

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BUDICAK, INC., BLUE MARLIN
ARBITRAGE, LLC, and PRIME TRADING,
LLC, individually and on behalf of others
similarly situated,

Plaintiffs,

v.

LANSING TRADE GROUP, LLC,
CASCADE COMMODITY CONSULTING,
LLC, and JOHN DOES NOS. 6-10,

Defendants.

Case No. 2:19-cv-02449

District Judge Toby Crouse

Magistrate Judge Angel D. Mitchell

**JOINT DECLARATION OF RAYMOND P. GIRNYS AND JENNIFER W. SPRENGEL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS WITH
LANSING TRADE GROUP, LLC AND CASCADE COMMODITY CONSULTING, LLC**

Pursuant to 28 U.S.C. § 1746, we, Raymond P. Girnys and Jennifer W. Sprengel, hereby declare as follows:

1. We are, respectively, partners of the law firms of Lowey Dannenberg, P.C. (“Lowey”) and Cafferty Clobes Meriwether & Sprengel, LLP (“Cafferty,” and together with Lowey, “Plaintiffs’ Counsel”). We submit this Declaration in connection with the pending Motion for Preliminary Approval of Class Action Settlements with Lansing Trade Group, LLC (“Lansing”) and Cascade Commodity Consulting, LLC (“Cascade”). We have been actively involved in prosecuting and resolving this Action, are familiar with its proceedings, and have personal knowledge of the matters set forth herein. If called upon and sworn as witnesses, we could competently testify thereto.

2. Attached as Exhibit 1 is a true and correct copy of the Stipulation and Agreement of Settlement with Lansing dated April 29, 2022 (“Lansing Stipulation”).

3. Attached as Exhibit 2 is a true and correct copy of the Stipulation and Agreement of Settlement with Cascade dated July 1, 2020, as amended April 29, 2022 (“Cascade Stipulation” and with the Lansing Stipulation, “Stipulations”). Unless otherwise noted, capitalized terms not defined herein have the same meaning as defined in the Stipulations.

4. Attached as Exhibit 3 is a true and correct copy of the Declaration of Linda V. Young, dated April 29, 2022.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Proposed Mailed Notice.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Proposed Publication Notice.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Proof of Claim and Release form.

8. Attached hereto as Exhibit 7 is a true and correct copy of the proposed Distribution Plan.

9. Attached hereto as Exhibit 8 is a true and correct copy of Lowey's firm Resume.

10. Attached hereto as Exhibit 9 is a true and correct copy of Cafferty's firm Resume.

11. **Procedural History.** On July 20, 2018, Plaintiff Budicak, Inc. ("Budicak") filed the initial class action complaint in this Action against Lansing in the Northern District of Illinois, alleging that Lansing violated the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.*, the Sherman Antitrust Act, 15 U.S.C. § 1, and common law by intentionally manipulating Chicago Board of Trade ("CBOT") wheat futures and options contracts ("CBOT Wheat Futures and Options"). ECF No. 1.¹

12. On September 7, 2018, Lansing moved to transfer the Action to the District of Kansas. ECF No. 26. Budicak filed an opposition to Lansing's motion to transfer on September 21, 2018. ECF No. 31. Lansing filed a reply in support of its motion to transfer on September 28, 2018. ECF No. 36.

13. On October 1, 2018, Budicak filed an amended class action complaint (the "Complaint"), adding Plaintiffs Blue Marlin Arbitrage, LLC ("Blue Marlin") and Prime Trading, LLC ("Prime Trading," and together with Budicak and Blue Marlin, "Plaintiffs"), and Defendant Cascade Commodity Consulting, LLC ("Cascade" and together with Lansing, "Defendants"). ECF No. 37.

¹ Unless otherwise noted, all docket citations are to *Budicak, Inc. v. Lansing Trade Group, LLC*, No. 2:19-cv-02499 (D. Kan.).

