

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

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

This document relates to all actions.

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

Chief Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

**PLAINTIFFS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS TO
CLASS REPRESENTATIVES**

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	iii
INTRODUCTION.....	1
BACKGROUND.....	4
ARGUMENT	8
I. The Court Should Grant an Award of Attorneys’ Fees in the Amount of One-Third of the Settlement Fund	8
A. A Percentage of the Fund Is the Preferred Method for Awarding Attorneys’ Fees in a Common Fund Case.....	8
B. The Requested Fee Award Is Reasonable Under the Tenth Circuit Law	10
1. The Result Obtained for the Class Favors the Requested Award.....	10
2. Class Counsel Devoted Significant Time and Labor to Prosecuting This Action.....	11
3. The Litigation Involves Contested Questions of Fact and Law.....	13
4. This Litigation Requires a High Level of Skill.....	16
5. Class Counsel Had to Forgo Other Employment to Litigate This Action.....	16
6. The One-Third Award Request Is Within the Range Customarily Awarded in Antitrust Cases.....	17
7. The Fee Is Contingent in Nature.....	18
8. There Are No Unusual Time Limitations.....	18
9. Class Counsel Have Extensive Experience Litigating Antitrust Class Actions.....	18
10. The “Undesirability” of the Case.....	18
11. The Nature and Length of the Professional Relationship with the Clients.....	19
12. The Requested One-Third Fee Award Is Similar to Awards in Other Complex Cases.....	19

II.	The Court Should Award Reimbursement of Class Counsel’s Reasonable and Necessary Litigation Expenses.....	20
III.	The Requested Service Awards to the Class Representatives Are Appropriate	21
CONCLUSION		24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alvarado Partners, L.P. v. Mehta</i> , 723 F. Supp. 540 (D. Colo. 1989).....	11
<i>In re Assicurazioni Generali S.p.A. Holocaust Ins. Litig.</i> , No. MDL-1374, 2009 WL 762438 (S.D.N.Y. Mar. 24, 2009)	12
<i>Been v. O.K. Indus., Inc.</i> , No. 02-cv-285, 2011 WL 4478766 (E.D. Okla. Aug. 16, 2011)	11, 21
<i>Been v. O.K. Indus., Inc.</i> , No. 02-cv-285, 2011 WL 4475291 (E.D. Okla. Sept. 26, 2011)	12
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	8
<i>Brown v. Phillips Petroleum Co.</i> , 838 F.2d 451 (10th Cir. 1988)	8, 9, 10, 16
<i>Cazeau v. TPUSA, Inc.</i> , No. 18-cv-00321, 2021 WL 1688540 (D. Utah Apr. 29, 2021)	<i>passim</i>
<i>Cecil v. BP Am. Prod. Co.</i> , No. 16-cv-00410, 2018 WL 8367957 (E.D. Okla. Nov. 19, 2018)	18, 20, 21
<i>Chieftain Royalty Co. v. Laredo Petroleum, Inc.</i> , No. 12-cv-1319, 2015 WL 2254606 (W.D. Okla. May 13, 2015).....	21
<i>Childs v. Unified Life Ins. Co.</i> , No. 10-cv-23, 2011 WL 6016486 (N.D. Okla. Dec. 2, 2011)	11
<i>Cimarron Pipeline Constr., Inc. v. Nat’l Council on Comp. Ins.</i> , No. 89-cv-1186, 1993 WL 355466 (W.D. Okla. June 8, 1993).....	9, 20
<i>Cook v. Rockwell Int’l Corp.</i> , No. 90-cv-00181, 2017 WL 5076498 (D. Colo. Apr. 28, 2017)	12, 17
<i>In re Credit Default Swaps Antitrust Litig.</i> , No. 13-md-2476, 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016).....	13
<i>In re Crocs, Inc. Sec. Litig.</i> , No. 07-cv-02351, 2014 WL 4670886 (D. Colo. Sept. 18, 2014).....	20

<i>In re DDAVP Direct Purchaser Antitrust Litig.</i> , No. 05 Civ. 2237 (CS), 2011 WL 12627961 (S.D.N.Y. Nov. 28, 2011).....	22
<i>In re Flonase Antitrust Litig.</i> , 951 F. Supp. 2d 739 (E.D. Pa. 2013)	17
<i>Gottlieb v. Barry</i> , 43 F.3d 474 (10th Cir. 1994)	8, 9
<i>Gudenkauf v. Stauffer Commc'ns, Inc.</i> , 158 F.3d 1074 (10th Cir. 1998)	10
<i>Harris v. Chevron U.S.A., Inc.</i> , No. 19-cv-00355, 2020 WL 8187464 (E.D. Okla. Feb. 27, 2020)	8, 9, 11
<i>In re High-Tech Emp. Antitrust Litig.</i> , No. 11-cv-02509-LHK, 2015 WL 5158730 (N.D. Cal. Sept. 2, 2015)	22
<i>In re Hypodermic Prods Antitrust Litig.</i> , No. 05-1602 (JLL), 2013 WL 12156679 (Apr. 10, 2013)	22
<i>Johnson v. Georgia Highway Express, Inc.</i> , 488 F.2d 714 (5th Cir. 1974)	19
<i>LeBlanc-Sternberg v. Fletcher</i> , 143 F.3d 748 (2d Cir. 1998).....	12
<i>Lewis v. Wal-Mart Stores, Inc.</i> , No. 02-cv-0944, 2006 WL 3505851 (N.D. Okla. Dec. 4, 2006)	9, 20
<i>In re Linerboard Antitrust Litig.</i> , No. MDL 1261, 2004 WL 1221350 (E.D. Pa. June 2, 2004)	13
<i>In re Lithium Ion Batteries Antitrust Litig.</i> , No. 13-md-2420, 2020 WL 7264559 (N.D. Cal. Dec. 10, 2020)	13
<i>McNeely v. Nat'l Mobile Health Care, LLC</i> , No. 07-cv-933, 2008 WL 4816510 (W.D. Okla. Oct. 27, 2008)	11
<i>Meijer, Inc. v. Barr Pharms., Inc.</i> , No. 05-cv-2195, 2009 WL 10744520 (D.D.C. Apr. 20, 2009).....	22
<i>In re Municipal Derivatives Antitrust Litig.</i> , No. 08-cv-02516, 2016 WL 11543257 (S.D.N.Y. July 8, 2016).....	17
<i>In re Neurontin Antitrust Litig.</i> , No. 02-cv-2731-MCA-JBC, 2014 WL 12962880 (D.N.J. Aug. 6, 2014)	22

<i>In re Parking Heaters Antitrust Litig.</i> , No. 15-mc-0940, 2019 WL 8137325 (E.D.N.Y. Aug. 15, 2019)	12
<i>In re Revco Sec. Litig.</i> , No. 89-cv-593, 1993 WL 497188 (N.D. Ohio Sept. 14, 1993)	23
<i>Sagacity, Inc. v. Cimarex Energy Co.</i> , No. CIV-17-101-GLJ, 2024 WL 2923720 (E.D. Okla. June 10, 2024).....	18
<i>Shaw v. Interthinx, Inc.</i> , No. 13-cv-01229, 2015 WL 1867861 (D. Colo. Apr. 22, 2015)	<i>passim</i>
<i>In re Titanium Dioxide Antitrust Litig.</i> , No. 10-cv-00318 (RDB), 2013 WL 6577029 (D. Md. Dec. 13, 2013).....	22
<i>In re U.S. Foodservice, Inc. Pricing Litig.</i> , No. 07-md-1894, 2014 WL 12862264 (D. Conn. Dec. 9, 2014)	17
<i>In re Universal Serv. Fund Tel. Billing Practices Litig.</i> , No. 02-md-1468, 2011 WL 1808038 (D. Kan. May 12, 2011)	9, 17
<i>In re Urethane Antitrust Litig.</i> , No. 04-md-1616, 2016 WL 4060156 (D. Kan. July 29, 2016).....	9, 11, 12, 17
<i>Uselton v. Com. Lovelace Motor Freight, Inc.</i> , 9 F.3d 849 (10th Cir. 1993)	9, 10
<i>Whittington v. Taco Bell of Am., Inc.</i> , No. 10-cv-01884, 2013 WL 6022972 (D. Colo. Nov. 13, 2013).....	9, 20
<i>Williams v. Sprint/United Mgmt. Co.</i> , No. 03-cv-2200, 2007 WL 2694029 (D. Kan. Sept. 11, 2007).....	9, 20
<i>In re WorldCom, Inc. Sec. Litig.</i> , 388 F. Supp. 2d 319 (S.D.N.Y. 2005).....	9

