

**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

**DIRECT PURCHASER PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR FIRST DISTRIBUTION OF NET SETTLEMENT PROCEEDS**

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I. INTRODUCTION

The Direct Purchaser Plaintiffs (“DPPs”) hereby seek the Court’s approval of their proposed plan to distribute the \$108,714,999.81 Net Settlement Fund¹ to qualified claimants. This Motion and the plan of distribution are pursuant to the terms and conditions of the first six Settlement Agreements in this case with Defendants Fieldale Farms Corporation, Peco Foods, Inc., the George’s Defendants,² Amick Farms LLC, Pilgrim’s Pride Corporation, and the Tyson Defendants³ (collectively, “Settled Defendants”).⁴

DPPs propose that the Court order that the Net Settlement Fund be distributed on a *pro rata* basis pursuant to the portion of approved eligible Broiler purchases of Class members who have filed valid claims. The *pro rata* distribution in this case was described in the long form class notice and claim form which have already been approved by the Court and sent to Class members. The long form notice stated: “The proposed distribution plan for the Settlements is to make a pro rata distribution to each qualifying Class member based on the dollar value of approved purchases of Broilers per Settlement Class member during the Settlement Class Period.” (*See* ECF No. 4259-2, Ex. B.)

¹ The term “Settlement Fund” refers to the \$169,601,600.00 paid by the Settled Defendants into the escrow account. The term “Net Settlement Fund” refers to the Settlement fund plus accrued interest and minus (i) the costs of settlement administration and escrow, and (ii) the attorneys’ fees, litigation expenses, and class representative incentive awards already distributed to Interim Co-Lead Counsel (*See* ECF No. 5229). As more fully set forth in Section II.B below, the Net Settlement Fund equals \$108,714,999.81. (*See* Section II.B *infra*; *see also* Declaration of Michael H. Pearson in Support of Motion (“Pearson Decl.”) ¶ 4.)

² The George’s Defendants are George’s Inc. and George’s Farms, Inc.

³ The Tyson Defendants are Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc., and Tyson Poultry, Inc.

⁴ This Court granted final approval to the DPPs’ settlements with Fieldale on November 16, 2018 (ECF No. 1414); Amick on October 26, 2020 (ECF No. 3934); Peco and George’s on October 27, 2020 (ECF No. 3944); and Pilgrim’s and Tyson on June 29, 2021 (ECF No. 4789).

The Court-appointed Settlement Administrator, JND Legal Administration LLC (“JND”), in consultation with Interim Co-Lead Counsel,⁵ disseminated notice to the Settlement Classes (as defined in each of the Settlement Agreements), diligently processed 2,925 claims, and determined each claimant’s eligibility. (*See generally* Declaration of Lorri Staal, Vice President of Operations at JND, in support of this Motion (“Staal Decl.”).) All Defendants provided JND with data showing their sales to all DPP Class members of affected Broiler products during the Class Period, and thus JND was able to provide Class members with a pre-populated claim form showing the amount of that Class member’s purchases as reflected in Defendants’ sales data. As a result, there was significant participation in the claims process by Class members. 1,222 claims have been vetted and approved by JND and DPP Co-Lead Counsel, and are now recommended for approval.⁶ Indeed, the dollar value of claims made as a percentage of the overall Settlement Class sales is very high for an antitrust case, with each of the six settlements exceeding a 50% claims rate by dollar value of the total Class sales. (Pearson Decl. ¶ 9) These claims will be paid promptly upon approval by the Court of this Motion. This distribution process is more fully described in Section II.B below.

II. BACKGROUND

DPP Co-Lead Counsel’s vigorous prosecution has resulted in the creation of a nearly \$170 million gross Settlement Fund from the first six settlements. Accordingly, DPPs believe it is

⁵ The Court appointed Lockridge Grindal Nauen P.L.L.P. (“LGN”) and Pearson, Simon & Warshaw, LLP (“PSW”) as Interim Co-Lead Counsel at the outset of the litigation. *See* Order of October 14, 2016 (ECF No. 144). The Court reaffirmed its appointment of LGN and PSW Interim Co-Lead Counsel in approving each of the Settlements to date. *See* n.4 *supra*.

