

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

IN RE TURKEY ANTITRUST LITIGATION

Civil Action No. 19-cv-08318

This Document Relates To:

Hon. Sunil R. Harjani
Hon. Keri L. Holleb Hotaling

*Direct Purchaser Plaintiffs Actions and Direct
Purchaser Actions*

**DECLARATION OF BRIAN D. CLARK IN SUPPORT OF DIRECT PURCHASER
PLAINTIFFS' MOTION FOR A COMMON BENEFIT SET-ASIDE ORDER**

I, Brian D. Clark, declare under oath, as follows:

1. I am a Partner in the law firm of Lockridge Grindal Nauen PLLP. This Court appointed my firm, together with the firm of Hagens Berman Sobol Shapiro LLP, as Co-Lead Counsel for Direct Purchaser Plaintiffs ("DPPs") in this litigation. (*See* ECF No. 1107).

2. I submit this declaration in support of Direct Purchaser Plaintiffs' Motion for a Common Benefit Set-Aside Order. I have personal knowledge of the facts in this declaration and could competently testify to them if called as a witness.

3. To date, DPP Co-Lead counsel have invested over 50,000 hours in litigating this case. Further, DPPs have expended over \$4.5 million on numerous categories of common benefit work, including (1) subpoenas to telephone providers, who require reimbursements for the costs of complying with such subpoenas, as well as a vendor to process and analyze the millions of calls within such records, (2) paying their e-discovery platform provider more than 1.7 million pages of documents produced by the parties in this matter, (3) expert costs of analyzing and identifying holes in the sales and cost data produced by Defendants and third parties in this matter, (4) expert

costs of cleaning the sales and cost data produced by defendants and third parties, (5) expert costs of preparing three expert reports to date providing analyses on the turkey market and regression analyses required for any antitrust plaintiff—class or direct action—in order to sustain an antitrust claim, and (6) court reporter vendor who provided in person and remote deposition services, including electronic exhibits during depositions.

4. DPP Counsel have served and negotiated 569 requests for production of documents on 11 Defendant families. The document productions from these requests resulted in production of more than 1.7 million documents. DPPs also served 26 subpoenas on non-parties, and negotiated responses to each of these. DPP Counsel also served 111 interrogatories on the Defendants to develop the factual record. DPP counsel prepared for and took more than 75 depositions of Defendant and non-party fact witnesses in this matter. Preparation for these depositions involved extensive teams of attorneys to review, catalogue, and prepare witness binders, and then a senior attorney to prepare and take each fact deposition.

5. On August 3, 2021, a related direct action complaint, Case No. 1:21-cv-04131, was filed on behalf of Winn-Dixie Stores, Inc. (“Winn-Dixie”), and Bi-Lo Holdings, Inc. (“Bi-Lo Holdings”) in the United States District Court for the Northern District of Illinois.

6. On December 19, 2021, a related direct action complaint, Case No. 1:21-cv-06600, was filed on behalf of Amory Investments LLC (“Amory”) in the United States District Court for the Northern District of Illinois.

7. On January 10, 2022, Direct Action Plaintiffs Winn-Dixie and Bi-Lo Holdings filed a notice of joinder to DPPs motion for leave to amend the DPP complaint. Winn-Dixie and Bi-Lo Holdings attached a copy of an earlier draft of DPPs’ new amended complaint to their notice for joinder on the docket at ECF No. 375-1. DPP Counsel discovered that Winn-Dixie and Bi-Lo

Holdings used an unfinished draft of DPPs' because it contains a uniquely identifiable typo that DPP Counsel corrected in the version filed with the Court. Winn-Dixie and Bi-Lo had no role in generating any portion of DPPs' draft or final complaints.

8. On February 22, 2022, counsel for Winn-Dixie, Bi-Lo Holdings, Amory, and Aramark approached a member of DPP Counsel's team to request a copy of DPPs' substantive responses to All Defendants' Second Set Interrogatories to All Plaintiffs, Interrogatories Nos. 5-21 ("Defendants' Contention Interrogatories") dated December 15, 2022. DPPs' substantive responses to Defendants' Contention Interrogatories set out the basis for direct purchaser of Turkey claims in this case with extensive citations to the case record that DPP Counsel had developed.