Rules

Fed. R. Civ. P. 12(b)(2).....	4
Fed. R. Civ. P. 12(b)(3).....	4
Fed. R. Civ. P. 12(b)(6).....	4
Fed. R. Civ. P. 23(f).....	6
Fed. R. Civ. P. 23(h)	9
Fed. R. Civ. P. 30(b)(1).....	<i>passim</i>

Fed. R. Civ. P. 30(b)(6).....	<i>passim</i>
Fed. R. Civ. P. 33(d)	14

Other Authorities

7B Charles Alan Wright & Arthur R. Miller, <i>Fed. Prac. & Proc. Civ.</i> § 1803 (3d ed. 2020)	8
--	---

INTRODUCTION

In connection with the fifth settlement in this hard-fought complex antitrust litigation—a \$100 million proposed resolution (the “Settlement”) with defendant Pilgrim’s¹—Plaintiffs,² individually and on behalf of the Settlement Class³ respectfully request: (1) an award of attorneys’ fees equaling one-third of the Pilgrim’s Settlement fund (plus accrued interest); (2) compensation for the unreimbursed costs and expenses incurred in furtherance of this litigation that Class Counsel⁴ incurred in the prosecution of this case; and (3) a service award of \$100,000 to each of the seven Class Representatives.⁵

The Pilgrim’s Settlement is the fifth and last settlement in this case, and it was reached through a series of hard-fought negotiations with the assistance of renowned mediator Professor Eric D. Green. Coolidge Decl. ¶ 141.⁶ In addition to numerous mediation-related communications, formal mediation sessions took place on November 12, 2021 and again after the class was certified on June 19, 2024. *Id.* The final settlement resulted from both parties’

¹ “Pilgrim’s” means Pilgrim’s Pride Corporation.

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

³ The Settlement Class is defined as: “All individuals and entities in the United States and its territories that were compensated for Broiler Grow-Out Services by a Defendant or Co-Conspirator, or by a division, subsidiary, predecessor, or Affiliate of a Defendant or Co-Conspirator, at any time during the period January 27, 2013 through December 31, 2019.” This is the same class definition that applied to the Tyson, Perdue, Koch, and Sanderson settlements. The Settlement Class differs from the certified litigation class in only one respect; the Settlement Class includes Growers for Claxton that were not included in the certified litigation class because Claxton did not preserve structured data on their Grower pay.

⁴ For the purpose of this motion, “Class Counsel” refers to Co-Lead Counsel and the firms working on the litigation at Co-Lead Counsel’s direction, identified at Coolidge Decl. ¶ 151.

⁵ By an order dated August 20, 2024, the Court granted preliminary approval of the Settlement Agreement with defendant Pilgrim’s. ECF No. 617. Unless otherwise specified, all docket citations are to the MDL docket No. 6:20-md-2977 (E.D. Okla).

⁶ The term “Coolidge Decl.” refers to the Declaration of Melinda R. Coolidge in Support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Litigation Expenses, and Service Awards to the Class Representatives, which is being filed concurrently.

acceptance of the mediator's proposal. Coolidge Decl. ¶ 141.

The Settlement provides for a payment of \$100 million to the Settlement Class. Coolidge Decl. ¶ 142. The Court previously granted final approval to settlements with the Tyson, Perdue, Koch, and Sanderson Defendants,⁷ for a combined \$69 million in cash payments. Together with the Pilgrim's Settlement, the total recovered for the Settlement Class will be \$169 million. The recovery from Pilgrim's in this Settlement also represents the second largest settlement amount paid by a single defendant in any of the antitrust cases in the protein industry—despite some of the output markets in those cases being an order of magnitude larger than the market for Broiler Grow-Out Services.⁸ In addition to the immediate cash benefit and the avoidance of the risk, expense, and delay of taking this nearly eight-year old action to trial against Pilgrim's and litigating any appeals, the Pilgrim's Settlement also provides other important non-monetary benefits to the Settlement Class: Pilgrim's will not enforce provisions in its contracts with Settlement Class members that mandate arbitration or bar participation in class actions for a period of five years. Coolidge Decl. ¶ 142.

Throughout this litigation, Class Counsel have vigorously litigated on behalf of the Class. From completing fact discovery, including taking and defending 81 depositions pursuant to Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6); conducting and concluding expert discovery (*e.g.*, submitting opening and rebuttal reports, defending the deposition of Plaintiffs' economic expert, and deposing Defendants' experts); briefing offensive and defensive *Daubert* motions; and successfully briefing and arguing Plaintiffs' motion to certify the class, Class Counsel expended more than 56,000 hours over nearly eight years. *Id.* ¶¶ 149-52.

Pursuant to the Court's August 20 and September 3, 2024 Orders (ECF 618 and 621), Plaintiffs provided notice to the Settlement Class members via both direct mailings and the publication of a short form notice, which commenced on September 19, 2024. *Id.* ¶ 146. The notices apprised Settlement Class members that Class Counsel would submit an application for

⁷ ECF Nos. 285 (Perdue & Tyson), 420 (Koch), and 565 (Sanderson).

⁸ See generally *In re Cattle Antitrust Litig.*, No. 19-cv-01222-JRT-JFD (D. Minn.); *In re Cattle and Beef Antitrust Litig.*, No. 0:22-md-03031-JRT-JFD (D. Minn.); *In re Turkey Antitrust Litig.*, No. 19-cv-8318 (N.D. Ill.); *In re Pork Antitrust Litig.*, No. 0:21-md-2998-JRT-JFD (D. Minn.); *Broiler Chicken Antitrust Litig.*, No. 16-cv-08637 (N.D. Ill.); *Brown et al. v. JBS Food Company et al.*, No. 1:22-cv-02946-PAB-STV (D. Colo.); *Jien et al. v. Perdue Farms, Inc. et al.*, No. 1:19-cv-02521-SAG (D. Md.).

(i) an award of attorneys' fees up to one-third of the gross settlement amount (plus interest), and (ii) reimbursement of expenses up to \$2.0 million. *Id.* As of November 1, 2024, Co-Lead Counsel have received six written responses from Settlement Class members, each requesting exclusion from the Settlement Class. *Id.* ¶ 147. As a testament to the work of Class Counsel and the strong results of the case, as of November 1, 2024, not a single member of the Class—which includes more than 30,000 chicken broiler growers across the country—has objected to the Settlement or to Class Counsel's sought fee, expenses, or the proposed Class Representative service awards. *Id.*

Given Class Counsel's enormous efforts in this case and the substantial collective recovery that Class Counsel obtained on behalf of the Class, Plaintiffs' request for attorneys' fees is reasonable and justified. Class Counsel expended tens of thousands of hours of work and advanced millions of dollars in costs without any guarantee of remuneration or reimbursement. Specifically, Plaintiffs' request for one-third of the cash component of the Pilgrim's Settlement, (*i.e.*, \$33.33 million), when combined with the prior fee awards, reflects a multiplier of 1.56 using Class Counsel's lodestar at current rates through September 30, 2024. *Id.* ¶ 152. Such a multiplier reflects a fair and reasonable return on the risk taken by Class Counsel, and it is well within—and in fact below—multipliers awarded in similar antitrust class actions. *See infra* at 12-13. In short, this fee request, and the request for an award of litigation expenses incurred in the amount of \$402,434.23, which Class Counsel reasonably incurred (and funded) in prosecuting these claims, are reasonable and justified (*id.* ¶ 156).