14. On November 16, 2018, Defendants moved to dismiss the Complaint. ECF Nos. 52, 59. On December 21, 2018, Plaintiffs filed their oppositions to Defendants' motions to dismiss. ECF Nos. 87-88. On January 18, 2019, Defendants filed their replies in support of their motions. ECF Nos. 90, 92.

15. On August 5, 2019, Lansing's motion to transfer the case to the District of Kansas was granted and the pending motions to dismiss were terminated without prejudice to be refiled pursuant to the schedule set in the District of Kansas. ECF No. 110.

16. On September 24, 2019, Lansing refiled its motion to dismiss the complaint. ECF No. 122. On October 9, 2019, Cascade filed a new motion to dismiss. ECF No. 137. Plaintiffs filed their opposition to Cascade's motion to dismiss on November 4, 2019. ECF No. 141. On November 18, 2019, Cascade filed its reply in support of its motion to dismiss. ECF No. 143. On November 21, 2019, Cascade filed an unopposed motion to amend/correct the reply. ECF No. 143. On November 22, 2019, the Court granted Cascade's motion to amend/correct the reply. ECF No. 145. That same day, Cascade filed the amended reply to its motion. ECF No. 146.

17. On January 29, 2020, the Court ordered Plaintiffs and Lansing to submit supplemental briefing to specifically address Tenth Circuit authority governing the issues under review. ECF No. 156. On February 12, 2020, Plaintiffs and Lansing filed their supplemental briefs. ECF Nos. 158-59.

18. On February 14, 2020, the Court denied Cascade's motion to dismiss, holding that Cascade was subject to the personal jurisdiction of the Court and venue was proper in the District of Kansas. ECF No. 160. On March 25, 2020, the Court denied Lansing's motion to dismiss, holding that Plaintiffs had standing to sue and that Plaintiffs adequately alleged CEA and Sherman Act claims. ECF No. 167.

19. On October 30, 2020, Plaintiffs filed a motion for class certification and submitted the expert report of Dr. Craig Pirrong in support (ECF Nos. 182-83), supplemented on January 8, 2021. ECF No. 208.

20. On May 11, 2021, Lansing moved to exclude the opinions and testimony of Dr. Pirrong and opposed Plaintiffs' motion to certify the class, including the expert reports Drs. Kenneth Lehn and Terrence Hendershott as exhibits to its briefs. ECF Nos. 222-26.

21. On July 9-10, 2021, Plaintiffs filed the following documents: (1) a reply in support of class certification (ECF No. 251); (2) an opposition to Lansing's motion to exclude the opinions and testimony of Dr. Pirrong (ECF No. 249); (3) motions to exclude the opinions and testimony of Drs. Lehn and Hendershott (ECF Nos. 245, 247); (4) a motion for leave to file rebuttal expert disclosures (ECF No. 243); and (5) the proposed rebuttal expert report of Dr. Craig Pirrong (ECF No. 250, Ex. 68).

22. On August 12, 2021, Lansing filed the following documents: (1) a motion to strike portions of Plaintiffs' reply in support of class certification (ECF No. 291); (2) an opposition to Plaintiffs' motion to file rebuttal expert disclosures (ECF No. 293); (3) oppositions to Plaintiffs' motion to exclude the opinions and testimony of Drs. Lehn and Hendershott (ECF Nos. 294-95); and (4) a reply in support of Lansing's motion to exclude the opinions and testimony of Dr. Pirrong (ECF No. 296).

23. On September 2, 2021, Plaintiffs filed the following documents: (1) a reply in support of Plaintiffs' motion to file rebuttal expert disclosures (ECF No. 318); (2) replies in support of Plaintiffs' motions to exclude the opinions and testimony of Drs. Lehn and Hendershott (ECF Nos. 317, 320); and (3) an opposition to Lansing's motion to strike (ECF No. 319).