⁶ JND reviewed and rejected 1,703 claims (including withdrawn, duplicative, and ineligible claims) as more fully set forth in Section III.A below. (Staal Decl. ¶ 44.)

appropriate to propose a Round One distribution of the Net Settlement Fund from those six settlements.⁷

A. Claims Administration

On February 25, 2021, this Court approved the claims process and appointed JND as the Claims Administrator.⁸ (ECF No. 4341.) As more fully detailed in the concurrently filed Declaration of Lorri Staal, the claims process was carried out with significant Class member participation.

1. The Court-Approved Claims Process was Successfully Carried Out

On March 16, 2021, JND mailed notice packets containing the claim form and the long form notice. (Staal Decl. ¶ 8.) On the same day, JND commenced an email campaign and sent the Email Notice to potential Class members. (*Id.* ¶ 9.) JND also caused the Publication Notice to be published in industry publications and placed banner display advertisements on industry websites. (*Id.* ¶ 12.) The claim forms included calculated amounts for each Class member's Broiler purchases from each of the Defendants and Co-Conspirators during the Class Period, to the extent purchase data was produced by the Defendants. (*Id.* ¶ 7.) If a Class member wanted to dispute the pre-populated claim form amount, it could submit a purchase audit request form (available to Class members via the settlement website) to submit documentation to support a different amount. (*Id.* ¶¶ 7, 14.) Class members had the opportunity to submit their claim forms via mail, email or using the settlement website. (*Id.* ¶ 22.)

⁷ As the Court is aware, DPPs have since reached settlements with two more Defendants, Mar-Jac and Harrison Poultry. The Court granted final approval to those settlements on January 27, 2022, ECF No. 5397. As noted at the final approval hearing, the Mar-Jac and Harrison Poultry Settlements will be the subject of a future distribution subject to the Court's approval.

⁸ The Court approved the claims process in conjunction with preliminary approval of the Pilgrim's and Tyson Settlements. The Court previously appointed JND as the Claims Administrator of the prior Settlements. (*See* ECF Nos. 980 (Fieldale), 3394 (Peco, George's and Amick).)

2. JND Verified Each Claim was Valid and Accurate

To ensure that all claims were proper and accurate, JND: (1) identified all duplicative claims; (2) audited and consolidated claims filed by different entities for the same Class member; (3) identified any claims that were deficient on their face; (4) reviewed and audited any claims submitted by self-identified claimants without pre-populated data; (5) reviewed and audited any claims for which a purchase audit request was submitted (*i.e.*, where the claimant disputed the pre-populated claim form amount); (5) identified any ineligible product purchases claimed; and (6) identified any claims based on indirect purchases. (Staal Decl. ¶¶ 26-38.) JND also worked with Interim Co-Lead Counsel's data team to ensure that all claims were accurate. (*Id.* ¶ 38.) The claim review process is described in greater detail below and in the supporting Staal declaration.

JND reviewed the claim submissions to identify potentially duplicate claims filed for the same Class member. Exact duplicates were immediately consolidated. Where multiple claims were filed by different entities on behalf of the same Class member, the claims were further analyzed and, in many cases, additional outreach was performed to determine which claim(s) should be accepted or rejected. (*Id.* ¶ 28.)

Claim Forms were also reviewed for any facial deficiencies, including missing signatures or other required information. (*Id.* ¶ 27.) All such claims were flagged as deficient. (*Id.* ¶ 29.)

Where Claim Forms were submitted by self-identified entities who did not have pre-populated data, JND worked with Interim Co-Lead Counsel to determine whether the Claimant could be matched to Class purchase data. If a match was confirmed, the Class member's record was updated accordingly in JND's database. (*Id.* ¶ 31.)

