

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

In re DENTAL SUPPLIES ANTITRUST LITIGATION	No. 1:16-CV-00696-BMC-GRB ALL CASES
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**DECLARATION OF ERIC L. CRAMER, ESQ. ON BEHALF OF CLASS COUNSEL IN
SUPPORT OF PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS
SETTLEMENT AND PLAINTIFFS’ MOTION FOR AN AWARD OF ATTORNEYS’
FEES, REIMBURSEMENT OF EXPENSES, AND PAYMENT OF SERVICE AWARDS
TO THE CLASS REPRESENTATIVES**

I, Eric L. Cramer, declare as follows:

1. I am Chairman of the law firm of Berger Montague PC. The Court has appointed my firm as one of four firms designated as Class Counsel for the preliminarily certified Settlement Class (the “Class”). *See* Order Preliminarily Approving Settlement, Certifying the Settlement Class for Purposes of Settlement, Appointing Class Counsel, and Approving Issuance of Notice to the Class, ECF No. 317 (the “Preliminary Approval Order”), ¶ 9 (appointing Berger Montague PC, Cohen Milstein Sellers & Toll PLLC, Hausfeld LLP, and Susman Godfrey LLP (collectively, “Co-Lead Counsel” as Class Counsel)).¹

¹ In addition to Co-Lead Counsel, Radice Law Firm, P.C. has served as Interim Liaison Counsel. Additional firms, acting under the direction of Co-Lead Counsel, have also served as counsel for the Class, including: Ahdoot & Wolfson, PC; Barrack, Rodos & Bacine; Burns Charest LLC; Criden & Love, P.A.; DiNovo Price LLP; Edelson & Associates, LLC; Gibbs Law Group LLP; Glancy Prongay & Murray LLP; Goldman Scarlato & Penny, P.C.; Grant & Eisenhofer P.A.; Gustafson Gluek PLLC; Heins Mills & Olson, P.L.C.; Kaplan Fox & Kilsheimer LLP; Keller Rohrback L.L.P.; Klafter Olsen & Lesser LLP; David McLafferty & Associates, P.C.; Lockridge Grindal Nauen P.L.L.P.; NastLaw LLC; Nussbaum Law Group, P.C.; Peiffer Wolf Carr & Kane, APLC; Reinhardt Wendorf & Blanchfield; Roberts Law Firm; Rupp Baase Pfalzgraf Cunningham, LLC; Saltz, Mongeluzzi, Barrett & Bendesky, P.C.; Joseph Saveri Law Firm, Inc. ; Spector Roseman & Kodroff, PC; Stephan Zouras, LLP; and Weinstein Kitchenoff & Asher LLC. I refer to these firms along with Co-Lead Counsel and Liaison Counsel as “Class Counsel.”

2. I submit this declaration on behalf of Co-Lead Counsel and other counsel for the Class² in support of Plaintiffs' Motion for Final Approval of the Class Settlement and Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives. I make this declaration based on personal knowledge and also based on the declarations of Class Counsel attached as Exhibits 1 to 33 hereto.

3. I have personally participated in all material aspects of this litigation from its pre-complaint investigation through settlement. As one of the Co-Lead Counsel, I have been responsible for drafting the complaints, overseeing the filing of all briefs and other documents in this case, working with Plaintiffs' expert economists, the litigation strategy of this complex antitrust class action, and the negotiation of the Settlement with Defendants Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Company (together, "Defendants").

SUMMARY OF THE CASE AND THE SETTLEMENT

A. Investigation and Complaints

4. In drafting the complaints at the outset of this litigation, Class Counsel extensively investigated the alleged Conspiracy (the "Conspiracy") and its effects, including, *inter alia*, reviewing materials from related litigation, researching the applicable law with respect

² The Court in the Preliminary Approval Order granted preliminary certification for purposes of settlement of the Settlement Class defined as:

All persons or entities that purchased Dental Products directly from Schein, Patterson, Benco, Burkhart, or any combination thereof, during the period beginning August 31, 2008 through and including March 31, 2016 (the "Class Period"). Excluded from the Class are Schein, Patterson, Benco, and Burkhart (including their subsidiaries, affiliate entities, and employees), and all federal or state government entities or agencies.

See id. ¶ 4. Class Counsel will seek final certification of the Settlement Class in their motion for final approval of the Settlement.

to the claims asserted in the Action and the potential defenses, and consulting with industry experts.

5. My firm filed the first of more than 30 class complaints in January 2016.

6. On February 12, 2016, the Court consolidated all class cases, and designated *SourceOne Dental, Inc. v. Patterson Companies, Inc., et al.*, No. 15-cv-5440, as a related case. See ECF No. 2. In the same order, the Court appointed Berger Montague PC, Cohen Milstein Sellers & Toll PLLC, Hausfeld LLP, and Susman Godfrey LLP as Interim Co-Lead Class Counsel for the proposed Class. *Id.*

7. Plaintiffs filed their first Consolidated Class Action Complaint (“CCAC”) on February 26, 2016, alleging that since at least August 31, 2008, Defendants had engaged in a long-running Conspiracy in the market for the distribution of dental supplies and equipment which encompassed an alleged overarching agreement to suppress price competition, by coordinating, among other ways: (a) directly, through interfirm communications, and indirectly, through dental manufacturers and a third-party data collection company, to impose artificially inflated gross margin levels and monitor and enforce those levels; (b) directly and indirectly to prevent and restrain competition by boycotting, refusing to deal with, and jointly pressuring manufacturers not to deal with entities that threatened margin erosion such as group purchasing organizations, Amazon.com, and low-cost distributors; and (c) directly to restrict the movement of customers from one Defendant to another by limiting the hiring of each other’s sales representatives and restricting new hires from soliciting prior clients.

