

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE CATTLE AND BEEF ANTITRUST
LITIGATION

Case No. 0:22-md-03031 (JRT-JFD)

This Document Relates To:
IN RE DPP BEEF LITIGATION

**DIRECT PURCHASER PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT BETWEEN
DIRECT PURCHASER PLAINTIFFS AND TYSON DEFENDANTS AND
APPROVAL OF NOTICE PLAN AND CLAIMS PROCESS**

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I. INTRODUCTION

Direct Purchaser Plaintiffs (“DPPs” or “the Class”)¹ respectfully move for preliminary approval of a settlement (the “Settlement”) with Defendants Tyson Foods, Inc. and Tyson Fresh Meats, Inc. (collectively, “Tyson”), and for approval of DPPs’ notice plan and claims process. This is the first settlement for the DPPs after the close of fact discovery and after the completion of class certification briefing and hearing. The Settlement represents an excellent recovery for the Class, both in terms of financial relief to class members and cooperation to those class members in pursuing their claims against the remaining Defendants.

This non-reversionary Settlement provides a total of \$82.5 million in monetary relief to the Class, made up of \$80 million in settlement funds plus an additional non-reversionary \$2.5 million towards settlement notice and administrative costs, along with extensive cooperation to the DPPs. The Settlement was negotiated at arm’s length with the assistance of a nationally recognized, highly experienced mediator and extended over several months. Because the Settlement provides significant relief to the Class, it falls well within the range of reasonableness necessary to establish preliminary approval under Federal Rule of Civil Procedure (“Rule”) 23(e).

Based upon the motion, memorandum of law, and other supporting papers, the DPPs request that this Court grant preliminary approval of the Settlement; appoint Interim Co-

¹ As used herein, “DPPs” means Plaintiffs Gregg Szilagyi solely in his capacity as Chapter 7 trustee for the bankruptcy estate of Central Grocers, Inc., R&D Marketing, LLC, and Redner’s Markets, Inc.

Lead Counsel as Settlement Class Counsel; certify the proposed Settlement Class; approve the form of notice; direct that individual notice of the Settlement be distributed to potential members of the settlement class to the extent reasonably practicable; and set a date for a final settlement approval hearing.

II. BACKGROUND

DPPs filed their underlying complaints in June and July of 2020, after extensive investigation. *See Samuels v. Cargill, Inc. et al.*, No. 20-cv-1319, ECF No. 1; *Olean Wholesale Grocery Cooperative, Inc. v. Cargill, Inc. et al.*, No. 20-cv-1602, ECF No. 1.² DPPs filed their third consolidated amended class action complaint on January 18, 2022. No. 20-cv-1319, ECF No. 303 (“TAC”). DPP’s investigation included significant research into the allegations of an unlawful agreement among Defendants and Defendants’ participation in trade associations, vetting of the then-confidential witness information, and extensive work with economic experts. *See Decl. of Megan E. Jones (“Jones Decl.”)*, at ¶¶ 4-6.

DPPs allege that “Defendants conspired to...drive up the price of beef in order to realize sky-high margins” in violation of Section 1 of the Sherman Act. *In re Cattle Antitrust Litig.*, No. 20-cv-1319 (JRT/HB), 2021 WL 7757881, at *1 (D. Minn. Sept. 14, 2021). They further allege that Defendants³ engaged in price-fixing in part by conspiring

² On September 4, 2020, the Court appointed Gustafson Gluek PLLC, Cotchett, Pitre & McCarthy, LLP, Hartley LLP, and Hausfeld LLP as Interim Co-Lead Counsel for the putative class of direct purchasers. No. 20-cv-1319, ECF No. 71.

³ DPPs’ Complaint names JBS S.A., JBS USA Food Company, Swift Beef Company, JBS Packerland, Inc., Cargill, Inc., Cargill Meat Solutions Corporation (a/k/a Cargill Protein),

to restrict the supply of beef in the United States through various means and by engaging in other collusive conduct. *See, e.g.*, TAC at ¶ 3. DPPs also allege that each Defendant, during the relevant period beginning January 1, 2015, unlawfully acted in concert to moderate and suppress beef supply in order to drive up the price of beef. *In re Cattle*, 2021 WL 7757881, at *5. DPPs filed an amended complaint that included further research and substantial expert analysis. ECF No. 158. Defendants moved to dismiss the DPPs' First Amended Complaint on February 18, 2021, which DPPs opposed on April 5, 2021. After a lengthy hearing on July 12, 2021, this Court denied the motions as to the DPPs' Amended Complaint on September 14, 2021. No. 20-cv-1319, ECF No. 238.

Since the initial complaints were filed, the parties have spent hundreds of hours negotiating and substantively meeting and conferring regarding discovery requests, deposition limits, custodians, structured data, date ranges, search methodology, the scope of third-party subpoenas, and entry of a protective order. *See Jones Decl.* at ¶¶ 8-9. The parties also negotiated and submitted competing scheduling proposals. *Id.* at ¶ 10. These tasks have been made all the more complex because of the extensive coordination required among DPPs and the other plaintiff classes. *Id.* at ¶ 11.

