

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

IN RE CATTLE AND BEEF ANTITRUST  
LITIGATION

Case No. 0:20-cv-01319 JRT-HB

This Document Relates To:  
IN RE DPP BEEF LITIGATION

**DIRECT PURCHASER**  
**PLAINTIFFS' MOTION FOR**  
**PRELIMINARY APPROVAL OF**  
**SETTLEMENT BETWEEN DIRECT**  
**PURCHASER PLAINTIFFS AND**  
**JBS DEFENDANTS**

Direct Purchaser Plaintiffs (“DPPs”)<sup>1</sup>, by and through their undersigned counsel, respectfully move this Court for an Order granting preliminary approval of a settlement with Defendants JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively, “JBS”). This motion is based upon Fed. R. Civ. P. 23, and all the files, records, and proceedings herein including Plaintiffs’ Memorandum of Law in Support of Motion for Preliminary Approval of Settlement between DPPs and JBS and supporting documents.

Dated: January 31, 2022

Respectfully Submitted,

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<sup>1</sup> As used herein, “DPPs” means plaintiffs Howard B. Samuels 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.

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***Interim Co-Lead Counsel for the Proposed  
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UNITED STATES DISTRICT COURT  
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LITIGATION

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**NOTICE OF HEARING ON  
DIRECT PURCHASER  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT BETWEEN DIRECT  
PURCHASER PLAINTIFFS AND  
JBS DEFENDANTS**

**PLEASE TAKE NOTICE** that Direct Purchaser Plaintiffs (“DPPs”)<sup>1</sup>, by and through their undersigned counsel, will bring DPPs’ Motion for Preliminary Approval of Settlement between DPPs and Defendants JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively, “JBS”), on February 3, 2022, at 10:00 AM CST, via Zoom, before the Honorable John R. Tunheim.

Dated: January 31, 2022

Respectfully Submitted,

/s/ Daniel E. Gustafson

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<sup>1</sup> As used herein, “DPPs” means plaintiffs Howard B. Samuels 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.

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Direct Purchaser Plaintiffs***

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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LITIGATION

Case No. 0:20-cv-01319 JRT-HB

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 JBS DEFENDANTS**

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## I. INTRODUCTION

Direct Purchaser Plaintiffs (“DPPs”)<sup>1</sup> respectfully move for preliminary approval of a settlement (the “Settlement”) with Defendants JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively, “JBS”). This is the first settlement for the DPP class and the first public settlement overall in any of the coordinated, complex beef antitrust cases. This icebreaker settlement represents an excellent recovery for the class, both in terms of financial relief to class members and benefit to those class members in pursuing their claims against other Defendants.

The Settlement provides \$52.5 million in monetary relief and extensive cooperation to the DPP class. This 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 Rule 23(e).

Based on the motion and supporting papers, the DPPs request that this Court grant preliminary approval of this Settlement; appoint Interim Co-Lead Counsel as Settlement Class Counsel; certify the proposed settlement class; approve the form of notice (including directing non-settling Defendants to timely provide notice data); direct that

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<sup>1</sup> As used herein, “DPPs” means Howard B. Samuels 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.

individual notice of this settlement be distributed to potential members of the settlement class to the extent reasonably practicable; and set the date for the final approval hearing.

## II. BACKGROUND

DPPs filed their underlying complaints in June and July of 2020, after extensive investigation. *See* Case No. 20-cv-1319, Doc. No. 1; Case No. 20-cv-1602, Doc. No. 1.<sup>2</sup> DPPs filed their consolidated amended class action complaint on December 28, 2020. Doc. No. 142 (“Complaint”). The investigation included significant research into the allegations of an alleged agreement and Defendants<sup>3</sup> participation in trade associations, vetting of the then-confidential witness information, and extensive work with economic experts.

The 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. Doc. No. 331 (“MTD Order”) at 3. DPPs allege Defendants engaged in price-fixing, in part, by constraining the supply of beef in the United States through various means and by engaging in other collusive conduct. *See, e.g.*, Complaint, ¶ 3. Plaintiffs allege that each Defendant, from 2015 on, unlawfully acted in concert to moderate and suppress slaughter volumes in order to drive up the price of beef. MTD Order at 21.

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<sup>2</sup> 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. Doc. No. 71.

<sup>3</sup> 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), National Beef Packing Company, Tyson Foods, Inc., and Tyson Fresh Meats, Inc. as Defendants.

After complaints making similar allegations were dismissed on September 29, 2020, DPPs further researched, investigated, and analyzed their claims to file an amended complaint, including with substantial expert analysis. *See* Doc. No. 127. Defendants moved to dismiss the DPPs' Amended Complaint on February 11, 2021, which DPPs opposed on March 29, 2021. After a lengthy hearing on the motions on July 12, 2021, this Court denied the motions as to the DPPs' Complaint on September 14, 2021.<sup>4</sup> Doc. No. 331.

Since filing the initial complaints, the parties exchanged discovery requests and objections and responses on September 9, 2020, and October 9, 2020, respectively. *See* Declaration of Daniel E. Gustafson ¶ 5. After the motions to dismiss were denied, discovery disclosures and requests, and related discussions, resumed in earnest. On October 15, 2021, DPPs served further requests for production on Defendants, including JBS; on December 3, 2021, Defendants served their objections and responses on DPPs. *Id.* ¶ 10.

The parties have now spent many 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 for the entry of a protective order. *Id.* These tasks have been large but made even more complicated by the extensive coordination between DPPs and the other classes and the Direct Action Plaintiff ("DAP"). The parties have also extensively negotiated and submitted competing

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<sup>4</sup> This Court granted Defendants' Motions as to nine state law claims brought by the indirect purchasers. *See* Doc. No. 331.

scheduling proposals and worked to submit a Case Management Issues Order. *Id.* The DPPs have added additional class representatives to bolster the DPP class's representation throughout the case and have worked to respond to discovery requests from Defendants for these new representatives. *Id.* ¶ 11.

### III. SUMMARY OF SETTLEMENT NEGOTIATIONS AND AGREEMENT

DPPs and JBS reached this settlement through protracted, confidential arm's-length negotiations. *Id.* ¶¶ 12-15. This settlement includes both monetary relief for the class and JBS's extensive cooperation in DPPs' prosecution of the ongoing litigation against the non-settling Defendants.

After the denial of Defendants' motion to dismiss, the parties discussed the possibility of settlement and agreed to mediate with Professor Eric Green. *Id.* ¶ 13. Prior to the mediation, the parties submitted extensive papers regarding their respective settlement positions and after an extended, hard-fought mediation on October 28, 2021, made substantial progress but did not reach a final agreement on all material terms. Following months of further difficult negotiations, the Parties have agreed on the full Settlement. *See* Gustafson Declaration Ex. A.

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

All persons and entities who, from January 1, 2015, through February 10, 2022, purchased for use or delivery in the United States, directly from any of the Defendants or their respective subsidiaries and affiliates, boxed or case-ready beef processed from Fed Cattle, excluding ground beef made from culled cows. 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 governmental 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.

*Id.* ¶ 5. The Settlement provides that JBS will pay \$52.5 million into a settlement fund that will be used to compensate the direct purchaser class, pay for notice and administration of the settlement and pay litigation fees and expenses. *Id.* ¶¶ 1(u), 9.

Interim Co-Lead Counsel believe this remarkable recovery is fair and reasonable in any event, but particularly given the early stage of the litigation, JBS's market share regarding the products at issue, and the significant cooperation JBS has agreed to provide. The fairness and reasonableness of the settlement is further amplified by the fact that the Settlement is an "icebreaker" settlement in a multi-defendant case, assisting Plaintiffs in the litigation against the non-settling Defendants. The promised cooperation by JBS's U.S. Operations and sales divisions includes: (a) an eight (8) hour attorney proffer where JBS's counsel is required to summarize the principal facts known to it that are relevant to the alleged conduct, market, and industry participants at issue in the Actions, including any facts previously provided to the DOJ or any other U.S. government investigative authority in response to subpoenas or otherwise related to the allegations in the Complaint; (b) production of JBS's structured data; (c) data, documents, and contact information necessary for facilitating class notice and settlement administration; (d) witness interviews with up to six (6) JBS employees; (e) depositions of up to six (6) JBS employees; (f) the production of up to three (3) current employee



witnesses at trial; and (g) assistance with authentication and laying a foundation for admissibility at trial of JBS documents, among other cooperation provisions. *Id.* ¶ 10.

The settlement includes a typical “opt out provision,” set forth in a confidential side letter available to the Court for *in camera* review, that permits JBS to withdraw from the settlement if class members representing a specified percentage of total sales of Beef sold by JBS in the United States opt out of the settlement. *See, e.g.*, Manual for Complex Litigation, 4<sup>th</sup> Edition, § 22.922 (discussing such provisions and noting that it is common in Rule 23(b)(3) class settlements).

Upon final judgment, and in exchange for the monetary relief and extensive cooperation, DPPs will release claims, as defined in the Settlement, against JBS. *See Id.* at 21-22.

#### **IV. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL**

“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. These economic gains multiply when settlement also avoids the costs of litigating class status—often a complex litigation within itself.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (internal citations omitted). “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); *Liddell v. Board of Educ. of the City of St.*

*Louis*, 126 F.3d 1049, 1056 (8th Cir. 1997). “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.*, 11-MD-2247- ADM-JJK, 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)). As the Eighth Circuit has directed, in considering settlements, “strong 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).

In reviewing class action settlements, courts must ensure that they are “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). In assessing whether a settlement should receive preliminary approval, the fairness, reasonableness, and adequacy “standard is 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. CV 18-296 (MJD/KMM), 2021 WL 3080960, at \*5 (D. Minn. July 21, 2021). 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).

#### **A. The Settlement is Fair, Reasonable, and Adequate**

Rule 23(e)(2) directs courts to approve a settlement “only on finding that it is fair, reasonable, and adequate” after considering several factors, namely: 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-cv-180, 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); *White v. Nat'l Football League*, 836 F. Supp. 1458, 1476-77 (D. Minn. 1993). “The court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement.” *In re Employee Benefit Plans Sec. Litig.*, Civ. No. 3-92-708, 1993 WL 330595, \*5 (D. Minn. June 2, 1993) (citation omitted); *see also Welsch v. Gardenbring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987) (affording “great weight” to opinions of experienced counsel).

This proposed settlement satisfies all of the foregoing factors. First, the Settlement was reached in arm's length negotiations by counsel experienced in settling class actions. Sufficient investigation and initial data analysis were conducted in drafting the exhaustive complaints and counsel for both parties have had the opportunity to properly evaluate the strengths and weaknesses of their respective claims and defenses, and the propriety of settlement at this juncture. Both parties' counsel are experienced in antitrust matters. Indeed, lead counsel for the DPPs have substantial experience in litigating protein antitrust cases throughout the country. For example, Gustafson Gluek PLLC (“Gustafson”) and Cotchett, Pitre & McCarthy, LLP (“CPM”) are the court-appointed lead class counsel for a class of commercial food preparers in the *In re Broiler Chicken*

*Antitrust Litigation* currently pending in the Northern District of Illinois. *See* 16-cv-08637 (N.D. Ill.), Doc. No. 144 (order appointing lead counsel). That case similarly alleges collusive supply restraints and price-fixing. Gustafson is also serving as co-lead counsel for the indirect consumer class in the *In re Pork Antitrust Litigation* pending in this District and also involving some of the same defendant groups as this case. *See* 18-cv-1776 (D. Minn.), Doc. No. 151 (order appointing lead counsel). Moreover, Hausfeld LLP (“Hausfeld”) is the court-appointed lead counsel for a class of direct purchasers in the *In re Packaged Seafood Antitrust Litigation*, No. 3:15-MD-2670 (S.D. Cal.) that is currently pending before both the Ninth Circuit and in the Southern District of California; Jason Hartley, now of Hartley LLP (“Hartley”), serves on Plaintiffs’ steering committee in that matter. Doc. No. 119, at 3 (appointing Hausfeld LLP as co-lead counsel, appointing Jason Hartley to Plaintiffs’ steering committee) (S.D. Cal. March 24, 2016). Finally, Gustafson, CPM, and Hausfeld are all serving in leadership or high-level roles in either the *In re Atlantic Farm-Raised Salmon Antitrust Litigation* or the related indirect purchaser matter, *Wood Mountain Fish LLC v. Mowi ASA*, 19-CV-22128, both pending in the Southern District of Florida. *In re Atlantic Farm-Raised Salmon Antitrust Litig.*, 19-cv-21551, Doc. No. 97, at 3 (S.D. Fla. June 3, 2019) (appointing Hausfeld LLP co-lead counsel). All of the foregoing experiences have provided class counsel with valuable insight into these protein markets, the associated volume of commerce, and the risks inherent in the litigation, which further support approval of the settlement.

