

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

IN RE BROILER CHICKEN ANTITRUST  
LITIGATION

This Document Relates To:

THE DIRECT PURCHASER PLAINTIFF  
ACTION

Case No.: 1:16-cv-08637

The Honorable Thomas M. Durkin

Magistrate Judge Jeffrey T. Gilbert

**SUPPLEMENTAL STATEMENT IN SUPPORT OF DIRECT PURCHASER  
PLAINTIFFS' MOTION FOR PAYMENT OF ATTORNEYS' FEES,  
REIMBURSEMENT OF LITIGATION EXPENSES, AND  
CLASS REPRESENTATIVE SERVICE AWARDS**

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In response to the Court’s Order (ECF No. 7795) and Direct Purchaser Plaintiffs’ (“DPPs”) status report in response thereto (ECF No. 7801), DPPs hereby submit this supplemental statement in support of their motion for an award of attorneys’ fees, reimbursement of litigation expenses, and Class Representative service awards (“Motion”) submitted on May 1, 2024 (ECF No. 7232). As discussed below, DPPs respectfully submit that the Seventh Circuit’s recent opinion<sup>1</sup> regarding the End User’s fee petition is specific to the facts and attorneys in that petition and should not apply to the DPPs, and that DPPs’ request for a fee award in the amount of 33 1/3% of the Net Settlement Fund is supported by the law and the facts and circumstances presented by DPPs’ Motion.

## **I. INTRODUCTION**

Class Counsel for the DPPs have litigated this complex class action for eight years and the services that they provided to the Certified Class have been extraordinary – they achieved success at each pivotal motion throughout the case, went to trial, and secured settlements in excess of \$284 million. And the members of the DPP Class have affirmed their support of Class Counsel – not one of them objected to either the first or the pending fee petition.

As more fully set forth in DPPs’ Motion, the market rate for Co-Lead Class Counsel’s services is 33 1/3%. *See* Memorandum of Law in support of Motion, ECF No. 7233, at Section IV. The Seventh Circuit permits courts to consider four factors to determine the “market rate” in a case such as this: (1) the actual agreements between the parties, as well as fee agreements reached by entities in the market for legal services; (2) the risk of non-payment at the outset of the case; (3) the caliber of class counsel’s performance; and (4) information from other cases, including fees awarded in comparable cases. *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 3:12-cv-00660, 2018

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<sup>1</sup> *In re Broiler Chicken Antitrust Litig.*, 142 F.4th 568, 576 (7th Cir. 2025) (“*Broiler IP*”).

WL 6606079, at \*1, \*8 (S.D. Ill. Dec. 16, 2018) (citing *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 719 (7th Cir. 2001)). As this Court held in approving the DPPs' first interim request for attorneys' fees (ECF No. 5229) and as DPPs have discussed with regard to the pending Motion, these considerations weigh heavily in favor of the Court granting DPPs' request. *See* Memorandum of Law in support of Motion, ECF No. 7233, at Section IV.

Now, the Court has requested Co-Lead Class Counsel analyze the applicability and impact of the Seventh Circuit's recent decision in *Broiler II* on the pending Motion. The Court previously requested additional input from Co-Lead Class Counsel regarding this fee petition – as it sought an analysis of fee awards to Co-Lead Class Counsel (which DPPs provided and which supported the requested fee) and in response to an amicus brief filed by a non-DPP Class member without standing. Each time, Co-Lead Class Counsel have provided legal and factual bases for the Court to award an appropriate fee award.

This instance is no different: the facts and circumstances that resulted in the determination of the End-User fee request are unique to those counsel, their clients, and other cases they worked or relied upon. As set forth in this brief and all prior submissions in support of the Motion, DPPs' request for a fee award in the amount of 33 1/3% of the Net Settlement Fund (*see* Section III below) is supported by the law and the facts and circumstances presented by DPPs' Motion.