Over the last four years, the parties have engaged in lengthy and substantial fact and expert discovery. *Jones Decl.* at ¶¶ 12-15. The parties met and conferred several times to negotiate the scope and substance of discovery. *Id.* at ¶ 9. DPPs served on and received from Tyson document requests, interrogatories, and subpoenas for documents and for

National Beef Packing Company, Tyson Foods, Inc., and Tyson Fresh Meats, Inc. as Defendants.

testimony. The parties contested many of these discovery requests, resulting in motion practice. *Id.* at ¶ 13. In response to DPPs' discovery requests, Tyson produced thousands of pages of responsive documents, electronically stored information, and phone records. *Id.* at ¶ 12. DPPs also took several depositions of Tyson employees, including high-ranking executives, and produced class representatives as witnesses for deposition. *Id.* at ¶ 13. The yearslong fact discovery resulted in the production of critical testimony and documents which strengthened DPPs' arguments in support of class certification. The parties also engaged in substantial expert discovery which culminated in the exchanging of expert reports on behalf of DPPs and Defendants. *Id.* at ¶ 15. On September 25, 2024, DPPs filed their motion for class certification. No. 22-md-3031, ECF Nos. 852-861. Defendants filed their response, and a motion to exclude DPPs' expert on January 24, 2025. No. 22-md-3031, ECF Nos. 1090-1093, 1097-1099, 1101-1163. On April 4, 2025, DPPs filed their reply (No. 22-md-3031, ECF No. 1248), and their response to Defendants' motion to exclude DPPs;' expert (No. 22-md-3031, ECF No. 1254). On November 4, 2025, the Court held a multi-day hearing on the class certification motion and the motion to exclude expert testimony. No. 22-md-3031, ECF Nos. 1471, 1472.

III. SUMMARY OF SETTLEMENT NEGOTIATIONS AND AGREEMENT

DPPs and Tyson reached this Settlement through protracted, confidential arm's-length negotiations. Jones Decl. at ¶ 17. The non-reversionary Settlement includes both monetary relief for the Class and Tyson's extensive cooperation in DPPs' prosecution of the ongoing litigation against the remaining Defendants.

After briefing on class certification was completed, the parties discussed the possibility of settlement and in October 2025, agreed to mediate with well-regarded and nationally recognized mediator Professor Eric Green. *Id.* at ¶ 19. Prior to the mediation, the parties submitted detailed statements regarding their respective settlement positions. The parties' mediation was contentious, spanning two full-day sessions. In November 2025, the parties made substantial progress but did not reach a final agreement on all material terms. Finally, after nearly two months of difficult negotiations, in December 2025, Professor Green presented a proposal to both parties for consideration. The parties took this proposal under careful advisement and agreed to its full terms, culminating in this Settlement. *See* Jones Decl. at ¶¶ 20-21, Ex. A to Jones Declaration ("Settlement Agreement").

The Settlement provides that DPPs shall seek appointment of Interim Co-Lead Counsel as Settlement Class Counsel for the purposes of the Settlement and certification of the following "Settlement Class" for settlement purposes only:

All persons and entities who directly purchased Beef⁴ for use or delivery in the United States, whether fresh or frozen, made from one of the following primals: chuck, loin, rib or round from Defendants, or their respective subsidiaries or affiliates, from January 1, 2015 to February 29, 2020. For this lawsuit, beef excludes any product that is marketed as organic, grass-fed,

⁴ Beef for this settlement is defined as: Boxed beef and case-ready beef (i.e., beef that has been cut into subprimals and packaged for resale) made from Fed Cattle in the United States that is sold fresh or frozen. With the exception of case-ready beef, "Beef" excludes other meat from Fed Cattle that is further processed at another plant (e.g., by grinding; adding other ingredients; or cooking or curing) and excludes drop byproducts (e.g., trim, fats, oils, hides, offal). The definition of "Beef" is limited to products derived from the loin, chuck, rib, and round primal cuts.

kosher, halal, certified human, Wagyu, “American-Style Kobe Beef,” and any product that is cooked, marinated, seasoned, flavored, or breaded.

Excluded from the Settlement Class are Defendants; their officers, directors or employees; any entity in which a Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of a Defendant. Also excluded from this Settlement Class are any federal, state, or local government entities, any judicial officer presiding over this action; the members of the judicial officer’s immediate family and staff, and any juror assigned to this action.

The Settlement provides that Tyson will pay \$80 million into a settlement fund, as well as an additional non-reversionary \$2.5 million for class notice and administrative costs. *Id.* at ¶ 23.

Interim Co-Lead Counsel believe this remarkable recovery is fair and reasonable, particularly in light of Tyson’s market share regarding the products at issue, and the significant cooperation Tyson has agreed to provide. The promised cooperation by Tyson includes: (a) providing declarations, certifications, or affidavits regarding the authentication of documents as business records under Federal Rule of Evidence 803(6); (b) providing discovery responses, documents, or information that Tyson provides to any other plaintiff in this litigation; and (c) producing up to six witnesses of DPPs’ choosing to provide live trial testimony, with the exception of Tyson’s current President, CEO, other C-suite officers, and board members. *See* Settlement Agreement at § 4. Notably, the Settlement does not contain any “opt out provision” or provide for reversion of any of the Settlement funds. *See* Settlement Agreement at § 16.

Upon final judgment, and in exchange for the monetary relief, payment of notice and administrative costs, and extensive cooperation described herein, DPPs shall release

claims, as defined in the Settlement, against Tyson. *See* Settlement Agreement at §§ 17, 18.

