and research did not benefit from contemporaneous government investigations or enforcement proceedings into the peanut farming industry. Class Counsel prepared and filed an amended class action complaint (ECF No. 120) and a second amended complaint naming Olam Peanut Shelling Company, Inc. as Defendant (ECF No. 148) reflecting information Class Counsel obtained in discovery.

**B. Case Management**

6. In their application to the Court to be appointed lead counsel, Co-Lead Counsel told the Court that they would efficiently litigate this case and would implement protocols to avoid duplication of effort and unnecessary time and expenses. With these objectives in mind, Co-Lead Counsel has supervised all facets of the litigation, including the assignment of work to Class Counsel.

7. To promote the efficient prosecution of this case, Co-Lead Counsel convened weekly calls with Class Counsel to ensure that everybody was on the same page regarding case strategy and work assignments. These calls were especially important during the pandemic because they enabled Co-Lead Counsel to efficiently supervise the litigation without the need to conduct meetings in person. Co-Lead Counsel avoided unnecessary time and expense by canceling the calls when there was nothing of particular importance to discuss during a given week.

**C. Fact Discovery**

8. As in most complex antitrust cases, the majority of time invested in the case related to fact discovery, which was critical to seeking certification of the Class, establishing Defendants' liability and opposing Defendants' summary judgment motions, and ultimately negotiating settlements. There were three primary phases of discovery in this matter: (1) negotiation of parameters for discovery, (2) document review and analysis, and (3) depositions. Each stage and the work involved in that stage is discussed below.

*1. Negotiation of Parameters for Discovery*

9. At the outset of discovery, Class Counsel worked with a firm specializing in technology-assisted methods of review and negotiated a comprehensive protocol for producing electronically stored information; additionally, Class Counsel negotiated and drafted a Stipulated Protective Order governing confidential information. Thereafter, Class Counsel drafted and served discovery requests on Defendants and participated in extensive meet-and-confers with Defendants' counsel to negotiate the parameters of the requests; Class Counsel also worked with the Class Representatives to prepare their responses to Defendants' discovery requests.

10. Class Counsel also prepared and served discovery requests on the following third parties (including telephone service providers and non-party participants in the shelling industry):

- a. American Peanut Council

- b. AT&T (Phone Records. Multiple subpoenas – 9 rounds)
- c. American Peanut Shellers
- d. Charter (Phone Records. Multiple subpoenas – 2 rounds)
- e. Damascus (multiple subpoenas – 3 rounds) (Motion to Quash – local counsel David Bain)
- f. Joseph West
- g. Lovatt and Rushing
- h. Mazur and Hockman
- i. M.C. McNeill & Co.
- j. National Buying Points (Multiple subpoenas – 2 rounds)
- k. Peanut and Tree Nuts Assoc.
- l. RCB Nuts, LLC
- m. Sessions Company, Inc. (Multiple subpoenas – 2 rounds)
- n. Southern Peanut Company
- o. Summerdale Peanut Company
- p. The Peanut Institute
- q. Trico Peanut LLC (Multiple subpoenas – 2 rounds)
- r. USDA (FOIA)
- s. Verizon (Phone Records. Multiple subpoenas – 9 rounds)
- t. Virginia-Carolina Association
- u. Williston Peanuts (Multiple subpoenas – 3 rounds)
- v. Windstream (Phone Records. Multiple subpoenas – 3 rounds)

2. Document Review and Analysis

11. Traditionally, a document review involved reviewing every single document produced by an opposing party or third party. Only after a review of all such documents would a

document review be “complete.” That is not how Co-Lead Counsel approached review of the 1,740,000 documents produced by Defendants and various third parties in this case. Instead, Co-Lead Counsel retained the services of an electronic discovery vendor, CS Disco, that specializes in state-of-the-art technology called Technology Assisted Review (TAR). TAR eliminated the need to manually review all documents and allowed Class Counsel to focus on the key documents relating to the conspiracy. Only a relatively small portion of the overall 1,740,000 documents required manual review, with the rest analyzed through techniques such as TAR.

12. To organize the document review, Co-Lead Counsel drafted a coding manual that provided consistent “tags” or issues that reviewers would assign to documents in their targeted set of documents within the CS Disco review platform. Each set of documents (typically about 500 documents) was called a batch, and document reviewers prepared a batch memo for Co-Lead Counsel after completing each batch. These batch memos highlighted key documents, enabling Class Counsel to focus on certain Defendant employees for purposes of requesting additional document custodians, and were integral to the process of identifying which Defendant employees to depose.

13. Separately from the review of Defendant and third-party documents, Co-Lead Counsel identified, collected, reviewed, and produced thousands of documents from the Class Representatives. This involved in-person meetings (pre-pandemic) to collect hard copy documents and identify electronic data sources (computers, cellphones, and cloud-based emails) that a vendor subsequently collected. Once Co-Lead Counsel responded to Defendants’ document requests on behalf of the Class Representatives and negotiated search terms with Defendants, Co-Lead Counsel narrowed down the hundreds of thousands of documents collected from the Class Representatives to limit the scope of documents to be reviewed.

14. Ultimately, Class Counsel created, reviewed, and analyzed a database containing more than 1,740,000 documents and other records produced by Defendants and third parties.

15. Further, working with an outside expert that specializes in technology for the review of phone records, Class Counsel developed a database that enabled Class Counsel to sift through millions of Defendants' employees' phone calls and cull out potentially relevant calls between Defendants. This process required extensive efforts to (a) identify relevant phone numbers of Defendants' executives and key salespeople, (b) serve discovery confirming the ownership of those numbers with Defendants, (c) serve third-party discovery on phone carriers to obtain records, and (d) process such records to make them searchable. This work was critical to the case because it enabled Class Counsel to connect specific phone calls to specific pricing decisions by Defendants. Class Counsel's work relating to the phone records was integral to the deposition process, class certification, Plaintiffs' opposition to Defendants' summary judgment motions and settlement negotiations, because Class Counsel learned of numerous inter-company communications between the Defendants relating to the pricing of Runners. (ECF No. 494 at pp. 9-10) ("Plaintiffs further allege that additional evidence of collusion will flow from emails, phone records, and deposition testimony..."; "Plaintiffs refer to a litany of similar emails, deposition testimony, and other documents in support of potential collusion.").

### 3. Depositions

16. While depositions are always an important aspect of an antitrust case, most witnesses in this matter were not within the Court's power to compel testimony at trial. Therefore, the only evidence such witnesses would provide for trial would come through video deposition testimony played for the jury. Given the importance of this evidence, Co-Lead Counsel took responsibility for defending all Class Representative depositions as well as taking the majority of Defendant and third-party depositions.