Moreover, the negotiations over this settlement were conducted before a highly respected, nationally-renowned 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 associated with the settlement. *In re Michael Milken and Assocs. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *Capsolas v. Pasta Res. Inc.*, No. 10-CV-5595 RLE, 2012 WL 1656920, at \*1 (S.D.N.Y. May 9, 2012) ("The assistance of an experienced mediator . . . reinforces that the Settlement Agreement is noncollusive."); *cf. 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."). These factors weigh heavily in favor of preliminary approval.

Further, the relief provided to the class in this Settlement is substantial. As a threshold measure, in a multi-defendant case like this one, the existence of an "icebreaker" settlement is itself valuable to the class, because such settlements often bring remaining defendants to settlement negotiations. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) ("An early settlement with one of many defendants can 'break the ice' and bring other defendants to the point of serious negotiations."). But even were this not the first such settlement, by any measure, \$52.5 million dollars is a substantial settlement sum. By comparison, JBS settled with the direct purchaser class in the *Pork* case for \$24.5 million and that settlement was preliminarily approved by this Court. In addition to the financial component of this

Settlement, JBS's required cooperation will bolster DPPs' claims against the remaining Defendants.

Finally, 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 once it is time for the funds to be distributed.

**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-PAM-AJB, 2013 WL 5888231, at \*2 (D. Minn. 2013). At the preliminary approval stage, only the first three factors are considered, *In re Wireless Tel.*, 396 F.3d at 932, and the first is the most important, *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988).

All three factors favor preliminary approval of the Settlement. First, without the Settlement, the outcome of the litigation as to JBS would be far from certain. Although DPPs defeated Defendants' a motion to dismiss, the future stages of class certification,

summary judgment motions, and trial will be strenuously contested. Furthermore, any decisions on class certification or at trial are not only uncertain, but would likely face an appeal, which compounds the uncertainty, not to mention the delay associated with any recovery for the class. In lieu of the vicissitudes and delay that inhere in continued litigation, the Settlement provides for substantial, direct, and certain benefits to the class. This is a highly favorable result in the face of uncertain continued litigation. This factor favors approval of the Settlement.

Second, there is no indication that JBS's financial condition is not secure. After carefully reviewing the financial information JBS furnished, counsel concluded that JBS is capable of fulfilling its voluntary financial settlement obligations or of funding a vigorous defense to the litigation.

Third, this case will be complex and expensive, and will place an enormous burden upon the parties and the Court. Counsel for all parties have vigorously represented their clients and will continue to do so. This case will only get more expensive and complex as depositions and expert analyses begin to take place. This factor easily supports approval of the Settlement.

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

To qualify for settlement-class certification, an action must satisfy all provisions of Federal Rule of Civil Procedure 23(a), plus one of the subdivisions of Rule 23(b). *See* Fed. R. Civ. P. 23(a) & 23(b). Rule 23(a) requires the proponents of certification to establish each of the following: (1) that 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). In this case, Rule 23(b)(3) requires that the common questions of law and fact must predominate over individual questions, and the class must 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 here satisfies each of the requirements of Rule 23(a) (numerosity, commonality, typicality and adequacy of representation) and of Rule 23(b)(3) (predominance and superiority).

### **1. Numerosity is Easily Satisfied**

For a class action to be appropriate, 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.” *Rasberry v. Columbia Cty., Arkansas*, No. 16-cv-1074, 2017 WL 3259447, at \*2 (W.D. Ark. July 31, 2017) (citing *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. Gustafson Decl., ¶ 5. The Defendants unquestionably sell their products directly to a number of direct purchasers that are geographically dispersed throughout the United States.



## 2. There are Common Questions of Law and Fact

A common question, for purposes of 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, 2014 WL 1281600, at \*15 (D. Minn. Mar. 13, 2014) (noting that a “single common contention” could satisfy commonality).

The Complaint sets forth nine common questions relating to the scope of JBS’s conduct to suppress the supply of beef and artificially inflate its price. *See* Compl. ¶ 333. 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 arise from the same event or are based on the same legal theory as the claims of the class members.” *Lockwood Motors, Inc. v. General 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, 133 (D. Minn. 1985); *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) (internal citations omitted); *see also Smith v. United Health Care Servs., Inc.*, No. 00-cv-1163, 2002 WL 192565, at \*3-4 (D. Minn. 2002) (plaintiffs typical of class despite varying degree of damages due to “strong similarity of legal theories”).

Here, the named Plaintiffs’ and the putative Settlement Class’s legal claims arise out of the same alleged conduct. Namely, that class members purchased beef directly from one or more Defendants during the Relevant Time Period and suffered economic injury as a result of paying Beef prices that were artificially inflated by Defendants’ conspiracy. *See, generally*, Complaint. In short, Plaintiffs’ claims arise out of the same course of conduct and the same injury, and they seek the same relief. *See In re Select Comfort Corp. Sec. Litig.*, 202 F.R.D. 598, 604 (D. Minn. 2001) (“Typicality is closely related to commonality as a finding of one generally compels a finding of the other.”) (cleaned up). Because Plaintiffs’ claims are typical of the Settlement Class’s claims, this requirement is similarly met.

#### **4. Plaintiffs Have Adequately Represented the Class**

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). In order 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) each representative’s interests

are sufficiently similar to those of the class that it is unlikely that their goals and viewpoints will diverge. *See 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 vigorously prosecuted this action on behalf of the class representatives and the entire proposed Settlement Class. Co-Lead Counsel—in addition to their extensive experience with protein related price-fixing cases cited above—have decades of experience leading and litigating some of the largest antitrust cases in the country. *See* Doc. No. 71 (firm resumes of Co-Lead Counsel previously submitted with DPPs’ Motion to Appoint Lead Counsel). Further, the class representatives have come forward to litigate against their Beef suppliers on behalf of the Class and have actively participated in this action and fully cooperated with Interim Co-Lead Counsel. This requirement 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). District courts in Minnesota have recognized that “[a]s with commonality and typicality requirements, the predominance inquiry is directed toward the issue of liability.” *In re 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.* (internal citations 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 common to the class, predominance is satisfied here.

**6. A Class Action is the Superior Method for Resolving These Claims**

Rule 23(b)(3) instructs that the matters pertinent to this inquiry include: (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. Each of these factors favor certification in this case. Requiring each direct purchaser of beef to come forward with individual—and identical—claims would deplete the judiciary's resources, likely create inconsistent results, establish incompatible standards of conduct for the Defendant, and lead to repetitious, complex trials. This litigation provides an efficient and economic method for individual direct purchasers to participate in this litigation and recover their damages, while aggregating costs. Finally, while there are similar cases being brought by other groups of purchaser plaintiffs, this is the only case seeking recovery for a class of direct purchasers. Despite the large number of putative Settlement Class members and the complex issues at stake, there are no insurmountable difficulties in managing this case as a class action. The Settlement itself

will obviate the need for management of further litigation and a possible trial and appeal involving one of the larger Defendants.

It should also be noted that the proposed Settlement Class is easily ascertainable in two ways: first, a class member may self-identify simply by reviewing the class definition, and second, Defendants, including JBS, possess complete lists of clients and customers who purchased beef directly from them.

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

## **V. NOTICE PLAN**

### **A. The Court Should Direct Settlement Class Notice to the Class**

Under generally recognized standards, class notice must afford potential class members the ability 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 “alternative means such as notice through third parties, paid advertising, and/or posting in places frequented by class members” where individual notice is not possible. *Mullins v. Direct Digital*, 795 F.3d 654, 665 (7th Cir. 2015); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1149 (8th Cir. 1999); *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995). This 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 (citing *DeBoer*, 64 F.3d at 1176). Furthermore, in addition to United States mail, notice may be by electronic means or other appropriate means. Fed. R. Civ. P. 23(c)(2)(B). Other putative settlement class members may be notified by publication notice. *See City of Greenville v. Syngenta Crop Prot.*, No. 3:10-CV-188, 2012 WL 1948153, \*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 Eric Schachter ¶¶ 3-5, Ex. A (listing many prior engagements on complex settlement administration projects). A.B. Data has extensive experience providing notice and claims administration in antitrust cases, such as this one. *Id.* For example, 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*. *See* 18-cv-1776 (D. Minn.), Doc. Nos. 631, 832. This Court also appointed A.B. Data as notice and claims administrator with respect to the consumer indirect purchaser class in *Pork*. *See* 18-cv-1776, Doc. No. 811.

Similarly, A.B. Data has also been appointed by the court as notice and claims administrator in the *In re Broiler Chicken Antitrust Litigation*, currently pending in the

Northern District of Illinois. Notably, A.B. Data has been appointed as notice provider for *each of the three classes* litigating *Broilers* claims there: the Direct Purchaser Plaintiffs, the Commercial and Institutional Indirect Purchaser Plaintiffs, *and* the End-User Consumer Plaintiffs. *See, e.g.*, 16-cv-08637 (N.D. Ill.), Doc. No. 5234.

A.B. Data is also the court-appointed notice provider and claims administrator for direct purchasers in the antitrust litigation pending against the Turkey producers. *See Olean Wholesale Grocery Cooperative Inc. et al. v. Agri-Stats, Inc., et al.*, 19-cv-08318 (N.D. Ill.), Doc. Nos. 265, 295. The extensive experience A.B. Data has gained from the other protein antitrust cases involving chicken, pork, and turkey will be invaluable in this case.

**Direct Notice.** Proposed forms of the notice materials to the putative Settlement Class are included herewith as exhibits attached to the Schacter Declaration, and include the Long-Form Notice at Exhibit B. The foregoing materials provide plain, easily understood information about, among other things, that this is a class action; the amount of the settlement; the Settlement Class definition in plain and engaging language; that the Action alleges antitrust violations and price-fixing claims; that a member of the Settlement Class may appear through an attorney if the member wants; that members of the Settlement Class can be excluded from the Settlement Class or object to the Settlement if they so choose; the amount of the litigation fund that Plaintiffs seek; the maximum amount of fees and expenses to be sought; the time and manner for requesting exclusion or submitting an objection; the binding effect of a judgment on the Settlement

Class; and that, if the Court grants final approval, the case will be dismissed as against the Settling Defendants. Schachter Decl. ¶ 9.

Under DPPs' plan, the notice provider 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.<sup>5</sup> The Long-Form Notice provides significant information and transparency regarding the proposed settlement and contains all information required by the Rules and case law. The Long-Form Notice also provides the URL for the website where class members may review the more fulsome information about the lawsuit and the proposed settlement. In addition to a physical mailing, the Notice will also be emailed directly to settlement class members where email information is available. *See* Schachter Decl. ¶¶ 7-10.