## **II. THE SEVENTH CIRCUIT'S RECENT OPINION REGARDING THE END USER'S FEE PETITION IS SPECIFIC TO THE FACTS IN THAT PETITION AND SHOULD NOT APPLY TO THE DPPS**

The Seventh Circuit's recent opinion, *Broiler II*, deals with a specific award to specific counsel based on unique and particularized facts. Following substantial briefing and remand, the Seventh Circuit complimented the Court for the detailed review that it conducted and, aside from one modification that altered the median of the prior awards considered, affirmed the fee award with that modification. *Broiler II*, 142 F.4th at 576.

As the Seventh Circuit confirmed, the determination of the appropriate fee award in this case is within the sound discretion of the trial court. Moreover, considering the methodology used by the Court and the Seventh Circuit in determining the End-User Class Counsel's attorneys' fees, DPPs' request remains well-supported and appropriate. As previously requested by the Court, DPPs submitted Co-Lead Class Counsel's relevant fee awards from 2010 through 2023 (ECF No. 7259). After a thorough analysis, and limiting cases to those with recoveries between \$100 million and \$1 billion as the Seventh Circuit did (*see* 142 F.4th at 576), the result is a median award for Co-Lead Class Counsel of 33 1/3%, as requested.

**A. The End-User Fee Award was Based on Specific Facts and Circumstances Regarding the End-User Fee Petition Which Do Not Apply to the DPP Class**

The two Seventh Circuit appellate decisions resulted in a determination regarding the market rate that was largely specific to circumstances surrounding the End-User Class and its counsel. In *In re Broiler Chicken Antitrust Litig.*, 80 F.4th 797 (7th Cir. 2023) ("*Broiler I*"), the court held that in determining an appropriate fee award in the End-User case, this Court should consider bids made by class counsel in auctions and out-of-circuit decisions, in particular in the Ninth Circuit. *See Broiler I*, 80 F.4th at 802.

On remand, this Court further examined bids End-User counsel made at auction; out-of-circuit decisions, in particular in the Ninth Circuit; and the declining fee agreement between End-User Class Counsel and their client in *Interest Rate Swaps ("IRS")*. ECF No. 7309 ("End-User Remand Order"). The Court prepared a spreadsheet of fee awards in other cases from three sources: (1) fee awards recovered by End-User Class counsel; (2) fee awards collected and presented by the commercial indirect purchaser plaintiffs' expert, Professor Robert Klonoff; and (3) the End User Class Counsel's fee agreement in *IRS*. *Id.*; *see also Broiler II*, 142 F.4th at 572. After focusing on awards in cases with recoveries between \$100 million and \$1 billion, disregarding three Ninth

Circuit fee awards as being unrepresentative, and giving greater weight to *IRS*, this Court determined that an appropriate fee for End-User Class Counsel was 30%. *See* End-User Remand Order, at 15; *Broiler II*, 142 F.4th at 572.

On appeal of the Remand Order, in *Broiler II* the Seventh Circuit reaffirmed its position in *Broiler I* that the district court has “substantial latitude” in determining the appropriate fee because “it ‘is closer to the case than we are,’ and reasonable fees ‘often fall within a broad range.’” *Broiler II*, 142 F.4th at 573 (citing *Broiler I*, 80 F.4th at 801). Nonetheless, the court held that this Court should not have included the fee awards Professor Klonoff presented because, it found, they were not derived from a representative sample. *Id.* After removing those cases, the Seventh Circuit re-ran the fee calculation to “stick as close as possible to [its] approach,” which yielded an adjusted average award of 27.1% and median of 26.6%, and adjusted the End User fee award to 26.6%. *Id.* at 576.

This history confirms that the Seventh Circuit’s decisions in *Broiler I* and *Broiler II* were specific to the facts and circumstances of the End-User fee petition. As detailed in DPPs’ prior briefing in support of their Motion and further affirmed in this brief, the facts and circumstances presented by DPPs’ Motion supports their request for attorneys’ fees in an amount of 33 1/3% of the Net Settlement Fund.