17. While depositions usually present an array of logistical challenges even in normal situations, the pendency of the pandemic exponentially increased those challenges, because all the depositions had to be taken remotely with counsel, witnesses, court reporters, and videographers in different locations. Class Counsel met this challenge head on. The first course of action was to retain the services of Veritext, a vendor of court reporting services that offered a sophisticated deposition platform that facilitated remote depositions. The second course of action was to assemble a team of attorneys and paralegals from the ranks of the Class Counsel firms who were responsible for making sure that the depositions went forward without a hitch despite the logistical challenges. This team was tasked with (a) preparing deposition outlines, (b) identifying key documents to be used at each deposition, (c) preparing Federal Rule of Evidence 1006 Exhibits for the relevant phone records, (d) coordinating with Veritext to ensure that the deposition exhibits were uploaded for use at the depositions on the remote technology platform, (e) mailing hard copy “courtesy” exhibits to each deponent as required by the parties’ Deposition Protocol (ECF No. 174), and, of course, (f) taking and defending 37 depositions.

18. Provided below is a table listing each deposition taken in this matter.

	<b><u>Deponent</u></b>	<b><u>Party Affiliation</u></b>	<b><u>Depo Date</u></b>
1.	Danielle Ray	Golden	6/25/2020
2.	Michael Franke	Birdsong	7/23/2020
3.	Mark Milliron	Golden	7/29/2020
4.	Ricky Hartley	Golden	8/26/2020
5.	David Glidewell	Golden	8/28/2020
6.	Dustin Howell & Rocky Creek Land Management Co. 30(b)(6)	Plaintiffs	9/6/2020
7.	Jeff Johnson	Birdsong	9/11/2020
8.	Kevin Calhoun	Birdsong	9/15/2020
9.	Grant Belden	Golden	9/16/2020
10.	Mark Hasty and D&M Farms 30(b)(6)	Plaintiffs	9/16/2020
11.	Bill Bullard	Birdsong	9/17/2020

	<b><u>Deponent</u></b>	<b><u>Party Affiliation</u></b>	<b><u>Depo Date</u></b>
12.	Golden 30(b)(6)	Golden	9/17/2020
13.	Ned Bergman	Third Party	9/21/2020
14.	Dr. Michael Williams	Plaintiffs	9/21/2020
15.	Phil Sronce	Third Party	9/21/2020
16.	Bill Marshall	Olam	9/22/2020
17.	Keith Menzie	Third Party	9/22/2020
18.	Chad Chandler	Olam	9/23/2020
19.	David Birdsong	Birdsong	9/23/2020
20.	Gerald Garland	Birdsong	9/29/2020
21.	Gregory Mills	Golden	9/30/2020
22.	Ravi Prabhakar	Olam	9/30/2020
23.	Verizon 30(b)(6)	Third Party	10/1/2020
24.	Joe Campbell	Golden	10/1/2020
25.	Dr. Michelle Burtis	Defendants	10/1/2020
26.	Lance Honig	Third Party	10/1/2020
27.	Sherri Grimm	Third Party	10/2/2020
28.	Jim Fenn	Olam	10/5/2020
29.	Dustin Land	Plaintiffs	10/6/2020
30.	Charles Birdsong	Birdsong	10/9/2020
31.	AT&T 30(b)(6)	Third Party	10/9/2020
32.	Birdsong 30(b)(6)	Birdsong	10/12/2020
33.	Dr. Robert Topel	Defendants	10/15/2020
34.	Dr. Kevin Murphy	Defendants	10/16/2020
35.	Brent Cuddy	Golden	10/22/2020
36.	Collins McNeill	Third Party	10/22/2020
37.	Develyn Ferguson	Plaintiffs	1/5/2021

19. As the chart above reflects, many of the depositions took place on back-to-back days, and in some cases, two depositions occurred on the same day. While Plaintiffs would have preferred to take more of these depositions earlier in the discovery period, Olam did not substantially complete its document production until late August 2020, leaving little time between when Plaintiffs received the documents and when depositions had to be taken to comply with the October 15, 2020 deadline for completing fact discovery. The reality of this situation meant that



in some cases, the participation of multiple attorneys was necessary to ensure evidence obtained one day (or even the same day) was coordinated with the attorney taking a related deposition.

**D. Class Certification & Expert Discovery**

20. As is the norm in class action cases, Defendants vigorously opposed Plaintiffs' motion for class certification. Indeed, even after the Court granted class certification, the remaining (then-non-settling) Defendant, Golden Peanut, appealed that order to the Fourth Circuit, which jeopardized the favorable ruling Plaintiffs had obtained.

21. Given the importance of class certification, Co-Lead Counsel assigned Class Counsel attorneys (from the Spector Roseman firm) with substantial expertise in this area to be primarily responsible for discovery and briefing relating to class certification, including expert discovery. During the discovery phase of this case, Class Counsel worked with their economist Michael A. Williams, Ph.D. to analyze the peanut industry and determine whether Defendants had depressed the pricing offered to the Class for Runners.

22. Plaintiffs' motion for class certification was filed on September 4, 2020. (ECF No. 235). Defendants filed their opposition to class certification on September 25, 2020. (ECF No. 257). Plaintiffs' reply in support of class certification was filed on October 2, 2020. (ECF No. 271). As Plaintiffs' class certification briefs were filed *before* the discovery cut-off, Co-Lead Counsel took great effort to ensure that all facts supporting certification were marshalled *during* the document review and deposition process and shared with the attorneys responsible for overseeing the preparation of Plaintiffs' class certification papers.

23. In connection with the class certification process, Class Counsel worked extensively with Dr. Williams in producing (1) his initial 81-page report and (2) his 28-page interim declaration (filed with Plaintiffs' class certification reply brief). Class Counsel also worked with Dr. Williams in producing his 176-page rebuttal report, which was completed while class

certification was pending, but was not part of the class certification record. Class Counsel also worked extensively with Dr. Williams to prepare for and defend his deposition. While Plaintiffs relied on one economist in support of their motion for class certification, the well-financed group of Defendants retained the services of three economists; one to oppose class certification and two others to provide merits expert opinions. Thus, Class Counsel was required to spend a considerable amount of time preparing for and deposing Defendants' three economist experts: Drs. Michelle Burtis, Robert Topel, and Kevin Murphy. These efforts were headed up by the Spector Roseman firm, but required extensive coordination with the teams preparing for depositions, summary judgment, and trial. In this regard, Co-Lead Counsel implemented a weekly call (separate and distinct from the weekly calls described above) with Plaintiffs' experts, Spector Roseman, and Co-Lead Counsel that resulted in exceptional coordination and efficiencies.