**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 has devised 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 implementing a thirty-day digital media banner ad campaign on [www.supermarketnews.com](http://www.supermarketnews.com) and [www.nrn.com](http://www.nrn.com). Schachter Decl. ¶ 11. The subscriber base for the trade journals and websites encompasses many businesses responsible for procurement of beef and other

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<sup>5</sup> Class Counsel for DPPs estimates that there are approximately 30,000 class members. An exact number cannot be provided at this time because Defendants have not produced their granular data yet in this litigation. Gustafson Decl. ¶ 16. The 30,000-class member estimate is based on Class Counsel and A.B. Data's experience in similar antitrust protein cases, including *Broilers*, *Pork*, and *Turkey*. *Id.*



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 Schachter Declaration.

- **News Release.** A.B. Data will disseminate a news release via the *PR Newswire* distribution service. Schachter Decl. ¶ 12. 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.

**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. Schachter Decl. ¶¶ 13-15. The toll-free telephone number will be equipped with an automated interactive voice response system in both English and Spanish. The automated interactive voice response system will present callers with a series of choices to hear prerecorded information concerning the Settlement Agreement. If callers need further help, they will have an option to speak with a live operator during business hours. *Id.* The website will present relevant information and documentation, including a case summary, copies of the settlement agreement and related Orders, other important documents, and a schedule showing important dates. *Id.*

Courts have regularly approved class notice plans that include multilayered approaches, such as the foregoing. *See Petrovic*, 200 F.3d at 1153; *DeBoer*, 64 F.3d at 1176.

## 2. The Form of Plaintiffs' 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 requesting 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 Schachter Declaration, DPPs' Class Notice Plan addresses each of Rule 23's requirements in a clear and easily understood manner. DPPs' notice expert has opined that the notice plan meets the requirements of Rule 23. 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 multifaceted, comprehensive Notice Plan provides the best notice practicable under the circumstances of this case and fully satisfies Rule 23 and due process requirements. *See Petrovic*, 200 F.3d at 1153; *DeBoer*, 64 F.3d at 1176; Schachter Decl. ¶ 17. 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.

**B. To Provide for Adequate Notice, the Court Should Require the Non-Settling Defendants to Produce Their Available Customer Contact Information**

The foregoing plan requires providing direct notice to the DPP class in accord with Rule 23. DPPs have thus far received no customer contact information from the non-settling Defendants in this litigation. Through this filing, DPPs seek an order from the Court requiring that all non-settling Defendants produce their customer names, addresses, and email addresses for the settlement class period. Courts regularly require non-settling defendants to produce this information for purposes of effectuating notice of class

settlements and facilitating claims administration in antitrust and complex cases. *See, e.g., In re Pork Antitrust Litigation*, Case No. 18-cv-1776-JRT-HB (D. Minn. January 13, 2021), ECF No. 631, ¶ 7 (“So that the proposed notice plan may be carried out, each Defendant in this Action is directed to provide a customer list to the Settlement Administrator, including any reasonably available names, email addresses, and mailing addresses, pursuant to the schedule below.”); *Precision Associates Inc. et al. v. Panalpina World Transport (Holding) Ltd.*, Case No. 08-cv-000042-BMC-PK (E.D.N.Y. Sept. 29, 2011, Oct. 17, 2011 & Dec. 02, 2011), (ECF Nos. 536 (ordering production from non-settling defendants); 546 (denying limitation that class lists be sent directly to claims administrator without access by class counsel); 561 (ordering further production from those defendants only providing subsets of customer contact information)); *In re Aftermarket Auto. Lighting Prod. Antitrust Litig.*, No. 09-ML-2007 (C.D. Cal. Aug. 29, 2011) (Doc. No. 315-3) (Finegan declaration) (defendants produced class member records); *Encinas v. J.J. Drywall Corp.*, 265 F.R.D. 3, 11 (D.D.C. 2010); *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, ¶ 3 (E.D. Pa. July 15, 2010) (ordering “each Defendant who has not already done so” to produce customer lists); *In re Air Cargo Shipping Serv. Antitrust Litig.*, No. 06-MD-01775 (E.D.N.Y. Oct. 31, 2007) (Doc. No. 646) (ordering production from non-settling defendants). There are myriad other decisions holding similarly.<sup>6</sup> DPPs respectfully request that such information be

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<sup>6</sup> *See, e.g., In re Visa Check/MasterMoney Antitrust Litigation*, 2002 WL 31528478, at \*3 (E.D.N.Y. June 21, 2002) (Gleeson, J.) (non-settling defendants required to produce customer information for purposes of notice); *In re Urethane Antitrust Litig.*, No. 04-MD-01616, ECF No. 291 at 3 (D. Kan. April 6, 2006) (requiring production of records

provided to DPPs within 30 days of this Court’s order directing notice to the class and preliminarily approving this settlement.

### **B. 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.

<b>EVENT</b>	<b>DEADLINE</b>
JBS to issue CAFA notice	Within 10 days after the Preliminary Approval Motion is filed
Order approving Plaintiffs’ proposed Notice Program (“Order”)	N/A
All Defendants to produce reasonably available customer names, mailing addresses and email addresses	30 days after the Court’s Order
Direct mail; Mailed and Email notice to potential Settlement Class Members; establish the settlement website; and issue a press release over PR Newswire	60 days after the Court’s Order

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from non-settling defendants’ records); *Lazy Oil Co. v. Witco Corp.*, 95 F.Supp.2d 290, 297 (W.D. Pa. 1997) (mailed notice based on non-settling defendants’ customer lists); *In re Packaged Ice Antitrust Litig.*, No. 08-MD-1952, 2010 WL 5638219, \*2 (E.D. Mich. Sept. 2, 2010) (directing non-settling defendants to provide customer data); *In re Citric Acid Antitrust Litig.*, No. 1092, C-95-2963, 1997 WL 446239, \*1 (N.D. Cal. July 24, 1997); *In re Art Materials Antitrust Litig.*, MDL No. 436, 1983 WL 1815, \*2 (N.D. Ohio May 2, 1983) (ordering defendants to identify purchasers).

<b>EVENT</b>	<b>DEADLINE</b>
Publication notice begins	60 days after the Court's Order or as soon as practicable thereafter due to publication schedules
Plaintiffs to file motion for final approval of \$5 million Litigation Fund	75 days after the Court's Order
Deadline for class members to object	105 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	105 days after the Court's Order (requests must be postmarked by this deadline)
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 JBS;
- Certifying the Settlement Class for purposes of Settlement, and appointing Howard B. Samuels 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;

- Ordering the non-settling Defendants to produce customer names, addresses, and email addresses for the settlement class period;
- Approving the proposed form and manner of notice to the Settlement Class, and directing that the notice to the Settlement Class be disseminated by Claims Administrator A.B. Data 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 completion of further Settlement proceedings, including scheduling the Final Approval Hearing.

Dated: January 31, 2022

Respectfully Submitted,

/s/ Daniel E. Gustafson

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***Interim Co-Lead Counsel for the Proposed  
Direct Purchaser Plaintiffs***



**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE CATTLE AND BEEF ANTITRUST  
LITIGATION

Case No. 0:20-cv-01319 JRT-HB

This Document Relates To:  
IN RE DPP BEEF LITIGATION

**DIRECT PURCHASER PLAINTIFFS'  
RULE 7.1(f) COMPLIANCE  
CERTIFICATE**

The undersigned hereby certifies that, pursuant to Local Rule 7.1(f), Direct Purchaser Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Settlement with JBS Defendants, contains 7,104 words, as determined through the word count feature of the Microsoft Office Word 2016 word processing software used to prepare the memorandum. The word processing program has been applied specifically to include all text, including headings, footnotes, and quotations. The memorandum was prepared in 13-point font in accordance with the type size limitation of Local Rule 7.1(h).

Dated: January 31, 2022

Respectfully Submitted,

/s/ Daniel E. Gustafson

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*Interim Co-Lead Counsel for the Proposed  
Direct Purchaser Plaintiffs*

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

IN RE CATTLE AND BEEF ANTITRUST  
LITIGATION

Case No. 0:20-cv-01319 JRT-HB

This Document Relates To:  
IN RE DPP BEEF LITIGATION

**DECLARATION OF**  
**DANIEL E. GUSTAFSON IN**  
**SUPPORT OF DPPS' MOTION FOR**  
**PRELIMINARY APPROVAL OF**  
**SETTLEMENT BETWEEN DIRECT**  
**PURCHASER PLAINTIFFS AND**  
**JBS DEFENDANTS**

Pursuant to 28 U.S.C. § 1746, I, Daniel E. Gustafson, hereby declare and state as follows:

1. I am an attorney licensed to practice law in the State of Minnesota and admitted to federal Court in Minnesota. I am a founding member of Gustafson Gluek PLLC. Gustafson Gluek, along with Cotchett, Pitre, & McCarthy, LLP, Hausfeld LLP, and Hartley LLP, has acted as Interim Co-Lead Counsel for the Direct Purchaser Plaintiffs ("DPPs") Class.<sup>1</sup> See Doc. No. 71.

2. I make this Declaration in support of DPPs' Memorandum of Law in Support of DPPs' Motion for Preliminary Approval of Settlement with JBS Defendants<sup>2</sup>,

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<sup>1</sup> The DPP Class is represented by plaintiffs Howard B. Samuels 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.

<sup>2</sup> The JBS Defendants include JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc.

and based upon my personal knowledge, as well as records and information available to me. If called as a witness, I could testify competently to the matters stated in this Declaration.

## SUMMARY OF THE ACTION

3. The first direct purchaser class action complaint, *Pacific Agri-Products, v. JBS USA Food Co. Holdings, et al.*, 19-cv-02720, Doc. No. 1. (“*Pac-Agri*”), was filed on October 16, 2019.<sup>3</sup> The first of the consolidated beef direct purchaser actions, *Samuels v. Cargill, Inc. et al.*, 20-cv-1319, Doc. No. 1 (D. Minn., June 6, 2020) was filed on June 6, 2020 (“*Samuels*”). The other consolidated direct purchaser action, *Olean Wholesale Grocery Cooperative, Inc. v. Cargill, Inc. et al.*, 20-cv-1602, Doc. No. 1 (D. Minn. July 17, 2020) (“*Olean*”) was filed shortly thereafter. Each of these complaints alleged antitrust violations on behalf of direct purchasers of beef from JBS and non-Settling Defendants.

4. Prior to our clients filing this case, counsel in the above Actions commenced and pursued an extensive investigation of the Beef market, including reviewing public data and statements and working with an expert to analyze the market and potential overcharges. In addition, we thoroughly researched our legal claims, including reviewing and analyzing extensive motion to dismiss briefing and a corresponding order in related actions brought by other classes of plaintiffs affected by Defendants’ conspiracy. That information gave rise to the DPP Actions.

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<sup>3</sup> The *Pac-Agri* complaint was voluntarily dismissed because Pac-Agri no longer wished to serve as a class representative. See 19-cv-02720, Doc. No. 38.

5. DPPs have participated in considerable discovery and related negotiations. The parties exchanged discovery requests and objections and responses on September 9, 2020, and October 9, 2020, respectively.

6. While opposing the motions to dismiss and preparing for the litigation ahead, DPPs have continued to investigate the claims asserted in the Actions. That has included further work with consulting experts and reviewing documents produced by certain defendants to the Department of Justice. These further efforts formed the basis of the allegations in DPPs' Corrected Consolidated Amended Class Action Complaint, which was filed on December 28, 2020. *See* 20-cv-1319, Doc. No. 158 (the "CAC").

7. Defendants moved to dismiss the CAC on February 18, 2021. Doc. No. 166. DPPs worked to oppose Defendants' motion to dismiss the CAC, helping to inform them of the strengths and weaknesses of each side's positions. DPPs' opposition was ultimately successful, with the Court denying Defendants' motion to dismiss on September 14, 2021. *See* 20-cv-1319, Doc. No. 238 (Sept. 14, 2021).