**B. DPPs’ Request for Attorneys’ Fees in the Amount of 33 1/3% of the Net Settlement Fund is Supported by the Law and the Facts and Circumstances Presented in Their Motion**

As the Seventh Circuit explained in *Broiler II*, determination of an appropriate fee award does not need to be based on a historical fee chart, and courts should avoid “a second major litigation strictly over attorneys’ fees.” 142 F.4th at 576 (citing *Siddiqui v. Nat’l Ass’n of Broad. Emps. & Technicians – Commc’ns Workers*, 132 F.4th 530, 533 (7th Cir. 2025)). Accordingly, courts in this district and others routinely determine the appropriate fee award without relying on

a chart-based analysis. *See, e.g., In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 846 (N.D. Ill. 2015); *In re Lithotripsy Antitrust Litig.*, No. 1:98-cv-08394, 2000 WL 765086, at \*2 (N.D. Ill. June 12, 2000); *see also* Memorandum of Law in support of Motion, ECF No. 7233, at IV.A.1 (citing authority). Indeed that is the methodology that this Court utilized in analyzing the DPPs' initial fee petition and determining that the appropriate market rate for DPP Class Counsel was 33 1/3% of the net settlement fund. (ECF No. 5229 at 10.)

A fee award of 33 1/3% in this case reflects a hypothetical real-world arm's length transaction between the DPP Class and Co-Lead Class Counsel, and is a generally accepted percentage in the Seventh Circuit. The requested fee award is justified by the remarkable results obtained for the DPP Class (*i.e.*, \$284 million in settlements) and the risks faced by Class Counsel (illustrated by the defense verdict at the trial of the sole remaining defendant), and is well within the acceptable range of attorneys' fee awards in such protracted, complex, and expensive litigation. *See generally* Memorandum of Law in support of Motion, ECF No. 7233. DPPs were the first party to file this extremely risky case in 2016 without the benefit of a government investigation or other circumstances providing any indication that success was likely, much less assured.

*Broiler II* does not support a different result. Importantly, none of the facts and circumstances which resulted in downward adjustments to End-User Class Counsel's fee petition apply to DPPs' Motion. Co-Lead Class Counsel, Pearson Warshaw, LLP ("PW") and Lockridge Grindal Nauen PLLP ("LGN"), have not submitted any bids in auctions in antitrust cases. *See* ECF No. 7259 at 2. Furthermore, the Seventh Circuit affirmed this Court's decision that End-User Class Counsel's bids in other cases were not good indicators of their market rate in this case. *Broiler II*, 142 F.4th at 574. DPPs are not relying upon Professor Klonoff's opinion and have not included any of the cases he cited in his declaration of prior fee agreements and awards.

Co-Lead Class Counsel were not parties to *IRS*, which this Court and the Seventh Circuit recognized arises from distinguishable facts and circumstances. To the contrary, PW has submitted proof that their fee agreement with a sophisticated individual client in *City of Oakland v. Oakland Raiders, et al.*, No. 3:18-cv-07444-JCS (N.D. Cal.), in an antitrust case is consistent with their fee request in this case. The terms of the pure contingency fee agreement called for counsel to advance costs and be paid attorneys' fees of 33% of any recovery, net of costs. *See* ECF No. 7259 at 7. Like this case, *City of Oakland* presented complex legal issues and was fraught with risk, which was borne by counsel and not the client. Indeed, this case is a prime example of the "market rate" of complex, comparable antitrust legal services, and further supports the requested fee.

Finally, unlike the End-User Class, no DPP Class member objected to Motion. This is notable since the DPP Class contains many sophisticated businesses. *See* ECF No. 5229 ("Courts have found that the lack of opposition by sophisticated business entities is evidence that the award is reasonable.") (citing *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (holding that for large, sophisticated investors, it would be "worth a complaint to the district judge if the lawyers' cut seems too high. Yet none of the institutional investors has protested."); *see also In re Dairy Farmers*, 80 F. Supp. 3d at 847 (observing, in finding that the requested one-third fee award was reasonable, that "the plaintiffs here are sizable, sophisticated entities capable of reviewing (and objecting to) the proposed fee arrangement"))).