Lastly, the requested service awards of \$100,000 for each of the seven Class Representatives are appropriate and justified. When combined with the prior awards of \$50,000 each (provided before the Class Representatives devoted substantial time to responding to extensive interrogatories and preparing and sitting for depositions), the proposed awards are in line with amounts approved by courts in similar cases. *See infra* at 21-23. As of November 1, 2024, none of the 30,000 growers in the case have objected to the proposed Settlement, the request for attorneys' fees or expenses, or the proposed awards to Class Representatives. Coolidge Decl. ¶ 147.

BACKGROUND

Plaintiffs filed the first complaint in this case on January 27, 2017. Coolidge Decl. ¶ 7. Plaintiffs alleged that Defendants and seventeen non-defendant Co-Conspirators⁹ engaged in an overarching scheme to reduce Grower compensation in violation of the federal antitrust laws. *Id.* ¶ 11. This alleged conspiracy includes two mutually reinforcing courses of anticompetitive conduct: an agreement not to solicit Growers performing Broiler Grow-Out Services for another Integrator (what the cartelists referred to internally as a “no cold call” agreement), and a regular and extensive reciprocal exchange of grower compensation information, which they accomplished through a third-party intermediary, Agri Stats, as well as through direct oral and written interfirm exchanges. *Id.* The purpose and effect of this alleged scheme was to reduce Grower mobility, and thereby suppress Grower pay nationwide. Plaintiffs and their experts showed that this alleged scheme reduced Grower compensation below competitive levels, causing Growers to suffer substantial damages in the form of reduced pay. *Id.* ¶ 93.

Class Counsel expended more than 56,000 hours on this case, and advanced millions of dollars (with more than four hundred thousand dollars in unreimbursed costs), without any guarantees of compensation or reimbursement. *See id.* ¶¶ 148-57. In the early stages of the case, counsel spent many hours investigating the claims and drafting the complaint, with assistance from Class Representatives. *See id.* ¶¶ 158-61. Class Counsel then worked to defend the complaint and to consolidate the handful of cases that were ultimately filed. *See generally id.* ¶¶ 13-60. Throughout, defense counsel (some of the country’s largest firms and most experienced antitrust lawyers) vigorously litigated on behalf of Defendants. *Id.* ¶ 150. In resisting Defendants’ efforts, Class Counsel briefed (and where requested, argued) numerous motions before multiple courts, including: motions to dismiss under Rules 12(b)(2), (3), and (6), motions to stay discovery, and a motion to compel arbitration before this Court; multiple motions to dismiss or stay Plaintiffs’ claims against Sanderson and Koch in the Eastern District of North Carolina; a motion in the bankruptcy court in the Northern District of Texas; and two rounds of

⁹ “Co-Conspirator” means the alleged co-conspirators referred to in the complaint, that is: Agri Stats, Inc. (“Agri Stats”), Foster Farms, Mountaire Farms, Wayne Farms, George’s, Inc., Peco Foods, Inc., House of Raeford Farms, Simmons Foods, Keystone Foods, Inc., Fieldale Farms Corp., O.K. Industries, Case Foods, Marshall Durbin Companies, Amick Farms, Inc., Mar-Jac Poultry, Inc., Harrison Poultry, Inc., Claxton Poultry Farms, and Norman W. Fries, Inc.

briefing in front of the Joint Panel on Multidistrict Litigation that resulted in the centralization of multiple cases. *See id.* ¶¶ 13-60. The result of these efforts yielded a single consolidated action before this Court that has proceeded efficiently and effectively against all the Defendants.

A substantial portion of Class Counsel's work in this case has focused on the many tasks necessary to collect and develop the record supporting Plaintiffs' claims by obtaining discovery from the five Defendants and 51 nonparties who possess relevant information, including the sixteen alleged Integrator Co-Conspirators, alleged Co-Conspirator Agri Stats, numerous other non-conspirator integrators, various trade associations, and other individuals with knowledge of the alleged unlawful conduct. *Id.* ¶¶ 67-68. For each of these entities and persons, Plaintiffs served discovery requests, many via subpoena, and then negotiated the scope of discovery, the appropriate custodians, and the search methodologies to be used to identify and collect relevant, responsive documents. *Id.* ¶¶ 67-70, 90. This process involved thousands of hours of attorney time, scores of letters and telephone calls, and dogged attention to detail. Additionally, for Co-Lead Counsel, this meant supervising and managing the work of multiple other Class Counsel to ensure effective and efficient litigation. *Id.* ¶¶ 67-70, 148. The result has been the collection of over two million documents (consisting of tens of millions of pages), as well as massive amounts of structured transactional data on over 650,000 Broiler flocks. *Id.* ¶ 70.

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

On a parallel track with document and deposition discovery, Co-Lead Counsel worked

with expert economists to help understand and interpret documents from an economic perspective, and to digest and work with the structured transactional data. The experts ultimately used these documents and the data to prepare economic analyses supporting Plaintiffs' claims that the alleged scheme violated the antitrust laws, that the alleged scheme had a widespread impact across the class, and to estimate damages to the Class as a whole. *Id.* ¶ 92. This economic analysis is a critical component of any antitrust case, and Co-Lead Counsel have overseen the expert work to ensure the work is done effectively and with optimal efficiency. *Id.* Leading up to the submission of his opening report in August 2022, Co-Lead Counsel worked extensively with their economic expert, Dr. Hal J. Singer, and then reviewed and analyzed the opposing expert reports of Defendants' three experts. *Id.* ¶ 93. Defendants proffered expert reports from Dr. John B. Carey (who opined on aspects of the broiler chicken industry), and Drs. Justin McCrary and Celeste Saravia (economists hired to rebut Dr. Singer's opinions on the relevant market, classwide impact, and damages). After taking the depositions of Defendants' experts, Co-Lead Counsel continued to provide Dr. Singer with the information he needed for his rebuttal report, submitted in January 2023, and defended his deposition in February 2023. *Id.* ¶¶ 94-95, 99.

Following the conclusion of expert discovery, the parties submitted *Daubert* motions on March 17, 2023. *Id.* ¶ 96. Also on that date, Co-Lead Counsel filed Plaintiffs' motion for class certification. *Id.* ¶ 98. On April 28, 2023, the parties filed response briefs to the opposing party's *Daubert* motions and PPC filed its opposition to class certification. *Id.* ¶¶ 97-98. The parties' respective reply papers in support of their *Daubert* motions or class certification were filed on June 2 and 9, 2023, respectively. *Id.* The Court held a two-day hearing on these motions on July 13-14, 2023, at which extensive argument from both parties was heard. *Id.* ¶ 100.

