

**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 (A) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENTS; AND (B) CLASS COUNSEL'S MOTION FOR AN AWARD
OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND
REQUEST FOR SERVICE AWARD**

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, “Class Counsel”). We submit this Declaration in support of (A) Plaintiffs’ Motion for Final Approval of Class Action Settlements with Lansing Trade Group, LLC (“Lansing”) and Cascade Commodity Consulting, LLC (“Cascade,” and together with Lansing, the “Defendants”) and (B) Class Counsel’s Motion for Award of Attorneys’ Fees, Reimbursement of Expenses and Request for Service Awards to Class Representatives (the “Fee and Expense Application”). We have been actively involved in prosecuting and resolving the above-captioned Action (the “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.

I. INTRODUCTION

2. To resolve this Action against them, Cascade agreed to provide significant, non-monetary cooperation for use in the prosecution of this Action, and Lansing agreed to pay \$18,000,000 for the benefit of the Settlement Class. The Settlements are the product of arm’s length negotiations between Class Counsel and counsel for Defendants. Lansing’s counsel have decades of experience and are some of the leading defense practitioners in Commodity Exchange Act (“CEA”) and class action litigation cases. Cascade’s counsel are highly sophisticated and have nationwide experience in complex commercial litigation. When the respective Settlements were reached, Plaintiffs and Class Counsel were fully aware of the strengths and weaknesses of the claims asserted in the Action.

3. Based on the work and investigation performed in the Action, we believe that the Settlements are an excellent result for the Settlement Class in light of the substantial litigation

risks, and that both the Settlements should be approved. Should these Settlements be approved, Class Counsel will have recovered \$18,000,000 from the Settlements for the benefit of the Class.

4. We also respectfully submit that the previously filed Distribution Plan should be approved. *See* Joint Declaration of Raymond P. Girnys and Jennifer W. Sprengel dated April 29, 2022 (ECF No. 351) at ¶¶ 45-47; Distribution Plan (ECF No. 351-7). The Distribution Plan was developed by Class Counsel in consultation with Plaintiffs' experts and the Settlement Administrator. It was designed to fairly and reasonably allocate the Net Settlement Fund among Authorized Claimants based on their Net Artificiality Paid and/or Net Loss on CBOT Wheat Futures or Options due to Defendants' alleged manipulation, while at the same time serving as a cost-efficient and equitable way to distribute the Net Settlement Fund. The Distribution Plan's approach to allocation is consistent with many other distribution plans that have been approved by courts in this District and elsewhere.

5. As to the Fee and Expense Application, the Class Notice informed the Settlement Class that Class Counsel would apply for an award of attorneys' fees of up to \$6,000,000, which is 33.33% of the Settlement Fund, and payment of litigation expenses not to exceed \$750,000, plus interest on such attorneys' fees and litigation expenses. The Class Notice also advised that Plaintiffs may seek service awards totaling, in the aggregate, up to \$60,000.

6. Consistent with the Notice, Class Counsel respectfully move for an attorneys' fee award of approximately 33.33% of the total Settlement Fund (or \$6,000,000) and payment of \$476,401.92 for expenses incurred from the inception of the Action through the present, plus interest on such attorneys' fees and litigation expenses.

7. Class Counsel believe the requested attorneys' fee award is reasonable based on Class Counsel's efforts, the significant risk they undertook, the complexity and magnitude of the

case, and the results they achieved. The requested payment for litigation expenses should also be approved because the expenses were reasonably and necessarily incurred during the prosecution of the Action. In addition, Plaintiffs Budicak, Inc. (“Budicak”), Blue Marlin Arbitrage, LLC (“Blue Marlin”) and Prime Trading LLC (“Prime Trading”) request a service award of \$20,000 each for taking on the risk of and their diligent work in serving as class representatives with no guarantee of compensation for the work each performed on behalf of the Class, which Class Counsel believes is reasonable and should be granted. No other Class Members stepped forward to file lawsuits nor to serve as class representatives, and, thus, without the class representatives’ willingness to represent the Class, there would have been no recovery for other Class Members.

8. This Declaration is organized as follows. Section II describes Class Counsel’s work to prosecute this Action, including the work that directly led to obtaining the two Settlements. Section III sets forth Class Counsel’s and additional Plaintiffs’ Counsel’s¹ total fee-compensable hours invested in prosecuting the Actions along with the related lodestar, and the litigation expenses incurred since the inception of this Action.