8. On October 22, 2016, after fact discovery had commenced and the Court had denied Defendants’ motion to dismiss the CCAC, Plaintiffs filed the Second Consolidated Class

Action Complaint (“SCCAC”), naming Defendants’ alleged co-conspirator Burkhart Dental Supply Co. (“Burkhart”) as a defendant.

B. Motions to Dismiss

9. Two months after Plaintiffs filed the CCAC, Defendants filed a joint motion to dismiss on May 4, 2016. ECF No. 62. After extensive briefing, on September 28, 2016, the Court denied Defendants’ motion in its entirety. *In re Dental Supplies Antitrust Litig.*, 16-CV-696-BMC-GRB, 2016 WL 5415681, at *1 (E.D.N.Y. Sept. 28, 2016).

10. After Plaintiffs filed the SCCAC adding Burkhart as a defendant, Burkhart filed a motion to be dismissed from the action on January 13, 2017, ECF No. 134, which was followed by another round of briefing on Burkhart’s motion. In an order dated September 20, 2017, the Court determined that it lacked personal jurisdiction over Burkhart, and dismissed Burkhart from the action pursuant to Fed. R. Civ. P. 12(b)(2). *In re Dental Supplies Antitrust Litig.*, No. 16-CV-696-BMC-GRB, 2017 WL 4217115, at *1 (E.D.N.Y. Sept. 20, 2017).

C. Discovery

11. The discovery process in this case included the production of more than 600,000 documents by Defendants, and the productions of hundreds of thousands of additional documents by third parties and the Plaintiffs themselves. Plaintiffs filed several motions to compel the production of documents, both from Defendants and from third parties. Defendants deposed all seven of the named Plaintiffs in the case, and Plaintiffs conducted nearly 100 depositions of Defendant and third-party witnesses.

12. Discovery issues related to Defendants’ productions of transactional data were vexing. Although Plaintiffs served their document and data requests on May 5, 2016, Defendants did not produce what Plaintiffs’ experts deemed usable data until January 2017. While the usable

data productions began in January 2017, Defendants did not complete their data productions until July 21, 2017, fewer than two months prior to the deadline for Plaintiffs to submit their combined class and merits expert reports. Defendants' final combined data productions included more than 900 million transactional records and more than 1 terabyte of data. Plaintiffs' expert econometrician, Dr. McClave, opined that Defendants' initial data productions were rife with errors and omissions, and Plaintiffs continued to receive supplemental productions as late as August 2017, just six weeks before Plaintiffs' expert reports were due. *See* Supplemental Declaration of James T. McClave in Support of Plaintiffs' Motion for Extension of Time to Complete Discovery, ECF No. 225, ¶ 2. This created challenges for Plaintiffs' experts in working with the data and in timely devising classwide impact and damages analyses.

13. Fact discovery spanned eighteen months, beginning on February 9, 2016, just before Plaintiffs filed the CCAC, and continuing until August 10, 2017. *See* ECF No. 209.

14. Expert discovery was similarly extensive and contentious. Plaintiffs served four combined class and merits expert reports from their two expert witnesses, Dr. James McClave (an econometrician) and Prof. John Solow (an economist). Defendants served expert reports from four separate experts. Plaintiffs deposed all four of Defendants' experts and defended depositions of Plaintiffs' experts.

15. From the outset of the litigation, Co-Lead Counsel coordinated with counsel for the plaintiff in the related action *SourceOne Dental, Inc. v. Patterson Companies, Inc., et al.*, No. 15-cv-5440. Co-Lead Counsel also coordinated with counsel for Archer and White Sales, Inc. ("Archer & White") (a low-cost distributor alleging that Defendants' conduct impaired its ability to compete, *see Archer and White Sales, Inc. v. Henry Schein, Inc., et al.*, No. 12-cv-00572-JRG (E.D. Tex.)); and the Federal Trade Commission ("FTC") in its investigation and prosecution of

Defendants' allegedly anticompetitive conduct. Co-Lead Counsel obtained all discovery materials that were produced in *SourceOne* and coordinated with SourceOne's counsel throughout the discovery process to avoid duplicative document requests and depositions. Co-Lead Counsel similarly coordinated on discovery issues with counsel for Archer & White. Plaintiffs obtained numerous discovery materials from Archer & White, including what Class Counsel understood were recorded phone conversations in which certain Defendant employees and others appeared to discuss prices and margins. Co-Lead Counsel also consulted with the FTC regarding discovery in the FTC's related investigation into Defendants' conduct, including regarding issues relating to Defendants' document and data productions. The FTC brought suit against Defendants on February 12, 2018 based in substantial part on the discovery taken by Plaintiffs in this Action. The FTC action, in which trial before an administrative law judge took place from October 16 to December 19, 2018, alleges some of the same conduct alleged by Plaintiffs here. *See In the Matter of Benco/Schein/Patterson*, FTC Docket No. 9379 (filed February 12, 2018), available at <https://www.ftc.gov/enforcement/cases-proceedings/151-0190/bencoscheinpatterson-matter>. The parties in the FTC action are currently in the process of post-hearing briefing.