For claims other than those accepting pre-populated data, where supporting documentation was not submitted, the claims were flagged as deficient. Where documentation was submitted, JND carefully reviewed all submissions, including invoices and structured transactional data, to

ensure that only eligible direct Broiler purchases were validated. If the documentation was not sufficient to prove the eligibility of claimed purchases, the claim was categorized as deficient. (*Id.* ¶ 36.)

The Court-approved notice required all claims to be submitted by May 17, 2021. (ECF No. 4341.) (Staal Decl. ¶¶ 18, 19; *see also* ECF No. 4789 at 4.) JND received 73 claims after the May 17, 2021 deadline. (*Id.* ¶ 23.) However, JND recommends, and Interim Co-Lead Counsel concur, that all late claims be paid. Payment of these late claims will have a *de minimus* effect on the payment to qualified claimants who filed timely claims. (*Id.* ¶ 46; *see also* Pearson Decl. ¶ 5.)

JND's claim review was methodical and detailed. Each claim submission that provided facially valid supporting documentation received several rounds of review by JND staff to ensure accuracy. Claims based on purchases not made directly from a Defendant or Co-Conspirator were rejected. Claims filed by excluded government entities were rejected as ineligible. (*Id.* ¶ 29.) Claims based on purchases of ineligible products, such as organic products and those exported directly out of the United States, were rejected as non-qualifying. Where claims reflected assignment agreements, the assigned purchases were carefully credited to the assignee's claim and debited from the assignor's claim, as appropriate. (Staal Decl. ¶ 33.) This same review process was used to review purchase audit requests, when a claimant disputed the pre-populated purchase amount.

Finally, JND reviewed claims to identify any claimants who had opted out of only some of the six Settlements. Such claims were processed to ensure these claimants would not receive a distribution from any Settlement from which they had opted out. (*Id.* ¶ 30.)

In sum, JND received and processed a total of 2,925 claim forms from potential Class members. (Staal Decl. ¶ 23.) After auditing the claims received, JND identified and rejected 151

duplicates and consolidated claims, and revised 52 claim amounts. (*Id.* ¶ 28.) Further, 55 claimants have withdrawn their claims. (*Id.* ¶ 49.) JND recommends that a total of 1,703 claims (including withdrawn claims) be denied for the reasons described in detail herein. (*Id.* ¶ 44.) A total of 1,222 valid claims remains with Broiler purchases totaling \$175,986,593,650.68.⁹ (*Id.* ¶¶ 47, 49.)

3. The Audit Process was Thorough

Where a claimant either did not have a pre-populated claim form, or disagreed with their pre-populated data, JND reviewed the claim submission in detail with the help of Class Counsel and their data expert to confirm validity. (*Id.* ¶ 38.) One hundred nineteen claimants submitted purchase audit request forms or otherwise disputed the amounts reflected in their pre-populated Claim Forms. (*Id.* ¶ 25.)

When addressing any claim modifications, deficiencies, and/or purchase audit requests, JND provided notice to the affected Class members and Interim Co-Lead Counsel, and gave the claimant an opportunity to cure any deficiencies. (*Id.* ¶¶ 39-41.) JND investigated and handled each issue on an individual basis and resolved it in a timely manner. (*Id.*; *see also* Pearson Decl. ¶ 6.) As of the filing of this Motion there are no outstanding disputes or issues. (Staal Decl. ¶ 48.)

4. Administration Costs

JND has provided to Interim Co-Lead Counsel invoices detailing the fees and expenses it has incurred to administer the notice and claims of the direct purchaser Class members. (Pearson Decl. ¶ 8; Staal Decl. ¶ 52.) In approving the six settlements the Court approved the payment of the costs of administration, pursuant to which Interim Co-Lead Counsel have already paid from the Settlement Fund \$1,165,597.10 to JND for the notice and administration of the six settlements.

