

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE CATTLE AND BEEF ANTITRUST
LITIGATION

Case No. 0:20-cv-01319 JRT-JFD

This Document Relates To:
IN RE DPP BEEF LITIGATION

DECLARATION OF
DANIEL E. GUSTAFSON IN
SUPPORT OF DIRECT
PURCHASER PLAINTIFFS’
MOTION FOR FINAL APPROVAL
OF SETTLEMENT BETWEEN
DIRECT PURCHASER
PLAINTIFFS AND JBS
DEFENDANTS

Pursuant to 28 U.S.C. § 1746, I, Daniel E. Gustafson, hereby declare and state as follows:

1. I am an attorney licensed to practice law in the State of Minnesota and admitted to federal Court in Minnesota. I am a founding member of Gustafson Gluek PLLC (“Gustafson Gluek”). Gustafson Gluek, along with Cotchett, Pitre, & McCarthy, LLC (“CPM”), Hausfeld LLP (“Hausfeld”), and Hartley LLP (“Hartley”), has acted as Interim Co-Lead Counsel for the Direct Purchaser Plaintiffs (“DPPs”) Class.¹ See Doc. No. 71.

2. I make this Declaration in support of DPPs’ Motion for Final Approval of

¹ The DPP Class is represented by plaintiffs Howard B. Samuels solely in his capacity as Chapter 7 trustee for the bankruptcy estate of Central Grocers, Inc., R&D Marketing, LLC, and Redner’s Markets, Inc.

Settlement Between Direct Purchaser Plaintiffs and JBS Defendants², and based upon my personal knowledge, as well as records and information available to me. If called as a witness, I could competently testify to the matters stated in this Declaration.

3. The first direct purchaser class action complaint, *Pacific Agri-Products, v. JBS USA Food Co. Holdings, et al.*, 19-cv-02720, Doc. No. 1 (“*Pac-Agri*”), was filed on October 16, 2019.³ The first of the consolidated beef direct purchaser actions, *Samuels v. Cargill, Inc. et al.*, 20-cv-1319, Doc. No. 1 was filed on June 6, 2020 (“*Samuels*”). The other consolidated direct purchaser action, *Olean Wholesale Grocery Cooperative, Inc. v. Cargill, Inc. et al.*, 20-cv-1602, Doc. No. 1 (D. Minn. July 17, 2020) (“*Olean*”) was filed shortly thereafter. Each of these complaints alleged antitrust violations on behalf of direct purchasers of beef from JBS and the other non-Settling Defendants.

4. Prior to our clients filing this case, counsel in the above Actions commenced and pursued an extensive investigation of the Beef market, including reviewing public data and statements and working with an expert to analyze the market and potential overcharges. In addition, we thoroughly researched our legal claims, including reviewing and analyzing extensive motion to dismiss briefing and a corresponding order in related actions brought by other classes of plaintiffs affected by Defendants’ conspiracy.

5. Even after filing the initial complaint, DPPs continued to investigate the

² The JBS Defendants include JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc.

³ The *Pac-Agri* complaint was voluntarily dismissed because *Pac-Agri* no longer wished to serve as a class representative. *See* 19-cv-02720, Doc. No. 38.

claims asserted in the Actions, including by further work with consulting experts, vetting the then-confidential witness information, and reviewing documents produced by certain Defendants to the Department of Justice. These efforts formed the basis of Corrected Consolidated Class Action Complaint on January 27, 2021. *Id.*; Doc. No. 158.

6. Defendants moved to dismiss on February 18, 2021, which DPPs opposed on April 5, 2021. Doc. Nos. 166-189; 200-208. DPPs' opposition was ultimately successful, with the court denying Defendants' motions to dismiss on September 14, 2021. *See* Doc. No. 238.

7. Plaintiffs filed a Second Consolidated Amended Class Action Complaint on October 15, 2021, Doc. No. 256, and a Third Consolidated Amended Class Action Complaint on January 18, 2022, Doc. No. 303 (the "Complaint"). *See* Doc No. 256.

8. DPPs have propounded various discovery requests, and have now spent many hours negotiating and substantively meeting and conferring regarding discovery requests, deposition limits, custodians, structured data, date ranges, search methodology, the scope of third-party subpoenas, and for the entry of a protective order. Thus, while discovery is still in its relatively early stages, DPPs are well aware of the parties' positions, the factual bases for the actions, and the risks DPPs face by continuing to litigate against the Defendants.

9. DPPs have added additional class representatives to bolster the DPP class's representation throughout the case and have worked to respond to discovery requests from Defendants for these new representatives.

10. On behalf of the DPPs, my firm, along with Co-Lead Counsel, engaged in

numerous rounds of settlement negotiations with counsel for the JBS Defendants, including with the assistance of nationally-recognized and experienced complex litigation mediator Professor Eric Green.

11. The parties first began discussing the possibility of settlement in June 2021. The parties began discussions in earnest after the Court denied the Defendants' motions to dismiss. After initial discussions, the parties agreed to mediate with the help of Professor Green.