D. Class Certification and *Daubert* Motions

16. Plaintiffs filed their Motion for Class Certification on February 22, 2018. ECF No. 263. Defendants filed memoranda in opposition to the Motion for Class Certification as well as *Daubert* motions to exclude the opinions of both of Plaintiffs' expert witnesses, Dr. McClave and Dr. Solow. ECF Nos. 272, 274. Defendants' motions argued, among other things, that: (1) the evidence does not support Plaintiffs' allegations that Defendants had conspired to restrain trade, and that Plaintiffs' evidence could not show a single overarching conspiracy; (2) Plaintiffs

cannot demonstrate common impact and classwide damages because prices and margins for dental supplies were supposedly highly variable; (3) individualized inquiries are purportedly required to determine whether each Class member was overcharged; and (4) Dr. McClave's models used invalid benchmarks and had certain other statistical flaws, rendering them unreliable for purposes of demonstrating common impact and classwide damages. *Id.*

17. Both Plaintiffs' Motion for Class Certification and Defendants' *Daubert* motions were fully briefed and pending before the Court at the time the Settlement was reached.

E. Settlement Discussions

18. The Parties discussed the possibility of settlement intermittently throughout the course of this litigation.

19. On February 23, 2018, the Parties attended a mediation before the Honorable Diane Welsh, a highly respected mediator and former United States Magistrate Judge for the Eastern District of Pennsylvania. The Parties prepared extensive mediation statements in advance of the mediation. Both sides vigorously negotiated their respective positions during the mediation. Although no agreement was reached at the mediation, the Parties continued their settlement discussions in the following months.

20. On August 16, 2018, just before the scheduled hearing on Defendants' motion to exclude the opinions of Dr. McClave, the Parties reached an agreement in concept for a proposed classwide settlement. The Parties informed the Court of that agreement in the Court's chambers on that day.

21. After the Parties had preliminarily agreed on the dollar amount of the Settlement, they continued to negotiate the specifics of the Settlement terms for an additional six weeks.

22. At all times when the Settlement was being negotiated, Class Counsel had extensive knowledge of the case record and the dental products industry, resulting from nearly three years of litigating the case. The settlement negotiations were accompanied by frank discussions of the relative strengths and weaknesses of the Parties' claims and defenses.

23. Plaintiffs' and Class Counsel's negotiations were informed by the assistance of their expert econometrician, Dr. McClave, and his consulting firm, Info Tech, Inc.

24. The Parties executed the Settlement Agreement on September 28, 2018. The Parties informed the Court of the Settlement in writing on the same day.

25. Settlement Class Representatives Arnell Prato, D.D.S., P.L.L.C., d/b/a/ Down to Earth Dental ("Down to Earth Dental"); Evolution Dental Sciences, LLC ("Evolution"); Howard M. May, DDS, P.C. ("Dr. May"); Casey Nelson, D.D.S. ("Dr. Nelson"); Jim Peck, D.D.S. ("Dr. Peck"); Bernard W. Kurek, D.M.D. and Larchmont Dental Associates, P.C. (together, "Dr. Kurek"); and Keith Schwartz, D.M.D., P.A. ("Dr. Schwartz") have all indicated to Class Counsel that they support the Settlement and that they believe it is an excellent result for the Class. The Settlement Class Representatives have similarly indicated to Class Counsel that they support Class Counsel's request for request for an award of attorneys' fees in the amount of one-third of the \$80 million cash value of the Settlement (the "Settlement Fund")—\$26.67 million (plus accrued interest); and for reimbursement of reasonably incurred litigation expenses in the amount of \$4,395,366.43.

26. On November 12, 2018, Plaintiffs filed the Motion for Preliminary Approval of Class Settlement, for Certification of Class for Settlement Purposes, for Appointment of Class Counsel, and to Issue Appropriate Notice to the Class, ECF No. 308 (the "Preliminary Approval Motion"). The Preliminary Approval Motion included a proposed Plan of Allocation and Notice

Plan, both of which were prepared by Class Counsel with the aid of an experienced settlement administrator, Heffler Claims Group (the “Settlement Administrator”). The Court granted the Preliminary Approval Motion on January 9, 2019. *See* ECF No. 317 (the “Preliminary Approval Order”).

27. Based on Co-Lead Counsel’s extensive experience, this Settlement is an outstanding result for the Class. The Settlement provides a significant, immediate, and certain cash payment of \$80 million, plus accrued interest, less attorneys’ fees, expenses, administration costs, and service awards (“Net Settlement Fund”).

28. The Settlement will provide immediate, meaningful, and certain benefits to the Class members. Specifically, each of the approximately 200,000 Class members,³ including private dental practices, dental laboratories, and corporate dentistry purchasers, who do not opt out will receive its *pro rata* share of the \$80 million Settlement Fund after reduction for attorneys’ fees, reimbursed expenses, service awards, and administrative costs (the Net Settlement Fund). Defendants have no right of reversion, and thus Class members will receive the full benefit of the Net Settlement Fund.

