

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

*IN RE TURKEY ANTITRUST LITIGATION*

No. 1:19-cv-08318

This Document Relates To:

Commercial and Institutional Indirect Purchaser  
Plaintiffs' Action (1:20-cv-02295)

**MEMORANDUM IN SUPPORT OF COMMERCIAL AND INSTITUTIONAL  
INDIRECT PURCHASER PLAINTIFFS' MOTION FOR AWARD OF COSTS,  
ONGOING LITIGATION EXPENSES, AND REPRESENTATIVE SERVICE AWARDS  
FROM THE TYSON SETTLEMENT FUND**

## I. INTRODUCTION

Commercial and Institutional Indirect Purchaser Plaintiffs (“CIIPPs”) make this motion for an award of \$700,000 from the settlement fund for past expenses along with ongoing and anticipated future litigation expenses. The requested award is composed of \$200,000 in past expense reimbursement along with a set-aside of \$500,000 for use in paying ongoing and anticipated future expenses. CIIPPs reached a \$1.75 million settlement with one defendant family, Tyson, which was preliminarily approved by this Court on July 28, 2021.<sup>1</sup> ([Case No. 1:20-cv-02295, ECF No. 196](#)). As of February 8, 2022, CIIPPs’ Settlement Class Counsel (“Settlement Class Counsel”) have paid out \$417,704.55 in litigation costs and anticipate ongoing litigation expenses of at least as much as this case proceeds to trial. *See* Declaration of Sterling Aldridge (“Aldridge Decl.”) at ¶ 5. Therefore, Settlement Class Counsel respectfully ask the Court to approve an award of \$700,000 from the Settlement Fund to reimburse Settlement Class Counsel for the reasonable and necessary litigation costs they have already paid and to pay reasonable ongoing and future expenses necessary to support this litigation.<sup>2</sup> Settlement Class Counsel have notified members of the Tyson Settlement Class of this request, and to date no Class Member has objected to Settlement Class Counsel’s request. *Id.* at ¶ 7. The deadline for Class Members to object to this request has passed. *See* Order Granting Commercial and Institutional Indirect Purchaser Plaintiffs’ Motion for Preliminary Approval of Proposed Settlement with Tyson Defendants and Provisional Certification of Settlement Class ([Case No. 1:20-cv-02295, ECF No. 196](#)).

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<sup>1</sup> “Tyson” refers, collectively, to Defendants Tyson Foods, Inc., Tyson Fresh Meats, Inc. Tyson Prepared Foods, Inc. and the Hillshire Brands Company.

<sup>2</sup> In the event of future recoveries, Settlement Class Counsel will petition the Court for reimbursement of additional reasonable expenses necessary to support this litigation. Aldridge Dec. ¶ 10.

Section 20 of the long form notice approved by the Court provided notice to the CIIPP Settlement Class that Settlement Class Counsel expected to request a future expense set-aside as follows:

In relation to this Settlement, Settlement Class Counsel will request a future expense set-aside not to exceed 50% of the Settlement Fund, net of any past expense reimbursement, class representative service awards, and notice costs. Settlement Class Counsel will ask to be reimbursed for certain expenses already incurred on behalf of the Settlement Class in an amount not to exceed \$200,000. Settlement Class Counsel will seek service awards of up to \$5,000 for each putative class representative.

See CIIPPs' Approved Notice Documents ([Case No. 1:20-cv-02295, ECF Nos. 203-206](#)). This condition is met here. The proposed future expense set-aside of \$500,000 is less than half of the \$1,750,000 settlement, even after netting out the \$102,799.81 in notice and settlement administration costs, \$200,000 in requested past expense reimbursement, and \$10,000 in proposed class representative service awards (i.e., \$5,000 for each of the two original CIIPP class representatives).