Although not required by the Seventh Circuit, a statistical analysis of the attorneys' fees awarded to Co-Lead Class Counsel in other antitrust cases further supports DPPs' request in this case. In response to the Court's previous request, Co-Lead Class Counsel thoroughly examined all antitrust class actions in which they served in a court-appointed role from 2010 through 2023 and provided the Court with the relevant information. *See* ECF Nos. 7259, 7259-2 (PW), 7259-4

(LGN). That information is combined and included in the following chart and is based on the following criteria: (1) no limitation on jurisdiction; (2) awards to Co-Lead Class Counsel in cases where they served as co-counsel (*i.e.*, *Broilers*, *Pork*, and *Potash*) combined into single entries; (3) no specific award given any more or less weight; and (4) inclusive of all awards:<sup>2</sup>

Source	Case	Court	Fee Award Total	Fee Award %	Recovery Amount
7259-2	<i>In re Credit Default Swaps Antitrust Litig.</i>	S.D.N.Y.	\$253,758,000	13.61%	\$1,864,650,000
7259-2	<i>In re: TFT-LCD (Flat Panel) Antitrust Litig.</i>	N.D. Cal.	\$141,906,672	30.00%	\$473,022,242
7259-4	<i>Precision Assocs., Inc. v. Panalpina World Transport (Holding) LTD.</i>	E.D.N.Y.	\$88,543,872	20.70% <sup>3</sup>	\$427,755,026
7259-2	<i>In re: National Collegiate Athletic Ass'n Athletic Grant-In-Aid Cap Antitrust Litig.</i>	N.D. Cal.	\$77,019,782	20.00% <sup>4</sup>	\$208,664,445
7259-2 7259-4	<i>In re Broiler Chicken Antitrust Litig.</i>	N.D. Ill.	\$55,008,866	33.33%	\$169,601,600
7259-2	<i>In re: Lithium Ion Batteries Antitrust Litig.</i>	N.D. Cal.	\$41,790,000	30.00%	\$139,300,000
7259-4	<i>In re Peanut Farmers Antitrust Litig.</i>	E.D. Vir.	\$34,250,000	33.33%	\$102,750,000
7259-2 7259-4	<i>In re Pork Antitrust Litig.</i>	D. Minn.	\$33,954,766	33.33%	\$101,864,300
7259-4	<i>In re Liquid Aluminum Sulfate Antitrust Litig.</i>	D.N.J.	\$30,865,556	33.33%	\$92,496,800
7259-2 7259-4	<i>In re: Potash Antitrust Litig. (II)</i>	N.D. Ill.	\$30,000,000	33.33%	\$90,000,000
7259-2	<i>In re Optical Disk Drive Antitrust Litig.</i>	N.D. Cal.	\$22,470,000	30.00%	\$74,900,000
7259-2	<i>In re: Keurig Green Mountain Single-Serve Coffee Antitrust Litig.</i>	S.D.N.Y.	\$10,333,333	33.33%	\$31,000,000

<sup>2</sup> See *Broiler II*, 142 F.4th at 576 (applying the same criteria).

<sup>3</sup> This value is an average of the three awards – 15%, 25% and 25%. See ECF No. 7259 at Section II.B.2 (further explaining the construct of the awards).

<sup>4</sup> The award in this matter was divided between the damages settlement (approximately \$41 million – 20% of \$208 million) and the injunctive award following trial and appeals (approximately \$36 million based on additional lodestar). See ECF No. 7259 at Section II.B.1 (further explaining the construct of the awards). Co-Lead Class Counsel have used the lesser 20% in the chart here, however the overall fees when divided by the cash recovery equals 36.91%.

Source	Case	Court	Fee Award Total	Fee Award %	Recovery Amount
7259-4	<i>In Re: Flat Glass Antitrust Litig. (II)</i>	W.D. Penn.	\$7,441,666	33.33%	\$22,325,000
7259-2	<i>In re Fresh Potatoes and Process Potatoes Antitrust Litig.</i>	D. Idaho	\$6,435,000	33.00%	\$19,500,000
7259-4	<i>In re: Parking Heaters Antitrust Litig.</i>	E.D.N.Y.	\$4,066,667	33.33%	\$12,200,000
7259-4	<i>In re: Wholesale Grocery Prods. Antitrust Litig.</i>	D. Minn.	\$2,625,000	30.00%	\$8,075,000
7259-2	<i>In re Flash Memory Antitrust Litig.</i>	N.D. Cal.	\$ -	N/A	\$ -
7259-2	<i>In re: German Automotive Manufacturers Antitrust Litig.</i>	N.D. Cal.	\$ -	N/A	\$ -
7259-2	<i>City of Oakland v. The Oakland Raiders, et al.</i>	N.D. Cal.	\$ -	33.33%	\$ -