F. Dissemination of Notice to the Settlement Class Members

29. The Preliminary Approval Order required that notice be provided to members of the Settlement Class in the form and manner set forth in Plaintiffs’ Memorandum in Support of Preliminary Approval and the accompanying Declaration of Jeanne C. Finegan, Apr, Concerning Ability to Provide Adequate Notice to Settlement Class Members Through Direct Notice

³ *See* Declaration of James T. McClave, Ph.D. Concerning Proposed Dental Litigation Settlement Allocation Plan, ECF No. 310-5, ¶ 2 (estimating size of the Settlement Class).

Methods and Proposed Multi-Media Notice Program (the “Notice Plan”). *See* Preliminary Approval Order ¶ 16.

30. Pursuant to the Preliminary Approval Order and the subsequent Case Management Order No. 4, ECF No. 318 (“CMO No. 4”), the Settlement Administrator commenced the mailing of Direct Notice to the Class on February 22, 2019. That same day, the Settlement Administrator also commenced Publication Notice through various media outlets and posted the Long-Form Notice along with other pertinent information and documents on a website devoted to this case (www.dentalsuppliesantitrustclassaction.com).⁴ The Class Notice informs all Class members of, *inter alia*: (1) the nature of the action; (2) the definition of the class that is being certified; (3) the class claims, issues, or defenses; (4) the basic terms of the Agreement; (5) that a class member may enter an appearance through an attorney if the member so desires; (6) that the Court will exclude from the class any member who requests exclusion; (7) the time and manner for objecting to the Settlement and/or requesting exclusion; (8) the binding effect of a class judgment on members and the terms of the releases; (9) the claims filing process and a description of the Plan of Allocation; (10) that Class Counsel would be seeking a fee award of up to one-third of the total Settlement amount, reimbursement for costs reasonably expended in prosecuting the case, and service awards for each of the Class Representatives; and (11) the date on which Plaintiffs will file a motion requesting an award of attorneys’ fees, reimbursement of costs, and service awards to the Class Representatives.

⁴ Publication Notice included the inclusion of notice in trade publications, a press release across PR Newswire’s US1 Newslines and Territories, and a social media advertising campaign through Facebook and Instagram. *See* Declaration of Jeanne C. Finegan, APR Concerning Ability to Provide Adequate Notice to Settlement Class Members Through Direct Notice Methods and Proposed Multi-Media Notice Program, ECF No. 310-4, ¶ 13.

31. The Settlement Administrator completed the mailing of Direct Notice to the Class members on February 22, 2019.⁵

32. Although Class members have until April 18, 2019 to object to the Settlement or opt out of the Settlement Class, *see* CMO No. 4, there have not been any objections or opt-outs as of the date of this Declaration.

CLASS COUNSEL’S LODESTAR AND EXPENSES

G. Class Counsel’s Diligent Efforts and Substantial Out-of-Pocket Expenses

33. As set forth above, from the inception of this case, Class Counsel vigorously pursued this action, committing their services and resources and advancing substantial funds to prosecute this case. Class Counsel provided legal services to the Class and advanced necessary litigation expenses with no assurance of compensation or repayment. To date, Class Counsel have neither been paid for their efforts nor reimbursed for their out-of-pocket expenses. Instead, their compensation and expense reimbursement were entirely contingent upon obtaining a recovery on behalf of the Class.

34. Class Counsel diligently and skillfully prosecuted this litigation for five years in the face of intense opposition from Defendants and opposing counsel from some of the top defense firms in the country. As described in detail above, these efforts required briefing of

⁵ Under the Court-approved notice plan, the Long-Form Notice was to be posted on the settlement website but not mailed directly to Class members. *See* Preliminary Approval Order, ¶ 16; Preliminary Approval Motion, at 30-31. The Long-Form Notice that was initially posted to the Settlement website included an incorrect estimate of Class Counsel’s expenses. The initial Long-Form Notice incorrectly stated that Class Counsel would seek reimbursement of expenses “not to exceed \$3,500,000,” a figure that did not account for certain of Class Counsel’s expert costs. After detecting the error, on March 14, 2019, Co-Lead Counsel promptly instructed the Settlement Administrator to (1) correct the Long-Form Notice on the Settlement website, changing \$3,500,000 to \$5,000,000; and (2) post an explanation on the website, noting that the originally-posted Long-Form Notice included an incorrect expense figure. The Short-Form Notice that the Settlement Administrator directly mailed to the Class members did not include an estimate of Class Counsel’s expenses. The Settlement Administrator reports that no Class members had requested a mailed copy of the Long-Form Notice prior to the correction having been made.

complex legal and factual issues, exhaustive discovery efforts throughout the two years of discovery that involved numerous meetings with defense counsel and third parties, nearly 100 fact depositions as well as depositions of Defendants' four experts and Plaintiffs' two experts, briefing of several discovery disputes, and extensive statistical and economic work by Plaintiffs' experts. Indeed, the economic issues related to Plaintiffs' factual allegations and motion for class certification resulted in hundreds of pages of expert opinions and many days of expert depositions.