IV. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

“Minnesota courts recognize a ‘strong public policy favoring the settlement of disputed claims without litigation.’” *Katun Corp. v. Clarke*, 484 F.3d 972, 975 (8th Cir. 2007) (internal citations omitted). Accordingly, the “policy in federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context.” *In re Uponor, Inc., F1807 Plumbing Fittings Prods. Liab. Litig.*, No. 11-md-2247, 2012 WL 2512750, at *7 (D. Minn. June 29, 2012) (quoting *White v. Nat’l Football League*, 822 F. Supp. 1389, 1416 (D. Minn. 1993)).

“The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation. The parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (internal citations omitted). “[S]trong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor.” *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999) (quoting *Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 921 F.2d 1371, 1388 (8th Cir. 1990)).

The court will review a class action settlement to ensure that it is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). In making this determination in the context of

preliminary approval, the fairness, reasonableness, and adequacy requirements are “lowered, with emphasis only on whether the settlement is within the range of possible approval due to an absence of any glaring substantive or procedural deficiencies.” *In re Centurylink Sales Pracs. & Sec. Litig.*, No. 18-0296, 2021 WL 3080960, at *5 (D. Minn. July 21, 2021) (quoting *Schoenbaum v. E.I. Dupont De Nemours & Co.*, No. 4:05CV01108 ERW, 2009 WL 4782082, at *2 (E.D. Mo. Dec. 8, 2009)). A court properly grants preliminary approval and approves class notice if the parties “will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1).

As noted, this Court has already considered and granted approval of DPPs’ settlement with JBS. *See In re Cattle and Beef Antitrust Litig.*, No. 20-cv-01319-JRT-DTS, ECF Nos. 494 (preliminary approval) and 641 (final approval). The Tyson Settlement similarly should be approved.

A. The Settlement Is Fair, Reasonable, and Adequate

Rule 23(e)(2) provides that the court should approve a settlement “only on finding that it is fair, reasonable, and adequate” after considering several factors: that the class was adequately represented by counsel and the class representatives; that the proposed settlement was negotiated at arm’s length; that the settlement provides adequate relief to the class; and that the settlement treats class members equitably relative to each other.

Courts attach “[a]n initial presumption of fairness ... to a class settlement reached in arm’s-length negotiations between experienced and capable counsel after meaningful discovery.” *Grier v. Chase Manhattan Auto Fin. Co.*, No. 99-0180, 2000 WL 175126, at

*5 (E.D. Pa. Feb. 16, 2000); *see also Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975). Courts are “entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement.” *In re Emp. Benefit Plans Sec. Litig.*, No. 3-92-708, 1993 WL 330595, at *5 (D. Minn. June 2, 1993) (citation omitted); *Welsch v. Gardebring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987) (accordng “great weight” to the opinions of experienced counsel).

The Settlement satisfies all the foregoing factors. *First*, the Settlement was reached in hard-fought arm’s-length negotiations, facilitated by a highly qualified mediator, by counsel experienced in settling class actions. Sufficient investigation and initial data analysis were conducted in drafting comprehensive complaints, significant fact and expert discovery was conducted over several years since the motion to dismiss was denied, and counsel for both parties have had ample opportunity to properly evaluate the strengths and weaknesses of their respective claims and defenses, as well as the propriety of settlement at this stage of the litigation. Both parties’ counsel are experienced in antitrust matters. Indeed, lead counsel for DPPs have substantial experience in litigating complex antitrust cases throughout the country, including those involving other protein industries. For example, Hausfeld LLP (“Hausfeld”) was appointed co-lead counsel on behalf of a certified class of broiler chicken growers in a case that also alleged supply restrictions and price-fixing. *See In re Broiler Chicken Grower Antitrust Litigation (No. II)*, No. 6:20-md-2977-RJS-CMR (E.D. Okla.). Hausfeld also served as co-lead counsel in *In re Processed Egg Products Antitrust Litigation*, No. 2:08-md-2002-GEKP (E.D. Pa.), and *In re Farm-Raised Salmon and Salmon Products Antitrust Litigation*, No. 1:19-cv-21551-CMA (S.D.

Fla.). Gustafson Gluek PLLC (“Gustafson”) and Cotchett, Pitre & McCarthy, LLP (“CPM”) were the court-appointed lead class counsel for a class of commercial food preparers in *In re Broiler Chicken Antitrust Litigation*, No. 16-cv-8637 (N.D. Ill), and were appointed co-lead settlement class counsel on July 30, 2025. *See id.*, ECF Nos. 144 (appointing lead counsel) and 7839 (appointing settlement class counsel). Gustafson was also appointed co-lead class counsel for consumers in *In re Pork Antitrust Litig.* See 18-cv-1776 (D. Minn.), ECF Nos. 151 (appointing co-lead counsel) 1491 and 1903 (appointing settlement class counsel). Hartley LLP was appointed to the Plaintiffs Steering Committee in *In re Packaged Seafood Antitrust Litigation*, 15-md-2670-DMS-MSB (S.D. Cal.), ECF No. 119. Those cases similarly alleged collusive supply restraints and price-fixing. These foregoing experiences have provided class counsel with valuable insight into protein markets, the associated volume of commerce, and the risks inherent in this specific subset of antitrust litigation, which further supports approval of the Settlement.

Second, negotiations over the Settlement were conducted before a highly respected nationally recognized mediator, who has extensive experience in resolving complex litigation and who ensured the negotiations were conducted at arm’s length and were non-collusive. This further demonstrates the procedural fairness through which the Settlement was reached. *Ponce v. Lenovo (United States) Inc.*, No. 16-cv-1000 (JNE/JSM), 2017 WL 1093186, at *2 (D. Minn. Mar. 23, 2017) (“The assistance of a retired United States Magistrate Judge as a mediator in the settlement process supports a conclusion that the Settlement is non-collusive and was fairly negotiated at arm’s length.”).