8. Plaintiffs made a further amendment to the CAC following the Court's order on October 15, 2021. Doc. No. 256 (the "Complaint").

9. DPPs have at all times and will continue to vigorously litigate this case.

10. On October 15, 2021, DPPs served further requests for production on Defendants, including JBS; on December 3, 2021, Defendants served their objections and responses on DPPs. The parties have, in coordination with plaintiffs across related actions as directed by Magistrate Judge Bowbeer's order, Doc. No. 252, engaged in dozens of meet and confers on discovery requests, deposition limits, custodians, non-

custodial sources of information, structured data, search methodology, protective order, scope of third-party subpoenas, and a deposition protocol. All parties have negotiated and submitted competing scheduling proposals and worked to submit a Case Management Issues Order. Thus, while discovery is still in its early stages, DPPs are well aware of the parties' positions, the factual bases for the actions, and the risks DPPs face by continuing to litigate against the Defendants.

11. DPPs have recently added additional class representatives to bolster their claims and the class's representation throughout the case and are working to respond to discovery requests for these new representatives.

#### **THE SETTLEMENT NEGOTIATIONS**

12. On behalf of the DPPs, my firm, along with my Co-Lead Counsel, engaged in numerous rounds of settlement negotiations with counsel for the JBS Defendants, including with the assistance of nationally-recognized and experienced complex litigation mediator Eric Green.

13. The parties first began discussing the possibility of settlement in June 2021. The parties began their discussions in earnest after the Court denied the defendants' motions to dismiss. After initial discussions, the parties agreed to mediate with the assistance of Mr. Green.

14. Co-Lead Counsel and JBS both submitted settlement position papers to Mr. Green and engaged in a lengthy mediation, during which the parties vigorously argued their respective positions. With the assistance of the mediator, the parties made substantial progress during the October 28, 2021, mediation but did not reach a final

agreement on all material terms. What followed were nearly three months of hard-fought negotiations between the parties to reach a final agreement, including extensive negotiations over the scope of the JBS Defendants' cooperation and other details of the settlement.

15. DPPs and the JBS Defendants finalized and signed the settlement agreement between them on January 27, 2022. The executed Settlement Agreement is attached hereto as Exhibit A.

### **THE SETTLEMENT AND ITS FAIRNESS**

16. This is the first settlement for the DPP class, which contains an estimated 30,000 members<sup>4</sup> who directly purchased beef from JBS and the non-settling Defendants, and the first known settlement overall in these coordinated, complex cases. This settlement reflects an analysis of not only the damages inflicted on the DPP class by the JBS Defendants, but also the value of an initial icebreaker settlement providing significant cooperation, which will be used to aid in the continued prosecution of this case against the remaining defendants who remain jointly and severally liable for the damages suffered by the DPP class.

17. The settlement negotiations between the JBS Defendants and DPPs were, at all times, at arm's length and hard-fought. Throughout this entire process, the JBS Defendants have been represented by experienced, sophisticated antitrust counsel. Co-Lead Counsel for the DPP Class have decades of experience litigating antitrust class

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<sup>4</sup> The 30,000-class member estimate is based on Class Counsel and A.B. Data's experience in similar antitrust protein cases, including *Broilers*, *Pork*, and *Turkey*.



actions and know how to fairly, reasonably, and adequately attach a value to the early resolution of antitrust litigation. Counsel for all parties also have substantial experience litigating other antitrust protein cases throughout the country, as well as decades of experience in antitrust cases. For example, Gustafson Gluek and Cotchett, Pitre & McCarthy, LLP are the court-appointed lead class counsel for a class of commercial food preparers in the *In re Broiler Chicken Antitrust Litigation*, currently pending in the Northern District of Illinois. *See* No. 16-cv-08637 (N.D. Ill.), Doc. No. 144 (order appointing lead counsel). Gustafson Gluek serves as co-lead counsel for a class of consumer indirect purchasers in the *In re Pork Antitrust Litigation*, currently pending before this Court. *See* No. 18-cv-1776 (D. Minn.), doc. No. 151 (order appointing lead counsel). Hausfeld LLP is the court-appointed lead counsel for a class of direct purchasers in the *In re Packaged Seafood Antitrust Litigation*, No. 3:15-md-02670 (S.D. Cal.), that is currently pending before both the Ninth Circuit and in the Southern District of California; Jason Hartley, now of Hartley LLP (“Hartley”), serves on Plaintiffs’ steering committee in that matter. Doc. No. 119 at 3 (appointing Hausfeld LLP as co-lead counsel, appointing Jason Hartley to Plaintiffs’ steering committee) (S.D. Cal. March 24, 2016). Gustafson Gluek, Cotchett, Pitre & McCarthy, and are all serving in leadership or high-level roles in either the *In re Atlantic Farm-Raised Salmon Antitrust Litigation* or the related indirect purchaser matter, *Wood Mountain Fish LLC v. Mowi ASA*, 19-CV-22128, both pending in the Southern District of Florida. *In re Atlantic Farm-Raised Salmon Antitrust Litig.*, 19-cv-21551, Doc. No. 97, at 3 (S.D. Fla. June 3, 2019) (appointing Hausfeld LLP co-lead counsel).

18. During the initial investigation, litigation, and in relation to this settlement, Co-Lead Counsel researched, analyzed, and evaluated many contested legal and factual issues. Thus, Co-Lead Counsel recognized the facts and benefits, risks and consequences of continued litigation versus the proposed ice-breaker settlement with the JBS Defendants. Counsel thoroughly evaluated the relative strengths and weaknesses of our respective litigation positions during the negotiation of this settlement.

19. There was no collusion or preference among counsel for the parties at any time during these negotiations. To the contrary, the negotiations were contentious, hard-fought, and fully informed, as well as supervised by a mediator. DPPs sought to, and did, obtain a significant monetary benefit for the proposed class from the JBS Defendants at this point in the litigation and, equally as important, significant cooperation to aid in the DPPs' continued prosecution of this action against the remaining Defendants. For the avoidance of doubt, there was no discussion or agreement of any kind regarding the amount of attorneys' fees, costs, or service awards that DPPs' counsel or DPPs may seek from the Court related to this settlement.

20. Under the terms of the proposed settlement agreement between DPPs and the JBS Defendants, the JBS Defendants commit to paying \$52.5 million to the settlement fund within fourteen (14) business days of Preliminary Approval of the settlement. The JBS Defendants also agree to provide significant cooperation, which will assist DPPs in prosecuting their remaining claims against the other defendants, including: (a) to the extent JBS is afforded leniency or conditional leniency with respect to Beef, Cattle or Fed Cattle pursuant to the U.S. Department of Justice's corporate leniency

program, or a similar program, JBS shall cooperate with the DPPs in a manner that is consistent with the provisions of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004; (b) to the extent the JBS Defendants produce relevant documents to government authorities, it shall produce those documents to the DPPs; (c) counsel for the JBS Defendants shall provide an attorney proffer providing a reasonably detailed description of the principal facts known to Settling Defendants that are relevant to the alleged conduct, market, and industry participants at issue in the Actions, including any facts previously provided to the DOJ or any other U.S. government investigative authority in response to subpoenas or otherwise related to the allegations in the DPPs' Complaint; (d) to the extent to which the JBS Defendants respond to discovery, produces documents, or provides proffers or other cooperation to other plaintiffs in the related actions, whether during the course of litigating the actions or as part of a settlement, it will serve or otherwise provide DPPs a copy of such materials; (e) produce three separate categories of extensive structured data; (f) produce data or documents sufficient to show the JBS Defendants' imports or exports of case ready or boxed beef to or from the United States; (g) produce documents sufficient to show price lists or pricing methodology used by the JBS Defendants with respect to case ready and boxed beef; (h) provide documents and data to assist DPPs in providing notice and developing a plan to allocate the distribution of the JBS settlement funds; (i) provide interviews by up to six current employees; (j) provide up to 6 current employees for deposition; (k) provide up to three current employee witnesses at trial; (l) use reasonable effort to authenticate, and lay an evidentiary foundation for admissibility to, documents or things produced by JBS in the

Action; and (m) beyond the information to be produced by the JBS Defendants in discovery in the Actions and pursuant to this Settlement Agreement, the JBS Defendants will further consider reasonable requests from Interim Co-Lead Counsel for additional information concerning DPPs' claims in the Actions.

21. I have personally prosecuted numerous antitrust class actions as lead counsel, co-lead counsel or in other leadership positions. I have negotiated many settlements during those years. In my opinion, and in the opinion of my esteemed Co-Lead Counsel Jason Hartley, Adam Zapala and Megan Jones, the current proposed ice-breaker settlement agreement with the JBS Defendants is fair, reasonable, and adequate. All Co-Lead Counsel, based on their experience, believe that this settlement is in the best interests of the class. This is because this settlement provides substantial benefits to the DPP Class and avoids the delay and uncertainty of continuing protracted and contentious litigation with the JBS Defendants.

I declare under penalty of perjury that the above is true and correct to the best of my knowledge.

Dated: January 31, 2022

/s/ Daniel E. Gustafson  
Daniel E. Gustafson

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE CATTLE AND BEEF ANTITRUST  
LITIGATION

Case No. 0:20-cv-1319 (JRT/HB)

This Document Relates To:  
IN RE DPP BEEF LITIGATION

**SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER CLASS  
PLAINTIFFS AND JBS DEFENDANTS**

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into as of the 27th day of January, 2022 by and between the Direct Purchaser Plaintiffs, and all of their predecessors; successors; assigns; affiliates; and any and all past and present parents, owners, subsidiaries, divisions, departments (“DPPs”),<sup>1</sup> through Interim Co-Lead Counsel (as hereinafter defined) for the proposed Settlement Class (as hereinafter defined), and Defendants JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc., and all of their predecessors; successors; assigns; affiliates; and any and all past and present parents, owners, subsidiaries, divisions, departments (collectively referred to as “Settling Defendants” or “JBS”) in the above-captioned action (the “Actions”). DPPs, on behalf of the Settlement Class, and JBS are referred to herein collectively as the “Parties” or individually as a “Party.”

WHEREAS, DPPs on behalf of themselves and as representatives of the putative class of similarly situated persons or entities allege in the Actions, among other things, that JBS

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<sup>1</sup> As used herein, “DPPs” means Howard B. Samuels 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.

participated in a conspiracy — with other Defendants in this litigation and unnamed co-conspirators. Specifically, DPPs allege that “[s]ince at least the start of 2015, Defendants have exploited their market power in this highly concentrated market by conspiring to limit the supply, and fix the prices, of beef sold to Plaintiffs and class members in the U.S. wholesale market.” (Direct Purchaser Plaintiffs’ Corrected Consolidated Amended Class Action Complaint, Dkt No. 158 (sealed)/159 (redacted public version)), ¶ 3 ;

WHEREAS, Interim Co-Lead Counsel were appointed by the Court to represent, on an interim basis, the putative class of direct purchasers of case ready or boxed beef (the “Settlement Class” as defined below);

WHEREAS, the Parties wish to resolve all claims asserted and all claims that could have been asserted against JBS in any way arising out of or relating in any way to the direct purchase, by members of the Settlement Class, of Beef (as hereinafter defined) produced, processed or sold by JBS or any of the Defendants or their co-conspirators;

WHEREAS, counsel for the Parties engaged in arm’s-length negotiations, including mediation with a nationally recognized and highly experienced mediator, on the terms of this Settlement Agreement, and this Settlement Agreement embodies all of the terms and conditions of the Settlement;

WHEREAS, DPPs concluded, after preliminary investigation of the facts and after considering the circumstances and the applicable law, that it is in the best interests of DPPs to enter into this Settlement Agreement with JBS to avoid the uncertainties of further complex litigation, and to obtain the benefits described herein for the Settlement Class (as hereinafter defined), and, further, that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of DPPs and the Settlement Class;

WHEREAS, JBS affirmatively represented to DPPs that it knows of no governmental criminal investigation into JBS' conduct related to the subject matter of Plaintiffs' Complaint;

WHEREAS, JBS wishes to avoid the costs, expenses, and uncertainties of this complex litigation;

NOW THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration, it is agreed by and among the Parties that the claims of the DPPs and the Settlement Class be settled and compromised, and dismissed on the merits with prejudice as to JBS subject to Court approval:

1. General Definitions. The terms below and elsewhere in this Agreement with initial capital letters shall have the meanings ascribed to them for purposes of this Settlement Agreement.