As set forth above, this Court's analysis of the End-User Class Fee Petition,<sup>5</sup> which was affirmed by the Seventh Circuit,<sup>6</sup> accounted for awards in cases in which the recovery amount was between \$100 million and \$1 billion. Applying this criteria to the chart above yields seven cases (highlighted in gray), six of which were based on the *gross* recovery thereby resulting in a higher effective rate than the 33 1/3% of the Net Settlement Fund requested in the Motion. The seven relevant cases have an average rate of 28.67% and a median of 33 1/3%. The median recovery amount provides an independent basis for DPPs' request in the amount of 33 1/3% of the Net Settlement Fund, and is consistent with the Seventh Circuit's adoption of the median fee amount. *See Broiler II*, 142 F.4th at 576 (awarding the median).

Co-Lead Class Counsel respectfully submit that these raw calculations should be adjusted and weighted higher based on several considerations. *See Broiler II*, 142 F.4th at 576 (affirming the Court's weighting of relevant decisions based on relevant facts and circumstances). First, this

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<sup>5</sup> See ECF No. 7309.

<sup>6</sup> See *Broiler II*, 142 F.4th at 572.

Court's prior award to DPP Class Counsel at 33 1/3% should be given more weight (rather than only being counted once), because it is the best indicator of the market rate for Co-Lead Class Counsel's services. The 33 1/3% fee recovery in *Pork* should be given more weight for the same reason – the cases are substantially similar and therefore are a good indicator of the market rate for Co-Lead Class Counsel's services in complex antitrust class actions, and Co-Lead Class Counsel are the same in each case.<sup>7</sup> Second, *Freight Forwarders* is readily distinguishable (specifically regarding the early, pre-motion to dismiss settlements approved at 15%) and should be either removed as an outlier or considered at the award percentage of the latter two fee award rates of 25%. *See* ECF No. 7259 at 8. Third, use of only the award percentage on the damages settlement in *NCAA* is misleading – the award in this matter was divided between the damages settlement (approximately \$41 million – 20% of \$208 million) and the injunctive award following trial and appeals (approximately \$36 million based on additional lodestar). This is more fully explained in Co-Lead Class Counsel's initial submission regarding these awards. *See* ECF No. 7259 at 4-5. Co-Lead Class Counsel have used the lesser 20% in the chart here, however the overall fees (\$77 million) when divided by the cash recovery (\$208 million) equals 36.91%. Fourth, the fee award in *Potash*, which was litigated in this district, should be counted at least once (if not twice since both PW and LGN were involved), even though the recovery amount was \$90 million, because it is a strong indicator of the market rate for Co-Lead Class Counsel's services in this jurisdiction. Fifth, the fee percentage in *City of Oakland* should be included because it is an important comparative data point, even though it did not result in a recovery, for the reasons set forth above.

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<sup>7</sup> Indeed, when the Seventh Circuit modified the Court's chart on appeal, at least one case (*Animation Workers*) was counted twice. *See Broiler II*, 142 F.4th at 572.

Applying any one of these modifications to the raw calculations raise the mean, while the median remains at 33 1/3%. For these reasons, DPPs' requested fee of 33 1/3% of the Net Settlement Fund is precisely in line with the recent Seventh Circuit decision and not subject to any of the challenges or unique circumstances of End-User Class Counsel.