On May 8, 2024, the Court granted Plaintiffs' motion for class certification and denied Pilgrim's motion to exclude many of the opinions proffered by Plaintiffs' expert witness. ECF 574. On May 15, 2024, the Court granted in part Plaintiffs' motion to exclude certain opinions offered by Pilgrim's proffered experts. ECF 575. Plaintiffs then defended the class certification opinion in opposing Pilgrim's petition for appeal under Fed. R. Civ. P. 23(f). Coolidge Declaration ¶ 105. Contemporaneously with that 23(f) briefing, Plaintiffs also successfully opposed Pilgrim's efforts to stay proceedings pending resolution of that appeal. *Id.* Plaintiffs also submitted contested briefing over the structure and timing of trial in this action, resulting in a trial schedule commencing in February 2025. *Id.* ¶ 107. Finally Plaintiffs briefed and filed an

offensive motion for partial summary judgment (ECF 600) and prepared to oppose Pilgrim's motion for summary judgment. *Id.* ¶ 106.

In addition to these efforts, Co-Lead Counsel have worked with the Class Representatives, who have made significant contributions to prosecuting the case. *Id.* ¶¶ 158-73. Co-Lead Counsel have met telephonically with the Class Representatives many times to assist with discovery and settlement efforts, including responding to document requests, providing access to the more than 10,000 hard copy and electronic files produced to Defendants, preparing written responses to interrogatories, consulting on facts, preparing and sitting for their depositions, and discussing settlement negotiations and outcomes. *Id.*

While these activities—investigation, discovery, and motion practice—have yielded evidence that substantiate Plaintiffs' claims, reaching this settlement with Pilgrim's confers an immediate and guaranteed benefit to the class.

Settlement negotiations occurred in part directly between counsel for Plaintiffs and Pilgrim's, and in part under the auspices of renowned mediator Professor Eric D. Green. *Id.* ¶ 141. The negotiations began in earnest in the Fall of 2021 and were extensive, with counsel regularly engaging in negotiations – including one day-long mediation conducted remotely by Eric D. Green on November 12, 2021. After the Court granted Plaintiffs' motion to certify the class, the parties engaged in another day-long mediation conducted in person at the offices of mediator Eric D. Green on June 19, 2024 – and exchange proposals and counterproposals. *Id.* ¶ 141. The final settlement resulted from both parties' acceptance of Mr. Green's recommended settlement amount. *Id.*

This \$100 million settlement followed settlements with Tyson, Perdue, Koch, and Sanderson, each of which entailed hard-fought negotiations that stretched over many months, and resulted in class recoveries of \$69 million, bring the total to \$169 million.

ARGUMENT

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

A fee award of one-third of the gross amount of the Pilgrim’s Settlement (plus accrued interest) is appropriate here. Through their efforts to date, Class Counsel have produced a common fund of \$169 million, plus interest accrued, for the benefit of the Settlement Class, as well as Pilgrim’s agreement not to enforce any arbitration or class action waiver clause for a period of five years. Coolidge Decl. ¶¶ 3-4, 142. As discussed below, the requested fee award of one-third of the \$100 million settlement fund from the Pilgrim’s settlement (plus accrued interest) is consistent with Tenth Circuit precedent and is reasonable in the context of this litigation.

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

It is well-established that awarding a percentage of a common fund is the preferred method for calculating attorneys’ fees in a class action.¹⁰ “The court’s authority for . . . attorney fees stems from the fact that the class-action device is a creature of equity and the allowance of attorney-related costs is considered part of the historic equity power of the federal courts.” 7B Charles Alan Wright & Arthur R. Miller, *Fed. Prac. & Proc. Civ.* § 1803 (3d ed. 2020). “Attorneys’ fees are appropriately awarded from that fund, on the theory ‘that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant’s expense.’” *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994) (quoting *Boeing Co.*, 444 U.S. at 478). “Courts prefer the percentage of the recovery method because it eliminates disputes about the reasonableness of rate and hours, conserves judicial resources, and aligns the interest of class counsel and the class members to maximize recovery.” *Harris v. Chevron U.S.A., Inc.*, No. 19-cv-00355, 2020 WL 8187464, at *2 (E.D. Okla. Feb. 27, 2020);

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

see also *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (percentage method provides “appropriate financial incentives” necessary to “attract well-qualified plaintiffs’ counsel who are able to take a case to trial, and who defendants understand are able and willing to do so”).

The Tenth Circuit expressly prefers the percentage of the fund method in determining the award of attorneys’ fees in common fund cases. See *Gottlieb*, 43 F.3d at 483; *Brown*, 838 F.2d at 454; *Uselton v. Com. Lovelace Motor Freight, Inc.*, 9 F.3d 849, 853 (10th Cir. 1993). The Tenth Circuit further instructs that where, as here, “federal common law is used to determine the reasonableness of the attorneys’ fee under Rule 23(h), neither a lodestar analysis nor a lodestar cross check is required.” *Harris*, 2020 WL 8187464, at *2 (collecting cases). “Rather, the court may make general findings regarding the expenditure of time and labor based on the record as a whole.” *Id.* Further, as this Court has observed, an award of “one-third of the settlement fund” is “customary” in class action litigation. *Cazeau v. TPUSA, Inc.*, No. 18-cv-00321, 2021 WL 1688540, at *9 (D. Utah Apr. 29, 2021) (Shelby, J.); *In re Urethane Antitrust Litig.*, No. 04-md-1616, 2016 WL 4060156, at *1, *8 (D. Kan. July 29, 2016) (awarding fees of one-third of antitrust settlement of \$835 million); see also *Growers* ECF 531, 566, 649 (awarding attorneys’ fees of one-third of the settlement amounts with Tyson, Perdue, Koch, and Sanderson).¹¹

¹¹ See also, e.g., *Shaw v. Interthinx, Inc.*, No. 13-cv-01229, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) (“The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class.”) (quotation omitted); *In re Universal Serv. Fund Tel. Billing Practices Litig.*, No. 02-md-1468, 2011 WL 1808038, at *2 (D. Kan. May 12, 2011) (“[A]n award of one-third of the fund falls within the range of awards deemed reasonable by courts.”); *Lewis v. Wal-Mart Stores, Inc.*, No. 02-cv-0944, 2006 WL 3505851, at *1 (N.D. Okla. Dec. 4, 2006) (awarding one-third of the settlement fund in case settling after three years of litigation and noting that “[a] contingency fee of one-third is relatively standard in lawsuits that settle before trial”); *Whittington v. Taco Bell of Am., Inc.*, No. 10-cv-01884, 2013 WL 6022972, at *6 (D. Colo. Nov. 13, 2013) (“Together the fees and costs amount to approximately 39% of the fund as a whole. This is within the normal range for a contingent fee award.”); *Williams v. Sprint/United Mgmt. Co.*, No. 03-cv-2200, 2007 WL 2694029, at *6 (D. Kan. Sept. 11, 2007) (finding 35% fee award “fair and reasonable” for \$57 million settlement reached after four years and before trial); *Cimarron Pipeline Constr., Inc. v. Nat’l Council on Comp. Ins.*, No. 89-cv-1186, 1993 WL 355466, at *2 (W.D. Okla. June 8, 1993) (awarding one-third fee for settlement reached before trial; “Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingent fee basis”).