- a. "Actions" means the putative class action filed by DPPs in the above-captioned proceeding.
- b. "Beef" means boxed and case-ready meat that has been processed from cattle by Defendants and other smaller, nondefendant producers, including but not limited to primals; trim or sub-primal products; further processed and value added products; offal or variety products; rendered product and byproducts. It excludes ground beef made from culled cows.
- c. "Cattle" means fed cattle before they are processed into Beef and excludes culled cows. "Fed Cattle" means steers and heifers raised in feedlots on a concentrated diet for the production and sale of Beef.
- d. "Complaint" means the Direct Purchaser Plaintiffs' Corrected Consolidated Amended Class Action Complaint, Dkt. Nos. 158 (sealed)/159 (redacted)



public version), as well as the forthcoming proposed amended complaint that DPPs have indicated they intend to file to add additional class representatives.

- e. “Court” means the United States District Court for the District of Minnesota.
- f. “Defendants” means JBS S.A., JBS USA Food Company, Swift Beef Company, JBS Packerland, Inc., Cargill, Inc., Cargill Meat Solutions Corporation (a/k/a Cargill Protein), National Beef Packing Company, Tyson Foods, Inc., and Tyson Fresh Meats, Inc.
- g. “Escrow Account” means the escrow account established with the escrow agent to receive and maintain funds contributed by JBS for the benefit of the Settlement Class.
- h. “Escrow Agreement” means that certain agreement between the escrow agent that holds the Settlement Fund and DPPs (by and through Interim Co-Lead Counsel) pursuant to which the Escrow Account is established and funded for the benefit of the Settlement Class, as set forth in Paragraphs 8 and 9 below.
- i. “Execution Date” means the latest date on which all parties have signed this Settlement Agreement.
- j. “Final Approval” means an order and judgment by the Court which finally approves this Settlement Agreement and the settlement pursuant to Federal Rule of Civil Procedure 23 and dismisses JBS with prejudice from the Actions.

- k. “Final Judgment” means the first date upon which both of the following conditions shall have been satisfied: (a) final approval of the Settlement Agreement by the Court (“Final Approval”); and (b) either (1) thirty days have passed from the date of Final Approval with no notice of appeal having been filed with the Court; or (2) Final Approval has been affirmed by a mandate issued by any reviewing court to which any appeal has been taken, and any further petition for review (including certiorari) has been denied, and the time for any further appeal or review of Final Approval has expired.
- l. “Interim Co-Lead Counsel” means Gustafson Gluek PLLC, Cotchett, Pitre & McCarthy, LLP, Hartley LLP, and Hausfeld LLP, as appointed by the Court on an interim basis to represent the putative class of direct purchasers.
- m. “Released Parties” means, individually and collectively, JBS and its former, current and successor parents, subsidiaries and any of the respective former, current and future, direct or indirect trustees, directors, officers, shareholders, managers, members, attorneys, equity holders, agents, insurers and employees of JBS. Notwithstanding the foregoing, “Released Parties” does not include any Defendant other than JBS named by DPPs in the Actions, either explicitly or as a third-party beneficiary.
- n. “Person” means without limitation, any individual, corporation, partnership or any variation thereof (e.g., limited partnership, limited liability partnership), limited liability company, proprietorship, joint venture, association, group or other form of legal entity or business.

- o. “Preliminary Approval” means an order by the Court to preliminarily approve this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23.
- p. “Released Claims” shall have the meaning set forth in Paragraph 14 of this Agreement.
- q. “Releasing Party” or “Releasing Parties” shall refer individually and collectively, to the Settlement Class and all members of the Settlement Class, including the DPPs, each on behalf of themselves and their respective predecessors and successors; their current and former, direct and indirect parents, subsidiaries and affiliates; their present and former shareholders, partners, directors, officers, owners of any kind, principals, members, agents, employees, contractors, attorneys, insurers, heirs, executors, administrators, devisees, representatives; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and any of their past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions; and also means, to the full extent of the power of the signatories hereto to release past, present and future claims, persons or entities acting in a private attorney general, qui tam, taxpayer or any other capacity, whether or not any of them participate in this Settlement Agreement. As used in this Paragraph, “affiliates” means entities controlling, controlled by or under

common ownership or control with, in whole or in part, any of the Releasing Parties.

- r. “Settlement Administrator” means the firm retained to disseminate the Settlement Class Notice and to administer the payment of Settlement Funds to the Settlement Class, subject to approval of the Court.
- s. “Settlement Class” means the class defined in Paragraph 5 below.
- t. “Settlement Class Period” means January 1, 2015 through February 10 , 2022.
- u. “Settlement Fund” means \$52.5 million U.S. dollars, the amount JBS shall pay or cause to be paid into an interest-bearing Escrow Account maintained by an escrow agent on behalf of the Settlement Class, pursuant to Paragraphs 8 and 9 below.

2. The Parties’ Efforts to Effectuate this Settlement Agreement. The Parties will cooperate in good faith and use their best efforts to seek the Court’s Preliminary Approval and Final Approval of this Settlement Agreement.

3. Litigation Standstill. Except as to the specific discovery negotiations outlined in Paragraph 10(e) below, DPPs, through Interim Co-Lead Counsel, shall cease all litigation activities against JBS related to the pursuit of claims against JBS in the Actions unless and until the Court were to deny Preliminary Approval or Final Approval of this Settlement Agreement. None of the foregoing provisions shall be construed to prohibit DPPs from seeking appropriate discovery from non-settling Defendants or co-conspirators or any other person other than Settling Defendants or from enforcing the terms of this Agreement on JBS.

4. Motion for Preliminary Approval. DPPs will move the Court for Preliminary Approval of this Settlement within fourteen (14) days of the Execution Date. Within a reasonable time in advance of submission to the Court, the papers in support of the motion for Preliminary Approval shall be provided by Interim Co-Lead Counsel to JBS for its review. To the extent that JBS objects to any aspect of the motion, they shall communicate such objection to Interim Co-Lead Counsel and the Parties shall meet and confer to resolve any such objection. The Parties shall take all reasonable actions as may be necessary to obtain Preliminary Approval and certification of the Settlement Class.

5. Certification of a Settlement Class. As part of the motion for Preliminary Approval of this Settlement, DPPs shall seek, and JBS shall take no position with respect to, appointment of Interim Co-Lead Counsel as Settlement Class Counsel for purposes of this Settlement and certification in the Action of the following “Settlement Class” for settlement purposes only:

All persons and entities who, from January 1, 2015 through February 10, 2022, purchased for use or delivery in the United States, directly from any of the Defendants or their respective subsidiaries and affiliates, boxed or case-ready beef processed from Fed Cattle, excluding ground beef made from culled cows.

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 governmental 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.

6. Settlement Class Notices. After Preliminary Approval, and subject to approval by the Court of the means for dissemination:

- a. To the extent reasonably practicable, individual notice of this settlement shall be mailed, emailed, or otherwise sent and/or published by the Settlement Administrator, at the direction of Interim Co-Lead Counsel, to

potential members of the Settlement Class, in conformance with a notice plan to be approved by the Court. The Settlement Administrator shall be selected by Interim Co-Lead Counsel for approval by the Court.

- b. Neither the Settlement Class, Interim Co-Lead Counsel, nor JBS shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or obtaining approval of the settlement or administering the settlement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund, subject to any necessary Court approval, to pay the costs for notice and administration in conjunction with Preliminary Approval and Final Approval of this Settlement Agreement. To mitigate the costs of notice and administration, DPPs shall endeavor, if practicable, to disseminate notice of this settlement with notice of any other settlements reached in the Actions.
- c. Any costs of notice and administration that Interim Co-Lead Counsel are permitted to withdraw from the Settlement Fund, either pursuant to this Settlement Agreement or order of the Court, shall be nonrefundable if, for any reason, the Settlement Agreement is terminated according to its terms or is not finally approved by the Court.

7. Motion for Final Approval and Entry of Final Judgment. If the Court grants Preliminary Approval and certifies the Settlement Class, then DPPs, through Interim Co-Lead Counsel — in accordance with the schedule set forth in the Court’s Preliminary Approval — shall submit to the Court a separate motion for Final Approval of this Settlement Agreement by the Court. A reasonable time in advance of submission to the Court, the papers in support of the

motion for Final Approval shall be provided by Interim Co-Lead Counsel to JBS for their review. To the extent that JBS objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Counsel and the parties shall meet and confer to resolve any such objection.

The motion for Final Approval shall seek entry of an order and Final Judgment:

- a. Finally approving the Settlement Agreement as being a fair, reasonable, and adequate settlement for the Settlement Class within the meaning of Federal Rule of Civil Procedure 23, and directing the implementation, performance, and consummation of this Settlement Agreement;
- b. Determining that the Class Notice constituted the best notice practicable under the circumstances of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- c. Dismissing the Actions with prejudice as to JBS in all class action complaints asserted by DPPs or the Settlement Class;
- d. Discharging and releasing Released Parties from all Released Claims;
- e. Reserving continuing and exclusive jurisdiction over the Settlement Agreement for all purposes; and
- f. Determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to JBS shall be final and appealable and entered forthwith.

The Parties shall act in good faith to support and take all reasonable steps necessary to obtain Final Approval of the Settlement Agreement.

8. Escrow Account. The Escrow Account shall be administered by Interim Co-Lead Counsel for the DPPs and Settlement Class under the Court’s continuing supervision and control pursuant to the Escrow Agreement.

9. Settlement Consideration. In consideration for the release of Released Claims and the dismissal of the Actions, within fourteen (14) business days of the Court’s grant of Preliminary Approval, JBS shall pay or cause to be paid the Settlement Fund of \$52.5 million (Fifty-Two million and Five Hundred Thousand dollars) into the Escrow Account.

10. Cooperation. Cooperation by JBS is a material term of this Settlement Agreement and shall include the following categories of cooperation. The Parties agree that such cooperation obligations shall be limited to the Settling Defendants’ U.S. operations and sales; and that JBS S.A. shall not be obligated to contribute to any such cooperation. Such cooperation obligations shall not commence until after Plaintiffs move for Preliminary Approval of the Settlement Agreement:

- a. **ACPERA Cooperation.** To the extent that JBS is afforded any leniency or conditional leniency with respect to Beef, Cattle or Fed Cattle pursuant to the U.S. Department of Justice’s corporate leniency program, or a similar program, JBS shall cooperate with the DPPs in a manner that is consistent with the provisions of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (“ACPERA”).
- b. **Government Productions.** To the extent JBS has produced or produces documents or other materials in connection with investigations concerning potential anticompetitive activity related to the subject matter of Plaintiffs’ Complaint (*i.e.*, conspiring to limit the supply, and fix the prices, of beef or



cattle sold in the United States), to the U.S. Department of Justice, Federal Trade Commission, U.S. Department of Agriculture, Commodities Future Trading Commission, or states' attorneys general, and to the extent JBS has not previously produced such documents or other materials to DPPs, JBS shall produce such materials to DPPs (1) within fourteen (14) calendar days of the date Plaintiffs' file their motion for Preliminary Approval, if such documents or materials have previously been produced to any such entity, or (2) for productions made to any such entity after the date Plaintiffs' file their motion for Preliminary Approval, within thirty (30) calendar days of their production to any such entity or such other time as the parties mutually agree.