⁹ Of these valid claims, 28 claims, totaling \$2,084,171,903.93, were submitted after the May 17, 2021 deadline. (Staal Decl. ¶ 46.)

(Staal Decl. ¶ 52.) JND's fees, including the anticipated cost of completing this initial distribution, are \$1,365,597.10. (*Id.*) This is within the amount already approved by the Court in approving each of the six settlements. (*See* Section III.C.1.) If the actual amount is less than this anticipated amount, the difference will be distributed *pro rata*.

B. Distribution of the Net Settlement Fund

As noted, the Settled Defendants have paid a total of \$169,601,600.00 into the Settlement Fund. (Pearson Decl. ¶ 4.) This money has been earning interest since deposited. (*Id.*) The Net Settlement Fund equals \$108,714,999.81. An accounting of the Net Settlement Fund is as follows:

Description	Amount
Funding by Fieldale	+ \$2,250,000.00
Funding by Peco	+ \$4,964,600.00
Funding by George's	+ \$4,097,000.00
Funding by Amick	+ \$3,950,000.00
Funding by Pilgrim's	+ \$75,000,000.00
Funding by Tyson	+ \$79,340,000.00
Settlement Fund	= \$169,601,600.00
Earned Interest (through January 31, 2022) ¹⁰	+ \$109,863.58
Escrow Fees (through January 31, 2022) ¹¹	- \$32,000.00
Claims Administration Costs (through January 31, 2022) ¹²	- \$1,165,597.10
Claims Administration Costs (Anticipated) ¹³	- \$200,000.00
Additional Bank Fees Through End Of Distribution ¹⁴	- \$15,000.00
Attorneys' Fees (Paid)	- \$55,008,866.67
Litigation Expenses (Paid)	- \$4,500,000.00
Incentive Awards (Paid)	- \$75,000.00
Net Settlement Fund	= \$108,714,999.81

¹⁰ Fieldale \$82,474.64; Peco \$9,799.69; George's \$8,086.83; Amick \$8,283.26; Pilgrim's \$592.39; Tyson \$626.77.

¹¹ Fieldale \$11,000.00; Peco \$5,000.00; George's \$5,000.00; Amick \$5,000.00; Pilgrim's \$3,000.00; Tyson \$3,000.00.

¹² *See* Section III.C.1 below.

¹³ *See* Section III.C.1 below. If the actual amount is less than this anticipated amount, the difference will be distributed *pro rata*.

¹⁴ \$2,500.00 reserve for each of the six Settlements for additional bank fees through the end of the distribution, for a total of \$15,000. If the actual amount is less than this anticipated amount, the difference will be distributed *pro rata*.

(See Pearson Decl. ¶ 4.)

Upon entry of an Order approving the distribution as set forth herein or as modified by the Court, within 21 days the Escrow Agent¹⁵ will transfer the Net Settlement Fund to JND, and JND will promptly issue payment of each qualified claimant's *pro rata* share by mailing payments to qualified claimants at the address indicated on their claim form or as updated in JND's database. In addition, JND will file any tax returns and pay any taxes due from the Settlement Fund. JND recommends (and Interim Co-Lead Counsel concur) that the checks disbursed to qualified claimants bear the notation "Non-Negotiable After 90 Days" and that no check be negotiable more than 120 days after the date of the check. (Staal Decl. ¶ 51.) The additional 30 days will allow for bank processing and a small extension of time for individuals who present their checks to the bank after 90 days but the bank continues to accept the check for payment. (*Id.* ¶ 51.)

DPPs will file a report with the Court 30 days after the 120 days of negotiability advising the Court regarding the status of the distribution and propose a plan for any funds remaining in the Net Settlement Fund. If the Court believes a hearing on the status of distribution is appropriate at that time, DPPs are happy to oblige.

