

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 19-21551-CIV-ALTONAGA/Louis

In re:

**FARM-RAISED SALMON
AND SALMON PRODUCTS
ANTITRUST LITIGATION**

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DECLARATION OF PETER PRIETO AND MICHAEL P. LEHMANN

I, Peter Prieto, declare and state as follows:

1. I am a partner at Podhurst Orseck P.A., which, along with Hausfeld LLP, was appointed by the Court as Class Counsel on behalf of the Settlement Class, in *In re Farm-Raised Salmon And Salmon Products Antitrust Litigation*, No. 19-21551-CIV-ALTONAGA/Louis (S.D. Fla.). This declaration is respectfully submitted in support of Plaintiffs' Application for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses. I make this declaration based on my personal knowledge and, if called as a witness, could competently testify to the following information.

I, Michael P. Lehmann, declare and state as follows:

2. I am a partner at Hausfeld LLP, which, along with Podhurst Orseck P.A., was appointed by the Court as Class Counsel on behalf of the Settlement Class in *In re Farm-Raised Salmon And Salmon Products Antitrust Litigation*, No. 19-21551-CIV-ALTONAGA/Louis (S.D. Fla.). This declaration is respectfully submitted in support of Plaintiffs' Application for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses. I make this declaration based on my personal knowledge and, if called as a witness, could competently testify to the following information.

3. For the reasons set forth below and in the accompanying memorandum of law, we submit that the Fee and Expense Application is reasonable, supported by the facts and law, and should be granted in all respects.

4. Because this Declaration is submitted in support of settlement, it is inadmissible in any subsequent proceedings.

5. On April 23, 2019, Plaintiff Euclid Fish Company, through its counsel, Hausfeld LLP, filed the first complaint, *Euclid Fish Co. v. Mowi ASA et al.*, 19-cv-21551 (S.D. Fla. Apr. 23, 2019) (“*Euclid*”), ECF No. 1. *Euclid* was premised upon counsel’s review of publicly available material, analysis of market conditions, and research into the European Commission’s (“EC”) investigation targeting numerous Defendants.¹

6. Following the filing of the *Euclid* action, numerous similar complaints were filed, and the Court consolidated those cases into the above captioned action. ECF Nos. 53, 56, 57, 94.

7. On May 31, 2019, Class Counsel moved to be appointed as Interim Co-Lead Counsel; for the law firm Kopelowitz Ostrow Ferguson Weiselberg Gilbert to be appointed as Liaison Counsel; and for the law firms Preti, Flaherty, Beliveau & Pachios LLP; Wollmuth Maher & Deutsch LLP; Steyer Lowenthal Boodrookas Alvarez & Smith, LLP, and Freed Kanner London & Millen LLC to be appointed to the Plaintiffs’ Executive Committee. ECF No. 95. This proposed leadership structure reflected an agreement reached through private ordering of Plaintiffs’ counsel in all direct purchaser cases then pending. ECF No. 95.

8. The Court granted Plaintiffs’ motion and appointed Class Counsel as Interim Co-Lead Counsel on behalf of Plaintiffs and the putative class. ECF No. 97 at 3. In that order, the Court highlighted that each of the firms in the leadership structure had “experience handling class actions, complex litigation, and claims of the type asserted in this action, as well as knowledge of the applicable law” and “[e]ach of the proposed members of Plaintiffs’ leadership has done work

¹ As of the date of this filing, the investigations brought by the EC and DOJ are yet to result in public indictments or statements of objections.

identifying or investigating potential claims in the action and will commit the resources necessary to represent the class.” *Id.*

9. On August 19, 2019, Plaintiffs filed their Consolidated Amended Direct Purchaser Complaint (the “CAC”). ECF No. 168.

10. Defendants jointly moved to dismiss the CAC on April 20, 2020. ECF No. 211. Defendants contended that the CAC alleged neither direct evidence of a conspiracy nor parallel conduct and “plus factors” supporting an inference of agreement among Defendants. *See id.*

11. Plaintiffs sought production of documents that Defendants had produced to the DOJ and the EC. *See* ECF No. 207, 217. Plaintiffs’ motion to compel was opposed not merely by Defendants, but by the EC. *See* ECF No. 227-1. Nonetheless, the Court ultimately granted Plaintiffs’ request and ordered, over these objections, the production of more than 183,000 documents that Defendants had produced to the DOJ and the EC. *See* ECF No. 233.