II. CLASS COUNSEL’S WORK ON BEHALF OF PLAINTIFFS AND THE SETTLEMENT CLASS

A. Initial Case Investigation, Initial Pleadings, and Motion to Dismiss & Motion to Strike

9. On July 12, 2018, the Commodity Futures Trading Commission (“CFTC”) announced that it had agreed to a settlement with Lansing, pursuant to which Lansing agreed to pay a \$3.4 million monetary penalty for alleged “attempted manipulation of the price of certain wheat futures and options contracts that were traded on the Chicago Board of Trade (“CBOT”)

¹ Additional Plaintiffs’ Counsel includes Cavanaugh Biggs & Lemon P.A. and McCallister Law Group, LLC.

and for allegedly aiding and abetting the attempted manipulation of the cash price for yellow corn from Columbus, Ohio” from at least March 3, 2015 to March 11, 2015.²

10. The CFTC’s press release provided sparse details on the precise nature of the “attempted manipulation” but informed the public that Lansing “coordinated and executed a strategy to attempt to manipulate the price of certain Chicago Board of Trade wheat futures and options contracts (“CBOT Wheat Futures and Options”). Lansing’s strategy centered on acquiring and loading-out for delivery wheat with 3 parts per million deoxynivalenol (3 ppm Vomitoxin) through the purchase and cancellation of 250 wheat shipping certificates (Wheat Certificates). Through the cancellation of these Wheat Certificates, Lansing intended to send a false or misleading signal to the market of a demand for 3 ppm Vomitoxin wheat in order to attempt to influence the price of certain wheat futures and options contracts traded on the CBOT. Lansing intended by these actions to increase the value of its wheat spread and option positions.”

11. After reviewing the CFTC’s press release, Class Counsel assembled a team of attorneys and support staff to investigate the nature and scope of Lansing’s alleged manipulation. Class Counsel have been involved in litigating several class actions alleging antitrust violations and commodities manipulation. Due to Class Counsel’s experience in these other cases, Class Counsel were quickly able to analyze the potential claims against Lansing.

12. Based on information gained from the regulatory findings as well as Class Counsel’s own investigation, which included a review of CBOT Wheat Futures or Options trading data, legal issues, and relevant factual events related to the alleged misconduct and consultation with an econometrician, on July 20, 2018, Plaintiff Budicak filed the initial class action complaint in this Action against Lansing in the Northern District of Illinois, alleging that Lansing violated

² *CFTC Orders Commodity Trading Firm to Pay \$3.4 Million Penalty for Attempted Manipulation of Agricultural Markets*, Release No. 7754-18, July 12, 2018, available at: <https://www.cftc.gov/PressRoom/PressReleases/7754-18>.

the CEA, 7 U.S.C. §§ 1, *et seq.*, the Sherman Antitrust Act, 15 U.S.C. § 1, and common law by intentionally manipulating CBOT Wheat Futures and Options. ECF No. 1.³ Budicak also alleged that Lansing executed a scheme to manipulate certain CBOT Wheat Futures and Options contracts by creating a false signal to the market by cancelling wheat shipping certificates.

13. At the time of this initial filing, there were substantial risks in taking on the Action, including whether the alleged manipulation would be deemed plausible to withstand a motion to dismiss. Class Counsel continued their factual and legal investigation even after filing the initial complaint. Class Counsel devoted substantial resources to navigate the risks of the Action and to prepare a case that would have the best opportunity to ultimately achieve a significant recovery for Class Members. During this time, the Northern District of Illinois was participating in the Mandatory Initial Discovery Pilot Program. Pursuant to that Program, Plaintiff moved for early discovery prior to motion to dismiss practice. Over Defendant Lansing's objection, Plaintiff was granted and obtained important early discovery, including the production of audio transcripts of Lansing employees on which certain Lansing traders were discussing the alleged manipulation.

14. On September 7, 2018, Defendant Lansing moved to transfer the case from the Northern District of Illinois to the District of Kansas. ECF No. 26. Budicak filed an opposition on September 21, 2018 (ECF No. 31), and Lansing filed a reply in support of its motion on September 28, 2018. ECF No. 36.