## II. ARGUMENT

Under the common fund doctrine, class counsel customarily are entitled to reimbursement of reasonable expenses incurred in the litigation. See [Mills v. Elec. Auto-Lite Co.](#), 396 U.S. 375, 392 (1970) (recognizing the right to reimbursement of litigation expenses where a common fund has been produced or preserved for the benefit of the class); [In re Synthroid Mktg. Litig.](#), 264 F.3d 712, 722 (7th Cir. 2001) (recognizing a right to reimbursement of reasonable litigation expenses at market rates); [In re Dairy Farmers of Am., Inc.](#), 80 F. Supp. 3d 838, 853 (N.D. Ill. 2015) (recognizing the right to reimbursement of expenses from a common fund that has been produced or preserved for the benefit of a class in an antitrust case); [FED. R. CIV. P. 23\(h\)](#).

Allowing a portion of class settlement funds to be used for future expenses is a well-accepted practice. *See, e.g., Newby v. Enron Corp.*, 394 F.3d 296, 305-06 (5th Cir. 2004) (affirming 37.5% set aside for establishment of a \$15 million litigation expense fund from the proceeds of a partial settlement); *In re Auto Parts Antitrust Litig.*, No. 12-MD 2311, 2018 WL 7108072, at \*2 (E.D. Mich. Nov. 5, 2018) (approving request to set aside nearly \$3.5 million for use in future litigation expenses); *In re Auto Parts Antitrust Litig.*, No. 12-MD 2311, 2016 WL 9459355, at \*2 (E.D. Mich. Nov. 29, 2016) (approving request to set aside nearly \$10 million for use in future litigation expenses); *In re Auto Parts Antitrust Litig.*, No. 12-MD 2311, 2015 WL 13715591, at \*2 (E.D. Mich. Dec. 7, 2015) (approving request to set aside nearly \$3 million for use in future litigation expenses); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. C 07-05634, 2015 WL 3396829, at \*3 (N.D. Cal. May. 26, 2015) (approving counsel’s request for a \$3 million future litigation fund); *In re Packaged Ice Antitrust Litig.*, 08-MD-01952, 2011 WL 717519, at \*13-14 (E.D. Mich. Feb. 22, 2011) (approving class counsel’s request to use proceeds from early settlement to pay litigation expenses); *see also* MANUAL (Fourth) at § 13.21 (“[p]artial settlements may provide funds needed to pursue the litigation . . . .”); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) (concluding that a partial “settlement provides class plaintiffs with an immediate financial recovery that ensures funding to pursue the litigation against the non-settling defendants”); *In re Pressure Sensitive Labelstock Antitrust Litig.*, 584 F. Supp. 2d 697, 702 (M.D. Pa. 2008) (approving request to set aside to pay outstanding and future litigation costs); *In re WorldCom, Inc. Sec. Litig.*, No. 02 CIV 3288 (DLC), 2004 WL 2591402, at \*22 (S.D.N.Y. Nov. 12, 2004) (creating a \$5 million fund for the continuation of litigation against non-settling defendants); *In re California Micro Devices Sec. Litig.*, 965 F. Supp. 1327, 1337 (N.D. Cal. 1997) (approving 7.9% of approximately \$19 million settlement fund for future litigation

expenses). The ongoing and future expense set-aside requested by CIIPPs here is particularly appropriate because, although CIIPP counsel expect to request legal fees in connection with future settlements and/or verdicts, CIIPP counsel will not seek legal fees in connection with this settlement with Tyson.

From the inception of the case in April 2020 through February 7, 2022, Settlement Class Counsel have paid \$417,704.55 in litigation costs that were reasonable and necessary to support this litigation. All of Settlement Class Counsel's costs are common in litigation of this size and complexity. These costs are described in detail in the Aldridge declaration and exhibits accompanying this motion; however, the three largest costs are addressed below.