9. On May 9, 2022, counsel for Winn-Dixie, Bi-Lo Holdings, and Amory contacted a member of the DPP Counsel team seeking an unredacted copy of the DPPs' brief opposing Defendants' motion to dismiss. DPPs filed their opposition brief under seal on the docket at ECF No. 528 on May 2, 2022. DPP Counsel declined to provide Winn-Dixie and Bi-Lo Holdings with a copy of the DPPs' opposition brief. Four weeks later, Winn-Dixie and Bi-Lo Holdings filed a single sentence notice of joinder to the public version of DPPs' opposition brief. ECF No. 544.

10. Counsel for Winn-Dixie, Bi-Lo Holdings, and Amory did not take an active role in organizing and coordinating discovery efforts among the plaintiff groups and did not take a deposition of a defendant or third party in this case. Indeed, counsel for Winn-Dixie, Bi-Lo, and Amory has appeared only once on the record single deposition, the deposition of Ryan Downes of Defendant Farbest Foods, Inc. on June 9, 2022.

11. Fact discovery in this case closed on November 1, 2022. (*See* ECF No. ECF 571).

12. On July 21, 2023, a related direct action complaint, Case No. 1:23-cv-4404, was filed on behalf of Aramark Food and Support Services Group, Inc. (“Aramark”) in the United States District Court for the Northern District of Illinois.

13. On December 20, 2023, a related direct action complaint by Carina Ventures LLC (No. 1:23-cv-16948) was transferred to the United States District Court for the Northern District of Illinois.

14. DPPs’ substantive responses to Defendants’ Contention Interrogatories set out the basis for direct purchaser of Turkey claims in this case with extensive citations to the case record that DPP Counsel had developed.

15. Direct Action Plaintiff Aramark has not moved the Court for additional discovery.

Meet and Confers:

16. In September 2024, counsel for Carina attempted to obtain various work product from DPPs, including lists of “hot documents.” DPPs expressed a willingness to provide such information in a letter dated September 30, 2024, which is attached hereto as **Exhibit A**. DPPs’ understanding is that Carina subsequently obtained the under seal materials that Carina sought through Defendants.

17. On January 31, 2025, I conferred telephonically with Patrick Ahern, counsel for Direct Action Plaintiffs Winn-Dixie, Bi-Lo Holdings, Aramark, and Amory. I explained the basis for bringing this motion and Mr. Ahern stated he would oppose the motion.

18. On February 3, 2025, along with my co-lead counsel Shana Scarlett, I conferred telephonically with Chris Goodnow and Katie Hickey, from the Kellogg Hansen law firm, counsel for Direct Action Plaintiffs Amory and Carina Ventures. I explained the basis for this motion and asked Carina its position on the motion. Carina requested more time to respond, so we agreed they

could respond by February 4, 2025 and we would wait to file the motion until February 5, 2025. On February 4, 2025, Chris Seeger from the Seeger Weiss firm contacted me, stating he is settlement counsel for Carina Ventures and Amory, and co-counsel with the Kellogg Hansen firm in the Turkey matter. I spoke telephonically with Mr. Seeger on February 4, 2025, and again explained the basis for the filing of this motion. Mr. Seeger requested an additional day to confer with his co-counsel at Kellogg Hansen to determine if an agreed set-aside amount could be reached, and I agreed to defer filing of this motion until February 6, 2025, to allow additional time for the parties to confer. I conferred with Mr. Seeger twice more by telephone on February 6, 2025, and agreed to defer filing of this motion until February 7 to determine if the amount of a set-aside could be agreed upon.

19. DPPs conferred further with counsel for Carina and Amory by email on February 7, 10, and 11. In a letter dated February 7, 2025, counsel for Carina and Amory proposed a set-aside of 7.5% with a cap of up to \$15.18 million, attached hereto as **Exhibit B**. Carina and Amory proposed tying that proposal to issues of scheduling and briefing in this matter, which DPP Counsel rejected as doing so would compromise DPPs' duties to the DPP class and Carina and Amory were reserving the right to fully object to any recovery by DPP Counsel from the set-aside funds themselves, which did not help narrow the issues to be presented to the Court. The parties conferred further by email on February 10 and 11, but were unable to reach a resolution.