### **III. UPDATED ACCOUNTING OF THE NET SETTLEMENT FUND AND THE REQUESTED FEE**

Co-Lead Class Counsel have directed the settlement administrator and escrow agent to deposit the settlement proceeds into interest-bearing accounts, which has resulted in over \$9 million in additional settlement proceeds for the benefit of the DPP Class. DPPs respectfully submit that the calculation of the Net Settlement Fund on which the requested award be based should include interest earned. *See* ECF No. 5543 at 3 (awarding Commercial and Institutional Indirect Purchase Plaintiffs' Class Counsel a 33 1/3% fee including interest earned on the settlement amounts); *see also Hale*, 2018 WL 6606079, at \*16 ("Further, the Court also GRANTS Class Counsel's motion for attorneys' fees and costs. Class Counsel are awarded (1) \$6,971,852.80 as reimbursement of reasonable litigation costs; and (2) attorneys' fees in the amount of one-third (33.33%) of the \$250 million common fund, net of the \$2.1 million estimated for settlement notice and administration, *but inclusive of interest accrued on the fund at the time of distribution.*" (emphasis added)); *Standard Iron Works v. ArcelorMittal*, No. 08 C 5214, 2014 WL 7781572, at \*3 (N.D. Ill. Oct. 22, 2014) (approving a 33.3% award of attorneys' fees where "Net Settlement Funds" were defined as "the monies deposited into escrow pursuant to the approved Settlement agreements, *plus all accrued interest on those accounts*" (emphasis added)).

A significant amount of time has passed since the Court approved the below listed settlements, which are the subject of the DPP fee petition. During this time, interest has continued

to accrue. As of the filing of this brief, the Net Settlement Fund on which the DPPs propose Class Counsel's fee request should be based is calculated as follows:

	<b>As-Filed Amount</b>	<b>Revised Amount (if applicable)</b>
Mar Jac Settlement Fund	\$7,975,000.00	<i>No Change</i>
Harrison Poultry Settlement Fund	\$3,300,000.00	<i>No Change</i>
Simmons Settlement Fund	\$8,018,991.00	<i>No Change</i>
Mountaire Settlement Fund	\$15,899,826.00	<i>No Change</i>
O.K. Foods Settlement Fund	\$4,856,333.00	<i>No Change</i>
House of Raeford Settlement Fund	\$27,500,000.00	<i>No Change</i>
Koch Settlement Fund	\$47,500,000.00	<i>No Change</i>
<b>Total of Settlements at Issue</b>	<b>\$115,050,150.00</b>	<b><i>No Change</i></b>
Interest Earned on the Settlements at Issue	\$2,975,355.20	\$9,752,858.31
Litigation Expenses paid by the Settlements at Issue	(\$6,010,950.20)	(\$9,126,563.04)
<i>Second Expense Reimbursement (ECF No. 7086)</i>	<i>(\$4,469,346.65)</i>	<i>No Change</i>
<i>Pending Expense Reimbursement (ECF No. 7232)</i>	<i>(\$1,029,448.72)</i>	<i>No Change</i>
<i>Claims/Notice Administrator (Paid and Incurred)</i>	<i>(\$407,720.15)</i>	<i>(\$618,154.69)</i>
<i>Escrow Agent Fees</i>	<i>(\$29,000.00)</i>	<i>(\$43,000.00)</i>
<i>Taxes</i>	<i>(\$75,434.68)</i>	<i>(\$2,966,612.98)</i>
Requested Future Litigation Expenses	(\$100,000.00)	<i>No Change</i>
Requested Class Representative Service Awards	(\$75,000.00)	<i>No Change</i>
<b>Net Settlement Fund</b>	<b>\$111,839,555.00</b>	<b>\$115,501,445.27</b>

The Court's final approval of the HRF and Koch settlements is currently on appeal by Certain Restaurant DAPs. Class Counsel will not take any fees or expenses until the appeal is resolved in favor of the DPP Class. DPPs will file a notice with the Court with an updated accounting of the Net Settlement Fund (because interest continues to accrue) shortly after any and all appeals are resolved. The amount of the award (33 1/3% of the Net Settlement Fund) as of the filing of this brief is \$38,500,481.76.

#### IV. CONCLUSION

DPPs respectfully submit that the Court should remain consistent with its prior fee award of 33 1/3% of the net settlement sum because it is appropriate and well-supported in this case. For the reasons set forth herein, as well as in each of the pleadings on file in support of the Motion,

DPPs respectfully request the Court enter an order awarding attorneys' fees equal to 33 1/3% of the Net Settlement Fund, to be calculated once the HRF and Koch settlements become final.

Date: July 25, 2025

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