12. Co-Lead counsel and JBS both submitted settlement position papers to Professor Green and engaged in a lengthy mediation, during which the parties vigorously argued their respective positions. With the assistance of the mediator, the parties made substantial progress during the October 28, 2021, mediation but did not reach a final agreement on all material terms. What followed were nearly three months of negotiations between the parties to reach a final agreement, including extensive negotiations over the scope of the JBS Defendants' cooperation and other details of the settlement.

13. These settlement negotiations were, at all times, at arm's length and hard-fought. Throughout this entire process, the JBS Defendants have been represented by experienced, sophisticated antitrust counsel. Co-Lead counsel for the DPP Class have decades of experience litigating antitrust class actions and know how to fairly, reasonably, and adequately attach a value to the prospect of an early settlement. In particular, Co-Lead counsel for the DPPs have substantial experience in litigating protein antitrust cases throughout the country. For example, Gustafson Gluek and CPM are the court-appointed lead class counsel for a class of commercial food preparers in the *In re*

Broiler Chicken Antitrust Litigation currently pending in the Northern District of Illinois. See 16-cv-08637 (N.D. Ill.), Doc. No. 144 (order appointing lead counsel). That case similarly alleges collusive supply restraints and price-fixing and involves some of the same defendant groups that have been named in this action. Gustafson Gluek is also serving as co-lead counsel for the indirect consumer class in the *In re Pork Antitrust Litigation* pending in this District and also involving some of the same defendant groups as this case. See 18-cv-1776 (D. Minn.), Doc. No. 151 (order appointing lead counsel). Moreover, Hausfeld is the court-appointed lead counsel for a class of direct purchasers in the *In re Packaged Seafood Antitrust Litigation*, No. 3:15-MD-2670 (S.D. Cal.) that is currently pending before both the Ninth Circuit and in the Southern District of California; Jason Hartley, now of Hartley, serves on Plaintiffs' steering committee in that matter. Doc. No. 119, at 3 (appointing Hausfeld as co-lead counsel, appointing Jason Hartley to Plaintiffs' steering committee) (S.D. Cal. March 24, 2016). Finally, Gustafson Gluek, CPM, and Hausfeld are all serving in leadership or high-level roles in either the *In re Atlantic Farm-Raised Salmon Antitrust Litigation* or the related indirect purchaser matter, *Wood Mountain Fish LLC v. Mowi ASA*, 19-CV-22128, both pending in the Southern District of Florida. See *In re Atlantic Farm-Raised Salmon Antitrust Litig.*, 19-cv-21551, Doc. No. 97, at 3 (S.D. Fla. June 3, 2019).

14. I have personally prosecuted numerous antitrust class actions as lead counsel, co-lead counsel, or in other leadership positions. I have negotiated many settlements during those years. In my opinion, and in the opinion of my esteemed Co-Lead Counsel Jason Hartley, Adam Zapala, and Megan Jones, the current proposed ice-

breaker settlement with the JBS Defendants is fair, reasonable, and adequate. All Co-Lead Counsel, based on their experience, unreservedly recommend and believe this settlement is in the best interests of the class. This settlement provides substantial benefits to the DPP class and avoids the delay and uncertainty of continuing protracted and contentious litigation with the JBS Defendants.

15. After carefully reviewing the financial information JBS furnished, I and DPP Co-Lead Counsel, concluded that JBS is capable of fulfilling its voluntary financial settlement obligations and of funding a vigorous defense to the litigation.

16. DPPs and the JBS Defendants finalized and signed the settlement agreement between them on January 27, 2022. A true and correct copy of the executed Settlement Agreement is attached hereto as Exhibit A. Doc. No. 332-1

17. A true and correct copy of the Order Granting Direct Purchaser Plaintiffs' Motion for Final Approval of the Class Action Settlement with the JBS Defendants and Entry of Final Judgment in *In re Pork Antitrust Litigation*, Case No. 18-cv-1776 (D. Minn.) at Doc. No. 838 is attached hereto as Exhibit B.

18. A true and correct copy of the Order Granting Direct Purchaser Plaintiffs' Motion for Final Approval of the Settlements with Defendants Mar-Jac, and Harrison Poultry in *In re Broiler Chicken Antitrust Litig.*, Case No. 1:16-CV-08637 (N.D. Ill.) at Doc. No. 5397 is attached hereto as Exhibit C.

19. Counsel for JBS informed me that, on February 8, 2022, JBS notified the appropriate federal and state officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b), which requires that appropriate federal and state officials (in this case,

the U.S. and state attorneys general) be notified of any proposed class action settlement. The statute provides that a court may not grant final approval to a proposed settlement sooner than 90 days after such notice is served. The 90-day waiting period has long passed, and none of the notified federal or state officials have objected to or otherwise commented on the proposed settlement.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

Dated: July 22, 2022

/s/ Daniel E. Gustafson
Daniel E. Gustafson