12. Plaintiffs filed their brief in opposition of Defendants’ motion to dismiss on June 8, 2020. ECF No. 236. In light of the pending production of the DOJ and EC documents, the Court denied Defendants’ motion to dismiss as moot, stating “the Court must engage in a detailed analysis to address the adequacy of the Direct Purchasers’ pleading, especially given the parties’ extensive briefing on the issue. The most prudent course is to allow Plaintiffs to file an amended complaint that includes additional facts gleaned from discovery supporting an agreement by Defendants to fix prices, and permit Defendants to file a joint motion to dismiss that specifically addresses that pleading’s allegations.” ECF No. 242 at 2.

13. Class Counsel engaged in an expedited review of the 183,000 documents produced by Defendants to ascertain additional facts supporting Plaintiffs’ claims.

14. Following this expedited and intensive review of the documents, on October 16, 2020, Plaintiffs filed their Second Consolidated Amended Complaint (“SCAC”), which added additional allegations and named Cermaq as an additional Defendant. *See* ECF No. 246.

15. On January 15, 2021, Defendants filed a joint motion to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* ECF No. 296.

16. Plaintiffs filed their opposition to Defendants' motion to dismiss on February 1, 2021. *See* ECF No. 298. Defendants filed a reply brief in support of their motion to dismiss on February 15, 2021. *See* ECF No. 304.

17. The Court denied Defendants' motion to dismiss the SCAC on March 23, 2021. ECF No. 307.

18. The Court entered its Order Setting Trial and Pre-Trial Schedule, Requiring Mediation, and Referring Certain Matters to Magistrate Judge on March 24, 2021 (the "Scheduling Order"). ECF No. 308.

19. The Scheduling Order also provided that the Parties select a mediator and schedule a mediation in accordance with Local Rule 16.2 and set deadlines for the exchange of expert reports and completing class certification discovery and fact discovery. *Id.* The Scheduling Order provided a deadline of December 1, 2021, for "Parties [to] exchange expert witness summaries or reports on issues of class certification," *Id.* at 1, leaving a timeframe of only nine months for Plaintiffs to conduct and review all necessary discovery and prepare this critical report, a process that often takes years in antitrust cases.

20. On April 9, 2021, Plaintiffs served their first set of Requests for Production on all Defendants. On May 7, 2021, Plaintiffs served a set of Requests for Production on Sjør AS, sued as Ocean Quality AS. On May 20, 2021, all Defendants responded to the Requests for Production on all Defendants. Sjør responded to the Requests for Production served especially upon it on June 7, 2021.

21. Shortly after the motion to dismiss was denied, Plaintiffs retained Dr. Tasneem Chipty of AlixPartners to analyze the class-wide impact and damages resulting from Defendants' alleged actions, and to conduct other significant analyses of Defendants' transaction data and related NASDAQ materials. *See* ECF No. 485.

22. The litigation entailed complicated economic and econometric issues. Class Counsel worked with Plaintiffs to develop further factual understanding of the market and

conducted their own research into other areas, including complex matters of antitrust law and foreign law governing discovery.

23. Beginning on June 7, 2021, the parties engaged in a series of meet and confers and extensive discovery correspondence as to the scope of Plaintiffs' Requests for Production. These negotiations eliminated most of the disputes as to Defendants' objections thereto, and the few remaining issues were addressed before Magistrate Judge Louis at hearings on July 15, 2021, and July 23, 2021.