Third, the relief provided to the Settlement Class is substantial. As a threshold matter, in a multi-defendant case such as this, settlement is itself valuable to the class because settlements can bring remaining defendants to the negotiating table. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003). Despite not being the first settlement in this case, by any measure a settlement worth \$82.5 million dollars is substantial. By comparison, JBS settled DPPs' claims in this case for \$52.5 million dollars, which the Court granted. *See* Case No. 20-cv-01319, ECF No. 641. Beyond the monetary relief component of the Settlement, Tyson's required cooperation will bolster DPPs' claims against the remaining Defendants.

Fourth, the Settlement treats class members equitably relative to each other. Funds will be awarded to class members on a *pro rata* basis, taking into account the amount of class products they purchased and the number of claims submitted. There will be a simplified online claims process for class members, including pre-population of claim forms where data is available, once it is time for the funds to be distributed.

Based on the foregoing factors, the Settlement is fair, reasonable and adequate.

1. The Eighth Circuit Factors Support a Finding That the Settlement Is Fair, Reasonable, and Adequate

The Eighth Circuit has established four factors for determining whether a proposed settlement is fair, reasonable, and adequate: (1) the merits of plaintiffs' case, weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *Marshall v. Nat'l Football League*, 787 F.3d 502, 508 (8th Cir. 2015) (citing

In re Uponor, Inc. F1807 Plumbing Fittings Prods. Liab. Litig., 716 F.3d 1057, 1063 (8th Cir. 2013)); *Dryer v. Nat'l Football League*, No. 09-cv-2182, 2013 WL 5888231, at *2 (D. Minn. 2013). At the preliminary approval step, only the first three factors are considered, and the first is the most important. *See generally, Holt v. CommunityAmerica Credit Union*, No. 19-cv-0629, 2020 WL 12604383, at *2 (W.D. Mo. Sep. 4, 2020).

Here, the three factors to be considered all weigh in favor of preliminary approval of the Settlement. *First*, without the Settlement, the outcome of the litigation as to Tyson would be far from certain. Although DPPs defeated Defendants' motion to dismiss, the class certification and motions to exclude expert testimony remain pending, and summary judgment motions and trial will be strenuously contested. And, to be sure, the decisions on class certification and at trial are uncertain, may face appeal, and would necessarily delay any recovery for the Settlement Class. Instead, the Settlement provides for substantial, direct, and certain benefits to the Class that are a highly favorable result in the face of the uncertainties of continued litigation. This factor favors approval.

Second, there is no indication that Tyson's financial situation is insecure. In fact, Tyson has already deposited the full \$82.5 million into an escrow account for the Settlement. Jones Decl. at ¶ 27. Thus, Tyson has already fulfilled its financial settlement obligations in this case. This factor also favors approval.

Third, this case will be complex and expensive, and will place an enormous burden upon the parties and the Court. Counsel for the parties have vigorously represented their clients and will continue to do so, which will only further add to the expense and complexity of continued litigation. This factor supports approval of the Settlement.

B. The Settlement Satisfies the Requirements for Class Certification at the Settlement Stage

To qualify for settlement-class certification, an action must satisfy all provisions of Rule 23(a), plus one of the subdivisions of Rule 23(b). *See* Fed. R. Civ. P. 23(a) & 23(b). Rule 23(a) requires that: (1) the members of the proposed class are so numerous that joinder of the individual claims would be impracticable; (2) that there are questions of law or fact common to the class; (3) that the claims of the proposed class representatives are typical of the claims of the Class members; and (4) that the proposed class representatives will adequately represent the interests of the class. Fed. R. Civ. P. 23(a). Rule 23(b)(3) requires that common questions of law and fact predominate over individual questions, and that class treatment be superior to other available methods for fairly and efficiently adjudicating the controversy. *See In re Select Comfort Corp. Sec. Litig.*, 202 F.R.D. 598, 611 (D. Minn. 2001). The proposed Settlement Class satisfies each of the Rule 23(a) requirements, and the strictures of Rule 23(b)(3).

1. Numerosity Is Easily Satisfied

For a class action to be maintained, the proposed class must be so numerous that joinder of all members is “impracticable.” Fed. R. Civ. P. 23(a)(1). “In general, a putative class exceeding 40 members is sufficiently large to make joinder impracticable.” *Raspberry v. Columbia Cnty., Arkansas*, No. 16-cv-1074, 2017 WL 3259447, at *2 (W.D. Ark. July 31, 2017) (quoting *Alberts v. Nash Finch Co.*, 245 F.R.D. 399, 409 (D. Minn. 2007)) (“[A] putative class exceeding 40 members is sufficiently large to make joinder impracticable.”). Here, the proposed class includes thousands of direct purchasers of beef. Jones Decl. at ¶

4. There is no question that Defendants, including Tyson, sell their products directly to numerous direct purchasers that are geographically dispersed throughout the United States.

2. There Are Common Questions of Law and Fact

A common question, for purposes for Rule 23(a)(2), is a “common contention” that is “of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). What matters is “the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.” *Id.* (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 132 (2009)). The existence of a single, common question will satisfy Rule 23(a)(2). *Dukes*, 564 U.S. at 359; *see also Khoday v. Symantec Corp.*, No. 11-180 (JRT/TNL), 2014 WL 1281600, at *15 (D. Minn. Mar. 13, 2014) (noting that a “single common contention” can satisfy commonality).