15. While the transfer motion was pending, Budicak filed an amended class action complaint (the "Complaint"), adding Plaintiffs Blue Marlin and Prime Trading, and Defendant Cascade. ECF No. 37. Plaintiffs expanded on their earlier claims and allegations based on their

³ Unless otherwise noted, all docket citations are to *Budicak, Inc. v. Lansing Trade Group, LLC*, No. 2:19-cv-02499 (D. Kan.).

continued investigation of Lansing's alleged manipulation, based in part on the early discovery obtained.

16. On November 16, 2018, Defendants each moved to dismiss the Complaint. ECF Nos. 52, 59. Cascade argued lack of personal jurisdiction and Defendant Lansing moved to dismiss for lack of Article III standing and failure to state a claim, in addition to moving to strike the Complaint for Plaintiffs' proposal to extend the Class Period. Plaintiffs filed their oppositions to Defendants' motions to dismiss on December 21, 2018. ECF Nos. 87-88. Defendants filed their replies in support of their motion to dismiss and motion to strike on January 19, 2019. ECF Nos. 90, 92. After obtaining leave from the Northern District of Illinois court, Plaintiffs then prepared a sur-reply to respond to some of the arguments made by the Defendants in their replies in support of their motion to strike and motion to dismiss. ECF No. 105.

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

18. 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.

19. 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. Class Counsel conducted extensive research to address the Tenth Circuit law and prepared a 16-page supplemental brief. On February 12, 2020, Plaintiffs and Lansing filed their supplemental briefs. ECF Nos. 158-59.

20. On February 14, 2020, the Court denied Cascade's motion to dismiss, holding that Cascade was subject to personal jurisdiction 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.

B. Discovery & Class Certification Motion

21. After the Court denied Defendants' motions to dismiss, the Parties engaged in extensive discovery. Both sides served multiple discovery requests on each other. The Parties met on twenty separate occasions to negotiate and resolve discovery disputes. The parties exchanged thousands of pages of documents. During the course of discovery, Lansing produced almost 100,000 pages of documents and data, including hundreds of hours of audio files. Class Counsel spent hundreds of hours and precious resources reviewing the produced documents, listening to the audio recordings, conducting interviews and depositions, and building a case against the Defendants.

22. Plaintiffs also engaged experts with vast experience in developing economic models for financial markets. The experts allowed Plaintiffs and Class Counsel to better understand the potential damages in this Action and helped provide analyses that showed the market movements occurred as a result of the alleged manipulation by Defendants. Plaintiffs' experts also analyzed Plaintiffs' CBOT Wheat Futures or Options transaction records. Based on

an analysis performed by Plaintiffs' experts, Class Counsel estimated the potential damages caused by Defendants' alleged misconduct.

23. Using the information gathered from their investigations, review of government settlements, and discovery, Class Counsel ramped up their efforts with respect to the motion for class certification. After conferring with their experts and developing their initial class certification strategy, Class Counsel regularly met with their experts to discuss new documents and information. On October 30, 2020, Plaintiffs moved for class certification and submitted the expert report of Dr. Craig Pirrong in support of their motion (ECF Nos. 182-83), supplemented on January 8, 2021. ECF No. 208. Lansing moved to exclude the opinions of Plaintiffs' expert and filed its opposition to Plaintiffs' motion to certify the class on May 11, 2021, submitting its own expert reports to support its argument. ECF Nos. 222-26.

24. On March 30, 2021 and April 2, 2021, Class Counsel defended Lansing's deposition of Plaintiffs' expert, Dr. Pirrong. On June 21, 2021, Class Counsel took the deposition of Lansing's expert, Dr. Kenneth Lehn. On June 25, 2021, Class Counsel took the deposition of Lansing's expert, Dr. Terrence Hendershott.

25. In July 2021, Plaintiffs filed a reply in support of their motion for class certification (ECF No. 251), an opposition to Lansing's motion to exclude Plaintiffs' expert's opinions (ECF No. 249), and new motions to exclude the opinions of Lansing's experts, among other documents. ECF Nos. 243, 245, 247, 250.

26. On August 12, 2021, Lansing filed a reply in support of its motion to exclude the opinions of Plaintiffs' expert (ECF No. 296), oppositions to Plaintiffs' motions to exclude Lansing's expert opinions (ECF Nos. 294-95), and a motion to strike portions of Plaintiffs' reply in support of class certification, among other documents. ECF Nos. 291, 293.