20. On February 5, 2025, I contacted Defendants regarding the filing of this motion. On February 6, Defendants stated they reserve the right to oppose the motion once they have had the opportunity to review it.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 12, 2025, at Minneapolis, Minnesota.

s/ Brian D. Clark
Brian D. Clark

EXHIBIT A



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HAGENS BERMAN

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September 30, 2024

VIA EMAIL

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Christopher Goodnow
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Re: In Re Turkey Antitrust Litigation, 1:19-cv-08318

Counsel:

We write on behalf of Direct Purchaser Plaintiffs in response to your multiple requests for common benefit work product in the captioned litigation. As you are aware, our firms filed the only direct purchaser plaintiff (“DPP”) class action in the above-referenced matter nearly five years ago. The Court appointed us interim Co-Lead Counsel for the DPP Class shortly thereafter. As interim Co-Lead Counsel, we have invested millions of dollars and thousands of hours synthesizing the discovery in this case into our class certification reports and the expert reports of Dr. Williams. You have obviously recognized the value of our work product in this case, as in the past week you have contacted at least 3 members of our team requesting unredacted copies of our expert reports, class certification briefs, *Daubert* briefs, and hot documents lists. You did this prior to reaching out to either of us directly. Going forward, we would appreciate that you contact us directly before reaching out to members of our team.

September 30, 2024

In any event, consistent with the common benefit doctrine, we are willing to help you and your clients make use of the work the DPP Class performed on your behalf over the last five years. We understand that you will use this common benefit work to pursue direct-action cases separate from the DPP Class. It would, of course, only be fair for you and your client to contribute to the expense of creating the common benefit work product. Therefore, we have attached an agreed motion and joint stipulation along with a proposed order to be filed with the Court, setting aside 5% of any recovery your clients make in this litigation into a common benefit fund. At the appropriate time, DPP Counsel will move the Court for compensation from the common benefit fund. Provided we reach agreement on the motion and proposed order, we would be happy to provide the information you have requested.

Please let us know if the agreement is acceptable to your clients, or if you have any edits or items to discuss.

Thank you,

s/ Brian D. Clark

Brian D. Clark

Lockridge Grindal Nauen PLLP

s/ Shana E. Scarlett

Shana E. Scarlett

Hagens Berman Sobol Shapiro LLP

EXHIBIT B

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February 7, 2025

Via Electronic Mail

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Re: *In Re Turkey Antitrust Litigation*, Case No. 1:19-cv-08318

Dear Brian and Shana:

I write on behalf of Amory Investments LLC and Carina Ventures LLC regarding our meet and confer of February 3, 2025. You informed us that Direct Purchaser Plaintiffs will ask the Court to enter a set-aside order requiring Amory and Carina to escrow 10% of all recoveries in the above-captioned action. Amory and Carina maintain that no set aside is warranted and will oppose DPPs' proposed order if you choose to file it with the Court.

Nonetheless, in the interest of compromise and without prejudice to objecting to any set aside if the parties cannot reach agreement, Amory and Carina will agree to a 7.5% set aside on recoveries of up to \$15.18 million. This proposed escrow exceeds any common costs that DPPs potentially could recover from Carina and Amory. Additionally, Carina and Amory reserve the right to oppose any requested allocation from the common benefit fund.

We have calculated the \$15.18 million cap on recoveries subject to escrow as follows. Collectively, Carina and Amory's volume of commerce in *Turkey* is \$2.3 billion. DPPs recently obtained a settlement from Cargill at 0.66% of class purchase volumes. If Carina and Amory can secure a settlement or judgment at a higher percentage of purchase volumes, that is necessarily

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the result of Carina's and Amory's work in this litigation, and could not be attributed to the work of class counsel.

Additionally, as a condition of Amory and Carina's agreement to this above-proposed set-aside order, DPPs must agree to cooperate with Carina and Amory as follows:

- DPPs will consent to an equal division of time between classes and direct-action plaintiffs for the deposition of any defense expert for which the Court orders classes and DAPs to take a consolidated deposition.
- DPPs will consent to DAPs filing separate opposition briefs to any summary judgment and *Daubert* motions filed by Defendants and directed at both the classes and DAPs.
 - Alternatively, to the extent the Court requires omnibus oppositions filed jointly by the classes and DAPs, the classes will agree that DAPs will take the lead on briefing with the understanding that DAPs will work with the classes in good faith to incorporate their edits.
- DPPs will consent for equal argument time split between the DAPs and classes on any summary judgment and *Daubert* motions filed by Defendants and directed at both classes and DAPs.

