

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

IN RE BROILER CHICKEN ANTITRUST  
LITIGATION,

Case No.: 1:16-cv-08637

The Honorable Thomas M. Durkin

This Document Relates To:

THE DIRECT PURCHASER PLAINTIFF  
ACTION

**DECLARATION OF BOBBY POUYA IN SUPPORT OF DIRECT PURCHASER  
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE SETTLEMENTS WITH  
DEFENDANTS PILGRIM'S PRIDE CORP., TYSON FOODS, INC., TYSON CHICKEN,  
INC., TYSON BREEDERS, INC., AND TYSON POULTRY, INC.**

I, Bobby Pouya, declare and state as follows:

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

2. I submit this Declaration in support of DPPs’ Motion for Final Approval of the Settlements with Defendants Pilgrim’s Pride Corp. (“Pilgrim’s”), and Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc., and Tyson Poultry, Inc. (collectively, “Tyson”) (Pilgrim’s and Tyson collectively are referred to as the “Settling Defendants”), filed simultaneously herewith.

3. On behalf of DPPs, I, my firm, and my Co-Lead Counsel personally conducted separate settlement negotiations with counsel for Defendant Pilgrim’s beginning in December 2020, and with counsel for Defendant Tyson beginning in December 2019. The DPPs and Settling Defendants signed the Settlement Agreements, which were filed with the Court in support of the DPPs’ Motion for Preliminary Approval as ECF No. 4259-1.

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

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

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

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

8. DPPs previously settled with Defendant Fieldale Farms Corp. (“Fieldale”) for \$2.25 million. DPPs also previously settled with Defendants Peco Foods, Inc. (“Peco”), George’s, Inc., George’s Farms, Inc. (collectively, “George’s”), and Amick Farms, LLC (“Amick”) for \$13,011,600.<sup>1</sup> For the Settlements with Pilgrim’s and Tyson, the Settlement Class will recover at a higher rate on a dollar per market share basis than the prior settlements. Accounting for currently anticipated opt-outs from prior settlements, Tyson and Pilgrim’s collectively constitute 37.5% (Settlement Class definition) of commerce sold to DPPs, and will provide the Settlement Class with \$154,340,000 in monetary relief (Pilgrim’s will pay \$75 million and Tyson will pay \$79,340,000). Each of the Settlement Agreements contains an opt-out reduction mechanism. (*See* Pilgrim’s Settlement § 19; Tyson Settlement § 21.) After completion of the settlement administration process, the number of opt-outs, including opt-outs based on partial assignments, was calculated for each of the Settlements. The Pilgrim’s Settlement is not subject to reduction of the amount set forth in the Agreement. The Tyson Settlement is subject to a \$660,000 reduction from \$80 million to \$79,340,000 based on the opt-outs received exceeding the agreed upon threshold for a reduction between the parties by 1.5% of Tyson’s sales during the Class Period and applying the reduction formula agreed to between DPPs and Tyson. Therefore, these third round Settlements constitute a step-up in damages to a range of approximately \$4 million per market share point. These Settlements bring the total amount recovered by DPPs from settling defendants (past and present) to date to \$169,601,600. This is a significant amount of money recovered for the DPP class.

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

**Settlement Negotiations with Pilgrim's**

9. DPPs' settlement negotiations with Pilgrim's commenced in December 2020.

10. In December 2020, DPPs and Pilgrim's agreed to a private, confidential mediation with Professor Eric Green, a nationally-renowned mediator. On January 5, 2021, DPPs and Pilgrim's engaged in a full-day face-to-face videoconference mediation with Professor Green. The parties were unable to reach an agreement during the mediation, but after continued discussions reached an agreement shortly thereafter.

11. Thereafter, the parties continued to negotiate (with the assistance of Professor Green) regarding the settlement terms, ultimately executing a Settlement Agreement on January 19, 2021.

**Settlement Negotiations with Tyson**

12. DPPs' settlement negotiations with Tyson commenced in December 2019.

13. After engaging in initial discussions the parties agreed to retain Judge Daniel Weinstein (ret.), another nationally renowned mediator. The settlement negotiations with Tyson were thorough and extensive. With the assistance of Judge Weinstein, DPPs and Tyson exchanged mediation briefs, made presentations addressing the merits of the case, and exchanged settlement offers and demands throughout the course of 2020. This process included numerous conferences with Judge Weinstein and his team, a face-to-face videoconference mediation, as well as other discussions. None of these efforts resulted in a settlement, and there were times when it appeared that the parties had reached an impasse.

14. In December 2020, DPPs and Tyson agreed to a further mediation with Judge Weinstein. On January 6, 2021, DPPs and Tyson engaged in a second full-day face-to-face

videoconference mediation with Judge Weinstein. The parties were unable to reach an agreement during the mediation, however the parties continued to negotiate through the mediator.

15. On Saturday, January 9, 2021, the parties reconvened via face-to-face videoconference with Judge Weinstein and, after hours of further negotiating, reached an agreement.

16. Thereafter, the parties continued to negotiate (with the assistance of Judge Weinstein) regarding the settlement terms, ultimately executing a Settlement Agreement on January 23, 2021.

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

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

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

20. DPPs have enlisted the services of an experienced class action administrator, JND Legal Administration, to administer notice to the Class Members. JND was appointed by the Court

in the prior settlements, as well as in the Court's Order on Preliminary Approval (ECF No. 4341). As set forth in the Motion and supporting declaration of Jennifer M. Keough, the Court-approved Notice Plan has been successfully implemented and Class members have been notified of the Settlements.

21. In the near future, DPPs will move the Court to approve a distribution of the net settlement proceeds to qualified claimants.

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

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 15th day of June, 2021 at Los Angeles, California.

*/s/ Bobby Pouya*

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Bobby Pouya