

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

IN RE BROILER CHICKEN ANTITRUST
LITIGATION,

Case No.: 1:16-cv-08637

The Honorable Thomas M. Durkin

This Document Relates To:

THE DIRECT PURCHASER PLAINTIFF
ACTION

**DECLARATION OF BRIAN D. CLARK IN SUPPORT OF DIRECT PURCHASER
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE SETTLEMENTS WITH
THE MAR-JAC AND HARRISON POULTRY DEFENDANTS**

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

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

2. I submit this Declaration in support of Plaintiffs’ Motion for Final Approval of Settlements Between the Direct Purchaser Plaintiffs and Defendants Mar-Jac Poultry, Inc., Mar-Jac Poultry MS, LLC, Mar-Jac Poultry AL, LLC, Mar-Jac AL/MS, Inc., Mar-Jac Poultry, LLC and Mar-Jac Holdings, Inc. (Mar-Jac Holdings, Inc. is incorrectly named in the Complaint as Mar-Jac Holdings, LLC) (collectively, “Mar-Jac”) and Harrison Poultry, Inc. (“Harrison Poultry”), filed simultaneously herewith.

3. On behalf of DPPs, I, my firm, and my Co-Lead Counsel personally conducted settlement negotiations with counsel for Mar-Jac beginning in Spring 2021 and with Harrison Poultry beginning in August 2021. The DPPs and Mar-Jac signed the Mar-Jac Settlement Agreement on August 18, 2021. The DPPs and Harrison Poultry signed the Harrison Settlement Agreement on September 11, 2021.

4. As counsel for DPPs, we performed a thorough investigation and engaged in extensive discovery prior to reaching the settlements. These efforts commenced prior to the filing of DPPs’ initial complaint and included pre-litigation investigation into Defendants’ conduct that formed the basis of the DPPs’ complaints.

5. During the litigation, DPPs obtained responses to multiple sets of interrogatories, and received over 8 million documents in response to their requests for production and third party subpoenas.

6. DPPs along with other plaintiffs have taken over 100 depositions of the Defendants and third parties.

7. DPPs have also provided responses to written discovery, produced documents, and defended or otherwise appeared for depositions noticed by the Defendants.

8. DPPs previously settled with Defendant Fieldale Farms Corp. (“Fieldale”) for \$2.25 million. DPPs also previously settled with Defendants Peco Foods, Inc. (“Peco”), George’s, Inc., George’s Farms, Inc. (collectively, “George’s”), and Amick Farms, LLC (“Amick”) for \$13,011,600.¹ Most recently, DPPs secured significant settlements with Pilgrim’s and Tyson in the amount of \$75 million and \$79,340,000, respectively. For the proposed settlements with Mar-Jac and Harrison, the Settlement Class will recover at a higher rate on a dollar per market share basis than the prior settlements. Mar-Jac constitutes approximately 1.5% and Harrison Poultry constitutes approximately 0.5% of commerce sold to DPPs under the Settlement Class definition, and will provide the Settlement Class with \$7,975,000 and \$3,300,000 (respectively) in monetary relief. Therefore, this fourth round Settlement constitutes a step-up in damages to a range of approximately \$5.5 million per market share point. These Settlements bring the total amount recovered by DPPs from settling defendants (past and present) to date to \$180,876,600. This is a significant amount of money recovered for the DPP class.

9. As this litigation has been pending for over 5 years (three and a half years against Mar-Jac and Harrison Poultry), the parties have had ample opportunity to assess the merits of DPPs’ claims and Harrison Poultry’s and Mar-Jac’s respective defenses, through investigation, discovery, research, settlement discussions and contested motion practice; and to balance the value

¹ \$4,964,600 from Peco, \$4,097,000 from George’s, and \$3,950,000 from Amick.

of Settlement Class members' claims against the substantial risks and expense of continuing litigation.

10. DPPs' settlement negotiations with Mar-Jac commenced in Spring 2021.

11. The Mar-Jac Settlement comes after extensive, confidential, protracted arm's-length negotiations between the parties. The hard-fought negotiations were kept confidential, and often broke down as the parties vigorously litigated the case and the parties had difficulty reaching agreement on the final terms of the Settlement. The negotiations necessitated numerous conferences as well as written exchanges between counsel during which the parties negotiated the material terms of the settlement, as well as the final Settlement Agreement. The parties debated many issues and negotiated many terms of the settlement, including the amount of payment, the timing of payment, potential conditions on payment, the effect of opt-outs on any settlement, and potential cooperation. Throughout this process, Mar-Jac has been represented by experienced, sophisticated counsel. In engaging in these settlement discussions, counsel for DPPs were focused on obtaining the best possible result for the DPP class.

12. The parties ultimately executed the Mar-Jac Settlement Agreement on August 18, 2021.

13. DPPs' settlement negotiations with Harrison Poultry commenced in August 2021.

14. The Settlement Agreement with Harrison Poultry was reached through confidential, arm's length settlement negotiations. The negotiations necessitated numerous conferences as well as written exchanges between counsel during which the parties negotiated the material terms of the settlement, as well as the final Settlement Agreement. The parties debated many issues and negotiated many terms of the settlement, including the amount of payment, the timing of payment, potential conditions on payment, the effect of opt-outs on any settlement, and potential

cooperation. Throughout this process, Harrison Poultry has been represented by experienced, sophisticated counsel. In engaging in these settlement discussions, counsel for DPPs were focused on obtaining the best possible result for the DPP class.

15. The parties ultimately executed the Harrison Poultry Settlement Agreement on September 11, 2021.

16. During settlement negotiations with the Settling Defendants, the parties debated many issues, and negotiated many terms of the settlements, including the amount of payment, the effect of opt-outs on any settlement, and potential cooperation.

17. There was no collusion or preference among counsel for the settling parties at any time during these negotiations. To the contrary, the negotiations were contentious, hard fought, and fully informed. DPPs sought to obtain the greatest monetary benefit possible from each Settling Defendant. Furthermore, there has never been any discussion or agreement at any time among the settling parties regarding the amount of attorneys' fees DPPs' counsel would ask the Court to award in this case.

18. For each of the proposed settlements, the proposed Settlement Class consists of persons and entities that purchased Broilers from the Defendants during the period from January 1, 2008 to December 20, 2019. DPPs' investigation and discovery has confirmed that there are thousands of persons and entities that fall within the Settlement Class definition.

19. DPPs have enlisted the services of an experienced class action administrator, A. B. Data Ltd., to administer notice to the Class Members. A. B. Data was appointed by the Court in the Court's Order on Preliminary Approval (ECF No. 5086). As set forth in the Motion and supporting declaration of Eric Schachter, the Court-approved Notice Plan has been successfully implemented and Class members have been notified of the Settlements.

20. Neither the Mar-Jac nor Harrison Poultry Settlement were terminated pursuant to the provision in Section 21 of the Settlement Agreements.

21. A. B. Data received an objection from Trudy A. Winkler dated October 27, 2021. Michael H. Pearson of Pearson, Simon & Warshaw, LLP contacted Ms. Winkler and it was determined that she was not a member of the DPP Class. On November 12, 2021, Ms. Winkler formally withdrew her objection.

22. In my opinion, and in that of my Co-Lead Counsel, the proposed settlement agreements with the Settling Defendants are fair, reasonable, and adequate. The Settlements provide substantial benefits to the Settlement Class, and avoid the delay and uncertainty of continuing protracted litigation with the Settling Defendants.

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 11th day of January, 2022 at Minneapolis, Minnesota.

/s/ Brian D. Clark

Brian D. Clark