24. Between July 15, 2021, and March 2, 2022, Plaintiffs participated in 26 discovery hearings before Magistrate Judge Louis. ECF Nos. 353, 362, 379, 388, 389, 391, 394, 396, 397, 400, 410, 414, 415, 416, 418, 424, 425, 427, 428, 433, 444, 463, 471, 478, 490, 505. These conferences included oral argument as to motions to compel, negotiations over search protocols and custodians, discussions about timelines for production of documents, and matters related to the taking of international depositions.

25. Ultimately, Defendants produced more than 872,000 documents, amounting to more than 62 million pages—the majority of which were in Norwegian, a foreign language with a relatively small number of native speakers—and responded to multiple interrogatories. Plaintiffs also responded to Defendants' interrogatories and document discovery, producing more than 95,000 documents, amounting to more than 163,000 pages.

26. On September 23, 2021, Plaintiffs moved for leave to amend their Complaint. Defendants opposed this motion, contending that Plaintiffs' motion was filed after undue delay and would prejudice Defendants. *See* ECF No. 434 at 1. The Court granted Plaintiffs leave to amend the SCAC on October 27, 2021. ECF No. 446.

27. On October 12, 2021, Plaintiffs moved to modify the scheduling order to permit them more time to prepare their expert report. ECF No. 435. Defendants opposed Plaintiffs' motion. ECF No. 445.

28. The Court granted, in part, Plaintiffs' motion to modify the scheduling order on November 5, 2021. ECF No. 450.

29. On October 28, 2021, Plaintiffs filed their Third Consolidated Amended Complaint (“TCAC”). The TCAC explicitly alleged a claim under the “Rule of Reason” doctrine against all Defendants, alleging that they engaged in information exchanges that violated Sections 1 and 3 of the Sherman Act. ECF No. 447. In the TCAC, Plaintiffs allege that Defendants unlawfully coordinated to fix the prices charged to direct purchasers of farm-raised Atlantic salmon and products derived therefrom. Defendants were alleged to have done so both by (1) applying a coordinated strategy to fix, raise, or stabilize spot prices of farmed Norwegian salmon through inter-competitor transactions reported to the NASDAQ Salmon Index and (2) coordinating sales prices and exchanging commercially sensitive information to reduce competition among Defendants for salmon, thereby facilitating supra-competitive spot pricing reported by NASDAQ.

30. In the fall of 2021, to review and analyze the millions of pages of documents that were produced in foreign languages (primarily Norwegian), Class Counsel assembled a team of foreign-language document reviewers. Class Counsel had regular meetings with this review team to ensure they were understanding and making the best use of these documents in the litigation.

31. Plaintiffs and their expert worked extensively to clean and process Defendants’ transaction data to analyze the class-wide impact and damages resulting from Defendants’ alleged actions, and to conduct other significant analyses of Defendants’ transaction data and related NASDAQ materials.

32. Even before they had received the vast majority of Defendants’ documents, Class Counsel sent Defendants proposed 30(b)(6) deposition topics on October 8, 2021. On November 3, Defendants agreed to a set of topics with Plaintiffs, but Defendants then sought to coordinate 30(b)(6) depositions with the parallel indirect purchaser action *Wood Mountain Fish v. Mowi ASA*.

33. As a result, between November 2021 and January 2022, Class Counsel worked with Defendants and counsel in the indirect purchaser action, *Wood Mountain Fish v. Mowi ASA*, 19-cv-22128, to negotiate deposition topics and logistical matters with respect to depositions of Defendants’ corporate representatives pursuant to Federal Rule of Civil Procedure 30(b)(6).

34. These depositions were complicated further by Norway's restrictions upon the taking of depositions. Depositions conducted in Norway may only be conducted with the approval of Norway's Central Authority. Even for voluntary depositions of willing deponents, the Central Authority's approval must be secured before the deposition may take place. As a result of the global pandemic, the process for securing approval for voluntary depositions had become substantially slower, increasing the duration from four to six weeks to five months. Ultimately, following the rise of the omicron variant, the *only* means for conducting voluntary depositions in Norway was foreclosed, because the United States Embassy ceased to provide assistance in arranging for deposition services indefinitely.