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

The sought fee is reasonable under the factors the Tenth Circuit uses to evaluate a requested fee under the percentage of the fund method. The factors (known as “*Johnson* factors”) are:

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

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

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

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

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

The factor frequently given the most weight in determining the amount of a fee award is the result achieved for the Class (*i.e.*, the eighth *Johnson* factor). *See Brown*, 838 F.2d at 456. In fact, the result obtained may be given greater weight as a *Johnson* factor where, as here, “recovery was highly contingent and . . . the efforts of counsel were instrumental in realizing recovery on behalf of the class.” *Id.*

Here, the Pilgrim’s Settlement, like the prior settlements in this case, provides significant benefits for the Settlement Class. The monetary component of the Pilgrim’s Settlement alone is \$100 million, which brings the total settlements in the case to \$169 million from the five Defendants. The non-monetary component includes Pilgrim’s agreement not to enforce its compulsory arbitration and class action waiver provisions in Grower contracts for a five-year period following final judgment. Coolidge Decl. ¶¶ 4, 142. Recoveries before trial, like the Pilgrim’s settlement here, are favored by courts. *See, e.g., Cazeau*, 2021 WL 1688540, at *5 (“the value of an immediate recovery outweighs the possibility of a greater recovery after

protracted litigation”); *Childs v. Unified Life Ins. Co.*, No. 10-cv-23, 2011 WL 6016486, at *13 (N.D. Okla. Dec. 2, 2011) (“settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation”) (quotation omitted); *McNeely v. Nat’l Mobile Health Care, LLC*, No. 07-cv-933, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008) (noting that the class was “better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted”); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 547 (D. Colo. 1989) (“It has been held prudent to take a bird in the hand instead of a prospective flock in the bush.”) (internal quotation omitted). The Pilgrim’s Settlement represents the largest recovery ever from a single defendant on behalf of a class or group of Growers, and it is the second largest recovery from any single defendant in any of the antitrust protein cases in history. Coolidge Decl. ¶ 5. The result followed eight years of hard-fought litigation, including years of extensive discovery, class certification and Daubert proceedings, and the early stages of preparation for summary judgment and trial. And as of November 1, 2024, there has been no objection lodged to the Settlement or the request for attorneys’ fees and expenses from the 30,000-person class. Coolidge Decl. ¶ 147.

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

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

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

Class Counsel have performed more than 56,000 hours of work in this litigation, which at current billing rates,¹² from inception through September 30, 2024, amounts to over \$36 million

¹² *See Urethane Antitrust Litig.*, 2016 WL 4060156, at *7 n.7 (applying current rates to account for “the long delay in receiving payment for past work”); *Been v. O.K. Indus., Inc.*, No. 02-cv-285, 2011 WL 4478766, at *11 (E.D. Okla. Aug. 16, 2011) (applying current rates as

of billable time. *See* Coolidge Decl. ¶ 151 (Class Counsel hours worked total 56,683.70 and lodestar totals \$36,038,708.80).¹³ If this motion is granted, considering the prior fee awards in this case (totaling \$23 million) along with this one, Class Counsel will have received \$56.33 million in fees (excluding interest) on more than \$36 million of accrued lodestar (for a multiplier of 1.56). *See* ECF 284 at 3 (Order Granting Plaintiffs’ Motion for Award of Attorneys’ Fees from Tyson and Perdue settlements, awarding one-third of the settlement amount, or \$11,916,667 in fees, plus one-third of any interest accrued); ECF 419 at 2 (Order Granting Plaintiffs’ Motion for Award of Attorneys’ Fees from Koch settlement, awarding one-third of the settlement amount, or \$5,166,667 in fees, plus one-third of any interest accrued); ECF 566 at 3 (Order Granting Plaintiffs’ Motion for Award of Attorneys’ Fees and Reimbursement of Litigation Expenses from Sanderson settlement, awarding one-third of the settlement amount, or \$5,916,667, plus one-third of any interest accrued).

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

an appropriate adjustment for delay (citing *Missouri v. Jenkins*, 491 U.S. 274, 282-84 (1989))), *report and recommendation adopted*, 2011 WL 4475291 (E.D. Okla. Sept. 26, 2011); *see also LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (applying current rates to account for “the delay in payment”); *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litig.*, No. MDL-1374, 2009 WL 762438, at *4, n.10 (S.D.N.Y. Mar. 24, 2009) (“Courts have upheld use of ‘current’ rates to compensate for inflation and delay in payment.”).

¹³ Only Class Counsel who have devoted more than de minimis additional time since their last submission to the Court have submitted updated figures for hours, lodestar, and firm unreimbursed expenses with this submission. *See* Coolidge Decl. ¶ 151, n.19.

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

Here, the requested award of one-third of the Pilgrim’s Settlement fund (plus accrued interest), together with the fees awarded from the earlier Tyson, Perdue, Koch, and Sanderson settlements, amounts to a multiplier of 1.56, which is well within the bounds of reasonableness given awards in analogous cases and in light of the hard-fought result against top-notch defense counsel after eight years of work. *See Coolidge Decl.* ¶ 152.

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

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

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

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

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

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

transactional data covering 650,000 Broiler flocks. *Id.* ¶ 70. The data productions have required work with expert econometricians and repeated follow up correspondence with the producing parties as Plaintiffs' work to understand and interpret the structured data productions. *Id.* ¶ 92. Plaintiffs also issued several rounds of interrogatories and requests for admission to all Defendants, which have required many rounds of follow up and meeting and conferring regarding the sufficiency of Defendants' responses and the review of lengthy Fed. R. Civ. P. 33(d) designations and other supplemental responses flowing from Plaintiffs' meet and confers. *See id.* ¶¶ 72-75. Plaintiffs have also collected and produced their own documents, totaling more than 10,000 pages, which is a substantial number for Plaintiffs in an antitrust class action. *Id.* ¶ 71. Plaintiffs also responded to Defendants' interrogatories. *Id.* ¶ 73.

Plaintiffs also spent thousands of hours searching through and reviewing the documents and other discovery they obtained, including reviewing dozens of deposition and trial transcripts from related litigation involving Defendants and their Co-Conspirators and the Broiler industry. *Id.* ¶¶ 70, 77.

Plaintiffs began issuing deposition notices and requesting proposed dates in June 2021. *Id.* ¶ 78. By the close of fact discovery, Plaintiffs took 68 depositions under Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6) of witnesses associated with Defendants and their alleged Co-Conspirators, as well as cross-noticed depositions of five absent class members noticed by Defendants. *Id.* The Rule 30(b)(6) deposition requests to both Defendants and nonparty alleged Co-Conspirators were vigorously contested, and Plaintiffs engaged in months-long meet and confers with those entities to reach an agreeable scope for those depositions. In total, Plaintiffs took 73 depositions under Rules 30(b)(1) and 30(b)(6) and defended eight class representative depositions. *Id.* Before the first deposition could be conducted, the parties also negotiated a remote deposition protocol stipulation, with one minor issue resolved in a conference with Magistrate Judge Cecilia M. Romero, to provide witnesses, court reporters, and counsel options for remote examinations in a safe manner due to the ongoing pandemic. *Id.* ¶ 79. Judge Romero approved the remote deposition protocol on September 8, 2021. ECF 168.

On two occasions, Plaintiffs participated in emergency conferences before Magistrate Judge Romero concerning scheduled depositions. Coolidge Decl. ¶ 80. On May 19, 2022, counsel for Tim Stiller, a former PPC executive, informed the parties that Mr. Stiller was under federal indictment and would invoke his Fifth Amendment right at the deposition scheduled for

the next day, May 20, 2022. *Id.* Defendants PPC and Sanderson sought to stay the deposition to file a motion for a protective order. Plaintiffs argued that they had prepared for the deposition and that the parties had been aware of Mr. Stiller's indictment in July 2021. Magistrate Judge Romero found that the moving Defendants could have addressed the need for a protective order earlier in the litigation and ordered the deposition to proceed. ECF 354.

On July 27, 2022, Plaintiffs requested an emergency conference before Magistrate Judge Romero during the deposition of William Lovette, a former PPC executive who had been federally indicted and tried and acquitted of criminal charges relating to conspiring in the poultry industry. Coolidge Decl. ¶ 81. Mr. Lovette stated at the outset of the deposition that he would be invoking his Fifth Amendment right against self-incrimination during the deposition. However, in responding to questions, Mr. Lovette would only state that he would not answer the question on advice of counsel without stating that the basis for his refusal to respond was the invocation of his Fifth Amendment right against self-incrimination. Magistrate Judge Romero found that Mr. Lovette must specifically invoke the privilege against self-incrimination and directed that the deposition continue with that instruction to the witness. Coolidge Decl. ¶ 81; ECF 393.