35. Specifically, Class Counsel's efforts on behalf of the Class included the following:

- Investigating the underlying factual record and developing the legal theories of the case;
- Drafting the initial complaints and the two subsequent consolidated class action complaints;
- Opposing and defeating Defendants' joint motion to dismiss;
- Coordinating with counsel in a variety of related actions, including counsel for the plaintiff in the related *SourceOne* action; counsel the plaintiff in the action *Archer and White Sales, Inc. v. Henry Schein, Inc., et al.*, No. 12-cv-00572-JRG (E.D. Tex.); and the FTC in its investigation of Defendants' allegedly anticompetitive conduct, which was followed by an administrative action filed by the FTC against Defendants;
- Issuing subpoenas to numerous third parties and engaging in meet and confer discussions concerning the scope of document productions from those third parties;
- Preparing and serving requests for admission, interrogatories, and document requests;
- Responding to Defendants' interrogatories and document requests, including contention interrogatories;
- Briefing and arguing a multitude of discovery issues, resulting in hundreds of pages of briefing on these issues;
- Searching, analyzing, summarizing, and organizing close to a million pages of documents produced by Defendants and third parties;

- Taking and defending nearly 100 depositions around the country of both party and nonparty witnesses covering both class certification and merits issues, including depositions of Defendants' four experts and Plaintiffs' two experts;
- Retaining two highly regarded economic experts, and working closely with those experts in analyzing the reports of Defendants' four experts and in preparing Plaintiffs' motion for class certification;
- Briefing and preparing arguments and expert testimony for a hearing on Plaintiffs' class certification motion and Defendants' *Daubert* motions to exclude the opinions of Plaintiffs' experts;
- Preparing extensive mediation briefing and attending a mediation before the Honorable Diane Welsh, a highly respected mediator and former United States Magistrate Judge for the Eastern District of Pennsylvania;
- Conducting arm's-length settlement negotiations following the mediation;
- Developing and drafting the Settlement Agreement;
- Developing the proposed Plan of Allocation of the Settlement Fund in consultation with Plaintiffs' econometric expert Dr. McClave;
- Developing and drafting the Short-Form Notice, Long-Form Notice, and Motion for Preliminary Approval of the Settlement; and,
- Communicating with the Class Representatives throughout the duration of the litigation regarding updates on the litigation, settlement negotiations, and the notice and settlement approval process.

36. Even now, the work on this litigation has not ended and will not end until the last settlement distribution payment is made to Class members, the taxes on the escrow accounts are paid, and a final report is submitted to the Court. Co-Lead Counsel will continue to expend many additional hours—which are not included in the lodestar cross-check calculations—in connection with the Settlement administration process, responding to Class member inquiries, working to secure final approval of the Settlement, preparing for the Fairness Hearing scheduled for May 22, 2019, and dealing with logistical matters involving Settlement administration.

37. Class Counsel are comprised of some of the preeminent plaintiffs' class action and antitrust litigation firms in the country, with decades of experience prosecuting and trying

complex antitrust actions. All four firms are widely recognized as among the country's top antitrust litigation firms, each having led multiple complex cases to successful conclusions, including some of the most successful antitrust cases of all time. Class Counsel applied their knowledge and experience to obtain a positive result for the Class. Class Counsel also faced formidable opposition from defense counsel from nationally recognized law firms, including counsel with decades of antitrust and class action experience who vigorously defended this litigation.

H. Class Counsel's Total Lodestar is \$18,358,220.70 for 35,049.3 Hours of Work

38. This litigation required a substantial investment of time by Class Counsel. Class Counsel necessarily and reasonably expended more than 35,000 hours over the more than three years of litigation preparing, litigating, and eventually negotiating the Settlement of this Action. And Class Counsel's commitment to this litigation is not over. Co-Lead Counsel will spend substantial additional time preparing for and participating in the final approval hearing and handling Settlement administration.

39. From the inception of this matter through February 28, 2019, Class Counsel expended 35,049.3 hours prosecuting this complex, contingent litigation over the past three years, resulting in a total lodestar of \$18,358,220.70 at historical rates.⁶ The sought fee of one-third of the Settlement amount (plus interest) reflects a multiplier of 1.45, and thus means that the sought fee of \$26.67 million plus accrued interest (*i.e.*, one-third of the \$80 million

⁶ "Historical Rates" means the rates at the time the relevant services were performed. By contrast, the current rate method involves using current attorney rates for all attorneys in the case at the time the fee petition is submitted, even for time spent at the outset of the case when those rates may have been lower. The historical rate method is a more conservative means of recording and billing time, and does not account for the fact that the case was done on a fully contingent basis, and that bills were not paid by clients on a contemporaneous basis.

Settlement Fund including accrued interest) would provide a modest premium reflecting the risks Class Counsel took with no guarantee of recoupment.

40. After their appointment as interim Co-Lead Counsel at the outset of the case, Co-Lead Counsel established a procedure for monthly reporting of time and expenses for all firms actively involved in this case. This allowed Co-Lead Counsel to monitor the reported work of the firms, allocate work among the firms, and to understand on an ongoing basis the time and costs being billed. These monthly submissions included the identities of time keepers, the amount of time spent on tasks delineated by category, and a cumulative running total of hours spent working on the case, the resulting lodestar, and expenses incurred.