- c. **Attorney Proffer.** At a mutually agreeable time on or before February 28, 2022, or such other time as the Parties may agree, Settling Defendants' counsel shall for up to a total of 8 (eight) hours, and more if agreed by JBS and DPPs, meet with Interim Co-Lead Counsel at agreed upon locations or virtually if in-person attendance is not possible and provide a reasonably detailed description of the principal facts known to Settling Defendants that are relevant to the alleged conduct, market, and industry participants at issue in the Actions, including any facts previously provided to the DOJ or any other U.S. government investigative authority in response to subpoenas or otherwise related to the allegations in the Complaint.
- d. **Discovery or Settlement Cooperation in the Actions.** To the extent that JBS responds to discovery, produces documents, or provides proffers or

other cooperation to other plaintiffs in *In re: Cattle Antitrust Litigation*, No. 0:19-cv-01222 (D Minn.) (JRT/HB), *Peterson et al. v. JBS USA Food Company Holdings, et al.*, No. 0:19-cv-01129 (D Minn.) (JRT/HB), *Erbert & Gerbert's, Inc. v. JBS USA Food Company Holdings, et al.*, No. 0:20-cv-01414 (D Minn.) (JRT/HB), *Winn Dixie Stores, Inc., et al v. Cargill, Inc.*, et al., No. 0:21-cv-01751 (D Minn.) (JRT/HB) or any related actions, whether during the course of litigating the actions or as part of a settlement, it will serve or otherwise provide DPPs a copy of such materials within three (3) calendar days of their production to any other plaintiff.

- e. **Structured Data. Import/Export and Other Discovery.** , Settling Defendants shall provide Interim Co-Lead Counsel with the following types of discovery enumerated below. Interim Co-Lead Counsel shall be allowed to participate in meet and confers concerning the following discovery at the same time as, and in coordination with, plaintiffs in *In re: Cattle Antitrust Litigation*, No. 0:19-cv-01222 (D Minn.) (JRT/HB), *Peterson et al. v. JBS USA Food Company Holdings, et al.*, No. 0:19-cv-01129 (D Minn.) (JRT/HB), and *Erbert & Gerbert's, Inc. v. JBS USA Food Company Holdings, et al.*, No. 0:20-cv-01414 (D Minn.) (JRT/HB), *Winn Dixie Stores, Inc., et al v. Cargill, Inc.*, et al., No. 0:21-cv-01751 (D Minn.) (JRT/HB) (the “Related Actions”). The following types of discovery enumerated below shall be produced to DPPs in a reasonably prompt manner upon the latter of (a) the successful completion of the above-referenced meet and confers with both plaintiffs in the Related Actions and

Interim Co-Lead Counsel, or (b) an order from the Court resolving disputes related to the enumerated discovery. To the extent that the Settling Defendants do not agree or are not required to produce such discovery to plaintiffs in the Related Actions shall not relieve the Settling Defendants of their obligation to produce such discovery to DPPs.<sup>2</sup>

- i. To the extent reasonably accessible, structured data for the period of January 1, 2010 to December 31, 2020 (or whatever time period is later agreed to or ordered to be used in the litigation) showing:
  - (1) the individual transactions Settling Defendants made to procure Fed Cattle in the United States; (2) for each of Settling Defendants' plants in the United States and for their United States operations as a whole, granular (e.g., daily or weekly or, if not reasonable available, monthly) as well as quarterly, slaughter and case ready and boxed beef production volumes, capacity, capacity utilization, inventories and other tracked production metrics, as well as changes in these metrics over time; and (3) individual transactions for Settling Defendants' direct sales made to any customer, including any wholesalers or distributors, retailers, end-use customers, and internal customers, as well as available details about the sale of case ready and boxed beef in the United States.

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<sup>2</sup> By agreeing to provide DPPs with discovery into case ready beef as outlined in this Paragraph 10(e) as part of the consideration for this Settlement Agreement, the Settling Defendants are not conceding that case ready beef is a relevant category of discovery in the Actions or the Related Actions.

The Settling Defendants agree to use reasonable efforts to respond to a reasonable number of DPPs' questions regarding, and to otherwise assist DPPs in understanding, structured data produced by Settling Defendants.

- ii. Data or documents sufficient to show Settling Defendants' imports or exports of case ready or boxed beef to or from the United States for the period of January 1, 2010 to December 31, 2020 (or whatever time period is later agreed to or ordered to be used in the litigation).
- iii. Documents sufficient to show price lists or pricing methodology used by Settling Defendants with respect to case ready and boxed beef, during the Settlement Class Period.

f. **Cooperation for Settlement Notice Plan and Distribution:** Data or documents sufficient to show the amounts of payments made by customers during the Settlement Class Period to Settling Defendants for sales of case ready and boxed beef, on a product-by-product basis, in the United States and, in electronic format, the names of those customers and their last known email and physical addresses. Such data and documents shall be provided to Plaintiffs within thirty (30) days of the Execution Date, unless otherwise mutually agreed upon by the Parties.

g. **Interviews.** Within forty-five (45) calendar days after date of Plaintiffs' motion for Preliminary Approval or such other time as the Parties may agree, Settling Defendants agree to make available for interview up to six

(6) current employees of Settling Defendants, selected by Interim Co-Lead Counsel, with information regarding the factual allegations underlying the Claims in the Actions, including general industry knowledge. The employees to be selected for an interview shall not include those at the level of Chief, President, or a Board Director, or the Head of the Fed Beef or Regional Beef business units (but shall not exclude the direct reports of the Head of the Fed Beef or Regional Beef business units), or the equivalents of such titles, unless otherwise mutually agreed by the Parties.

- h. **Depositions.** The Settling Defendants shall not oppose or object to the DPPs noticing of up to six (6) depositions of current employees of Settling Defendants, including depositions of JBS under Fed.R.Civ.Pro. 30(b)(6), regarding the factual allegations underlying the Claims in the Actions, including general industry knowledge. The employees to be noticed for depositions shall not include those at the level of Chief, President, or Board Director, or the Head of the Fed Beef or Regional Beef business units (but shall not exclude the direct reports of the Head of the Fed Beef or Regional Beef business units), or the equivalents of such titles, unless otherwise mutually agreed by the Parties. The Parties further agree that:

- i. Plaintiffs will act in good faith to avoid taking depositions in a manner that would expand the limit of the number of depositions of JBS witnesses in the Actions that the parties to the Actions may agree upon or that the Court may order.

- ii. Written notice by Interim Co-Lead Counsel upon Settling Defendants' Counsel shall constitute sufficient service of notice of any depositions requested under this Paragraph.
- iii. Settling Defendants further agree that Interim Co-Lead Counsel may ask questions at depositions of Settling Defendants' witnesses noticed by other plaintiffs in *In re Cattle and Beef Antitrust Litigation*. Such questioning shall not expand the time limits on depositions in the Actions that may apply under the Federal Rules of Civil Procedure, that the parties to the Actions may agree upon, or that the Court may order.
- i. **Testimony at Trial.** JBS will use its best efforts to produce up to three (3) current employees of Settling Defendants, as selected by Interim Co-Lead Counsel, as live witnesses at trial. Such witnesses will be made available at Settling Defendants' expense and upon reasonable notice. Such witnesses may but need not be the same witnesses who have provided deposition testimony in the Actions. However, such witnesses shall not include those at the level of Chief, President, or Board Director, or the Head of the Fed Beef or Regional Beef business units (but shall not exclude the direct reports of the Head of the Fed Beef or Regional Beef business units), or the equivalents of such titles, unless otherwise mutually agreed by the Parties.
- j. **Additional Documents and Requests:** Beyond the information to be produced by the Settling Defendants in discovery in the Actions and

pursuant to this Settlement Agreement, the Settling Defendants will consider reasonable requests from Interim Co-Lead Counsel for additional information concerning DPPs' claims in the Actions, taking into account the information that it has or will produce in discovery, and whether providing the requested information will be burdensome, or will otherwise increase the cost of, or compromise, its defense, against other plaintiffs, of the claims in the Actions. The Parties shall meet and confer over any such requests, and in the event of a disagreement between Settling Defendants and Interim Co-Lead Counsel regarding the scope, burden, relevance, or permissibility of any such requests, the Parties will seek resolution of such disputes through mediation before Eric Green of Resolutions, LLC.

- k. **Authentication of Documents.** JBS agrees to use reasonable efforts to authenticate, and lay an evidentiary foundation for admissibility to, documents or things produced by JBS in the Action, where the facts indicate that the documents or things are authentic, whether by declarations, affidavits, depositions, hearings and/or trials, as may be necessary for the admission of such information in the Action.
- l. JBS's cooperation obligations under this Settlement Agreement shall not be terminated or otherwise affected by the release as set forth in this Settlement Agreement. Unless this Settlement Agreement is not approved by the Court, JBS's obligations to cooperate under this Settlement Agreement shall continue until Final Judgment has been entered in the Actions on all Claims brought by DPPs against all Defendants, and the time to appeal or to seek

permission to appeal from the Court's entry of final judgment on such Claims has expired, or, if appealed, Final Judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

11. Qualified Settlement Fund. The Parties agree to treat the Settlement Fund as being at all times a Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1, and to that end, the Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. In addition, Interim Co-Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 11, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Interim Co-Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Funds being a "Qualified Settlement Fund" within the meaning of Treas. Reg. § 1.468B-1. Interim Co-Lead Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund. JBS shall not be responsible for the filing or payment of any taxes or expenses connected to the Qualified Settlement Fund.



12. Distribution of Settlement Fund to Settlement Class. Members of the Settlement Class shall be entitled to look solely to the Settlement Fund for settlement and satisfaction against the Released Parties for the Released Claims, and shall not be entitled to any other payment or relief from the Released Parties. Except as provided by order of the Court, no member of the Settlement Class shall have any interest in the Settlement Fund or any portion thereof. DPPs, members of the Settlement Class, and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and expenses and the costs of notice of the Settlement Agreement to potential members of the Settlement Class. JBS and the other Released Parties shall not be liable for any costs, fees, or expenses of any of DPPs' and Interim Co-Lead Counsel's attorneys, experts, advisors, or representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Fund.

13. Fee Awards, Costs and Expenses, and Service Payments to DPPs. Subject to Interim Co-Lead Counsel's sole discretion as to timing, Interim Co-Lead Counsel will apply to the Court for a fee award, plus expenses, and costs incurred, and service awards to the DPPs to be paid from the proceeds of the Settlement Fund. JBS shall have no responsibility, financial obligation, or liability for any such fees, costs, or expenses. Within 15 days after any order by the Court awarding attorneys' fees, expenses, class representative service awards or expenses, the Escrow Agent shall pay the approved attorneys' fees, costs, and service award via wire transfer from the Settlement Fund as directed by Interim Co-Lead Counsel in accordance with and attaching the Court's order. In the event the Settlement does not become Final or the amount of attorneys' fees, costs, or service award is reversed or modified, within 30 days of the order from a court of

appropriate jurisdiction, Interim Co-Lead Counsel will cause the difference in the amount paid and the amount awarded to be returned to the Settlement Fund.