35. Between January 25, 2022 and February 18, 2022, Plaintiffs conducted ten depositions pursuant to Federal Rule of Civil Procedure 30(b)(6). As the following chart reflects, these depositions were conducted in a compressed time frame with several attorneys conducting more than one deposition.

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| 1. Cermaq | January 25, 2022 | Samantha Stein, Hausfeld LLP |
| 2. Leroy | February 1, 2022 | John Gravante III, Podhurst Orseck P.A. |
| 3. Mowi | February 3, 2022 | Samantha Stein, Hausfeld LLP |
| 4. Salmar | February 8, 2022 | Randall Weill, Preti, Flaherty, Beliveau & Pachios LLP |
| 5. Cermaq | February 9, 2022 | Timothy Kearns, Hausfeld LLP |
| 6. Grieg | February 10, 2022 | Scott Ferrier, Wollmuth Maher & Deutsch |
| 7. Salmar | February 11, 2022 | Randall Weill, Preti, Flaherty, Beliveau & Pachios LLP |
| 8. Cermaq | February 15, 2022 (originally January 26, 2022) | Timothy Kearns, Hausfeld LLP |
| 9. Grieg | February 17, 2022 | Ryan Keenan, Wollmuth Maher & Deutsch LLP |
| 10. Sjor | February 18, 2022 | Brian Hogan, Freed Kanner London & Millen LLC |

36. As a result of the COVID-19 pandemic, Plaintiffs' counsel conducted all depositions remotely, resulting in start times beginning as early as 3 a.m. local time. One of the depositions was ultimately adjourned as a result of COVID-19, so that Plaintiffs were required to conduct nine depositions in a span of 14 business days.

37. These depositions were also conducted in the shadow of Plaintiffs' then-pending February 25, 2022 deadline to submit their expert report in support of class certification.

38. On February 7, 2022, Plaintiffs filed a motion to extend the deadline for Plaintiffs to serve their report in support of class certification, highlighting their diligence in seeking to meet the deadline and identifying numerous difficulties presented by the operative schedule. ECF No. 485. Defendants filed a brief opposing that motion on February 10, 2022. ECF No. 491. Plaintiffs filed a reply brief in support of their motion to extend the next day. ECF No. 492.

39. On February 16, 2022, the Court granted Plaintiffs' motion to extend time, permitting Plaintiffs until May 16, 2022 to serve their expert report in support of class certification. ECF No. 498.

40. On March 8-9, 2022, pursuant to the Court's order, ECF No. 381, the Parties engaged in a mediation conducted by retired Chief Magistrate Judge Edward Infante (N.D. Cal.). Following two days of extensive negotiations between experienced counsel, the Parties arrived at the rough terms of a potential global settlement resolving all claims in the litigation. Over the following weeks, the Parties negotiated and ultimately memorialized their agreement in the Settlement Agreement and signed the agreement, ECF No. 524-3, on May 25, 2022.

41. On May 25, 2022, Plaintiffs moved for preliminary approval of the Settlement and related Notice Plan, which the Court granted on May 26, 2022. ECF No. 525. The Settlement Notice was then distributed, pursuant to the Court's Order, dated May 27, 2022. ECF No. 527.

42. Prior to the mediation, there had been no settlement communications. Instead, the Parties were engaged in extensive discovery and aggressive litigation led by their experienced and knowledgeable counsel. Class Counsel's diligent efforts ensured they were prepared to move the case forward and, ultimately, maximize any potential recovery.

43. Because of the extensive discovery already conducted, the Parties were thoroughly informed about the facts of the case and the risks both sides would face absent settlement.

44. Class Counsel believe that the settlement, providing \$85 million in cash to members of the proposed Settlement Class, is a significant and excellent result, particularly when

considering the cost savings, increased certainty, and accelerated timing of payments to the Settlement Class, which is comprised of approximately 800 members.