24. On September 16, 2021, Lansing filed its reply in support of its motion to strike. ECF No. 323.

25. **Settlement Negotiations.** Settlement negotiations between Plaintiffs and Lansing began shortly after Plaintiff Budicak filed the initial complaint against Lansing on July 20, 2018. In January 2019, Plaintiffs made a detailed in-person settlement presentation to Lansing that included Plaintiffs' views on liability and damages and an opening settlement demand. In March 2019, Lansing made a presentation to Plaintiffs that responded to their views of the case. Over the course of the next few months, the Parties continued to exchange their views of liability and damages and continued to negotiate a settlement. By May 1, 2019, these settlement negotiations stalled.

26. After Cascade filed its new motion to dismiss the case in this Court in October 2019, Plaintiffs and Cascade began discussing the potential for a settlement between the parties. Settlement negotiations continued throughout early 2020, resulting in a framework to settle the claims against Cascade. As part of the negotiations, counsel for Cascade made a proffer that provided background facts Plaintiffs used to further inform the development of their case.

27. On July 1, 2020, Plaintiffs and Cascade executed a Settlement Agreement that settled Plaintiffs' claims against Cascade for its alleged manipulation of CBOT Wheat Futures or Options. Under the Cascade Settlement Agreement, in exchange for a release of claims that were or could have been asserted in the Action, Cascade agreed to provide cooperation materials that would assist with the continued prosecution of the Action against Lansing. Cascade also agreed to provide assistance with respect to distributing notice of the Settlements to the Settlement Class.²

² On April 29, 2022, Plaintiffs and Cascade executed the Amendment to Stipulation and Agreement of Settlement with Cascade Commodity Consulting, LLC ("Amendment") to conform the Settlement Class and Class Period definitions with the Lansing Stipulation.

28. During the summer of 2020, Plaintiffs and Lansing discussed engaging a mediator to facilitate further settlement discussions and retained The Honorable Morton Denlow (Ret.) of JAMS. On August 25, 2020, Judge Denlow oversaw an all-day mediation via Zoom. During the session, Plaintiffs and Lansing shared their views of liability and damages. After hours of discussions, the mediation ended with Plaintiffs and Lansing at an impasse.

29. Following the mediation session, Judge Denlow contacted Plaintiffs and Lansing in November 2020, January 2021, April 2021, and July 2021 to discuss possible resolution of the Action. However, the parties remained at an impasse in settlement negotiations throughout this time period.

30. Following the completion of class certification briefing in September 2021, Judge Denlow again contacted the parties to discuss a possible resolution of the Action. Throughout the weeks that followed, Plaintiffs and Lansing continued to share their views of the case concerning liability and damages. On October 4, 2021, Judge Denlow made a mediator's proposal of \$18 million.

31. On October 22, 2021, the parties accepted Judge Denlow's settlement proposal. For the next several months, Plaintiffs and Lansing negotiated the specific terms of the agreement, including the scope of the release to be provided to Lansing and a qualified right for Lansing to terminate the Settlement Agreement under certain circumstances prior to final approval.

32. On April 29, 2022, after months of negotiations over the settlement terms, Plaintiffs and Lansing executed their Stipulation and Agreement of Settlement.

33. Negotiations leading to the Cascade and Lansing Settlements were entirely non-collusive and strictly arm's-length.

34. *Well-Informed.* Before reaching the Settlements, Plaintiffs and Plaintiffs' Counsel were well-informed regarding the strengths and weaknesses of Plaintiffs' claims. Plaintiffs' Counsel had the benefit of its investigations into the structure and trading in the wheat market. Economic analyses by experts of CBOT Wheat Futures and Options prices and Plaintiffs' Counsel's previous work uncovering alleged market manipulations in other cases helped further inform Plaintiffs' Counsel's settlement strategy. Plaintiffs' Counsel also studied the findings and orders issued by the U.S. Commodity Futures Trading Commission and the CME Group, Inc. in connection with Lansing's settlement with both entities concerning the alleged misconduct. Finally, before entering the Lansing settlement, Lansing produced during the course of discovery almost 100,000 pages of documents and data that also informed Plaintiffs' Counsel's views of the strengths and weaknesses of their case.