Enclosed with this letter is a revised proposed order and agreed-upon motion consistent with the above-stated conditions. Please review and let us know whether DPPs will agree to Carina and Amory's proposal. We hope this proposal can foster a productive and cordial relationship focused on holding Defendants accountable for their wrongful acts.

As mentioned above, if DPPs decline this offer and request that the Court enter a set-aside order requiring Amory and Carina to escrow 10% of all recoveries, Amory and Carina will vigorously oppose. DPPs' proposed set-aside is meritless.

First, at our February 3 meet and confer, you acknowledged that DPPs have made no effort to ascertain whether a 10% set aside is proportionate to the "common" costs you believe should be allocated to Carina and Amory. For example, I asked whether you had identified the "common" costs to date and calculated what portion you contend Carina and Amory owe to the DPPs. I explained that Carina and Amory account for only a fraction of DPPs' \$15 billion in class purchases. You confirmed that you had not calculated Carina and Amory's share of "common" costs. Instead, you stated that DPPs eventually will seek a flat percentage of Carina's and Amory's *total recovery* from the escrowed funds. That is improper. No common benefit fund can entitle DPPs to obtain an equity interest in the recovery of Amory and Carina.

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Second, you proposed an implausible definition of “common benefit work.” In your draft motion, you identify as “common” “unredacted pleadings, DPPs’ expert reports, class certification briefs, *Daubert* briefs, and attorney work product regarding documents and other discovery.” But Carina and Amory have not received any “attorney work product” (e.g., lists of hot documents). Further, DPPs’ class expert reports, related *Daubert* briefing, and class certification briefs were not to the “common benefit” of the class and DAPs. Your briefs and reports addressed the requirements of Rule 23, which are irrelevant to Carina and Amory. For example, your expert’s regressions and backup data demonstrating common impact – which you identified as the “most important” part of your expert work – do not assist Carina or Amory in establishing liability or damages in their cases. They do not even show an overcharge on the many turkey products at issue in Carina’s and Amory’s cases that fall outside the class definition. I asked whether it was DPPs’ position that *all* class certification work is “common” and chargeable to DAPs. You confirmed that it was.

Additionally, I asked you to identify what other “unredacted pleadings” were in issue, and you responded that Carina and Amory should pay for “everything” they “have access to,” whether from the docket or otherwise. In particular, you identified briefs you filed resisting production of pre-complaint investigative materials as attorney work product. It appears you succeeded in avoiding any production. *See Turkey*, Dkt. 494. But DPPs cannot charge Carina and Amory for work product they never have seen, much less briefing about that undisclosed work product.

Third, I explained that DPPs’ draft motion appears to reserve the right to seek double recovery of “common” costs. Your motion states: “The parties . . . agree that nothing in the Court’s Order on this stipulation shall prevent DPP Counsel from applying for and receiving an award of attorneys’ fees and expenses for any recovery obtained on behalf of the DPP Class.” I suggested that you consider amending this language to clarify that class counsel would seek common benefit funds only to the extent they did not already recover any “common” costs from Defendants. You refused and told us to raise the issue with the Court.

Fourth, you stated that Carina and Amory should escrow funds to pay for DPPs’ *future* work in connection with the merits phase of the case, including merits expert work and summary judgment briefing. That is facially unreasonable. Carina has started its own fact discovery period, and Carina and Amory will file their own expert report and summary judgment briefs. Carina and Amory do not have to pay for their cases and yours.

* * *

Amory and Carina decided to retain their own counsel and pursue their own claims in *Turkey* outside the DPP class. If the parties cannot reach agreement and DPPs present the Court with a disputed set-aside order, Amory and Carina will forcefully oppose, including with a

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detailed description of the reasons why Amory and Carina do not wish to be represented by class counsel. We do not wish to air those criticisms in front of the Court and instead would prefer to have an amicable relationship focused on establishing Defendants' liability for a multiyear antitrust conspiracy. But if you are not willing to engage constructively, and if DPPs press their meritless set-aside motion, we will have no choice but to vigorously oppose.

Very truly yours,

/s/ Chris Goodnow

Christopher C. Goodnow

*Counsel for Plaintiffs Carina Ventures LLC and
Amory Investments LLC*