27. On September 2, 2021, Plaintiffs filed replies in support of their motions to exclude the opinions of Lansing's experts (ECF Nos. 317, 320), and an opposition to Lansing's motion to strike, among other documents. ECF Nos. 318-19.

28. On September 16, 2021, Lansing filed its reply in support of its motion to strike ECF No. 323. The motions were pending when Plaintiffs and Lansing reached an agreement in principle to resolve the Action.

C. Settlement Negotiations

29. Class Counsel have a combined experience of more than 70 years in developing and leading the prosecution of federal commodity manipulation, antitrust, securities litigation and complex class action matters on behalf of some of the nation's largest pension funds and institutional investors. This experience includes recently obtaining, as court-appointed lead or co-lead counsel, over \$1,900,000,000 in settlements in cases involving similar commodity and benchmark manipulation and other antitrust actions, with additional settlements pending. *See, e.g., Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y) (settlements totaling \$546.5 million for alleged Euribor manipulation); *In re GSE Bonds Antitrust Litigation*, No. 19-cv-1704 (JSR) (S.D.N.Y.) (settlements totaling \$386.5 million relating to the alleged manipulation of unsecured bonds issued by U.S. government sponsored entities); *Fund Liquidation Holdings LLC, et al., v. UBS AG, et al.* No. 15-cv-5844 (GBD) (S.D.N.Y) (recovering \$329.5 million for the alleged manipulation of Yen-LIBOR and Euroyen TIBOR); *Dennis, et al. v. JPMorgan Chase & Co., et al.*, 16-cv-6496 (LAK) (S.D.N.Y.) (settlements totaling \$185,875,000 in connection with alleged manipulation of the Australian Bank Bill Swap Rate (BBSW)); *Fund Liquidation Holdings LLC, et al., v. Citibank, N.A., et al.*, No. 1:16-cv-5263 (AKH) (S.D.N.Y.) (\$155,458,000 million in total settlements related to manipulation of SIBOR and SOR); *In re JPMorgan Precious Metals*

Spoofing Litig., No. 18-cv-10356 (GHW) (S.D.N.Y.) (\$60 million settlement related to spoofing in the market for precious metals futures and options); *In re London Silver Fixing, Ltd. Antitrust Litig.*, No. 14-md-2573 (VEC) (S.D.N.Y.) (involving \$38 million settlement for alleged manipulation of the London Silver Fix); *In re Mexican Gov't Bonds Antitrust Litig.*, No. 18-cv-2830 (JPO) (S.D.N.Y.) (\$20.7 million in settlements related to alleged manipulation of Mexican Government Bonds); *In re JPMorgan Treasuries Spoofing Litig.*, No. 20-cv-3515 (PAE) (S.D.N.Y.) (\$15.7 million settlement related to manipulation in the market for U.S. Treasuries futures and options); *Boutchard, et al. v. Gandhi, et al.*, 18-cv-7041 (JJT) (N.D. Ill.) (\$15 million settlement concerning spoofing of E-mini index futures and options). In addition, Class Counsel are currently serving as Lead and Co-Lead counsel in numerous commodity manipulation and antitrust cases around the country.

30. Before reaching the Settlements, Class Counsel were well informed regarding the strengths and weaknesses of Plaintiffs' claims. Class Counsel extensively reviewed and analyzed available documents and information, including: (i) regulatory investigation disclosures and settlements relating to Lansing; (ii) publicly available information relating to the conduct alleged in Plaintiffs' Complaint; (iii) expert and industry research regarding wheat futures and options; (iv) specific market insights from consulting experts and industry insiders; (v) motions to dismiss and other pleadings filed by Defendants; and (vi) prior decisions of this Court and others deciding similar issues.

31. In addition, Class Counsel: (a) conducted an extensive investigation into the facts and legal issues in this action; (b) engaged in extensive meet and confers and negotiations with Defendants; (c) meticulously researched and analyzed the strengths and weaknesses of Plaintiffs' claims and Defendants' defenses; and (d) engaged in extensive discovery.

32. The negotiations leading to the Settlement Agreements were entirely non-collusive and strictly arm's-length, hard-fought and deliberative, with each side raising issues and arguments that well-represented the interests of their clients. Class Counsel were involved in all aspects of the settlement negotiations on behalf of Plaintiffs. In addition, Lansing's attorneys have decades of experience and are some of the leading defense practitioners in CEA and class action litigation cases, and Cascade was represented by sophisticated counsel with nationwide experience in complex litigation.