35. Plaintiffs' Counsel also benefited from the extensive arguments Defendants presented in their motions to dismiss the Complaint and in their opposition to Plaintiffs' motion for class certification (including two expert reports), and the Court's analysis in denying Defendants' motions to dismiss. In its order denying Lansing's motion to dismiss, the Court held that: (1) Plaintiffs had standing to sue; (2) Plaintiffs adequately alleged a CEA price manipulation claim; (3) Plaintiffs adequately alleged a manipulative/deceptive device claim; and (4) Plaintiffs plausibly alleged they are entitled to relief for violation of Section 1 of the Sherman Act. ECF No. 167. In its order denying Cascade's motion to dismiss, the Court held that Cascade was subject to the personal jurisdiction of the Court and venue was proper in the District of Kansas because: (1) Plaintiffs satisfied the venue provisions of the Sherman and Clayton Acts; and (2) the exercise of jurisdiction over Cascade in the District of Kansas comported with the Fifth Amendment. ECF No. 160.

36. During the course of the litigation and settlement negotiations with Lansing, Plaintiffs received and analyzed cooperation material from Cascade.

37. Plaintiffs' Counsel concluded that Cascade's settlement cooperation greatly assisted Plaintiffs' prosecution of their claims against Lansing. The value of the settlement cooperation was particularly high because it was provided at critical juncture, prior to Plaintiffs' motion for class certification.

38. *Arm's-Length Negotiations by Experienced Counsel.* At the time the proposed settlements with Cascade and Lansing were negotiated, our firms were experienced in prosecuting federal class action claims under the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.*, the Sherman Antitrust Act, 15 U.S.C. §§ 1, *et seq.*, and numerous other laws. *See* Exs. 7-8. We were involved in all aspects of the settlement negotiations on behalf of Plaintiffs.

39. Lansing and Cascade were also well-represented. Lansing was represented by one of the leading law firms in the United States. The attorneys negotiating on Lansing's behalf have decades of experience and are some of the leading defense practitioners in commercial, antitrust, securities, Commodity Exchange Act, and class action litigation cases. Cascade was represented by sophisticated counsel with nationwide experience in complex commercial litigation.

40. The Settlements were not the product of collusion. Prior to agreeing to any terms (including with respect to Lansing the Settlement Amount), we were well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the Plaintiffs' claims against Lansing.

41. The Settlements involve a structure and terms that are common in class action settlements.

42. The consideration that Lansing has agreed to pay in connection with its Settlement is within the range of that which may be found to be fair, reasonable, and adequate at final approval. Based on information currently available to Plaintiffs and in consultation with Plaintiffs' experts, Plaintiffs' Counsel have preliminarily estimated single (*i.e.*, non-trebled) class wide damages of \$117-\$141 million, assuming Plaintiffs succeed on all triable issues.³ The \$18,000,000 Settlement Amount represents 15% of the class-wide damages estimate.

43. Plaintiffs' Counsel has strong reason to believe that there are at least hundreds of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on trading volume data, discussions with market participants, and expert analysis.

44. In connection with final approval of the Settlements, Plaintiffs' Counsel anticipate requesting attorneys' fees of no more than one-third of the Settlement Fund (\$6 million), which may be paid upon final approval under the terms of the Lansing Stipulation. *See* Joint Decl. Ex. 1 § 3. Plaintiffs' Counsel will seek up to \$750,000 for the costs and expenses of litigating this action, and Plaintiffs may request Incentive Awards totaling no more than \$60,000 for their service in this Action.

45. **Distribution Plan.** Plaintiffs' Counsel consulted with an industry and economic expert to develop the proposed Distribution Plan. *See* Exhibit 7. Similar distribution plans have been preliminarily approved. *See* Plan of Allocation, *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (KBF) (S.D.N.Y. June 3, 2015), ECF No. 287-6; Order Preliminarily Approving Proposed Settlement, Scheduling Hearing for Final Approval Thereof, and Approving the Proposed Form and Program of Notice to the Settlement Class, *In re Crude Oil Commodity Futures*

³ Lansing disputes Plaintiffs' estimate of the class-wide damages that would be recoverable, even if Plaintiffs succeeded on all triable issues.