A number of issues also required motion practice, including a motion to compel nonparty Co-Conspirator House of Raeford, a motion to compel PPC to supplement its privilege log claims, motions to quash deposition subpoenas filed by two PPC executives, Jayson Penn and William Lovette (who had been criminally tried in an action brought by the Department of Justice), a motion by PPC to shield conversations its counsel had with a non-party witness a week prior to the individual's deposition, a motion to compel Agri Stats to produce documents responsive to Plaintiffs' subpoena, and a motion to compel the production of documents produced in another litigation (involving the sale of broilers to consumers) that Defendants Koch, PPC, and Sanderson indicated their experts intend to rely upon in this litigation. Coolidge Decl. ¶¶ 83-91.

In addition to fact discovery, Plaintiffs also worked closely with experts to analyze documents and structured transactional data to support Plaintiffs' claims, their widespread impact across the class, and their estimated damages. *Id.* ¶ 92. Plaintiffs worked closely with their economic expert, Dr. Singer, who submitted both opening and rebuttal reports, and defended Dr. Singer at his deposition. *Id.* ¶¶ 93-95, 99. Plaintiffs also analyzed three reports submitted by Defendants' three proffered experts and deposed each of these experts. *Id.* ¶¶ 94-

95, 99. Expert discovery also resulted in *Daubert* motions submitted by the parties, which were addressed at the hearing July 13-14, 2023. *Id.* ¶¶ 96-97, 99. On May 8, 2024, the Court granted Plaintiffs’ motion for class certification and denied Pilgrim’s motion to exclude Plaintiffs’ expert witnesses. On May 15, 2024, the Court granted in part Plaintiffs’ motion to exclude certain opinions offered by Pilgrim’s proffered experts. ECF 575.

Plaintiffs have also been engaged in the process of obtaining valuable cooperation from Tyson, Perdue, Koch, and Sanderson afforded by the Settlements. Coolidge Decl. ¶¶ 111, 123, 133.

These factors weigh in favor of the requested fee award.

4. This Litigation Requires a High Level of Skill.

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

Co-Lead Counsel—experienced class action litigators—have zealously and skillfully represented the interests of Plaintiffs and the Settlement Class through nearly eight years of hotly contested litigation. Class Counsel devoted the requisite skills to prosecute this action and their collective background and experience are a measure of the significant resources devoted to the litigation. This case required, among other skills, the ability to take critical fact depositions, write key briefs, argue multiple complicated motions, understand and explain complicated economic and econometric models, and negotiate with multiple Defendants and their counsel over many years to achieve these results, culminating in the \$100 million Pilgrim’s Settlement after winning class certification and defeating key *Daubert* attacks. Coolidge Decl. ¶ 149.

“[T]he number of adverse parties and the quality of opposing counsel” also weigh in favor of the fee application. *Brown*, 838 F.2d at 455. Here, Class Counsel was opposed by highly skilled attorneys from some of the largest law firms in the country, with substantial resources at their disposal and recognized antitrust expertise, who have vigorously litigated this case. This *Johnson* factor supports Class Counsel’s requested award. Coolidge Decl. ¶ 150.

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

As discussed above, this action involves numerous complex issues of fact and law, which

have been vigorously contested at all stages of the action by opposing counsel. Coolidge Decl. ¶¶ 13-107, 149. Class Counsel have devoted considerable resources to achieve further benefits for the Settlement Class. As a result, Class Counsel have necessarily forgone other matters in order to pursue this litigation, which they undertook at the outset with no guarantee of compensation. This factor weighs in favor of the requested award.

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

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

Numerous courts (including this one for the Tyson, Perdue, Koch, and Sanderson settlements)¹⁴ presiding over antitrust cases have awarded a one-third fee in class action common fund cases, including in antitrust cases. *See, e.g., Urethane Antitrust Litig.*, 2016 WL 4060156, at *8 (awarding one-third of \$835 million settlement); *Universal Serv. Fund Tel. Billing Pracs. Litig.*, 2011 WL 1808038, at *2 (“an award of one-third of the fund falls within the range of awards deemed reasonable by courts”) (citing *Brown*, 838 F.2d at 455 & n.2); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748-52 (E.D. Pa. 2013) (“in the last two-and-a-half years, courts in eight direct purchaser antitrust actions approved one-third fees”) (collecting cases); *see also supra* at 8. Accordingly, the one-third fee request (plus accrued interest) is reasonable relative to fee awards customarily awarded in antitrust and other complex class actions. This *Johnson* factor supports the requested fee award.¹⁵

¹⁴ ECF Nos. 285 (Perdue & Tyson), 420 (Koch), and 565 (Sanderson).

¹⁵ *See also, e.g., In re Municipal Derivatives Antitrust Litig.*, No. 08-cv-02516, 2016 WL 11543257, at *1 (S.D.N.Y. July 8, 2016) (one-third fee from \$101 million settlement fund); *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 07-md-1894, 2014 WL 12862264, at *3 (D. Conn. Dec. 9, 2014) (one-third fee from \$297 million settlement fund in a case that settled before summary judgment); *Henry, et al. v. Brown University, et al.*, 1:22-cv-00125, ECF 726, ¶ 29 (N.D. Ill. July 20, 2024) (one-third fee from \$284 million settlement fund).

7. The Fee Is Contingent in Nature.

Class Counsel agreed to pursue this complex antitrust matter on a contingent fee basis, with all the attendant risks to counsel and benefits to clients that such arrangements entail. There was a chance that, despite their best efforts, no recovery would be achieved. Class Counsel have so far incurred more than \$36 million in lodestar (from the inception of the case through September 30, 2024) and will continue to work to ensure distribution of the settlement funds to class members if approved. In addition, Class Counsel have advanced millions of dollars in costs to support the litigation, and after having been reimbursed \$4.5 million from prior settlements, have incurred a total of \$402,434.23 in unreimbursed expenses. Coolidge Decl. ¶¶ 151-156. All of this was incurred at the risk of no compensation or reimbursement absent a recovery. “Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys’ fees.” *Sagacity, Inc. v. Cimarex Energy Co.*, No. CIV-17-101-GLJ, 2024 WL 2923720, at *5 (E.D. Okla. June 10, 2024); *see also Cazeau*, 2021 WL 1688540, at *10 (“the contingent nature of Class Counsel’s representation supports the requested fee award”).

8. There Are No Unusual Time Limitations.

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

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

Class Counsel have decades of extensive experience litigating antitrust class actions, including leading and managing other counsel to assist them, and have recovered billions of dollars for class members. A detailed discussion of Co-Lead Counsel’s experience can be found at their firm websites and in their firm resumes (previously submitted at ECF 214-18 and 214-19 respectively).¹⁶ This factor supports the requested fee award.

10. The “Undesirability” of the Case.

This factor considers the complexity and challenges associated with a case and whether attorneys would be willing to bring the case to a resolution. *See, e.g., Cecil v. BP Am. Prod. Co.*,

¹⁶ See Hausfeld LLP <https://www.hausfeld.com>; Berger Montague PC, <https://bergermontague.com>.