As described in DPP’s Motion for Class Certification, the DPP TAC sets forth multiple common questions relating to the scope of Tyson’s conduct to suppress the supply of beef and artificially inflate its price. *See* No. 22-md-3031, ECF No. 854 at 14-38 (describing common questions and common conduct). These common questions will yield common answers and readily satisfy the commonality requirement.

3. Plaintiffs’ Claims Are Typical of the Class

The typicality prerequisite is satisfied “when the claims of the named plaintiffs emanate from the same event or are based on the same legal theory as the claims of the

class members.” *Lockwood Motors, Inc. v. Gen. Motors Corp.*, 162 F.R.D. 569, 575 (D. Minn. 1995); *Dirks v. Clayton Brokerage Co. of St. Louis, Inc.*, 105 F.R.D. 125, 132-33 (D. Minn. 1985) (citing *Paxton v. Union Nat. Bank*, 688 F.2d 552, 561-62 (8th Cir. 1982)). “When the claims or defenses of the representative and the class are based on the same course of conduct or legal theory, it is thought that the representatives will advance the interest of the class members by advancing his or her own interests.” *In re Control Data Corp. Sec. Litig.*, 116 F.R.D. 216, 220 (D. Minn. 1986) (citations omitted); *see also Smith v. United Health Care Servs., Inc.*, No. 00-cv-1163 (ADM/AJB), 2002 WL 192565, at *3-4 (D. Minn. 2002) (finding plaintiffs’ claims typical despite varying degree of damages due to “strong similarity of legal theories” (quoting *Lockwood*, 162 F.R.D. at 575)).

Here, the legal claims of named Plaintiffs and members of the proposed Settlement Class arise out of the same alleged conduct—that class members are direct purchasers of beef from one or more Defendants during the Relevant Period and suffered economic injury as a result of paying supracompetitive prices for beef. *See generally*, TAC, No. 20-cv-1319, No. 303; No. 22-md-3031, ECF No. 854. Plaintiffs’ claims arise from the same course of conduct, give rise to the same injury, and are redressable by the same relief. *Select Comfort*, 202 F.R.D. at 604 (“Typicality is closely related to commonality as ‘a finding of one generally compels a finding of the other.’” (quoting *Buycks-Roberson v. Citibank Fed. Sav. Bank*, 162 F.R.D. 322, 333 n.13 (N.D. Ill. 1995))). Because Plaintiffs’ claims are typical of the Settlement Class’s claims, this requirement is met.

4. Plaintiffs Adequately Represent the Class

Finally, under Rule 23(a)(4), a class representative must “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). To meet this requirement, the Court must find that (1) the representatives and their counsel are able and willing to prosecute the action competently and vigorously; and (2) that each representative’s interests are sufficiently similar to those of the class such that it is unlikely that their goals and viewpoints will diverge. *In re Monosodium Glutamate Antitrust Litig.*, 205 F.R.D. 229, 233 (D. Minn. 2001); *Lockwood*, 162 F.R.D. at 576.

Since the Court’s appointment of Interim Co-Lead Counsel, they have diligently and enthusiastically prosecuted this action on behalf of class representatives and the proposed Settlement Class. Co-Lead Counsel have extensive experience in other protein-related price-fixing cases cited above, and more generally have decades of experiencing leading and litigating many of the largest and most complex antitrust cases in the country. *See* No. 20-cv-01319, ECF No. 64 (firm resumes of Co-Lead Counsel previously submitted with DPPs’ Motion to Appoint Lead Counsel). Furthermore, the class representatives have come forward to litigate against their beef suppliers on behalf of the Class and have actively participated in this action, including sitting for deposition, and fully cooperated with Interim Co-Lead Counsel. This fourth and final requirement under Rule 23(a) is satisfied.

5. The Proposed Settlement Class Satisfies Rule 23(b)(3)

A proposed class meets the predominance requirement of Rule 23(b)(3) when “the questions of law or fact common to class members predominate over any questions affecting only individual members.” Fed. R. Civ. P. 23(b)(3). Courts in this district have

recognized that “[a]s with commonality and typicality requirements, the predominance inquiry is directed toward the issue of liability.” *Select Comfort*, 202 F.R.D. at 610. When determining whether common questions predominate, courts “focus on the liability issue ... and if the liability issue is common to the class, common questions are held to predominate over individual questions.” *Id.* (alteration in original) (quotation omitted).

Here, multiple common questions lie at the heart of all Settlement Class members’ claims, including whether Defendants conspired to decrease the supply of beef and raise the price of beef and whether Defendants’ conspiracy caused market-wide supracompetitive beef prices. Because the question of liability is central to the Class, predominance is satisfied.

6. A Class Action Is the Superior Method for Resolving the Disputed Claims

The superiority inquiry under Rule 23(b)(3) assesses: (a) class members’ interests in individually controlling the prosecution of separate actions; (b) whether other litigation exists concerning this controversy; (c) the desirability of concentrating the litigation in this forum; and (d) any difficulties in managing a class action. Here, each factor favors certification of the Settlement Class.