Litig., No. 11-cv-3600 (KBF) (S.D.N.Y. June 8, 2015), ECF No. 290; Plan of Allocation, *In re Optiver Commodities Litig.*, No. 08-cv-6842 (LAP) (S.D.N.Y. Aug. 1, 2014), ECF No. 60-7; Order Preliminarily Approving Proposed Settlement, Scheduling Hearing for Final Approval Thereof, and Approving the Proposed Form and Program of Notice to the Class, *In re Optiver Commodities Litig.*, No. 08-cv-6842 (LAP) (S.D.N.Y. Jan. 7, 2015), ECF No. 67. The Distribution Plan allocates 85% of the Net Settlement Fund based upon the *pro rata* fraction of the Net Artificiality Paid by each Authorized Claimant on Net Artificiality Paid Transactions. The remaining 15% of the Net Settlement Fund will be allocated based upon the *pro rata* fraction of the Net Loss by each Authorized Claimant on Net Loss Transactions. *See* Ex. 7, at 4-6. Net Artificiality Paid Transactions are those transactions that occurred between March 5-March 13, 2015. Net Loss Transactions are those CBOT Wheat Futures or Options transactions that occurred during the alleged Class Period, but not during the period of March 5-March 13, 2015.

46. To receive a portion of the Net Settlement Fund, Class Members will be required to submit a Proof of Claim and Release form (“Claim Form”). *See* Exhibit 6. The Claim Form only requires a claimant to provide background information and readily accessible information about their CBOT Wheat Futures or Options, including trade date, volume, trade price, option type, strike price and premium (if applicable).

47. The Settlement Administrator will calculate the Net Artificiality Paid and the Net Loss and sum up the results. Payments will be calculated based on each Authorized Claimant’s *pro rata* fraction of the total Net Artificiality Paid and Net Loss. In consultation with Plaintiffs’ Counsel, the Settlement Administrator will implement a reasonable minimum payment threshold to ensure that administrative costs of issuing small payments do not deplete the Fund.

48. **Notice Plan.** The proposed settlement administrator, A.B. Data, Ltd., developed the proposed Class Notice plan. *See* Exhibits 3-6. A.B. Data has extensive experience in class action administration and designed notice plans that have been approved in numerous complex class actions, including most recently: *In re JPMorgan Precious Metals Spoofing Litig.*, 18-cv-10356 (GHW) (S.D.N.Y.); *In re JPMorgan Treasury Futures Spoofing Litig.*, No. 20-cv-3515 (PAE) (S.D.N.Y.); *Boutchard v. Tower Research Capital LLC*, No. 18-cv-7041 (JJT) (N.D. Ill.); *Ploss v. Kraft*, No. 15-cv-2937 (EEC) (N.D. Ill.); *In re GSE Bonds Antitrust Litig.*, No. 19-1704 (JSR) (S.D.N.Y.); *Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (GBD) (S.D.N.Y.) and *Sonterra Capital Master Fund, Ltd. v. UBS AG et al.*, No-15-cv-5844 (GBD) (S.D.N.Y.); and *Sullivan v. Barclays plc*, No. 13-cv-2811 (S.D.N.Y.).

49. Plaintiffs' Counsel have diligently represented the interests of the Settlement Class. Our firms investigated and brought the Action. Plaintiffs' Counsel negotiated the Settlements with Cascade and Lansing. The firms responded to multiple motions to dismiss Plaintiffs' complaint and have performed all of the necessary work to prosecute this litigation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 29, 2022
White Plains, New York

/s/ Raymond P. Girnys
Raymond P. Girnys

Executed on: April 29, 2022
Chicago, Illinois

/s/ Jennifer W. Sprengel
Jennifer W. Sprengel