No. 16-cv-00410, 2018 WL 8367957, at *8 (E.D. Okla. Nov. 19, 2018). As discussed above, this case presented issues that required counsel to dedicate considerable resources in terms of attorney time and litigation expenses over a period of years with no guarantee of remuneration. Indeed, while the consumer/purchaser end of this case proceeding in the District of Illinois attracted hundreds of filings by parties and firms, very few parties and firms initially saw fit to bring these particular claims on behalf of Growers. Thus, this factor weighs in favor of the requested award. *See, e.g., Shaw*, 2015 WL 1867861, at *7 (emphasizing the exposure to counsel in time, money, and resources in choosing to represent the plaintiffs and class); *Cazeau*, 2021 WL 1688540, at *10 (“the significant time commitment and financial investment coupled with risk of no payment enhances the undesirability of this case”).

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

The *Johnson* court described this factor in terms of whether a “lawyer in private practice may vary his fee for similar work in the light of the professional relationship of the client with his office.” *Johnson*, 488 F.2d at 719. In the context of class action litigation, it is unlikely that the same class representatives or class members will seek additional or extended representation from counsel beyond the class litigation. *See Shaw*, 2015 WL 1867861, at *7 (“Unlike corporate clients, who may need future legal services from their counsel, the likelihood that many class members will be seeking additional representation from Class Counsel is slim.”). To the extent the Court considers the relationship between counsel and the Class Representatives, here, Class Counsel have worked closely with the Class Representatives throughout this litigation. Class Counsel consulted with Class Representatives at important stages of the litigation, including to obtain information to understand the Broiler market and industry, assistance with developing the complaints, to provide responses to Defendants’ document requests and interrogatories, to prepare for depositions, and to discuss settlement terms. *See Coolidge Decl.* ¶¶ 158-75. This factor weighs in favor of the requested award.

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

As discussed above, Class Counsel’s request for a fee award of one-third of the \$100 million Pilgrim’s Settlement fund (plus accrued interest) falls within the range of fee awards granted in antitrust class actions. The requested fee award is also comparable to awards in other class actions granted by courts in this Circuit. *See, e.g., Cazeau*, 2021 WL 1688540, at *9

(recognizing a contingent fee of one-third of the settlement “is customary and consistent with fee arrangements in similar cases”); *Shaw*, 2015 WL 1867861, at *6 (finding one-third award “is well within the percentage range approved in similar cases”) (collecting cases); *Whittington*, 2013 WL 6022972, at *6 (“Together the fees and costs amount to approximately 39% of the fund as a whole. This is within the normal range for a contingent fee award.”); *Williams*, 2007 WL 2694029, at *6 (finding 35% fee award “fair and reasonable” for \$57 million settlement reached after four years and before trial); *Lewis*, 2006 WL 3505851, at *1 (“A contingency fee of one-third is relatively standard in lawsuits that settle before trial and, given the length [four years] and complexity of this lawsuit, it is a reasonable percentage for a contingency fee.”); *Cimarron Pipeline*, 1993 WL 355466, at *2 (awarding one-third fee for settlement before trial; “Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingent fee basis.”).

Considering this precedent, an award of one-third of the Pilgrim’s Settlement is fair and reasonable as Class Counsel have obtained the Pilgrim’s Settlement after litigating the case for nearly eight years and engaging in significant discovery and litigation. Class Counsel also succeeded in obtaining valuable relief from Pilgrim’s concerning compulsory arbitration. Coolidge Decl. ¶¶ 4, 142. The requested fee award is reasonable under this *Johnson* factor.

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

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

Since the Sanderson settlement, Class Counsel incurred reasonable costs and expenses of \$29,991.98 paid directly by the firms involved, plus expenses paid from the litigation fund in the amount of \$310,968.71, and there are outstanding due and owing invoices in the amount of \$61,473.54 for a total of \$402,434.23. *See* Coolidge Decl. ¶¶ 153-56. These unreimbursed expenses include items typically billed to fee-paying clients, such as computer-based research

costs, copying costs, expert mediation services, travel expenses, and other typical litigation expenses.

All of these reasonable costs and expenses were directly related and necessary to Class Counsel's efforts to litigate this matter and to achieve the best possible result for the Settlement Class. Class Counsel advanced all of these costs on behalf of the Settlement Class over many years with no guarantee of every getting that money back. An award covering these expenses, advanced by Class Counsel for the benefit of the Settlement Class, is appropriate. As of November 1, 2024, there have been no objections to this request.

III. The Requested Service Awards to the Class Representatives Are Appropriate

Plaintiffs' requested awards of \$100,000 for each of the seven Class Representatives (which, when combined with the prior awards of \$50,000, equates to a total \$150,000 each for the case) are appropriate and justified. "Federal courts regularly give incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case and the risks they take." *Cecil*, 2018 WL 8367957, at *10; *see also Been v. O.K. Indus., Inc.*, 2011 WL 4478766, at *12 ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.") (quotation omitted); *Shaw*, 2015 WL 1867861, at *8 ("[I]ncentive awards are an efficient and productive way to encourage members of a class to become class representatives, and to reward the efforts they make on behalf of the class.") (quotation omitted); *Chieftain Royalty Co. v. Laredo Petroleum, Inc.*, No. 12-cv-1319, 2015 WL 2254606, at *4 (W.D. Okla. May 13, 2015) ("Case contribution awards are meant to compensate class representatives for their work on behalf of the class, which has benefited from their representation.") (quotation omitted). As of November 1, 2024, there have been no objections to this request. Coolidge Decl. ¶ 147.

In applying this standard, district courts in this Circuit have considered the following factors: "(1) the actions the Class Representatives took to protect the interests of the class and the amount of time spent; (2) whether the Class Representatives' actions resulted in a substantial benefit to the class; and (3) the risks that the Class Representatives assumed." *Been*, 2011 WL 4478766, at *12 (citing *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250-51 (S.D. Ohio 1991) (awarding class representatives each \$50,000 service awards)).

This requested service award represents the final opportunity to recognize the class representatives for their service in the litigation and to the class of growers they represent. Since the Court awarded them each \$50,000 two and half years ago from the first settlements in the case (Tyson and Perdue) (ECF 284 at 5, Feb. 18, 2022), the class representatives have provided additional discovery, including consulting on supplemental interrogatory responses, and spending the equivalent of two to three days preparing for and sitting for their depositions.

Courts routinely grant service awards to named class representatives in line with or well in excess of the amounts that are sought here. *See, e.g.*, Order at ¶ 5, *In re Urethane Antitrust Litig.*, No. 04-md-1616-JWL (D. Kan. July 29, 2016), ECF No. 3276 (granting service awards of \$150,000 to \$200,000 to class representatives); *In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-02509-LHK, 2015 WL 5158730, at *17-18 (N.D. Cal. Sept. 2, 2015) (awarding between \$100,000 to \$140,000 to each of five class representatives); *In re Neurontin Antitrust Litig.*, No. 02-cv-2731-MCA-JBC, 2014 WL 12962880, at *4, *5 (D.N.J. Aug. 6, 2014) (approving \$190 million settlement and granting service awards of \$100,000 to each class representative); *In re Titanium Dioxide Antitrust Litig.*, No. 10-cv-00318 (RDB), 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) (awarding \$125,000 to lead class representative from \$163.5 million settlement fund); Order at 16, *In re Hypodermic Prods. Antitrust Litig.*, No. 05-cv-1602 (D.N.J. Apr. 10, 2013), ECF No. 461 (awarding service awards totaling \$245,000, or .54% of the settlement amount of \$45 million,¹⁷ for “assist[ing] in the prosecution of this case by, among other things, production of documents and electronic data, providing written discovery responses, supplying affidavits, and regular communication with Direct Purchaser Plaintiffs’ counsel”); *In re Metoprolol Succinate Antitrust Litig.*, No. 06-cv-00052 (D. Del. Feb. 21, 2012), ECF No. 191, 194 (awarding service awards totaling \$150,000, or 0.75% of the settlement amount of \$20 million in a six-year case); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05 Civ. 2237 (CS), 2011 WL 12627961, at *1, *5 (S.D.N.Y. Nov. 28, 2011) (granting service awards to three plaintiffs totaling \$90,000, or 0.44% of the \$20.25 million settlement fund); *Meijer, Inc. v. Barr Pharms., Inc.*, No. 05-cv-2195, 2009 WL 10744520, at *1, *5 (D.D.C. Apr. 20, 2009) (awarding service awards of \$50,000 each, totaling \$250,000, or 1.14% of the settlement amount of \$22 million, in a four-year case); Order, *Ivax Corp. v. Aztec Peroxides, LLC*, No. 02-cv-00593

¹⁷ *In re Hypodermic Prods Antitrust Litig.*, No. 05-1602 (JLL), 2013 WL 12156679, at *2 (Apr. 10, 2013) (identifying settlement amount of \$45 million).