24. As reflected by the Court's December 2, 2020 class certification order, Class Counsel's hard work relating to class certification paid off. But more hard work was required because on December 16, 2020, Golden Peanut petitioned the United States Court of Appeals for the Fourth Circuit for permission to appeal the Certification Order under Fed. R. Civ. P. 23(f). Thus, Class Counsel was required to devote substantial time and effort to defending the Court's class certification ruling. Class Counsel filed Plaintiffs' opposition to the Rule 23(f) petition on December 28, 2020. *Golden Peanut Company, LLC v. D&M Farms, et al.*, No. 20-502 (4th Cir. Dec. 28, 2021) (Doc. 16). On January 27, 2021, the Fourth Circuit deferred ruling on the petition, but ordered formal briefing of the appeal. *Golden Peanut Company, LLC v. D&M Farms, et al.*, No. 20-502 (4th Cir. Jan. 27, 2021) (Doc. 30). Pending approval of the Golden Peanut Settlement Agreement, Golden Peanut filed a motion with the Fourth Circuit requesting that its appeal be

stayed, which the Fourth Circuit granted on February 26, 2021. *Golden Peanut Company, LLC v. D&M Farms, et al.*, No. 20-502 (4th Cir. Feb. 26, 2021) (Doc. 40).

**E. Summary Judgment and Daubert Motions**

*1. Summary Judgment*

25. Summary judgment motions were initially due on October 19, 2020, just four days after the deadline for completing fact discovery. Birdsong and Golden Peanut filed a joint motion for summary judgment on that date and Class Counsel filed Plaintiffs' memorandum in opposition on November 2, 2020.<sup>1</sup> (*See* ECF Nos. 282-290 and 373-386).

26. Class Counsel Robert Connolly, who was formerly the Chief of the Philadelphia field office for the Department of Justice's Antitrust Division, was given primary responsibility for preparing Plaintiffs' statement of undisputed facts. Mr. Connolly was also responsible for coordinating with the discovery team to ensure that key issues relating to summary judgment were addressed in depositions and written discovery. Additionally, Mr. Connolly was responsible for coordinating the extensive legal analysis that needed to be done prior to the close of fact discovery to ensure testimony obtained at depositions addressed prior rulings on summary judgment in antitrust cases.

27. After the Court preliminarily approved Plaintiffs' settlements with Olam and Birdsong, the Court directed counsel for Golden Peanut to resubmit a motion for summary judgment solely on behalf of Golden Peanut. Golden Peanut did so on January 15, 2021. (ECF Nos. 535-536). Thus, Class Counsel was required to devote substantial time preparing a second

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<sup>1</sup> Olam did not join in Birdsong's and Golden Peanut's summary judgment motion because it reached a settlement with Plaintiffs on October 23, 2020. Birdsong subsequently removed itself from the joint summary judgment motion it had filed with Golden Peanut because it reached a settlement with Plaintiffs on November 2, 2020.

opposition to Golden Peanut's summary judgment motion, which was filed on January 29, 2021. (ECF Nos. 544-550).

28. In connection with summary judgment, Class Counsel also drafted three Rule 1006 exhibits totaling 318 pages describing the extensive number of telephone calls between Defendants during the relevant period. This required that a law clerk from LGN review the precise details regarding the times, dates, parties involved (including employer and title), and underlying phone records to attest to the accuracy of the summary pursuant to Federal Rule of Evidence 1006. Ultimately, the law clerk (Develyn Ferguson) responsible for preparing the Rule 1006 exhibits was deposed by Defendant Golden Peanut in January 2021 to resolve threatened motion practice involving those exhibits.

29. After the parties fully briefed summary judgment for the second time and before the Court had ruled on Golden Peanut's summary judgment motion, the parties reached a settlement on March 4, 2021.

2. Daubert

30. On October 19, 2020, the same date that Birdsong and Golden Peanut moved for summary judgment, they also filed a motion to exclude the testimony and report of Dr. Williams. (ECF Nos. 291-297). Class Counsel filed papers opposing this motion on November 2, 2020. (ECF Nos. 373-375 and 387-392). Magistrate Judge Leonard denied Golden Peanut's motion on February 3, 2021 (ECF No. 555), a decision to which Golden Peanut objected on February 17, 2021 (ECF No. 568). Co-Lead Counsel and Golden Peanut agreed to terms on a settlement before Plaintiffs' response to Golden Peanut's objection was due.

**F. Pre-Trial Submissions and Trial Preparation**

31. The Court originally set a trial date of January 19, 2021. Throughout nearly all of 2020, Class Counsel devoted an enormous amount of time and expense preparing to go to trial on

that date. The Olam and Birdsong settlements respectively reached on October 23, 2020 and November 2, 2020 did not reduce the trial preparation because Plaintiffs still needed to prove the entire conspiracy to prevail against Golden Peanut. Moreover, although the Court notified the parties on December 7, 2020 that the trial would be postponed, it explicitly instructed the parties to continue litigating the case. On December 23, 2020, the Court reset the trial for June 15, 2021. *See* Court Docket Entry on December 23, 2020 and ECF No. 540 (order formally resetting trial date).

32. In addition to the work described above relating to discovery, class certification, summary judgment, and *Daubert*, Class Counsel did the following in preparation for trial:

- a. Worked extensively with a jury consultant; prepared for and conducted an in-person mock trial before multiple jury panels; participated in several telephonic or Zoom meetings with jury consultant to review results of mock trial and discuss strategy relating to same;
- b. Prepared briefs in support of and in opposition to more than fifteen (15) motions *in limine* (ECF Nos. 309-350, 414-420, 442-458);
- c. Prepared a lengthy pretrial statement and met and conferred with Golden Peanut's counsel regarding same;
- d. Prepared video deposition clips for use at trial;
- e. Reviewed deposition transcripts, designated portions for use at trial, and exchanged same with Golden Peanut's counsel;
- f. Designated potential trial exhibits and coordinated with Golden Peanut's counsel to negotiate admissibility of approximately 2,500 such exhibits;
- g. Drafted proposed *voir dire* questions;

- h. Drafted proposed jury instructions;
- i. Negotiated business records affidavits with various third parties;
- j. Prepared witness outlines; and
- k. Exchanged witness lists with Golden Peanut's counsel.