First, requiring each direct purchaser of beef to bring individual – and identical – claims would consume precious judicial resources, create inconsistent results, establish incompatible standards of conduct for Tyson, and lead to duplicative, costly trials. *Second*, while there are similar cases prosecuted by other groups of purchaser plaintiffs, this case is the only one seeking recovery on behalf of direct purchasers. *Third*, this litigation

provides a highly efficient means for individual direct purchasers to participate in this litigation and recover their damages, while aggregating and minimizing their costs. *Fourth*, despite the large number of class members and complex issues at stake, managing a class action, especially for the purposes of settlement, would not present insurmountable difficulties. The Settlement itself would make any further litigation and a possible trial and appeal unnecessary.

It is also worth noting that the proposed Settlement Class is readily ascertainable: class members may self-identify simply by reviewing the class definition, and Defendants, including Tyson, possess complete lists of clients and customers who are direct purchasers of their beef products.

Because DPPs have satisfied Rule 23(a) and (b)(3) for the purposes of the proposed Settlement Class, the Court should provisionally certify the proposed Settlement Class.

V. CLAIMS ADMINISTRATION AND NOTICE PLAN

A. The Court Appointed Huntington National Bank as Escrow Agent

DPPs previously requested the Court to approve Huntington National Bank as the Escrow Agent for this Settlement, to maintain the Qualified Settlement Fund and to provide escrow services for the Settlement. *See* No. 22-md-3031, ECF No. 1506. On January 6, 2026, the Court granted DPPs' motion, and approved Huntington Bank as the Escrow Agent for the Settlement with Tyson. *See* No. 22-md-3031, ECF No. 1510.

B. The Court Should Direct Settlement Class Notice to the Class

Under widely recognized standards, class notice must afford the potential class members the opportunity to “make an informed decision about their participation [in the

litigation].” MANUAL FOR COMPLEX LITIGATION, FOURTH, § 21.311, at 289. For class action cases, where the class is certified under Rule 23(b)(3) or for settlement purposes, the Court must direct notice to class members that is the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Settlement class notice generally requires individual notice where possible, and where individual notice is not possible, “alternative means such as notice through third parties, paid advertising, and/or posting in places frequented by class members.” *Mullins v. Direct Digital*, 795 F.3d 654, 665 (7th Cir. 2015); *Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 905-06 (8th Cir. 2018) . The notice standard does not require that *every* conceivable class member receive actual notice. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 176 (1974). Notice need not provide “a complete source of information” or an exact amount of recovery for each class member. *Petrovic*, 200 F.3d at 1153. Furthermore, in addition to United States post, notice may be given by electronic or other appropriate means. Fed. R. Civ. P. 23(c)(2)(B). Other putative settlement class members may be notified via publication notice. *City of Greenville v. Syngenta Crop Prot.*, No. 10-cv-0188, 2012 WL 1948153-JPG-PMF, at *4 (S.D. Ill. May 30, 2012).

1. The Robust, Multilayered Proposed Notice Plan Will Provide the Best Notice Practicable.

DPPs’ Notice Provider. DPPs have retained an experienced and well-regarded notice and claims administrator, A.B. Data, to serve as the notice provider for this Settlement. *See* Declaration of Brian Devery, A.B. Data Director of Client Services

(“Devery Decl.”) at ¶¶ 1-2, Exhibit A (listing extensive experience in complex settlement administration). A.B. Data’s experience in providing notice and claims administration includes antitrust cases such as this one. *Id.* Significantly, this experience specifically includes serving as the notice and claims administrator for the DPPs’ settlement with the JBS Defendants in this case. *See In re Cattle and Beef Antitrust Litig.*, No. 20-cv-1319 (D. Minn.), ECF No. 494 ¶ 7. In addition, this Court appointed A.B. Data as notice provider and claims administrator in connection with the direct purchasers’ settlements in *In re Pork Antitrust Litigation*. No. 18-cv-1776 (D. Minn.), ECF Nos. 631, 832. The Court also appointed A.B. Data in the same capacity with respect to the consumer indirect purchaser class in *Pork. Id.*, ECF Nos. 775, 776, 811. A.B. Data has also served as notice and claims administrator in *In re Broiler Chicken Antitrust Litigation* for each of the three classes. No. 16-cv-08637 (N.D. Ill.), ECF Nos. 5234, 6194, 6196.

Working together, A.B. Data and Class Counsel have a set of proposed notices to send to the Class regarding the Settlement. These include:

Direct Notice. Proposed forms of the notice materials to that putative Settlement Class are attached as exhibits to the Devery Declaration and include the Long-Form Notice at Exhibit B. These materials provide plain, easily understood information, including that this is a class action; the amount provided by the Settlement; the Settlement Class definition in plain and engaging language; DPPs’ allegations of Defendants’ antitrust violations and price-fixing claims in plain terms; the opportunity of Settlement Class members to appear through an attorney; the opportunity members of the Settlement Class to request exclusion from the Settlement Class or object to the Settlement; the amount of the Settlement fund

that DPPs seek; the maximum amount of fees and expenses to be sought by Interim Co-Lead Counsel; the time and manner for requesting exclusion or submitting an objection; the binding effect of a judgment on the Settlement Class; and dismissal of DPPs' claims against Tyson if the Court grants final approval. Devery Decl. at ¶ 11.

Under DPPs' plan, A.B. Data will send by mail (and email where available) the Long Form Notice to Settlement Class members whose contact information has been provided by the settling and non-settling Defendants.⁵ The Long-Form Notice provides significant information and transparency regarding the Settlement and contains all information required by the Federal Rules and the laws of this Court. The Long-Form Notice also provides the URL for the website where class members may review more detailed information about this lawsuit and the Settlement. In addition to physical mail, the Notice shall also be emailed directly to Settlement Class members where email information is available. *See* Devery Decl. at ¶¶ 8-11. A copy of the Short Form Notice is attached as Exhibit C to the Devery Declaration.