41. After the Court granted preliminary approval of the Settlement on January 9, 2019, Co-Lead Counsel reviewed the time expense reports submitted by Class Counsel firms to reconfirm that the time and expense reports submitted by each firm were accurate, compensable, and adequately supported. Co-Lead Counsel requested that each firm provide contemporaneous time records (at historical rates) that identify (a) the name and title/role of each individual biller (*i.e.*, partner, associate, staff attorney, paralegal, etc.), and (b) a brief description of the work undertaken for the time reported and proof of payment of all submitted expenses. Each firm was also asked to review its prior submissions to ensure they were accurate.

42. Co-Lead Counsel carefully reviewed the materials submitted by the Class Counsel firms to ensure that: (1) any time for work not authorized by Co-Lead Counsel and non-litigation related time be removed; (2) all billings be reasonable, including in the hourly rate charged and commensurate with the biller's experience level, and the time reported be commensurate with the work assigned; (3) all firms complied with Co-Lead Counsel's instructions to cap the hourly rate

for attorneys conducting document review at \$375 per hour and prohibit contract attorneys from billing to the case; and (4) unreasonable or unapproved costs and expenses be removed.

43. Attached as Exhibits 1 to 33 are the sworn declarations of each Class Counsel firm specifying (by professional) the number of hours and total lodestar based on blended historical rates contemporaneously recorded in the prosecution of this case; the amounts (by category) each advanced for litigation expenses; and a summary of the work performed by each firm.

44. Based on these sworn declarations, the table below summarizes the aggregate time and lodestar of all Class Counsel based on the contemporaneous, daily time records regularly prepared and maintained by each firm.

Breakdown of Time and Lodestar by Firm		
Firm	Hours	Lodestar
Cohen Milstein Sellers & Toll PLLC	7832.5	\$4,267,595.50
Berger Montague PC	4684.3	\$2,393,318.65
Susman Godfrey LLP	3618.8	\$2,348,741.00
Hausfeld LLP	3417.6	\$1,688,069.00
Radice Law Firm	2403.7	\$1,368,484.00
Keller Rohrback L.L.P.	988.5	\$624,722.20
Weinstein Kitchenoff & Asher LLC	1048.8	\$611,912.50
Heins Mills & Olson, P.L.C.	1340.7	\$581,795.00
Kaplan Fox & Kilsheimer LLP	843.6	\$490,741.66
Nussbaum Law Group, P.C.	718.8	\$432,350.50
Lockridge Grindal Nauen P.L.L.P.	899.6	\$407,654.00
DiNovo Price LLP	719.2	\$369,216.50
Roberts Law Firm	873.9	\$367,230.00
Edelson & Associates, LLC	763.7	\$297,437.50
Grant & Eisenhofer P.A.	791.6	\$271,848.00
Joseph Saveri Law Firm, Inc.	675.1	\$254,232.50
David McLafferty & Associates, P.C.	498.9	\$208,000.00
Burns Charest LLC	273.4	\$164,480.00

Gibbs Law Group LLP	362.6	\$162,978.00
Gustafson Gluck PLLC	326.3	\$149,203.50
Barrack, Rodos & Bacine	359.6	\$140,608.00
Ahdoot & Wolfson, PC	345.2	\$138,615.50
Reinhardt Wendorf & Blanchfield	250.5	\$119,960.00
Criden & Love, P.A.	117.4	\$82,126.19
Spector Roseman & Kodroff, PC	177.5	\$77,705.00
Rupp Baase Pfalzgraf Cunningham, LLC	166.6	\$67,166.50
Goldman Scarlato & Penny, P.C.	119.7	\$58,823.00
Saltz, Mongeluzzi, Barrett & Bendesky, P.C.	119.2	\$53,034.00
Stephan Zouras, LLP	68.8	\$40,200.00
Klafter Olsen & Lesser LLP	93.2	\$39,785.00
Peiffer Wolf Carr & Kane, APLC	78.8	\$32,367.50
Glancy Prongay & Murray LLP	48.8	\$31,815.50
NastLaw LLC	22.4	\$16,004.50
Totals	35,049.3	\$18,358,220.70

I. Class Counsel's Out-of-Pocket and Unpaid Expenses Total \$4,395,366.43

1. Summary of Total Expenses

45. Class Counsel has reasonably incurred, and seeks reimbursement of, expenses in the amount of \$4,395,366.43 (from inception through February 28, 2019). All of the time and funds advanced by Class Counsel were fully contingent on a successful outcome. During the case, Class Counsel, at the direction of Co-Lead Counsel, contributed to a Litigation Fund managed by my firm for common expenses. The Litigation Fund has been fully depleted paying expenses necessary to prosecute this case. Class Counsel also individually advanced and documented additional expenses over the course of the litigation. Finally, the Litigation Fund has unpaid bills owed for the work of Plaintiffs' expert econometrician Dr. McClave (and his consulting firm, Info Tech, Inc.). The table below provides a summary of the total expenses:

Summary of Total Expenses	
<i>Paid Expenses</i>	
Litigation Fund Paid Out	\$2,455,000.00
Additional Expenses Advanced by Class Counsel for Individual Firm Expenses	\$311,823.10
<i>Unpaid Expenses</i>	
Outstanding Bills for Experts Owed from Litigation Fund	\$1,628,543.33
TOTAL EXPENSES	\$4,395,366.43

2. Description of Total Expenses

46. A substantial portion of the expenses—82% of the \$4,395,366.43 total (*see infra* ¶ 53)—were reasonable and necessary payments to economic experts, who were essential to the prosecution of this economic/econometric-heavy case.