33. **Settlement Negotiations with Cascade:** The negotiations with Cascade took place over the course of one year, starting approximately in October 2019, after Cascade filed its motion to dismiss. While the motion to dismiss remained pending, the Parties continued their negotiations into early 2020, which resulted in a framework to settle claims against Cascade. After significant negotiations, the Parties reached an agreement in principle and executed the Cascade Settlement Agreement on July 1, 2020. Critically, as part of the Settlement, Cascade agreed to provide cooperation materials that would assist with Plaintiffs' continued prosecution of the Action against Lansing. Cascade also agreed to provide assistance with distributing notice of the Settlements to the Settlement Class.⁴

34. The Cascade Settlement Agreement was not the product of collusion. Plaintiffs and Cascade executed a settlement agreement for a cooperation-only settlement that allowed Plaintiffs to strengthen their prosecution of the Action against Lansing and ultimately helped to yield an \$18,000,000 recovery for the Class. Class Counsel believes that the consideration that Cascade

⁴ 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.

agreed to provide and was willing to continue to provide if the action had not settled is within the range of that which may be found to be fair, reasonable, and adequate.

35. **Settlement Negotiations with Lansing:** Plaintiff Budicak and Lansing had first broached the topic of settlement after Budicak filed the initial complaint on July 20, 2018. Talks continued in January 2019, when Plaintiffs made a detailed in-person settlement presentation to Lansing that included Plaintiffs' views on liability and damages, and an opening settlement demand. Plaintiffs' presentation was based on Class Counsel's investigation of Plaintiffs' claims and expertise in prosecuting manipulation cases. In March 2019, Lansing made a presentation to Plaintiffs in response to Plaintiffs' presentation and provided its views of the case. The Parties continued to exchange their views of liability and damages in an attempt to negotiate a settlement. However, by May 1, 2019, settlement negotiations stalled.

36. Following the initial negotiations in July 2018 and Plaintiffs' and Lansing's settlement presentations during the first half of 2019, negotiations between Plaintiffs and Lansing resumed during the summer of 2020. Plaintiffs and Lansing retained The Honorable Morton Denlow (Ret.) of JAMS to assist with mediation. Judge Denlow held a day-long mediation session on August 25, 2020, during which Plaintiffs and Lansing exchanged their views on factual and legal issues, as well as the potential amount of damages in the Action. However, the initial discussions during mediation did not end with an agreement.

37. Between November 2020 and July 2021, Judge Denlow continued to reach out to Plaintiffs and Lansing. But despite several discussions, the Parties were unable to reach agreement on a settlement.

38. In September 2021, After the Parties had filed their class certification briefs and related expert reports, the Parties again resumed settlement negotiations with the assistance of

Judge Denlow. During these discussions, Lansing and Plaintiffs again shared their views of the case concerning liability and damages, further colored by litigation events and the class certification briefing. On October 4, 2021, Judge Denlow made a mediator's proposal of \$18,000,000. On October 22, 2021, Plaintiffs and Lansing accepted Judge Denlow's proposal. After just over six months of additional negotiations over the specific settlement terms, Plaintiffs and Lansing executed the Stipulation and Agreement of Settlement on April 29, 2022.

39. Class Counsel believe that the consideration that Lansing agreed to provide—a settlement payment of \$18,000,000 for the benefit of the Class—is within the range of that which may be found to be fair, reasonable, and adequate.

40. The Settlements were not the product of collusion and each Party was represented by experienced counsel, who each have significant experience prosecuting federal class action claims and CEA claims. Before any financial numbers were discussed in the settlement negotiations with Defendants and before any demand or counter-offer was ever made, Class Counsel was well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the Plaintiffs' claims against Defendants.

D. Implementation of Class Notice and Reaction of the Class to the Settlements

41. As detailed in the Declaration of Jack Ewashko on behalf of A.B. Data, Ltd. ("Ewashko Decl."), pursuant to the Court-approved notice program, A.B. Data, Ltd. ("A.B. Data") mailed a total of 5,623 copies of the Notice of Proposed Class Action Settlements, June 9, 2023 Fairness Hearing Thereon and Class Members' Rights (the "Mailed Notice") and the Proof of Claim and Release (together, the "Notice Packet"), via first-class mail, to potential Settlement Class Members. *See* Ex. A. Additionally, A.B. Data posted the Mailed Notice, Publication Notice, and Claim Form, along with other relevant documents, on the website developed for these

Settlements, www.2015cbotwheatfuturesclassactionsettlement.com, and caused the Publication Notice to be published as described in the Class Notice Plan. *Id.* at ¶¶ 13-24. Further, Cascade provided the Settlement Administrator with its correspondence list so that the Settlement Administrator could distribute the Mailed Notice. Based on information received from the Chicago Mercantile Exchange (“CME”), Class 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, based on the nature and volume of the trading data and expert analysis.