Supplemental Publication Notice. In addition to the robust direct-notice plan outlined above, DPPs will supplement the notice plan with other forms of notice reasonably tailored to reach a maximum number of additional potential class members as efficiently as possible. These measures include:

- **Paid Media.** A.B. Data will implement a well-tailored paid media program that will include publishing the Short-Form Notice one time in *Supermarket News* and *Nation's Restaurant News*, trade journals targeting supply chain executives and food industry professionals and direct a thirty-day digital media banner ad campaign on

⁵ A.B. Data estimates that there are approximately 4,697 class members. This number is based on data produced by Defendants in this litigation. Devery Decl. at ¶ 7.

www.supermarketnews.com and www.nrn.com. Devery Decl. at ¶ 12. The subscriber base for the trade journals and websites encompasses many businesses responsible for procurement of beef and other businesses that fall within the Settlement Class definition. A proposed sample banner ad is included with the Notice Plan and attached as Exhibit D to the Devery Declaration.

- **News Release.** A.B. Data will distribute a news release via the *PR Newswire* distribution service. Devery Decl. at ¶ 13. This news release will be distributed to more than 10,000 newsrooms, including print, broadcast, and digital media across the United States. It will also be distributed to food-industry trade publications.
- **Social Media.** A.B. Data will also share information about the case with its followers on the social media platform X, formerly known as Twitter. Devery Decl. at ¶ 14.

Settlement Website and Toll-Free Number. A.B. Data will further assist potential class members in understanding their rights under the Settlement by establishing a case-specific toll-free number and website. Devery Decl. at ¶¶ 15-17. The toll-free telephone number will be equipped with an automated interactive voice response system. *Id.* at ¶ 16. The automated interactive voice response system will present callers with a series of choices to hear pre-recorded information about the Settlement Agreement. If callers need further assistance, they will have an option to speak with a live operator during business hours. *Id.* The website will provide relevant information and documentation, including a case summary, copies of the Settlement Agreement and related Orders, and a schedule of important dates (*e.g.*, the deadline for making objections). *Id.* at ¶ 17.

Class Counsel has required A.B. Data to make the following commitments, and A.B. Data has affirmed that it:

- *Will disclose all related entities that it intends to engage in this litigation.*

- *Does not have and will not enter into an agreement or financial arrangement with another entity by which it receives any financial compensation in any way related to this Settlement or Litigation other than compensation expressly agreed to and directed by Class Counsel.*
- *Does not have a personal relationship (including but not limited to familial, romantic, or financial/business) with any Class Counsel employee, partner, and/or owner.*

Devery Decl. at ¶ 25. A.B. Data will also take specific measures and precautions to prevent and minimize the filing of fraudulent claims. For example, A.B. Data will use Defendants' data to programmatically review and identify invalid submissions; use front-end screening tools to mitigate fraud; and consistently monitor the evolving tactics used to commit fraud in the claims process and update its tools and configurations to detect such fraud. Devery Decl. at ¶ 22.

Class Counsel believe that these disclosures and commitments are in the best interests of the Class and ensure that the Class's funds are being zealously guarded. Jones Decl. at ¶¶ 28-30. The DPPs request appointment of A.B. Data as the notice and claims administrator. Courts have regularly approved class notice plans such as the one DPPs propose here, which include multifaceted approaches. *See Petrovic*, 200 F.3d at 1153; *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1176 (8th Cir. 1995).

2. The Form of DPPs' Proposed Notice Satisfies Rule 23 and Due Process

Under Rule 23(c)(2)(B), the proposed class notice:

must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for request exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). As demonstrated in Exhibits B-D to the Devery Declaration, DPPs' Class Notice Plan addresses each of these requirements in a clear and easily understood manner. *See* Devery Decl. at ¶¶ 8-12, Exs. B-D. A.B. Data has opined that the notice plan meets the requirements of Rule 23. Devery Decl. at ¶ 24. Accordingly, the Notice Plan and accompanying forms are reasonable and adequate under the circumstances and are fairly calculated to apprise class members of their rights under the Settlement. *See id.* DPPs respectfully submit that this comprehensive Notice Plan provides the best notice practicable under the circumstances of this case and comports with Rule 23 and due process requirements. *See Petrovic*, 200 F.3d at 1153; *DeBoer*, 64 F.3d at 1176; Devery Decl. at ¶¶ 5, 24. Interim Co-Lead Class Counsel requests that the Court approve the proposed form and manner of notice to the Settlement Class as set forth in the Notice Plan.

C. The Proposed Claims Process and Plan of Allocation Are Fair and Reasonable.

Allocation plans must pass muster under Fed. R. Civ. P. 23(e)(2)(C)(ii). Courts assess the fairness, reasonableness, and adequacy of proposed allocation plans to determine whether class members are treated “equitably relative to each other.” *In re Reisdeo Techs., Inc., Secs. Litig.*, No. 19-cv-2863, 2022 WL 872909, at *3 (D. Minn. Mar. 24, 2022) (citing

Fed. R. Civ. P. 23(e)(2)(D)); *Pork*, 2022 WL 4238416, at *7. Moreover, *pro rata* allocation plans are routinely approved by courts as fair, reasonable, and adequate. *Id.*

Here, DPPs propose that the funds will be allocated according to the amount of beef class products purchased by a class member. As was approved for the JBS settlement, A.B. Data will, to the extent possible, provide claimants with a prepopulated claim form with each Settlement Class Member's purchase information based on Defendants' and Co-Conspirators' records obtained through this litigation. Devery Decl. ¶ 20.⁶ Copies of the Blank Claim Form and Pre-Populated Claim Form are attached as Exhibits E and F to the Devery Declaration.