47. In particular, Plaintiffs retained Dr. McClave, whose econometric work has been relied upon by multiple courts in certifying classes. *See* Expert Report of Dr. James T. McClave, September 19, 2017, ECF No. 265-1, at Appendix B (Curriculum Vitae of Dr. James T. McClave). Dr. McClave is a Professor of Statistics at the University of Florida and the CEO of InfoTech, Inc., a company specializing in statistical consulting; holds a Ph.D. in Statistics; and has focused his research and consulting on econometrics. *Id.* Numerous courts have found Dr. McClave qualified to testify as an expert econometrician in antitrust cases and his opinions have repeatedly been the basis for class certification. *See, e.g., In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175-JG, 2014 WL 7882100, at *9, *54-64 (E.D.N.Y. Oct. 15, 2014) (noting “Dr. McClave is an expert statistician” and relying on Dr. McClave’s analysis to grant class certification); *In re Chocolate Confectionary Antitrust Litig.*, 289 F.R.D. 200, 211, 222-25 (M.D. Pa. 2012) (concluding “Dr. McClave is properly qualified as an expert in both econometrics and statistics” and holding, *inter alia*, “[b]ased on Dr. McClave’s opinions, the court finds that the determination of damages is susceptible to class-wide proof”); *In re Urethane*

Antitrust Litig., 768 F.3d 1245, 1253-59 (10th Cir. 2014) (affirming district court order granting class certification, denying motion to decertify, and denying motion to exclude Dr. McClave's testimony); *In re Polypropylene Carpet Antitrust Litig.*, 93 F. Supp. 2d 1348, 1359 (N.D. Ga. 2000) ("Prior to this case, Dr. McClave on numerous occasions has been offered as an expert in the area of econometrics or statistics in antitrust cases."); *id.* ("Plaintiffs present Dr. McClave as an expert in the area of econometrics to provide testimony concerning an estimation of damages in this case. The Court finds that Dr. McClave is qualified as an expert to supply such testimony."). Dr. McClave worked extensively on issues related to class certification and damages, submitted two expert reports, sat for a deposition, and devoted substantial time to preparing for the *Daubert* hearing that was scheduled to take place on the same day that the parties reached an agreement in principle to settle the case.

48. Plaintiffs' other expert, Dr. John Solow, is a highly qualified economist with extensive knowledge of antitrust economics and industrial organization. Dr. Solow has a bachelor's degree in economics from Yale University, and master's and doctorate degrees in economics from Stanford University. *See* Expert Report of Dr. John L. Solow, September 19, 2017, ECF No. 265-1, at Ex. A (Curriculum Vitae of Dr. John L. Solow). He is a professor of economics at the University of Iowa. He has taught courses on antitrust law and economics, co-authored a treatise on antitrust law, and published numerous articles in the economics field. He has also served as an expert witness in other complex antitrust cases, where his opinions regarding market definition or structure have been accepted. *See, e.g., In re Steel Antitrust Litig.*, No. 08-cv-5214, 2015 WL 5304629, at *6-9 (N.D. Ill. Sept. 9, 2015); *In re Urethane Antitrust Litig.*, No. 04-md-1616-JWL, 2012 WL 6681783, at *2-4 (D. Kan. Dec. 21, 2012). Dr. Solow

relied on that expertise in this Action to apply a well-known methodology to define the relevant geographic and product markets in this case, among other opinions.

49. Another significant expense was hosting and managing the hundreds of thousands of documents produced by Defendants and third parties in this case on a secure database. Co-Lead Counsel, after assuring that the rates were below levels charged by comparable competitors, utilized Everlaw, a secure cloud-based e-discovery platform, for hosting, organization, and review of the Defendant and third-party documents. All of the expenses related to document hosting and management were billed on a regular basis to the Litigation Fund. As detailed below, the Litigation Fund paid out \$301,497.11 of these expenses during the course of the litigation.

50. Other expenses included costs associated with travel to depositions, Court hearings, and meetings around the country, data hosting for certain third-party discovery productions, reimbursement of certain litigation costs for the Burkhart part of the case, and costs incurred in consulting with industry experts. These expenses, as well as others routinely charged to hourly-fee-paying clients, such as court reporting expenses, photo and data copying charges, and computerized legal research costs, were reasonable and appropriate.

51. Based on each Class Counsel's sworn declarations, the table below summarizes the expenses incurred by each firm (including, but not limited to, contributions to the Litigation Fund) based on expense vouchers, receipts, and other source materials and represent an accurate recording of the expenses incurred by Class Counsel, not including unpaid Litigation Fund costs:

Breakdown of Paid Expenses by Firm	
Firm	Amount
Susman Godfrey LLP	\$367,801.63
Cohen Milstein Sellers & Toll PLLC	\$365,020.98
Berger Montague PC	\$355,787.91
Hausfeld LLP	\$349,752.62
Radice Law Firm	\$147,983.59
Kaplan Fox & Kilsheimer LLP	\$110,726.99
Roberts Law Firm	\$105,067.44
Keller Rohrback L.L.P.	\$104,666.64
Nussbaum Law Group, P.C.	\$102,113.45
Lockridge Grindal Nauen P.L.L.P.	\$101,602.52
Weinstein Kitchenoff & Asher LLC	\$101,016.30
DiNovo Price LLP	\$70,810.52
Heins Mills & Olson, P.L.C.	\$44,290.25
Gustafson Gluek PLLC	\$41,351.14
Joseph Saveri Law Firm, Inc.	\$40,712.80
Reinhardt Wendorf & Blanchfield	\$40,576.71
David McLafferty & Associates, P.C.	\$40,317.19
Gibbs Law Group LLP	\$22,470.69
Barrack, Rodos & Bacine	\$20,790.58
Spector Roseman & Kodroff, PC	\$20,726.41
Grant & Eisenhofer P.A.	\$20,568.60
Edelson & Associates, LLC	\$20,562.50
Klafter Olsen & Lesser LLP	\$20,421.30
Saltz, Mongeluzzi, Barrett & Bendesky, P.C.	\$20,401.65
Glancy Prongay & Murray LLP	\$20,359.72
Goldman Scarlato & Penny, P.C.	\$20,277.35
Ahdoot & Wolfson, PC	\$20,233.45
Peiffer Wolf Carr & Kane, APLC	\$20,016.43
NastLaw LLC	\$20,002.66
Criden & Love, P.A.	\$15,420.90
Burns Charest LLC	\$14,072.81
Stephan Zouras, LLP	\$573.13
Rupp Baase Pfalzgraf Cunningham, LLC	\$326.24
TOTAL	\$2,766,823.10

52. As demonstrated by the table above summarizing expense by category, the largest expense of most firms is its contribution to the Litigation Fund. From the inception of the litigation, the books and records of the Litigation Fund were maintained by the accounting department of Berger Montague PC. The Litigation Fund has been completely depleted paying expenses necessary to prosecute this litigation. The total expenses incurred by the Litigation Fund by category are as follows:

Summary of Litigation Fund Expenses	
<i>Paid Expenses</i>	
Expert Costs	\$1,965,578.61
Database Hosting Services	\$301,497.11
Court Reporters/Transcripts	\$158,814.60
Witness/Service Costs	\$5,687.96
Commercial Copies	\$66.32
Professional Fees (expert, investigator, accountant, etc.)	\$2,300.00
Mediation Fee	\$6,055.40
Reimbursement of Burkhardt Litigation Costs	\$15,000.00
<i>Unpaid (Incurred) Expenses</i>	
Expert Costs	\$1,628,543.33
TOTAL	\$4,083,543.33

53. In sum, including both paid and unpaid expenses, a total of \$4,083,543.33 was incurred by the Litigation Fund. Of that amount, a total of \$3,594,121.94 (\$1,965,578.61 paid expenses plus \$1,628,543.33 unpaid incurred expenses)—88 percent of all costs incurred by the Litigation Fund, and 82 percent of all of Class Counsel’s incurred expenses—was for expert costs. Based on the records of the Litigation Fund, the entirety of that amount was paid to vendors by the Litigation Fund and nothing remains in the Litigation Fund.

54. The Litigation Fund currently has an outstanding liability of \$1,628,543.33, all of which is owed for expert costs incurred by Class Counsel in association with litigating the case.

55. As discussed above, each of the Class Representatives affirmatively supports the fee and expense request.

J. Administration Costs

56. The Preliminary Approval Order provided that “Plaintiffs may pay up to \$400,000 for notice and claims administration costs from the Settlement Fund” and that “[i]f the actual costs of disseminating notice and administering the Settlement exceed \$400,000, Plaintiffs shall file a motion requesting Court approval for the disbursement of additional funds for notice and administration costs.” *Id.* ¶ 18. To date, Plaintiffs have incurred \$133,960.26 in notice and claims administration costs and have paid those costs from the Settlement Fund pursuant to the Proposed Order. Should the actual notice and claims administration costs exceed \$400,000, Plaintiffs will file a motion requesting the disbursement of additional funds for those costs in advance of the first distribution of Settlement funds to the Class.

57. Because of the large volume of data involved, Class Counsel anticipate that administration of the Settlement will require the assistance of Plaintiffs’ expert consultants to address any issues that may arise related to the Class member data. Accordingly, separate and apart from Plaintiffs’ request for reimbursement of litigation expenses, Plaintiffs and Class Counsel also request that the Court authorize Plaintiffs to pay up to \$200,000 from the Settlement Fund for anticipated future expert work related to claims administration.

THE EFFORTS OF THE CLASS REPRESENTATIVES

58. The seven Settlement Class Representatives Down to Earth Dental, Evolution, Dr. May, Dr. Nelson, Dr. Peck, Dr. Kurek, and Dr. Schwartz are each direct purchasers of dental products that expended significant time and effort in prosecuting this action for the benefit of the Class.

59. Each Class Representative significantly contributed to the prosecution of this litigation by, among other things, producing documents, responding to dozens of discovery requests, and submitting to depositions. Each Class Representative also took the risk of suing its dental product suppliers. And each of the Class Representatives made these efforts even though each of their respective recoveries was likely going to be relatively small compared to those of some of the larger members of the Class. Without their participation, the Class would have recovered nothing. Accordingly, the requested service awards of \$50,000 for each of the seven Class Representatives are well deserved.

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

Executed on March 22, 2019, in Philadelphia, PA.



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