**G. Settlement Negotiation and Administration**

33. Beginning in the summer of 2020, Co-Lead Counsel had preliminary discussions with two of the Defendants regarding settlement. As the deposition process unfolded and the deadline for filing summary judgment motions approached, Co-Lead Counsel's discussions with Olam took on a more serious nature. In the first half of October 2020, those discussions resulted in a settlement in principle, which Co-Lead Counsel viewed as an "ice-breaker" settlement. Co-Lead Counsel negotiated a term sheet with Olam's counsel and once that was done, negotiated the terms of a settlement agreement and a related but separate, cooperation agreement; the parties executed those agreements on October 23, 2020. Per the agreements, Olam agreed to pay \$7.75 million and provide valuable cooperation to Plaintiffs in connection with their claims against Birdsong and Golden Peanut. On the same day that the parties executed the settlement and cooperation agreements, Class Counsel filed a motion for preliminary approval with a supporting memorandum and declarations. (ECF Nos. 300-304). Co-Lead Counsel also prepared an escrow agreement at that time.

34. Shortly after the "ice-breaker" settlement with Olam was made public *via* the filings with the Court, Co-Lead Counsel engaged in further settlement discussions with Birdsong's counsel. Those discussions resulted in a settlement in principle. Co-Lead Counsel negotiated a term sheet with Birdsong's counsel and once that was done, negotiated the terms of a settlement agreement and a related but separate, cooperation agreement; the parties executed those agreements on November 2, 2020. Per the agreements, Birdsong agreed to pay \$50 million and

provide valuable cooperation to Plaintiffs in connection with their claims against Golden Peanut. On the same day that the parties executed the settlement and cooperation agreements, Class Counsel filed a motion for preliminary approval with a supporting memorandum and declarations. (ECF Nos. 368-372). Co-Lead Counsel also prepared an escrow agreement at that time.

35. Having reached settlements with two of the three Defendants, Co-Lead Counsel conducted a competitive bidding process to select settlement administrator Angeion Group, and also selected an escrow agent. Co-Lead Counsel assisted Angeion in preparing a settlement website for the benefit of the Class, and then worked with Angeion to devise a Notice Program consisting of multiple forms of notice to the Class: by mail, publication, and email. The proposed Notice Program also included social media ads. On November 24, 2020, Class Counsel filed papers seeking approval of the Notice Program and authorization to issue notice of the Olam and Birdsong settlements to the Class. (ECF Nos. 470-473).

36. On December 2, 2020, the Court issued its ruling certifying the Class. (ECF No. 496). Later that same day, Class Counsel filed a Motion to Approve Notice Program, which included the various forms of notice for the Court's consideration. (ECF Nos. 497-500). With the trial date at that time still set for January 19, 2021, Co-Lead Counsel believed it was imperative to issue notice as expeditiously as possible. Golden Peanut filed a response to the motion on December 4, 2020, contending that certain aspects of the proposed Notice Program did not satisfy due process. (ECF No. 501). On December 7, 2020, the Court scheduled a hearing on December 16, 2020 to consider Plaintiffs' Motion to Approve Notice Program. On December 10, 2020, Class Counsel filed a reply to Golden Peanut's response. (ECF No. 504).

37. On December 16, 2020, the Court held a hearing *via* Zoom to address the pending motions regarding preliminary approval and notice. (ECF No. 507). The Court directed Class

Counsel to revise the preliminary approval orders and notice papers and to resubmit them to the Court by December 21, 2020. *Id.* As directed, Class Counsel revised the orders and notice papers and submitted them to the Court on December 21, 2020. (ECF Nos. 511-513). On December 23, 2020, the Court entered orders preliminarily approving the Olam and Birdsong settlements and scheduling a Fairness Hearing for March 25, 2021. (ECF Nos. 514-515). The Court also entered an order approving the Notice Program and authorizing that notice be issued to the Class. (ECF No. 516). Class Counsel worked with Angeion to finalize the forms of notice and the Notice Program commenced on January 12, 2021, when Angeion mailed the notice to the Class.

38. On January 13, 2021, Class Counsel filed Plaintiffs' Motion for Final Approval of Settlements with the Olam and Birdsong Defendants. (ECF Nos. 527-528). On that same date, Class Counsel also filed a Motion for Award from the Olam and Birdsong Settlement Funds for Current and Ongoing Litigation Expenses (ECF No. 529).

39. While Class Counsel was focused on doing everything it could do in connection with getting the Olam and Birdsong settlements approved, Class Counsel was also vigorously continuing to litigate the case against Golden Peanut, as evidenced by the parties' summary judgment briefing. Recognizing that there was a window of opportunity before the Court ruled on summary judgment, Class Counsel reached out to Golden Peanut counsel to see if there was interest in restarting settlement discussions. There were some discussions in the second half of January, but the parties were unable to bridge their differences and concluded that the involvement of a mediator was necessary. The parties exchanged names of potential mediators and ultimately agreed to have Professor Eric D. Green, a nationally renowned mediator, conduct the mediation.

40. Professor Green met remotely with each of the parties to go over preliminary matters and scheduled a full-day mediation session for February 17, 2021. During the mediation



session, the parties went back and forth advocating their respective positions. With the active assistance of the mediator, the parties agreed to a settlement in principle.

41. Co-Lead Counsel negotiated a term sheet with Golden Peanut's counsel and once that was done, negotiated the terms of a settlement agreement; as Golden Peanut was the sole remaining Defendant, there was no need for a cooperation agreement. The parties executed the settlement agreement on March 4, 2021. Per the agreement, Golden Peanut agreed to pay \$45 million. On March 11, 2021, Class Counsel filed a motion for preliminary approval with a supporting memorandum and declaration. (ECF Nos. 579-581). The preliminary approval papers included a request for approval of a Notice Program and authorization to issue notice to the Class (along with drafts of the notice forms). Co-Lead Counsel also prepared an escrow agreement at that time.

42. On March 15, 2021, Class Counsel filed Plaintiffs' Notice Report, which provided the Court with information regarding compliance with the deadlines and requirements of the Court-approved Notice Program. (ECF No. 582).

43. On March 25, 2021, the Court conducted a Fairness Hearing to consider approval of the Olam and Birdsong settlements and Class Counsel's litigation costs motion. (ECF No. 586). On April 5, 2021, the Court issued an order approving both settlements, and on April 8, 2021, the Court issued an order granting Class Counsel's costs motion. (ECF Nos. 590, 591).