Settlement Class Members who filed a claim in the JBS settlement do not need to file another claim to participate in the Tyson settlement. Devery Decl. ¶ 21. However, due to changes between the settlement class definition from the JBS settlement, class members who submitted additional documentation to supplement their claims amount for the JBS settlement may need to do so again for the Tyson settlement. Any class member may submit additional documentation for the Tyson settlement – even if they did not do so for the JBS settlement – but it is not required. Class members who disagree with or wish to supplement

⁶ The DPP class definition has changed from the JBS settlement and now aligns with the class that DPPs seek to certify (*see* ECF No. 854 at ix, 2-3). Most relevant to the Tyson settlement, the class definition *now* excludes further processed products such as ground beef and drop byproducts such as offal. Where DPPs elected to recognize a portion of class members' purchases of those products for the JBS settlement (*see* ECF No. 1521 at 7 fn.8) those products are excluded from the Tyson settlement and DPPs will not recognize those purchases. A.B. Data is able to make these adjustments based on the Defendant-provided data. Devery Decl ¶ 21. However, as described *infra*, claims of class members who submitted additional documentation for the JBS settlement may need to re-submit their additional documentation for the Tyson settlement. *Id.* ¶ 21.

their known purchase information, they may do so by completing an audit form available on the settlement website. *Id.* ¶ 21. A copy of the Purchase Audit Request Form is attached as Exhibit G to the Devery Declaration. Settlement Class Members who did not submit a claim in the JBS settlement must submit a claim to be eligible for a payment from this Settlement. *Id.* ¶ 19. For Settlement Class Members who do not have a prepopulated claims amount, the claims form asks for simple details regarding the number of qualifying purchases through a brief, simple set of questions, and no documentation is required unless there is a potentially suspicious number of purchases or amount of costs claimed. DPPs also propose a distribution plan which provides for efficient and cost-effective disbursement of settlement funds to class members. Settlement Class members must submit a timely, valid claim through the settlement website or by mail to be eligible to receive payment. Payments will be sent by secure bank wire transfer to eligible claimants, or by hard copy check. Devery Decl. at ¶ 23.

DPPs propose that Class Members be able to submit claims through November 30, 2026. If that deadline needs to be moved, because of additional settlements or for another reason, DPPs will make such a request to the Court.

DPPs respectfully request that the Court approve the proposed claim form and the proposed plan of allocation.

D. Proposed Notice Schedule

Set forth below is the proposed schedule for purposes of the notice plan, objections and opt-out deadlines, deadlines for filing any attorneys' fees and reimbursement of litigation fund expenses, and a schedule for final approval. The relevant dates are not yet

affixed in the proposed notices but will be once the Court sets dates certain for the following litigation events.

EVENT	DEADLINE
Tyson to issue CAFA notice	Within 10 days after entry of the Court's Order preliminarily approving the Settlement and Notice Plan ("the Order")
Direct Mail and Email notice to potential Settlement Class Members; update the settlement website; and issue a press release over PR Newswire	12 days after the Court's Order
Publication Notice Begins	12 days after the Court's Order or as soon as practicable thereafter due to publication schedules
Deadline for class members to object	90 days after the Court's Order (objections must be received by this deadline)
Deadline for class members to request to opt out of the settlement	90 days after the Court's Order (requests must be postmarked by this deadline)
Interim Co-Lead Counsel to move for attorneys' fees, expenses, and service awards for named representatives	At least 30 days before the Final Approval Hearing
Plaintiffs to file affidavits or declarations of the person(s) under whose general direction notice was issued	At least 10 days before the Final Approval Hearing
Plaintiffs to file final approval brief, response to objections, if any, and a proposed final approval order with a complete list of all Settlement Class Members that have opted out of the Settlement	At least 10 days before the Final Approval Hearing or by a date to be set by the Court
Final Approval Hearing	At least 135 days after the Court's Order, as the Court's schedule permits

VI. CONCLUSION

Based on the foregoing, Interim Co-Lead Counsel respectfully asks the Court to enter an Order:

- Preliminarily approving the Settlement between DPPs and Tyson;
- Certifying the Settlement Class for purposes of settlement, and appointing Plaintiffs Gregg Szilagyi solely in his capacity as Chapter 7 trustee for the bankruptcy estate of Central Grocers, Inc., R&D Marketing, LLC, and Redner's Markets, Inc. as representatives of the Class; appointing DPP Interim Co-Lead Counsel as Settlement Class Counsel; and granting preliminary approval of the proposed Settlement;
- Approving the proposed form and manner of notice to the Settlement Class, and directing that the notice to the Settlement Class be disseminated by A.B. Data as Claims Administrator in the manner described, establishing a deadline for Settlement Class members to request exclusion from the Class or file objections to the Settlement; and
- Setting the proposed schedule for completing further Settlement proceedings, including scheduling the Final Approval Hearing.

Dated: April 17, 2026

Respectfully submitted,

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