45. Plaintiffs were, and remain, optimistic about their ability to prevail upon the claims asserted, but they are also realistic that antitrust class actions are notoriously lengthy, costly, and difficult to prosecute, amplifying the litigation risks to the class. To date, Class Counsel have committed more than 13,000 billable hours to the matter, even without considering the thousands of hours contributed by members of the Plaintiffs' Executive Committee and Liaison Counsel, which pushes the total time commitment among counsel to more than 20,000 hours.

46. Class Counsel have represented the named plaintiffs on a wholly-contingent basis and have, along with other Plaintiffs' counsel, advanced substantial expenses on behalf of named Plaintiffs and the Class, incurring a total of \$1,972,768.69 in litigation expenses. These expenses, which were reasonably and necessarily incurred during the litigation, fall into the following categories, as identified below:

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|--|-----------------------------|
| Expert Fees | \$1,249,305.55 ² |
| Foreign Language Document Reviewers | \$280,415.02 |
| Document Storage/E-Discovery | \$189,544.54 |
| Case Investigation Costs ³ | \$56,114.71 |
| Travel Costs ⁴ | \$51,451.28 |
| Court reporting, stenography, deposition translation | \$44,421.52 |
| Mediation fees | \$26,516.17 |

² While the total invoiced for Alix Partners' work is \$1,884,073.00, the indirect purchaser plaintiffs in a parallel case and the Direct Purchaser Plaintiffs here agreed to share the costs of the data cleaning. Accordingly, the indirect purchasers agreed to pay \$663,790.00 for their portion of the data cleaning. The Direct Purchaser Plaintiffs reserve all rights to seek reimbursement of costs for the full amount of \$1,884,073.00 in the event that it is not possible to recover from the indirect purchaser plaintiffs their portion of these costs.

³ These costs include access to relevant news sources and costs of Norwegian attorneys.

⁴ These costs include air travel, ground transportation, hotels, and meals.

| | |
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| Service of Process | \$24,085.58 |
| Online legal research (Westlaw/Lexis) | \$18,839.47 |
| Court fees/costs ⁵ | \$8,528.24 |
| Document translations | \$5,472.62 |
| Telephone/telecopier ⁶ | \$2,460.32 |
| Mailing and shipping (USPS, Fed Ex, UPS, etc.) | \$862.76 |
| Other miscellaneous costs | \$14,750.91 |

47. As such, even setting aside the attorney time devoted to the action, Class Counsel assumed a significant risk of nonpayment or underpayment in pursuing this litigation.

48. Class Counsel has not received any compensation for their time or effort in the case to date and, absent Court approval of attorneys' fees and expenses, Class Counsel would not receive compensation for their efforts.

49. The hours spent and the millions of dollars dedicated to this litigation inherently limited Class Counsel's ability to be employed on other matters. Class Counsel have rejected multiple opportunities to participate in other cases because of the commitment this litigation required.

50. Litigating and settling these claims required expansive teams of attorneys and demanded skillful, diligent representation by Class Counsel. Many of the Defendants are entities with foreign headquarters and principal places of business, and the alleged conduct occurred years ago, often involving personnel located outside the United States and whom Defendants no longer employ. Relevant evidence was held by non-defendants and numerous would-be parties were beyond the Court's jurisdiction.

⁵ These costs include PACER usage and transcript fees

⁶ These costs include both in-house copying/printing and outside copying/printing.

51. Absent the Settlement, Plaintiffs would have faced continued litigation risks because Defendants, represented by skilled legal counsel from several of the world's most formidable and prestigious law firms, would have fiercely contested Plaintiffs' claims at every stage, including class certification, summary judgment, and trial, as well as possible appeals at each of these stages.

52. On a compressed, aggressive case schedule, Class Counsel were required to deploy their significant experience and knowledge of class action practice and antitrust law to bring this litigation to the brink of class certification and achieve a substantial recovery for Plaintiffs, circumventing these litigation perils.

We declare under penalty of perjury under the laws of the United States that the foregoing statements are true and correct.

Dated: June 9, 2022

/s/ Peter Prieto
Peter Prieto

Dated: June 9, 2022

/s/ Michael P. Lehmann
Michael P. Lehmann