14. Release. Upon Final Judgment, the Releasing Parties shall completely release, acquit, and forever discharge the Released Parties from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any member of the Settlement Class has objected to the Settlement Agreement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that the Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, that exist as of February 10, 2022, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, losses, damages, and the consequences thereof that have been asserted, or could have been asserted, under federal or state law in any way arising out of or relating in any way to the direct purchase of Beef produced, processed or sold by JBS or produced, processed or sold by any of the other Defendants or their co-conspirators for which JBS could be held liable, and purchased directly by the Releasing Parties (the “Released Claims”). Notwithstanding the above, “Released Claims” do not include (i) claims asserted against any Defendant or co-conspirator other than the Released Parties; (ii) claims related to any indirect purchases of Beef by the Releasing Parties; nor (iii) any claims wholly unrelated to the allegations in the Actions that are based on breach of contract, any negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, or securities claim. This reservation of claims set forth in (i) - (iii) of this paragraph does not impair or diminish the right of the Released Parties to assert any and all defenses to such claims. During the period after the expiration of the deadline for submitting an opt-out notice, as determined by the Court, and prior

to Final Judgment, all Releasing Parties who have not submitted a valid request to be excluded from the Settlement Class shall be preliminarily enjoined and barred from asserting any Released Claims against the Released Parties. The release of the Released Claims will become effective as to all Releasing Parties upon Final Judgment. Upon Final Judgment, the Releasing Parties further agree that they will not file any other suit against the Released Parties arising out of or relating to the Released Claims.

15. Further Release. In addition to the provisions of Paragraph 14, with respect to any and all Released Claims, the Parties stipulate and agree that by operation of the Final Judgment, upon the Effective Date, Releasing Parties and the Released Parties hereby expressly waive and release, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasing Party may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 14, but each Releasing Party and Released Party hereby expressly waives and fully, finally, and forever settles and releases, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties have agreed to

release pursuant to Paragraph 14, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

16. Non-Disparagement. The Parties agree they will not disparage these Actions or one another, such as by making public statements to the media that disparage either of the parties or their conduct in connection with these Actions.

17. This Settlement Agreement shall not be construed as an admission of liability, or used as evidence of liability, for any purpose in any legal proceeding, claim, regulatory proceeding, or government investigation.

18. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein when executed.

19. Option to Terminate. JBS will have the sole discretion to terminate this Settlement Agreement if potential members of the Settlement Class representing more than a specified portion of relevant transactions (excluding any sales to Winn-Dixie Stores, Inc., Bi-Lo Holding LLC and their related entities, which initiated a direct action complaint prior to this Settlement) – as set forth in a confidential side letter which shall be provided to the Court through a filing under seal – opt out of the Settlement Class. Within seven (7) calendar days after the deadline for any opt out requests, Interim Co-Lead Counsel shall provide JBS with a list of persons or entities that have timely and validly requested exclusion from the Settlement Class. Within fourteen (14) calendar days after the provision of said list, JBS shall inform Interim Co-Lead Counsel in writing in the event that it wishes to terminate the Settlement Agreement based on the blow threshold and provide Interim Co-Lead Counsel with documentation establishing that the blow threshold has been reached. In the event that JBS considers electing to terminate the Parties' Settlement Agreement under this provision, or there are any disputes under this provision, the Parties agree to mediate

this dispute with Eric Green before JBS makes such an election. By agreeing to mediate, JBS does not give up its sole discretion to terminate the Settlement Agreement as set forth in this paragraph. If JBS elects to terminate, then DPPs shall in no way whatsoever be prejudiced in resuming full discovery and adjudication of the Actions as they stood as of the Execution Date and JBS shall be prohibited from arguing to DPPs or the Court that its agreements with other plaintiffs or parties in any way limit DPPs' ability to do so.

20. Effect of Disapproval and Rescission. If the Court does not certify the Settlement Class as defined in this Settlement Agreement, or if the Court does not approve this Settlement Agreement in all material respects, or if the Court does not enter Final Approval as provided for in Paragraph 7 herein, or if any judgment approving this Settlement Agreement is materially modified or set aside on appeal, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 1(j) of this Settlement Agreement, or if this Settlement Agreement is terminated pursuant to Paragraph 19 or 20, then this Agreement may be cancelled and terminated:

- a. solely by JBS with respect to Paragraph 19, or
- b. otherwise by JBS or DPPs on behalf of the Settlement Class.

If cancelled and terminated, this Settlement Agreement shall become null and void, and, with the exception of any Settlement Funds used for notice and administration purposes pursuant to Paragraph 6(c), in the event the settlement is not preliminarily or finally approved by the Court, all other funds in the Escrow Account shall be returned to JBS and the Parties' position shall be returned to the status quo ante.

21. Choice of Law and Dispute Resolution. Any disputes relating to this Settlement Agreement shall be governed by Minnesota law without regard to conflicts of law provisions, and

any and all disputes regarding this Settlement Agreement will first be mediated with Eric Green before being submitted to the Court.

22. Consent to Jurisdiction. The Parties and any Releasing Parties hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of Paragraph 14 or 15, including but not limited to, any suit, action, or proceeding in which the provisions of Paragraph 14 or 15 are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of or relating to this Settlement Agreement. In the event that the provisions of Paragraph 14 or 15 are asserted by any Released Party as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Released Party shall be entitled to a stay of that suit, action, or proceeding until the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on such provisions. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, the Parties and any Releasing Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the in personam jurisdiction of the Court. Nothing shall be construed as a submission to jurisdiction for any purpose other than enforcement of this Agreement.

23. Class Action Fairness Act. Within ten (10) days of filing of this Settlement Agreement in court with the abovementioned motion for preliminary approval, JBS, at its sole expense, shall submit all materials required to be sent to appropriate Federal and State officials

pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and shall confirm to Interim Co-Lead Counsel that such notices have been sent.

24. Costs Relating to Administration. The Released Parties shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Funds.

25. Binding Effect. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, Settlement Class, the Releasing Parties, and the Released Parties. Without limiting the generality of the foregoing, upon certification of the Settlement Class and Final Approval, each and every covenant and agreement herein by the DPPs shall be binding upon all members and potential members of the Settlement Class and Releasing Parties who have not validly excluded themselves from the Settlement Class.

26. Sole Remedy. This Settlement Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any Released Party, and upon entry of Final Judgment, the Releasing Parties shall be forever barred from initiating, asserting, maintaining, or prosecuting any and all Released Claims against any Released Party.

27. Counsel's Express Authority. Each counsel signing this Settlement Agreement on behalf of a Party or Parties has full and express authority to enter into all of the terms reflected herein on behalf of each and every one of the clients for which counsel is signing.

28. It is agreed that this Settlement Agreement shall be admissible in any proceeding for establishing the terms of the Parties' agreement or for any other purpose with respect to implementing or enforcing this Settlement Agreement.

29. Notices. All notices under this Settlement Agreement shall be in writing. Each such notice shall be given either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier, and, in the case of either (a), (b) or (c) shall be addressed:

If directed to DPPs, the Settlement Class, or any member of the Settlement Class, to:

Daniel E. Gustafson  
GUSTAFSON GLUEK PLLC  
120 South 6th Street, Suite 2600  
Minneapolis, Minnesota 55402

Megan E. Jones  
HAUSFELD LLP  
600 Montgomery Street, Suite 3200  
San Francisco, CA 94111

Jason S. Hartley  
HARTLEY LLP  
101 W. Broadway, Suite 820  
San Diego, CA 92101

Adam J. Zapala  
COTCHETT, PITRE & MCCARTHY, LLP  
840 Malcolm Road  
Burlingame, CA 94010

If directed to JBS , to:

Stephen R. Neuwirth  
Sami H. Rashid  
QUINN EMANUEL URQUHART & SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, NY 10010

or such other address as the Parties may designate, from time to time, by giving notice to all parties hereto in the manner described in this Paragraph.

30. No Admission. Whether or not Final Judgment is entered or this Settlement Agreement is terminated, the Parties expressly agree that this Settlement Agreement and its contents, and any and all statements, negotiations, documents, and discussions associated with it,



are not and shall not be deemed or construed to be an admission of liability by any Party or Released Party.

31. No Third-Party Beneficiaries. No provision of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Released Party, DPP, member of the Settlement Class, or Interim Co-Lead Counsel.

32. No Party is the Drafter. None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

33. Amendment and Waiver. This Settlement Agreement shall not be modified in any respect except by a writing executed by the Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. The waiver by any Party of any particular breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement. This Settlement Agreement does not waive or otherwise limit the Parties' rights and remedies for any breach of this Settlement Agreement. Any breach of this Settlement Agreement may result in irreparable damage to a Party for which such Party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that the Parties may immediately seek enforcement of this Settlement Agreement by means of specific performance or injunction, without the requirement of posting a bond or other security.

34. Execution in Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute

a single agreement. Facsimile or electronic mail signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.

35. Integrated Agreement. This Settlement Agreement comprises the entire, complete, and integrated agreement between the Parties, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between the Parties. The Parties agree that this Settlement Agreement may be modified only by a written instrument signed by the Parties and that no Party will assert any claim against another based on any alleged agreement affecting or relating to the terms of this Settlement Agreement not in writing and signed by the Parties.

36. Voluntary Settlement. The Parties agree that this Settlement Agreement was negotiated in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with competent counsel and the participation of a neutral mediator, and no Party has entered this Settlement Agreement as the result of any coercion or duress.

37. Confidentiality. The Parties agree to continue to maintain the confidentiality of all settlement discussions, and materials exchanged during the settlement negotiation. However, prior to the filing of the motion for Preliminary Approval, JBS can inform other Defendants that it has reached a settlement agreement with DPPs. In addition, the existence and terms of this Settlement Agreement and the settlement contemplated herein shall be kept confidential, except (a) for purposes of obtaining Preliminary Approval and Final Approval by the Court, which is expected to include public filing of this Settlement Agreement; (b) for purposes of providing notice to members of the Settlement Class; (c) as otherwise required by law (including any applicable court order) or regulation or administrative guidance, request, ruling or proceeding or stock exchange

rule and as necessary to prepare tax, securities, and other required documents and disclosure; or  
(d) to enforce this Settlement Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Settlement Agreement on the date first above written.



Dated: 1/27/2022

Daniel E. Gustafson (#202241)

Daniel C. Hedlund (#258337)

Michelle J. Looby (#388166)

Joshua J. Rissman (#391500)

Brittany Resch (#397656)

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Dated: \_\_\_\_\_

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ecastillo@cpmlegal.com

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Dated: 1-27-22

Dated: \_\_\_\_\_

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Dated: 1/27/2022

  
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*Interim Co-Lead Counsel for the Direct  
Purchaser Plaintiff Class*



Dated: 1/27/2022

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Company, Swift Beef Company, and JBS  
Packerland, Inc.*



**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE CATTLE AND BEEF ANTITRUST  
LITIGATION

Case No. 0:20-cv-01319 JRT-HB

This Document Relates To:  
IN RE DPP BEEF LITIGATION

**DECLARATION OF  
ERIC SCHACHTER IN SUPPORT  
OF DIRECT PURCHASER  
PLAINTIFFS' NOTICE PROGRAM**

Pursuant to 28 U.S.C. § 1746, I, Eric Schachter, declare and state as follows:

1. I am a Vice President with A.B. Data, Ltd. (“A.B. Data”). A.B. Data has been selected by Direct Purchaser Plaintiffs as the Settlement Administrator.<sup>1</sup> I am fully familiar with the facts contained herein based upon my personal knowledge, and if called as a witness, could and would testify competently thereto.

2. In consultation with Co-Lead Counsel, I have prepared a proposed settlement notice and administration plan for this litigation. This Declaration will describe the proposed notice plan and how it will meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and provide due process to the potential members of the Settlement Class. This Declaration is based upon my personal knowledge and upon information provided to me by Co-Lead Counsel, my associates, and A.B. Data staff members.

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<sup>1</sup> Unless otherwise noted, all capitalized terms shall have the same meaning as in the Settlement Agreement between Direct Purchaser Plaintiffs and JBS.

3. I have implemented and coordinated some of the largest and most complex class action notice and administration plans in the country. The scope of my work includes notification, claims processing, and distribution plans in all types of class actions, including but not limited to consumer, antitrust, securities, ERISA, insurance, and government agency settlements.

4. A.B. Data has also been appointed as notice, claims, and/or settlement administrator in hundreds of high-volume consumer, antitrust, civil rights, insurance, ERISA, securities, and wage and hour class action cases. A profile of A.B. Data's background and capabilities, including representative case and client lists, is included as **Exhibit A**.