42. To date, there have been no objections to the Settlements or to the attorneys’ fees, expense payment, and Incentive Award amounts described in the Class Notice, and one request for exclusion. Ewashko Decl. ¶¶ 29-31. The deadline for objections and requests for exclusion is April 10, 2023.

E. Estimate of Potential Damages, Value of Recovery, and Development of the Distribution Plan

43. Throughout the course of the Action, Class Counsel consulted with experts that assisted with evaluating the size of the CBOT Wheat Futures and Options market. Based on an analysis performed by Plaintiffs’ experts, who are experienced in developing econometric models for financial markets, Class Counsel estimated the potential damages caused by Defendants’ alleged misconduct.

44. The experts analyzed the relevant CBOT Wheat Futures and Options data to determine the size of the affected market. Based on extensive analysis from these experts, Class Counsel’s estimate is that Defendants’ alleged manipulation caused between \$117 million and \$141 million in single (*i.e.*, non-trebled) damages to the Settlement Class, assuming Plaintiffs succeed on all triable issues. Therefore, the total recovery in this Action on behalf of the Settlement Class represents between 12% and 15% of the estimated class-wide damages.

45. The consideration that the Defendants have agreed to pay in this Action is within the range of that which may be found to be fair, reasonable, and adequate at final approval. Recoveries in other CEA manipulation cases provide a metric against which the Settlements in this Action may be measured.

46. Class Counsel consulted with industry experts and economic consultants to develop the proposed Distribution Plan. ECF No. 351-7. Similar distribution plans have been 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; Final Order and Judgment, *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (KBF) (S.D.N.Y. Jan. 21, 2016), ECF No. 339; Plan of Allocation, *In re Optiver Commodities Litig.*, No. 08-cv-6842 (LAP) (S.D.N.Y. Aug. 1, 2014), ECF No. 60-7; Final Order and Judgment, *In re Optiver Commodities Litig.*, No. 08-cv-6842 (LAP) (S.D.N.Y. June 22, 2015), ECF No. 93. The Distribution Plan has been constructed to fairly and reasonably allocate the Net Settlement Fund among Authorized Claimants based on their Net Artificiality Paid and/or Net Loss on CBOT Wheat Futures or Options due to Defendants' alleged manipulation, while at the same time serving as a cost-efficient and equitable way to distribute the Net Settlement Fund.

47. 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 ECF No. 351-7, at 4-6. Net Artificiality Paid Transactions are those transactions that occurred between March 5-13, 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 5-13, 2015. 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.

48. Class Counsel recommend the proposed Distribution Plan as fair, reasonable, and adequate to the proposed Settlement Class, having determined it to be the most fair and efficient manner for distributing funds to Class Members.

III. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

49. The Class Notice advised the Settlement Class that Class Counsel would apply for an award of attorneys' fees in an amount not to exceed one-third of the Settlement Fund, plus no more than \$750,000 for payment of litigation expenses and costs, and interest on such attorneys' fees and litigation expenses and costs.

50. Class Counsel respectfully request that this Court award attorneys' fees in the amount of \$6,000,000, which is 33.33% of the \$18,000,000 common fund created by the Settlements with Defendants, and \$476,401.02 for unreimbursed costs and expenses incurred by Class Counsel in the Action. The Fee and Expense Application submitted herewith is fully consistent with the Class Notice.