III. ARGUMENT

In antitrust cases such as this, many courts, including in this District, have approved settlement distributions that apportion available settlement funds on a *pro rata* basis to class members with qualified claims, without favoring any single or group of class members over another. *See, e.g., In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 1999 WL 639173, *4 (N.D. Ill. Aug. 17, 1999) ("We note that courts have utilized the *pro rata* distribution method in several prior price-fixing class actions We think this method will provide the most

¹⁵ U.S. Bank was appointed by the Court as escrow agent for each of the Settlements.

accurate measure of the damages suffered by each class member and, for this reason, we endorse the pro rata distribution method.”); accord *In re Potash Antitrust Litig.*, MDL No. 1996, Dkt. No. 610 (Order Approving Plan of Distribution of the Settlement Fund) (N.D. Ill. Jul. 18, 2014); *In re Packaged Ice Antitrust Litig.*, No. 08-MDL-01952, 2011 WL 6209188, at *15-16 (E.D. Mich. Dec. 13, 2011); *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 345 (E.D. Pa. 2007); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 335 (E.D. Pa. 2007); *In re Remeron Direct Purchaser Antitrust Litig.*, No. CIV.03-0085 FSH, 2005 WL 3008808, *11 (D.N.J. Nov. 9, 2005) (citing cases); see also 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions*, § 12.10 (4th ed. 2002). In administering the substantial LCD settlements, the court noted that pro rata allocation “has been used in many antitrust cases.” *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-1827, 2011 WL 7575004, *4 (N.D. Cal. Dec. 27, 2011).

The proposed pro rata distribution in this case was described in the long form class notice and claim form which have already been approved by the Court and sent to Class members. The long form notice clearly stated: “The proposed distribution plan for the Settlements is to make a pro rata distribution to each qualifying Class member based on the dollar value of approved purchases of Broilers per Settlement Class member during the Settlement Class Period.” (See ECF No. 4259-2, Ex. B.)

A. The Court Should Approve the Recommendations of the Claims Administrator and Interim Co-Lead Counsel Concerning Acceptance or Rejection of Claims

As explained above, JND has performed a diligent, thorough review of all claim forms. (See Section II.A *supra*; Staal Decl. ¶ 26.) Based on this process, JND has determined (and Interim Co-Lead Counsel concurs) that there are 1,222 eligible claims to be paid according to the proposed

plan of distribution.¹⁶ (Staal Decl. ¶ 47.) Thus, DPPs propose that the Court approve the payment of the eligible claims.

JND reviewed and rejected 1,703 claims (including withdrawn claims). (*Id.* ¶ 44.) The most common reasons for rejecting claims were: (i) claimants did not have pre-populated data and did not submit documentation of any kind to support their claim, (ii) claimants' supporting documentation indicated that the claimed purchases were not direct and therefore not eligible, (iii) the supporting documentation was insufficient to support the claimed amount, (iv) the claimed purchases were from a distributor and were not purchased directly from a Defendant or Co-Conspirator; and (v) the claim was submitted by an excluded government entity. (*Id.*) Interim Co-Lead Class Counsel agrees with JND's determinations, and proposes that the Court approve JND's determinations concerning the denial of ineligible claims and the payment of eligible claims. (Pearson Decl. ¶ 7.)

B. Late Claims that are Otherwise Valid Should be Paid

As noted above on page 5 and footnote 6, of the 1,222 claims recommended for approval, 28 were received after the Court's May 17, 2021 deadline to submit all claims. (Staal Decl. ¶ 46.) Of the 28 late and otherwise valid claims, 14 claims were filed within three days of the filing deadline of May 17, 2021 and all but two claims were filed by August 3, 2021; one claim was filed in October 2021 and one claim was filed in November 2021. All of the late claims that were filed after the first week in June 2021 accepted their pre-populated claim forms, and did not delay the claim review process. Those 28 late-filed claims total \$2,084,171,903.93 in otherwise eligible