44. On April 23, 2021, the Court conducted a hearing on preliminary approval of the Golden Peanut settlement. (ECF No. 593). Later that same day, the Court entered an order granting preliminary approval, authorizing the dissemination of notice to the Class, and setting the Fairness Hearing for July 26, 2021. (ECF No. 595).

45. After the Court authorized notice, Class Counsel worked with Angeion to update

the settlement website and finalize the notice forms, including the pre-filled claim forms. The Notice Program commenced on May 14, 2021 with Angeion mailing the notice to the Class.

46. Plaintiffs' Motion for Final Approval of the Golden Peanut settlement is due on June 7, 2021. Going forward, assuming the Court finally approves the Golden Peanut settlement, Co-Lead Counsel will continue to supervise all aspects of settlement and claims administration and will also supervise the final distribution of settlement proceeds to qualified Class Members. Co-Lead Counsel will also prepare all pleadings relating to obtaining the Court's approval of the proposed distribution. To date, Co-Lead counsel have fielded dozens of telephone calls from class members relating to the settlements and expect many more between now and the final distribution of funds to the class. Settlement administration is a time-intensive process to ensure each Class member who submits a claim obtains the full compensation to which they are entitled, while also ensuring that adequate auditing of such claims occurs.

## **II. CLASS COUNSEL'S TIME INVESTED IN THIS MATTER**

### **A. Time and Expense Reporting Procedures**

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

48. Shortly after being appointed as Interim Co-Lead Counsel, we submitted a time and expense protocol that was reviewed and ultimately approved by the Court. (*See* ECF Nos. 80, 44 and 44-3). We subsequently provided a copy of that time and expense protocol to all Class Counsel in December 2019 and instructed them to abide by it ("Time and Expense Protocol"). (Exhibit 1). We also provided each Class Counsel templates of the required Microsoft Excel reporting form.

49. Pursuant to the Time and Expense Protocol, each firm is required to contemporaneously record and transmit to LGN each month, *via* email, a detailed, task-based spreadsheet with time entries. The reports contain a chronological listing of time reported for work

performed by attorneys and paralegals in specified activity categories, a complete and accurate categorization of work performed, the name and title of the person who performed the work, the hourly rate associated with each attorney and paralegal at the time the work was performed (*i.e.*, the professional's "historical" rate), and the firm's resulting lodestar reported for that month. The historical hourly rates charged by Class Counsel are reasonable, based on each person's position, experience level, and location, and have been approved by multiple courts in similar antitrust class actions.

50. To control Class Counsel's lodestar, the Time and Expense Protocol instructed Class Counsel not to submit time for work not requested by Co-Lead Counsel, for duplicative work, reading and reviewing, preparing time and expense reports, routine clerical tasks, or for work related to any client not retained. Additionally, the Time and Expense Protocol required that each firm submit, *via* email, all litigation-related expenses incurred by the firm for the month. Finally, time included in the fee petition that was spent on first level document review was capped at \$350 per hour.

51. To ensure that time and expense entries submitted by each firm were reported in a uniform matter, the Time and Expense Protocol required that all reports be submitted to Co-Lead Counsel in a Microsoft Excel format, by the 20th day of each month for time and expenses incurred in the preceding month. This uniform, electronic monthly reporting simplified our review of each firm's reports.

52. Upon receipt, Co-Lead Counsel reviewed the monthly time and expense reports from Class Counsel to ensure their compliance with the Time and Expense Protocol.

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

**B. Class Counsel's Time Incurred in Prosecuting This Matter (aka Lodestar)**

54. Based on the monthly attorney and paralegal time reports submitted to Co-Lead Counsel, through May 31, 2021, Class Counsel have reported 20,866.3 hours of professional time expended for the benefit of the Class. This represents a lodestar of \$11,716,258.50 using Class Counsel's historic hourly rates. This work was performed on an entirely contingent basis.

55. Attached as Exhibit 2 to this declaration is a summary chart with lodestar figures for attorney and paralegal time reported by each firm for their efforts on behalf of the Class from inception of the litigation through May 31, 2021. The total lodestar figure for each firm is reflected in the Lodestar column of the chart, and at the bottom of that column is the combined lodestar for all firms.

56. Exhibit 2 was prepared at my direction and under my supervision by Amber M. Raak, a paralegal employed at LGN, based on data reported in the monthly attorney and paralegal time reports submitted to us by Class Counsel and in the attached Declarations of Class Counsel (Exhibits 3-8).

57. Based on the data available to me and my firm, I hereby attest that the lodestar amounts reported in Exhibit 2 accurately reflect the data reported to us by Class Counsel and audited by Co-Lead Counsel. The underlying data is available for the Court's *in camera* review, if requested.

58. Attached as Exhibits 3-8 are declarations from Class Counsel attesting that the time and expenses reported to Co-Lead Counsel by each such firm have complied with the reporting requirements in the protocol, and to the truth and accuracy of the time and expenses reported by

such firm in this case. Each declarant also identifies the attorneys and paralegals from his or her firm that have worked on the case and submitted time in the monthly reports submitted to Co-Lead Counsel, and the historic hourly rates for each professional that has submitted time in the case.

59. Importantly, Class Counsel have carefully reviewed the Court's prior orders involving the award of fees in contingent cases. Based on those rulings and the Time and Expense Protocol Co-Lead Counsel put in place at the beginning of the litigation, Co-Lead Counsel has carefully reviewed all Class Counsel time and cut more than 556.5 hours and \$280,563.25 in lodestar. None of the time that has been cut is reflected in the lodestar amount of \$11,716,258.50.

### **C. Co-Lead Counsel's Management of Assignments**

60. A notable aspect of the lean management of this case by Co-Lead Counsel is the number of firms involved in prosecuting this complex antitrust class action. It is routine to have a dozen (if not dozens) of firms involved in litigating complex antitrust cases like this to share the risk of a large monetary loss in a contingent case, and few antitrust firms can dedicate a substantial portion of their time to a particular case. However, Co-Lead Counsel distributed the work in this case to only five law firms.<sup>2</sup>

61. As noted above, Co-Lead Counsel took on the majority of work in the case, including being actively involved in all aspects of motion practice, discovery, experts, and trial preparations. Liaison Counsel (the Durette firm) assisted throughout the litigation in ensuring compliance with local rules, coordinating appearances for hearings, reviewing all pleadings, and

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<sup>2</sup> A sixth law firm, the law firm of David Bain, was retained to assist with a discrete project relating to a motion to quash filed by Damascus, a third party upon whom Class Counsel served a subpoena. As the motion to quash was filed in in the Middle District of Georgia (Case No. 1:20-mc-00001-LAG) and no Class Counsel attorneys are licensed to practice law in Georgia, it was necessary to retain licensed Georgia counsel. Mr. Bain filled that role and assisted Class Counsel with preparing and filing the response to the motion to quash. Mr. Bain devoted a total of 7.5 hours for the project.

communicating with defense counsel and the Court regarding appropriate matters. However, there were two substantive aspects of the litigation that Co-Lead Counsel identified as needing specific expertise by other law firms: (a) class certification and experts and (b) trial preparation. An explanation of the expertise of the firms Co-Lead Counsel retained for this work is provided below.