The first significant cost already paid by Settlement Class Counsel (\$341,438.00) ("Experts (Testifying and Non-testifying)") results from the work CIIPPs' testifying and non-testifying experts performed on behalf the CIIPP Class. Aldridge Decl. ¶ 11; Exhibit A. This expert work benefits the CIIPP Class as our experts continue to conduct, in-depth analyses of transactional data produced by Defendants to standardize the transactional data and prove the existence of the overcharge CIIPPs allege and its impact on the CIIPP Class. Expert work plays a fundamental role in this type of antitrust action, where expert testimony is frequently relied on to show common impact and an overcharge to class members. Such testimony is sure to play a significant role at class certification, summary judgment and eventually trial. Undertaking this work adds value to the CIIPP Class by increasing the likelihood of success on the merits and by creating leverage during settlement negotiations.

The second significant cost already paid for by Settlement Class Counsel (\$45,985.17) ("ESI Storage") stems from hosting Defendants' document productions and discovery documents in electronic databases. Aldridge Decl. ¶ 12; Exhibit A. These electronic databases are essential

to CIIPPs' prosecution of the case, as they allow Settlement Class Counsel to assemble the requests for documents. Settlement Class Counsel expect to incur additional Database Vendor Expenses as this case proceeds to trial. Aldridge Decl. ¶ 12.

The third significant cost already paid by Settlement Class Counsel (\$18,125.00) ("Transcript and Process Service") relates to the service of third-party subpoenas seeking, among other things, structured data of food distributors that purchased and sold turkey products to CIIPP class members. Aldridge Decl. ¶ 13; Exhibit B. Issuance of third-party subpoenas and resulting structured data will bolster CIIPPs' showing of impact, particularly at the class certification stage of this litigation. Aldridge Decl. ¶ 13.

The litigation costs already paid by Settlement Class Counsel are described in detail in the declaration and exhibits accompanying this motion. These costs are consistent with other cases of this size and complexity. *See, e.g., Silverman v. Motorola Solutions, Inc.* 739 F.3d 956, 958 (7th Cir. 2013) (noting more than \$5 million in out-of-pocket expenses were expended over four years, prior to summary judgment). Additionally, these already paid costs were reasonable and necessary to support this litigation, and have contributed to the creation of the \$1,750,000 Settlement Fund.

Settlement Class Counsel also request that the Court award \$500,000 to pay ongoing and future litigation expenses. The costs described above and in the accompanying declaration were not one-time expenses; they are ongoing. A number of Defendants remain in the case. The same and similar expenses will be incurred as CIIPPs continue to prosecute this case, and they also will be reasonable and necessary to support this litigation. Aldridge Decl. ¶ 5. It is common for courts to award portions of settlement funds to pay for future litigation expenses. *See, e.g., In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 643 (noting that a partial "settlement provides class plaintiffs with an immediate financial recovery that ensures funding to pursue the litigation against

the non-settling defendants”); *In re WorldCom, Inc. Sec. Litig.*, 2004 WL 2591402, at \*22 (setting aside \$1 million from a settlement fund to pay, inter alia, “expenses incurred in the continuing prosecution of this litigation”).

### **Class Representative Service Awards**

The long form notice advised that Settlement Counsel would seek service awards of up to \$5,000.00 for each of the representative plaintiffs whose efforts resulted in the settlement with the Tyson Defendants. To date, no objections to, or comments about, that request have been received. Because this litigation—and the current settlement—could not have been pursued without the representative plaintiffs, the Court should grant the requested awards.

When considering service awards, courts consider the following factors: “(1) the actions the plaintiffs have taken to protect the interests of the class, (2) the degree to which the class has benefited from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing the litigation.” *Day v. NuCO2 Mgmt., LLC*, No. 1:18-CV-02088, 2018 WL 2473472, at \*2 (N.D. Ill. May 18, 2018) (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

Named Class Representatives Sandee’s Bakery and Gnemi, LLC have participated in multiple interviews and conferences with counsel, have gathered and produced ESI and other documents, and have been engaged in this litigation for over a year. They still face depositions and potentially trial testimony and have been willing to spend their time pursuing claims that benefit all similarly situated businesses. The requested \$5,000.00 award is less than awards issued by courts in this and other Districts. See *Day*, 2018 WL 2473472, at \*2; *Koszyk v. Country Fin. a/k/a CC Servs., Inc.*, No. 16 CIV. 3571, 2016 WL 5109196, at \*2 (N.D. Ill. Sept. 16, 2016).<sup>3</sup>