¹⁶ Where more than one claimant with the same standardized name submitted a validated claim, JND counted the total purchase amount only once (as the maximum amount to be paid per standardized claimant); however, each submitted claim is included in the claim counts herein. (Staal Decl. at 8 n.4).

purchases, or 1.18% of the total qualified purchases of \$175,986,593,650.68. The Court has discretion to allow or disallow such claims. *In re Gypsum Antitrust Cases*, 565 F.2d 1123, 1128 (9th Cir. 1977) (court has discretion with respect to the disallowance of late claims); *Burns v. Elrod*, 757 F.2d 151, 154-55 (7th Cir. 1985); see *In re Cendant Corp. Prides Litig.*, 233 F.3d 188, 194-97 (3d Cir. 2000) (holding that until the fund created by the settlement is actually distributed, the court retains its traditional equity powers to protect unnamed but interested persons; a court may assert this power to allow late-filed proofs of claim).

DPPs propose that all late-filed claims filed prior to the filing of this motion be paid. Payment of these late-filed claims will have a *de minimus* impact on the distribution to the Class and will not delay the distribution plan. (Pearson Decl. ¶ 5.)

C. The Court Should Authorize Payment of Outstanding Fees and Costs

DPPs respectfully request that the Court authorize the payment of any outstanding expenses associated with the Settlements.

1. Claims Administration Costs

The Court-appointed claims administrator, JND, has provided its services, as described in the Staal Declaration. Each of the six Settlement Agreements authorized Class Counsel to withdraw up to a certain amount for notice and administration costs, totaling \$2.3 million. (See ECF Nos. 447-2 at 18 (Fieldale, \$500,000), 3324 at 18 (Peco, \$500,000), 3324 at 47 (George's, \$500,000), 3324 at 75 (Amick, \$300,000), 4259-1 at 15 (Pilgrim's, \$250,000), 4259-1 at 45 (Tyson, \$250,000).) Pursuant to this, Interim Co-Lead Counsel have already paid from the Settlement Fund \$1,165,597.10 to JND after review and approval of their bills. (Pearson Decl. ¶ 8.) As set forth in Section II.A above, JND's fees, including the anticipated cost of completing this

initial distribution, are \$1,365,597.10.¹⁷ (*Id.*) Interim Co-Lead Counsel find this request to be reasonable and recommend that the Court approve the payment. (*Id.*)

2. Other Expenses Associated with the Settlements

DPPs request the Court's authorization to reserve, if necessary, \$2,500.00 per settlement¹⁸ (\$15,000.00 total) for any additional, unaccounted for escrow or banking fees that may be incurred before the actual distribution.

IV. CONCLUSION

For the foregoing reasons, DPPs respectfully request that the Court (1) authorize the payment of eligible claims; (2) deny the ineligible claims; (3) order the Escrow Agent to distribute the Net Settlement Fund to JND and pay approved fees and costs from the Settlement Fund; and (4) order JND to distribute the *pro rata* settlement proceeds to qualified claimants.¹⁹

Further, as noted above at page 8, DPPs will file a report with the Court 150 days after payments are sent advising the Court of the status of the distribution, and at that time will propose a plan for any funds remaining in the Net Settlement Fund.

¹⁷ If the actual amount is less than this anticipated amount, the difference will be distributed *pro rata* to the Court-approved qualified claimants.

¹⁸ If the actual amount is less than this anticipated amount, the difference will be distributed *pro rata* to the Court-approved qualified claimants.

¹⁹ At the January 25, 2022 final approval hearing for the settlements with the Mar-Jac and Harrison Poultry defendants, the Court discussed this Motion with Counsel. The Court stated that once the Motion was filed, the Court may grant it without a hearing after 14 days if (1) the Court did not have any questions, and (2) no response is filed.

Date: February 11, 2022

/s/ Michael H. Pearson

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