- a. **Class Certification & Experts:** Co-Lead Counsel retained the services of Jeffrey Corrigan and Jeffrey Spector of the Spector Roseman law firm, a nationally renowned class action litigation firm. Messrs. Corrigan and Spector have a particularly strong reputation for their work with respect to class certification and expert testimony. The result of their work relating to class certification speaks for itself. *See* ECF 496 (granting Plaintiffs' motion for class certification over strenuous objection by Defendants).
- b. **Trial Preparation:** Co-Lead Counsel retained the services of The Law Offices of Robert E. Connolly. Mr. Connolly is the former head of the U.S. Department of Justice's Antitrust Division's Philadelphia Field Office. Mr. Connolly previously was awarded the Department's highest litigation honor, the John Marshall Award, for his conviction after trial of the Mitsubishi Corporation for its involvement in an international price fixing cartel. Mr. Connolly's colleague, Joan Marshall, is herself a former experienced Antitrust Division prosecutor who tried price fixing and fraud cases and was awarded the Assistant Attorney General's Award for her continued trial success. Together, Mr. Connolly and Ms. Marshall assisted Plaintiffs in drafting jury instructions, putting together statements of undisputed facts (in preparation for both summary judgment and trial), and preparing mock jury presentations.

**III. ADDITIONAL EXPENSES NOT ALREADY REIMBURSED BY THE COURT'S ORDER ON APRIL 8, 2021 (ECF 591)**

62. The Court previously awarded Plaintiffs the bulk of their costs incurred in this case. Order Approving Class Counsel's Motion for Award From the Olam and Birdsong Settlement Fund for Current and Ongoing Litigation Expenses, ECF No. 591 (Apr. 8, 2021). However, a small amount of additional expenses not included in that motion have been incurred. In total, the additional expenses counsel seek reimbursement of now is \$7,688.02. An explanation of those expenses is contained below.

63. **Litigation Fund Payments:** Class Counsel have paid three additional expenses that have not been reimbursed. First, an additional invoice for \$862.99 from Veritext (Plaintiffs' Court Reporting Vendor) was paid from the litigation fund. Second, a final invoice of \$2,033.79 from Plaintiffs' Database Vendor, CS Disco, was paid. Finally, an invoice for \$156.00 from Verizon was recently received and paid for unpaid costs related to a phone record subpoena served during discovery. In total, litigation fund payments that have not yet been reimbursed total \$3,052.78.

64. **Firm Specific Expenses:** Class Counsel have paid a small amount of other expenses directly (i.e., not from the Litigation Fund) since the cut-off date for firm-specific costs included in Plaintiffs' first request for reimbursement of expenses. These expenses relate primarily to court costs and filing fees, shipping charges (U.S. mail and Federal express, and legal research costs (e.g., Westlaw). The submitted expenses that have been paid directly from Class Counsel law firms is \$4,635.24.

**IV. CLASS REPRESENTATIVES' CONTRIBUTION TO THE PROSECUTION OF THIS CASE**

65. The Class Representatives in this case fall into three distinct groups: (1) D&M Farms, Mark Hasty, and Dustin Land, (2) Rocky Creek Peanut Farms, LLC and Daniel Howell, and (3) Lonnie Gilbert. The Class Representatives' involvement in this case was instrumental to the outstanding result achieved in the case and justifies service awards for each one of them. In short, the recovery of nearly \$103 million for America's peanut farmers would not have happened if these farmers had not stood up and represented the Class.

66. Throughout this litigation, Class Representatives have advised Class Counsel and approved pleadings, responded to written discovery, searched for, gathered, preserved, and produced documents, prepared and sat for their depositions, kept themselves apprised of the progress of the case, and performed other similar activities on behalf of the Class, including considering and approving the settlements with Olam, Birdsong, and Golden Peanut, without any promise of receiving anything for their service. (ECF Nos. 236, 242.) A more specific summary of the efforts of each Class Representative is provided below.

**A. D&M Farms, Mark Hasty, and Dustin Land**

67. As the initial named plaintiffs in this case, Mr. Hasty, Mr. Land, and D&M Farms dedicated extensive time and effort to advancing this litigation and have been committed to helping other peanut farmers who have been similarly injured by Defendants' anti-competitive prices since the inception of this lawsuit. Mr. Hasty, Mr. Land, and D&M Farms have vigorously assisted Class Counsel in prosecuting this litigation; they produced documents, authorized discovery responses, and sat for full days of depositions. Additionally, Mr. Hasty, Mr. Land, and D&M Farms participated in teleconferences with Plaintiffs' experts and Class Counsel, providing relevant insights that were integral to the preparation of the economist's analyses and reports.



68. In particular, Mr. Hasty, Mr. Land, and D&M Farms assisted in responding to numerous discovery requests from Defendants, including Responses to Defendants' First Set of Requests of Interrogatories to Plaintiffs (dated February 14, 2020); Responses to Defendants' Second Set of Requests for Production to Plaintiffs (dated May 20, 2020); Supplemental Responses to Defendants' First Set of Interrogatories to Plaintiffs (dated August 10, 2020); Olam's First Set of Requests for Production to Plaintiffs (dated August 31, 2020); and Responses to Olam's First Set of Interrogatories to Plaintiffs (dated September 1, 2020). D&M Farms, as a farming partnership operated by Mr. Hasty and Mr. Land, responded to duplicate versions of all the same discovery requests as its operators, and provided additional information in response to corporate discovery requests. Mr. Hasty and Mr. Land also corresponded with Class Counsel to provide information about themselves and D&M Farms for Plaintiffs' Initial Disclosures (dated December 30, 2019); Plaintiffs' First Amended Disclosures of Document Custodians and Non-Custodial Document Sources (dated January 31, 2020); and Plaintiffs' Second Amended Disclosures of Document Custodians and Non-Custodial Document Sources (dated April 20, 2020).