51. In further support of the Fee and Expense Application, Counsel have submitted declarations summarizing the work performed by counsel in this Action, the hours worked, and the corresponding lodestar, as well as the expenses incurred in prosecuting this Action. *See* Declaration of Raymond P. Girnys ("Girnys Decl.") ¶¶ 5-11; Declaration of Jennifer W. Sprengel ("Sprengel Decl.") ¶¶ 5-11; Declaration of Eric I. Unrein ("Unrein Decl.") ¶¶ 10-16; Declaration of Gary D. McCallister ("McCallister Decl.") ¶¶ 5-11, filed herewith. In total, Class Counsel and additional Plaintiffs' Counsel have performed 13,882.70 hours in this Action, with a corresponding

lodestar value of \$10,068,834 based on current rates. Each firm's declaration includes schedules that summarize the fee compensable hours and lodestar of the firm from the inception of this Action to February 28, 2023, and each firm audited the time and lodestar for accuracy, necessity, and reasonableness. As a result of this review, where appropriate, time and lodestar were reduced in the exercise of billing judgment. The total hours do not include a portion of the time Class Counsel spent preparing the motion for the final approval of the Settlements and the Fee and Expense Application, or any time that will be spent administering the Settlements after final approval is granted. Lodestar figures do not include charges for expense items.

52. If the attorneys' fee request of \$6,000,000 is granted, the risk multiplier on the total lodestar incurred will be 0.60. *See* Mem. in Support of Class Counsel's Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Request for Service Awards to Class Representatives at Argument, Part I.C. (filed herewith).

53. The following chart summarizes the aggregate hours and lodestar of Class Counsel and additional Plaintiffs' Counsel, as set forth in more detail in the separate firm declarations.

Firm Name	Total Hours inception through 2/28/2023	Total Lodestar inception through 2/28/2023
Lowey Dannenberg, P.C.	6,838.50	\$4,819,881.50
Cafferty Clobes Meriwether & Sprengel, LLP	6,463.40	\$4,919,642.50
Cavanaugh Biggs & Lemon P.A.	416.40	\$218,610.00
McCallister Law Group, LLC	164.40	\$110,700.00
Total:	13,882.70	\$10,068,834.00

54. As their resumes indicate (*see* ECF Nos. 351-8, 351-9), Class Counsel are skilled and accomplished litigators in the antitrust and commodities litigation fields, among others, with successful track records in some of the largest class actions throughout the country.

55. Class Counsel bore the risk of litigating and funding this Action entirely on a contingent basis. There have been numerous contingency-fee cases in which counsel have contributed thousands of hours of service to the Class's claims and advanced substantial sums of money, only to receive no compensation for their work.

56. Notwithstanding the risk of non-payment, Class Counsel fully devoted substantial attorney time and resources to the prosecution of the Action, foregoing other potential matters. Recognizing the complexities of the claim, Class Counsel also enlisted expert resources, which further increased the financial risk they undertook. Expert/Consultant Fees totaled \$393,656.26, or 82.53% of the expenses incurred in this Action. The expenditure of these and other litigation costs were reasonably necessary to effectively litigate the Action and are further evidence of Class Counsel's commitment. Summaries of the expenses by category can be found in the Girnys Decl. and Sprengel Decl. filed in support of the Fee and Expense Application.

57. In total, Class Counsel seeks reimbursement for \$476,401.02 in expenses in pursuing this Action. The categories of expenses, the amount incurred and disbursed by each firm, and the basis for the reasonableness of each firm's expenses are set forth in the respective concurrently filed individual declarations.

58. The total expenses incurred by Class Counsel and additional Plaintiffs' Counsel are as follows.

Firm Disbursements	
Expense Category	Amount
Professional, Consulting, or Expert Fees	\$393,156.26
Court Transcripts/Court Reporter Fees	\$32,278.76
Computer Research, Databases & Docket	\$22,345.76
Document Review, IT and Maintenance	\$12,961.28
Travel	\$8,450.68
In-House Photocopying	\$3,872.65

Service and Filing Fees	\$2,229.00
Outside Photocopying	\$432.49
Telephone/Telecopier & Conferencing	\$417.75
Postage, Mailing and Messenger/Delivery	\$257.29
Total:	\$476,401.02

IV. CONCLUSION

59. For the reasons set forth above, in the accompanying memoranda of law, and the record in this Action, we respectfully submit that: (i) the Settlements are fair, reasonable, and adequate and should be approved; (ii) the Distribution Plan is fair and reasonable and should be applied to these Settlements; and (iii) the Fee and Expense Application is reasonable, supported by the facts and law, and should be granted.

We declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information and belief.

Executed on: March 24, 2023
White Plains, New York

/s/ Raymond P. Girnys
Raymond P. Girnys

Executed on: March 24, 2023
Chicago, Illinois

/s/ Jennifer W. Sprengel
Jennifer W. Sprengel