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<sup>3</sup> Numerous courts have approved class representative service awards multiples of those sought here. See, e.g., *Austin v. Metro. Council*, Civ. No. 11-3621 at ¶ 48 (D. Minn. Mar. 27, 2012) (approving \$20,000 award); see also *Cook*, 142 F.3d at 1016 (awarding \$25,000 award);

### III. CONCLUSION

For these reasons, Settlement Class Counsel respectfully request the Court grant their request for an award of \$700,000 from the Settlement Fund to reimburse Settlement Class Counsel for already-paid litigation expenses and to pay ongoing litigation expenses and award class representative service awards to named Class Representatives Sandee's Bakery and Gnemi, LLC.

Dated: February 8, 2021

Respectfully submitted,

**BARRETT LAW GROUP, P.A.**

By: /s/ Sterling Aldridge

Don Barrett (*pro hac vice*)

Katherine Barrett Riley (*pro hac vice*)

Sterling Aldridge (*pro hac vice*)

**BARRETT LAW GROUP, P.A.**

P.O. Box 927

404 Court Square

Lexington, MS 39095

(662) 834-2488 Telephone

dbarrett@barrettlawgroup.com

kbriley@barrettlawgroup.com

saldridge@barrettlawgroup.com

Jonathan W. Cuneo (*pro hac vice*)

Blaine Finley (*pro hac vice*)

4725 Wisconsin Ave. NW, Suite 200

Washington, DC 20016

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[Brotherton v. Cleveland](#), 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (\$50,000 award); [Enter. Energy Corp. v. Columbia Gas Transmission Corp.](#), 137 F.R.D. 240, 250-52 (S.D. Ohio 1991) (\$50,000 service awards to each of six class representatives); [Bogosian v. Gulf Oil Corp.](#), 621 F. Supp. 27, 33 (E.D. Pa. 1985) (approving \$20,000 award to class representatives); [Camp v. Progressive Corp.](#), No. 01-2680, 2004 WL 2149079, at \*6, \*22 (E.D. La. Sept. 23, 2004) (awarding \$102,000 to class representatives in a case in which the amount allocable to class members was \$3.6 million); [In re Linerboard Antitrust](#), No. MDL 1261, 2004 WL 1221350, at \*18-19 (E.D. Pa. June 2, 2004) (awarding \$25,000 to each of five class representatives); [Sheppard v. Consol. Edison Co. of New York, Inc.](#), No. 94-CV-0403, 2002 WL 2003206 at \*6-7 (S. D. N. Y. Aug. 1, 2002) (three of six class representatives awarded \$25,000 or more); [Selzer v. Bd. of Educ. of City of N.Y.](#), No. 82 Civ. 7783, 1993 WL 42787 at \*4 (S. D. N. Y. Feb. 16, 1993) (\$47,000 awards to each of two class representatives); [In re Revco Sec. Litig.](#), Nos. 851 & 89CV593, 1992 WL 118800 at \*7 (N.D. Ohio May 6, 1992) (\$200,000 award); [In re First Jersey Sec., Inc. Sec. Litig.](#), MDL No. 681, 1989 WL 69901, at \*7 (E.D. Pa. Jun. 23, 1989) (\$25,000 award).

(202) 789-3960 Telephone  
jonc@cuneolaw.com  
bfinley@cuneolaw.com

***Settlement Class Counsel for Commercial and  
Institutional Indirect Purchaser Plaintiffs  
Sandee's Bakery and Gnemi LLC***

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that on February 8, 2021, a copy of the foregoing was electronically filed with the Clerk of the Court using the Court's CM/ECF system, which will send notification of the filing to all counsel of record.

By: /s/ Sterling Aldridge  
Sterling Aldridge