69. Throughout the discovery process, Mr. Hasty and Mr. Land dedicated time and effort assisting Class Counsel and their electronic discovery partners with retrieval of e-mails, text messages, and other data on devices that Mr. Hasty and Mr. Land have in their possession to provide information responsive to Defendants' Requests for Production. In fact, Mr. Hasty, Mr. Land, and D&M Farms collectively produced more than 17,200 documents. Additionally, Mr. Hasty and Mr. Land spent substantial time preparing for their depositions, which took place during harvest season—with Mr. Hasty serving both as a corporate witness for D&M Farms and in his individual capacity and Mr. Land testifying in his individual capacity. As part of their deposition

preparation, both Mr. Hasty and Mr. Land spent considerable time and effort reviewing documents they produced and their discovery responses.

70. Most recently, Mr. Hasty and Mr. Land assisted with providing the relevant settlement notices to Class Members.

**B. Rocky Creek Peanut Farms, LLC and Daniel Howell**

71. Since joining the lawsuit as named plaintiffs in April 2020, Mr. Howell and Rocky Creek Peanut Farms, LLC dedicated extensive time and effort to advancing this litigation and have been committed to helping other peanut farmers who were similarly injured by Defendants' anti-competitive prices (ECF No. 120). Mr. Howell and Rocky Creek Peanut Farms, LLC vigorously prosecuted this litigation; they produced documents, authorized discovery responses, and sat for a full day deposition.

72. In particular, Mr. Howell and Rocky Creek Peanut Farms, LLC assisted in responding to numerous discovery requests from Defendants, including Responses to Defendants' First Set of Requests of Production to Additional Named Plaintiffs (dated April 20, 2020); Responses to Defendants' First Set of Interrogatories to Additional Named Plaintiffs (dated April 20, 2020); Responses to Defendants' Second Set of Requests for Production to Plaintiffs (dated May 20, 2020); Supplemental Responses to Defendants' First Set of Interrogatories to Additional Named Plaintiffs (dated August 10, 2020); Responses to Olam's First Set of Requests for Production to Plaintiffs (dated Aug. 31, 2020); and Responses to Olam's First Set of Interrogatories to Plaintiffs (dated September 1, 2020). Mr. Howell also corresponded with Class Counsel to provide information about himself and Rocky Creek Peanut Farms, LLC for Plaintiffs' Amended Disclosures (dated April 20, 2020). Throughout the discovery process, Mr. Howell dedicated time and effort assisting Class Counsel and their electronic discovery partners with retrieval of e-mails, text messages, and other data on devices that Mr. Howell has in his possession

to provide information responsive to Defendants' Requests for Production. In fact, Mr. Howell and Rocky Creek Peanut Farms, LLC have produced over 5,100 pages of documents. Additionally, Mr. Howell spent time diligently preparing for his September 8, 2020 deposition as both a corporate witness for Rocky Creek Peanut Farms, LLC and in his individual capacity. As part of his deposition preparation, Mr. Howell spent considerable time and effort reviewing documents he produced and his discovery responses. Most recently, Mr. Howell assisted with providing the relevant settlement notices to Class Members.

**C. Lonnie Gilbert**

73. Since joining the lawsuit as a named plaintiff in April 2020, Mr. Gilbert dedicated extensive time and effort to advancing this litigation and has been committed to helping other peanut farmers who were similarly injured by Defendants' anti-competitive prices (ECF No. 120). Mr. Gilbert has vigorously prosecuted this litigation; he produced documents, authorized discovery responses, and sat for a full day deposition.

74. In particular, Mr. Gilbert assisted in responding to numerous discovery requests from Defendants, including Responses to Defendants' First Set of Requests of Production to Additional Named Plaintiffs (dated April 20, 2020); Responses to Defendants' First Set of Interrogatories to Additional Named Plaintiffs (dated April 20, 2020); Responses to Defendants' Second Set of Requests for Production to Plaintiffs (dated May 20, 2020); Supplemental Responses to Defendants' First Set of Interrogatories to Additional Named Plaintiffs (dated August 10, 2020); Responses to Olam's First Set of Requests for Production to Plaintiffs (dated Aug. 31, 2020); and Responses to Olam's First Set of Interrogatories to Plaintiffs (dated September 1, 2020). Mr. Gilbert also corresponded with Class Counsel to provide information for Plaintiffs' Second Amended Disclosures of Document Custodians and Non-Custodial Document Sources (dated April 20, 2020). Throughout the discovery process, Mr. Gilbert dedicated time and effort

assisting Class Counsel and their electronic discovery partners with retrieval of e-mails, text messages, and other data on devices that Mr. Gilbert has in its possession to provide information responsive to Defendants' Requests for Production. In fact, Mr. Gilbert produced over 5,300 pages of documents. Additionally, Mr. Gilbert spent time diligently preparing for his September 24, 2020 deposition. As part of his deposition preparation, Mr. Howell spent considerable time and effort reviewing the documents he produced and his discovery responses. Most recently, Mr. Gilbert assisted with providing the relevant settlement notices to Class Members.

75. The Class Representatives were never promised any additional compensation for leading the case, or that Class Counsel would even request such an award; rather, the Class Representatives devoted their time and efforts solely to recover some portion of their own overcharges and to enable other Class Members to recover theirs. (ECF Nos. 236, 242). The time and effort devoted by Class Representatives was instrumental in obtaining a phenomenal result for Plaintiffs and should be recognized.

**V. LOCKRIDGE GRINDAL NAUEN'S EFFORTS, TIME AND EXPENSES.**

**A. LGN's EFFORTS IN THIS CASE.**

76. My firm, LGN, initiated the investigation into this matter. Based on our investigation, we assembled a small but highly skilled, group of law firms able to efficiently represent America's peanut farmers in this complex matter. Since the Court appointed our firm as Co-Lead Counsel, we have led the prosecution of this matter in all regards, supervised the activities of all Class Counsel, and strategized and executed decisions regarding the overall prosecution of this litigation. More specifically, our efforts consisted of the following:

- a. We conducted an extensive investigation of the peanut shelling industry prior to filing this litigation, including both factual and legal research into the industry and potential claims. As part of the investigation, we met with our

initial clients (who became the first named Class Representatives for this case) and interviewed witnesses to learn about the peanut shelling industry, structure, and operations. We also collaborated with an economic consultant to conduct preliminary analysis of our clients' claims.