(D.D.C. Aug. 24, 2005), ECF No. 78 (granting service awards of \$100,000 to each class representative in an antitrust price-fixing class action from the \$21 million in settlement funds). If granted, the requested service awards here would equate to 0.062% of the total cash value of the settlement achieved (\$1.05 million in service awards divided by \$169 million in settlements).

Co-Lead Counsel originally requested \$50,000 service awards from the first two settlements in the case (totaling \$35.75 million), as there was no guarantee of any further recovery. Now that substantially more has been recovered for the class members, and the Class Representatives have devoted even more time to ensuring the success of this case, an additional \$100,000 award is appropriate. *See, e.g., In re Revco Sec. Litig.*, No. 89-cv-593, 1993 WL 497188, at *3-6 (N.D. Ohio Sept. 14, 1993) (awarding supplemental award of \$90,000 to class representative who previously received award of \$200,000).

The Class Representatives have earned significant service awards for their work on behalf of the Settlement Class, which has been important in achieving these Settlements. The Class Representatives each took the critical step of protecting the interests of the Settlement Class by initiating suit, which to Co-Lead Counsel's knowledge is the first antitrust class action brought by Broiler Growers against Defendants. *See Coolidge Decl.* ¶¶ 158-161. One Class Representative, Mr. Weaver, forfeited his Grower business in pursuing this Action when PPC offered a new contract that included release language purporting to extinguish his claims here. *Id.* ¶ 167. The Class Representatives were also willing to file a second separate class action against Sanderson and Koch when these Defendants were dismissed for lack of jurisdiction in the Eastern District of Oklahoma case. *Id.* ¶¶ 17, 36.

The Class Representatives have expended significant time and effort over the five-year period of the litigation. Prior to filing a complaint, they have helped with preparing the complaints by providing information about their experiences as Growers. *Id.* ¶¶ 158-61. They have met with Co-Lead Counsel telephonically and in-person multiple times to provide access to their hard copy and electronic files in order to respond to Defendants' document requests. *Id.* ¶ 162. They have collectively produced more than 10,000 pages of documents. *Id.* ¶ 71. Class Representatives have consulted multiple times with Co-Lead Counsel to prepare written responses to discovery, including reviewing drafts prior to service. *Id.* ¶ 163. Some Class Representatives have attended Court hearings, both in-person and virtual (via Zoom). *Id.* ¶ 166. The Class Representatives' willingness to give their time and energy—and in one instance, their

business—have conferred an outstanding benefit on the Settlement Class. Absent the Class Representatives stepping forward to take on the five largest Integrators in the United States, and undertaking the work and risks discussed above, the Settlement Class would not have the benefit of the \$169 million in total settlements, the agreements by each of the prior settling defendants to cooperate in pursuing these claims against the Defendants remaining in the case, and the additional relief from Perdue, Koch, Sanderson, and Pilgrim’s agreeing not to enforce their arbitration and class action waiver provisions for a five-year period. The notice disseminated to Settlement Class members notified them that the Court might be asked to approve incentive awards of up to \$100,000 to each Class Representative, and as of November 1, 2024, no objections to the requested incentive have been received. *Id.* ¶ 147. In light of the benefits conferred upon the Settlement Class, the role of the Class Representatives should be recognized with a reasonable payment. Class Counsel respectfully move for an award of \$100,000 to each of the seven Class Representatives.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their request for an award of attorneys’ fees of one-third of the Pilgrim’s Settlement amount of \$100 million plus accrued interest (that is, an award of \$33,333,333 plus one-third of any accrued interest), an award of litigation expenses incurred in the amount of \$402,434.23, and authorize Co-Lead Counsel to distribute the attorneys’ fees in a manner that, in their judgment, fairly compensates each firm in view of its contribution to the prosecution of the Plaintiffs’ claims.

Dated: November 4, 2024

Respectfully submitted,

/s/ Melinda R. Coolidge

Melinda R. Coolidge*

Michael D. Hausfeld*

James J. Pizzirusso*

Samantha S. Derksen*

HAUSFELD LLP

888 16th Street, NW, Suite 300

Washington, DC 20006

Telephone: (202) 540-7200

Facsimile: (202) 540-7201

Email: mcoolidge@hausfeld.com

Email: mhausfeld@hausfeld.com

Email: jpizzirusso@hausfeld.com

Email: sderksen@hausfeld.com

Gary I. Smith, Jr.*

HAUSFELD LLP

600 Montgomery St, Ste 3200

San Francisco, CA 94111

Telephone: (415) 633-1908

Facsimile: (415) 633-4980

Email: gsmith@hausfeld.com

Kyle G. Bates*

HAUSFELD LLP

33 Whitehall Street, 14th Floor

New York, NY 10004

Telephone: (415) 744-1966

Facsimile (212) 202-4322

Email: kbates@hausfeld.com

Daniel J. Walker*

BERGER MONTAGUE PC

2001 Pennsylvania Ave NW

Washington, DC 20006

Telephone: (202) 559-9745

Email: dwalker@bm.net

Eric L. Cramer*

Patrick F. Madden*

David A. Langer*

BERGER MONTAGUE PC

1818 Market Street, Suite 3600

Philadelphia, PA 19103

Telephone: (215) 875-3000

Facsimile: (215) 875-4604

Email: ecramer@bm.net

Email: pmadden@bm.net

Email: dlangner@bm.net

Co-Lead Counsel for Plaintiffs and the Proposed Class

M. David Riggs

Donald M. Bingham

Kristopher Koepsel

RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS

502 West Sixth Street

Tulsa, OK 74119
Telephone: (918) 699-8914
Facsimile: (918) 587-9708
Email: driggs@riggsabney.com
Email: don_bingham@riggsabney.com
Email: kkoepsel@riggsabney.com

William A. Edmondson (OBA No. 2628)
RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS
528 N.W. 12th Street
Oklahoma City, OK 73103
Telephone: (405) 843-9909
Facsimile: (405) 842-2913
Email: dedmondson@riggsabney.com

***Liaison Counsel for Plaintiffs and the
Proposed Class***

Larry D. Lahman (OBA No. 5166)
Roger L. Ediger (OBA 19449)
MITCHELL DECLERK, PLLC
202 West Broadway Avenue
Enid, OK 73701
Telephone: (580) 234-5144
Facsimile: (580) 234-8890
Email: ldl@mdpllc.com
Email: rle@mdpllc.com

* admitted *pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on November 4, 2024, I electronically filed the foregoing Plaintiffs' Motion for an Award of Attorneys' Fees And Reimbursement of Litigation Expenses with the Clerk of this Court via ECF which will send notification of such filing to all counsel of record.

/s/ Melinda R. Coolidge
Melinda R. Coolidge (admitted *pro hac vice*)