- b. Since filing this litigation in September 2019, we continued to conduct factual and legal research throughout the course of the case, not only to prepare and finalize two comprehensive amended complaints, but also as necessary to bring affirmative motions on behalf of the Class and thoroughly defend motions brought by Defendants.
- c. In collaboration with all Class Counsel, we dedicated significant effort to seek discovery of Defendants and representing and defending our clients in response to Defendants' discovery requests. We consulted with our clients to evaluate and collect their documents and data in response to Defendants' discovery requests and identified and worked with a forensics vendor to extract electronically stored data from our clients' devices and collect cellphone information. We also worked with our clients to draft responses and objections to multiple sets of requests for production and interrogatories issued by Defendants and conducted meet and confers with Defendants' counsel to narrow the scope of their requests. We also drafted and issued discovery requests and interrogatories to Defendants and conducted numerous meet and confer discussions with Defendants' counsel to understand Defendants' document and data sources and the availability of responsive information needed to prosecute this litigation. For example, we

worked with Defendants' Counsel to propose and negotiate custodial sources, search terms, and structured data productions.

- d. We also diligently pursued discovery of relevant third parties to further investigate and support the Class's claims in this litigation. We led the pursuit to obtain phone records of Defendants' employees pursuant to subpoenas of phone service providers, including AT&T, Windstream, and Verizon, and provided those records to a phone records vendor that we retained to analyze the data and provide information establishing an extraordinary number of direct inter-company communications—both phone calls and text messages—between Defendants' employees. We reviewed and analyzed the phone record information as part of our discovery efforts to prove Defendants engaged in unlawful conduct. We also prepared, issued, and negotiated subpoena requests to 22 third parties to further investigate the case. *See* Paragraph 10, *supra*. We also prepared, issued, and discussed Freedom of Information Act requests to various agencies within the United States Department of Agriculture, and submitted Open Record requests to the University of Georgia and Abraham Baldwin Agricultural College.
- e. We assigned responsibility for review of documents produced by the Defendants and third parties. We led the design of the document review program and implemented appropriate review guidelines, resulting in identification of relevant material from more than 1,7400,000 documents and other records produced by Defendants and various third parties. We participated in this review as necessary ourselves, and reviewed, analyzed,

and otherwise used the results of other Class Counsel's review of these productions to further the prosecution of Plaintiffs' claims.

- f. We worked with the rest of Class Counsel to prepare for and defend various motions, including Defendants' motions to dismiss, discovery motions (including Defendant Birdsong's motion for a protective order, Defendants' motions to compel discovery responses and depositions, and Defendant Olam's motions to quash third party subpoenas), and Defendants' motion for summary judgment.
- g. We also strategized with other Class Counsel to develop and file affirmative motions on behalf of the Class, including both class certification and non-dispositive motions such as requests to extend the case's trial schedule because of COVID-19 challenges, challenges to Defendants' privilege assertions for certain relevant documents, and a motion to quash Defendant Golden Peanut's third-party deposition subpoena. We performed an extensive amount of work to position this case for class certification, including regular exchanges with our economic and industry expert, Dr. Williams and his team at Berkeley Research Group, LLC throughout their review and analysis of Defendants' data and Dr. Williams' preparation of his expert reports on liability and class certification issues, drafting a motion for class certification, preparing Dr. Williams for his deposition by Defendants' counsel, and drafting a reply brief in support of class certification. After the Court granted class certification on December 2, 2020, we litigated Defendant Golden Peanut's Rule 23(f) appeal of the Court's decision.

- h. We prepared for and took (or assisted co-counsel in preparing for and taking) numerous depositions, including Rule 30(b)(1) and 30(b)(6) of Defendants, as well as depositions of Defendants' experts and third parties. Additionally, we prepared all the Class Representatives for, and defended them, in their depositions, both for testimony in their individual capacities and as corporate representatives. At the request of Defendants' counsel, we also allowed one of our law clerks to testify to his role in preparing Rule 1006 phone record exhibits and his supporting declaration for trial, and prepared him for and defended him at his deposition. Prior to commencing the entire intensive deposition process, we worked with Defendants' counsel to develop a deposition protocol, including remote deposition provisions to account for the unique challenges from the global COVID-19 health pandemic.
- i. We also conducted extensive pre-trial preparations, involving exhibits, witnesses, *in limine* motions, jury materials, and a mock trial. We brought on additional counsel with extensive experience in complex antitrust trial proceedings and worked with all counsel to prepare *voir dire* and jury instructions, strategize trial direction, and draft pre-trial filings such as a report of final factual contentions and legal issues, and analysis of trial exhibit lists exchanged with Defendants' counsel. Prior to the Court rescheduling trial from January 19, 2021 to June 15, 2021, we retained the services of a jury consultant and a trial graphics vendor to work with Class Counsel to prepare for the then-quickly approaching January 19, 2021 trial. We oversaw an extensive mock jury process that took place in Norfolk, Virginia, and



continued to work with our jury consultant to refine our case. Additionally, we worked with all Class Counsel to prepare for and engage in a mediation session with Defendant Golden Peanut, including drafting materials to submit to the mediator prior to the session.

- j. Finally, we participated extensively in all settlement negotiations and finalization of the settlement processes to date. We prepared motions for preliminary approval of settlements in this case, and we helped prepare and execute the class notice and claims administration program for the settlements. During the class notice period, we have responded to multiple inquiries from Class members regarding the proposed settlements as well as settlement and claims administration.

**B. LGN LODESTAR AND EXPENSES**

77. The schedule attached hereto as Exhibit 3 is a detailed summary of the time spent by the partners, attorneys and other professional support staff of my firm who were involved in this litigation, and the lodestar calculation based on my firm's historic billing rates from inception through May 31, 2021. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm.

78. The hourly rates for the partners, attorneys and professional support staff in my firm included in Exhibit 3 are our usual hourly rates customarily charged and routinely awarded in litigation of this nature.

79. The total number of hours my firm expended on this litigation from inception through May 31, 2021 is 11,278.20 hours. The total lodestar for my firm is \$5,500,268.00. My firm's lodestar figures are based on the firm's historic billing rates.

80. In December 2019, shortly after this litigation was commenced, my firm, as Interim Co-Lead Counsel, sent all Class Counsel the Court's approved time and expense reporting protocol. Throughout this litigation, my firm has abided by this protocol as we have performed work, incurred expenses, and submitted monthly reports of our time and expenses. My firm's submission of its compensable time and reimbursable expenses in this declaration and its exhibits comports with these Court-approved time and expense reporting protocol.

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

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

Executed on this 7th day of June, 2021 in Minneapolis, Minnesota.

s/Brian D. Clark  
Brian D. Clark