5. A.B. Data also has substantial experience administering other direct purchaser antitrust protein matters, including: *In re Broiler Chicken Antitrust Litigation*, No. 16-cv-08637 (N.D. Ill.) ("*Broilers*"); *In re Pork Antitrust Litigation*, No. 18-cv-1776 (D. Minn.) ("*Pork*"); and *Olean Wholesale Grocery Cooperative, Inc., et al., v. Agri Stats, Inc., et al.*, No. 1:19-cv-08318 (N.D. Ill.) ("*Turkey*"). 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*. See 18-cv-1776 (D. Minn.), Doc. Nos. 631, 832. This Court also appointed A.B. Data as notice and claims administrator with respect to the consumer indirect purchaser class in *Pork*. See 18-cv-1776, Doc. No. 811. A.B. Data has also been appointed by the district court as notice and claims administrator in the *Broilers* litigation, currently pending in the Northern District of Illinois. A.B. Data has been appointed as notice provider for each of the three classes litigating *Broilers* claims there:

the Direct Purchaser Plaintiffs, the Commercial and Institutional Indirect Purchaser Plaintiffs, *and* the End-User Consumer Plaintiffs. *See, e.g.*, 16-cv-08637 (N.D. Ill.), Doc. No. 5234. A.B. Data is also the court-appointed notice provider and claims administrator for direct purchasers in the antitrust litigation pending against the *Turkey* producers. *See Olean Wholesale Grocery Cooperative Inc. et al. v. Agri-Stats, Inc., et al.*, 19-cv-08318 (N.D. Ill.), Doc. Nos. 265, 295.

6. The objective of the proposed notice plan is to provide the best practicable notice under the circumstances of the proposed settlement to potential members of the Settlement Class. The Settlement Class is defined as follows:

All persons and entities who, from January 1, 2015, through February 10, 2022, purchased for use or delivery in the United States, directly from any of the Defendants or their respective subsidiaries and affiliates, boxed or case-ready beef processed from Fed Cattle, excluding ground beef made from culled cows. 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 governmental 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.

#### **NOTICE PLAN**

7. The proposed notice plan includes direct notice by mail and/or email to the members of the Settlement Class. I understand that in connection with this motion, DPPs are asking the Court for Defendants to produce contact information for all known, potential members of the Settlement Class that can be identified, to allow A.B. Data to send direct mail and email notice to members of the Settlement Class. To supplement this direct notice

and reach potential members of the Settlement Class that may not receive direct notice, A.B. Data will implement a print and digital media campaign, as detailed below.

8. Direct notice will be provided via a Long-Form Notice, attached as **Exhibit B**, that will be mailed to all Settlement Class Members with a known mailing address and posted on a case-specific website that A.B. Data will build and maintain. A Short-Form Notice, attached as **Exhibit C**, formatted as an email (“Email Notice”), will also be sent to all Settlement Class Members with a known email address.

9. The Long-Form Notice and Email Notice sent directly to potential members of the Settlement Class, will include summary information concerning the Settlement Agreement, including: that this is a class action; the amount of the settlement; the Settlement Class definition in plain and engaging language; that the Action alleges antitrust violations and price-fixing claims; that a member of the Settlement Class may appear through an attorney if the member wants; that members of the Settlement Class can be excluded from the Settlement Class or object to the Settlement if they so choose; the amount of the litigation fund that Plaintiffs seek; the maximum amount of fees and expenses to be sought; the time and manner for requesting exclusion or submitting an objection; the binding effect of a judgment on the Settlement Class; and that, if the Court grants final approval, the case will be dismissed as against the Settling Defendants. All notices will also include a hyperlink to the case website on which A.B. Data will post the more detailed Long-Form Notice and additional important documents and information.

10. For the Email Notice, A.B. Data implements certain best practices to increase deliverability and bypass SPAM and junk filters, and we will be able to verify how many

emails were successfully delivered. For the mailed Long-Form Notice, A.B. Data will track any mail returned as undeliverable by the United States Postal Service (USPS), and using third-party information providers to which we subscribe, attempt to ascertain an updated address and resend the Long-Form Notice accordingly.

11. To supplement the direct notice efforts, A.B. Data will publish the Short-Form Notice one time in *Supermarket News* and *Nation's Restaurant News*, trade journals targeting supply chain executives and food industry professionals. A.B. Data will also implement a thirty-day digital media banner ad campaign on [www.supermarketnews.com](http://www.supermarketnews.com) and [www.nrn.com](http://www.nrn.com). A sample banner ad is attached as **Exhibit D**. The subscriber base for these trade journals and websites encompass many businesses responsible for procurement of beef and other businesses that fall within the settlement class definition.<sup>2</sup>

12. A.B. Data will also disseminate a news release via the *PR Newswire* distribution service. 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.

### **WEBSITE AND TELEPHONE**

13. To assist potential members of the Settlement Class in understanding the terms of the Settlement Agreement and their rights, A.B. Data will establish a case-specific toll-free telephone number and website.

---

<sup>2</sup> These same trade journals and websites were also utilized by Direct Purchaser Plaintiffs in the Court-approved notice plans in *Pork* and *Turkey*.

14. The toll-free telephone number will be equipped with an automated interactive voice response system in both English and Spanish. The automated interactive voice response system will present callers with a series of choices to hear prerecorded information concerning the Settlement Agreement. If callers need further help, they will have an option to speak with a live operator during business hours.

15. The case-specific website will provide, among other things, a summary of the case, all relevant documents including the Settlement Agreement and Preliminary Approval Order, important dates, and any pertinent updates concerning the litigation or the Settlement approval process.

### **EXCLUSION PROCESSING**

16. The notices provide that members of the Settlement Class may request exclusion by sending a written, mailed request to the Settlement Administrator. A.B. Data will promptly circulate to the parties copies of all such requests and a report that tracks each request and whether the required information was included.

### **CONCLUSION**

17. It is my opinion, based on my individual expertise and experience and that of my A.B. Data colleagues, that the proposed notice plan is designed to effectively reach potential members of the Settlement Class, will deliver plain language notices that will capture the attention of the reader, and will provide relevant information in an informative and easy to understand manner that is necessary to effectively understand the rights and options under the terms of the Settlement Agreement. This proposed notice plan conforms to the standards employed by A.B. Data in notification plans designed to reach potential

class members of settlement groups or classes that are national in scope and reach narrowly defined entities and demographic targets. For all these reasons, in my opinion, the proposed notice plan satisfies the requirements of Rule 23 and due process

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

Executed this 31<sup>st</sup> day of January 2022 in Milwaukee, Wisconsin.

/s/ *Eric Schachter*

Eric Schachter

# EXHIBIT A



**Class  
Action  
Administration**



**Headquarters**  
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F: 414-961-3099

**New York**  
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32<sup>nd</sup> Floor  
New York, NY 10004  
P: 646-290-9137

**Washington DC**  
915 15<sup>th</sup> St., NW, Ste. 300  
Washington, DC 20005  
P: 202-618-2900  
F: 202-462-2085


**Florida**  
5080 PGA Boulevard, Ste. 209  
Palm Beach Gardens, FL 33418  
P: 561-336-1801  
F: 561-252-7720

**Israel**  
19 Weissburg Street  
Tel Aviv 69358  
Israel  
P: +972 (3) 720-8782




# CAPABILITIES

## About A.B. Data


 Founded in 1981, **A.B. Data** has earned a reputation for expertly managing the complexities of class action administration in consumer, antitrust, securities, Securities and Exchange Commission (SEC) enforcement actions, and ERISA, Attorneys General, employment, civil rights, insurance, environmental, wage and hour, and other class action cases. **A.B. Data's work in all aspects of class action administration** has been perfected by decades of experience in hundreds of class action cases involving billions of dollars in total settlements. Dedicated professionals deliver **A.B. Data's all-inclusive services**, working in partnership with its clients to administer their class action cases effectively, efficiently, and affordably, regardless of size or scope.

**A.B. Data offers unmatched resources and capacity** and is capable of expertly administering any class action notice, settlement, and/or fund administration. Whether notifying millions of class members in the United States or throughout the world, processing millions of claims, distributing payments digitally via A.B. Data's Digital PayPortal<sup>SM</sup>, or printing and distributing millions of checks, **A.B. Data matches its talent and technology** to the specific needs of its clients, delivering unparalleled service on time and on budget without ever compromising quality.

## Location, Ownership Structure

 **A.B. Data is an independently owned**, 39-year-old, Milwaukee, Wisconsin-based company that prides itself on its vast expertise and industry-leading innovations. We like to remind our clients and partners that we're not just a class action administration company, but a group of experienced, dedicated professionals who believe that relationships are just as important as the accurate and timely management of class action administrations. In other words, we are people who do business with people.

## Services

 **Every A.B. Data client is deserving of the best job we can put forward.** A.B. Data makes class action administration easy for our clients with clarity, convenience, and efficiency. Our priority is to navigate the intricacies of our clients' matters and deliver successful results by using our solid expertise, advanced technology, and top-quality products and services. We pay attention to the details and get it right the first time.

We aim to provide our clients the full experience of a truly collaborative working relationship. It is why we believe much of our success originates from our philosophy of "people doing business with people."

## Services

### All Digital — From Notice to Distribution

**A.B. Data is uniquely positioned to design, implement, and maintain notice and settlement administration programs** using an innovative, "all-digital" approach that replaces the more traditional and less efficient methods of administration, such as newspaper ads, mailed notices, and paper checks. Many of our recent proposed notice plans and claim programs utilize the latest technologies such as microtargeted digital ads for notice, streamlined online claims, and distributing settlement funds electronically using a digital paywall. These methods provide significant cost savings, are consistent with the amendments to Rule 23 that are now in effect, and importantly provide much-needed alignment of class action notice and administration with current consumer behaviors.

### Pre-Settlement Consultation

**The pre-settlement consultation is a collaborative session** designed to help A.B. Data clients prepare a stronger case. Our support teams simplify the task of sorting through a maze of documents during investigation and discovery, streamlining the process and preserving fund assets. From there, we assist with fully interactive media packages for court presentations and settlement negotiations. A.B. Data works closely with our clients, offering expert testimony on documents, processing, class and notice manageability, and proposed plans of allocation.

### Media Services

**A.B. Data continues to earn our reputation** as the early innovator in integrating advanced micro-targeting techniques, including contextual targeting, behavioral targeting, and predictive modeling. Coupled with inventive digital media strategies to drive claims, case-specific banner ad development, class member research, and comScore analysis services, our multi-tiered media programs are designed to cost-effectively deliver notice to potential class members and increase claims rates.

### Notice Administration

**In A.B. Data, clients have a comprehensive resource** with a depth of experience in direct notice. Our compliance and understanding of Rule 23 of the Federal Rules of Civil Procedure are crucial in meeting the "plain language" legal requirements for any campaign. From our sophisticated digital media capabilities and extensive global experience with class member research, our experts create notice documents that are easily understandable and cost-efficient to produce. We consult with our clients to deliver notice documents from multi-page, mailed, or emailed notice packets to concise postcards that establish the most influential and cost-effective means of communicating with potential claimants.

## Claims Processing

**A.B. Data continues to bring game-changing technologies** to improve the speed and precision in claims processing. Our robust system for online claims submissions allows us to meticulously verify data and documentation, preserve and authenticate claims, and calculate and verify settlement amounts. In addition, our data network infrastructure includes on-site data storage, backup, contingency plans, and security for electronic and hard copy claim filings. It is all part of a total commitment to be the most innovative and comprehensive resource in the industry. At A.B. Data, we take pride in having the in-house capacity to process millions of pages, as well as the organizational integrity to treat every claim as if it were the only one.

## Contact Center

**A.B. Data's Contact Center is comprised of a full staff** that is trained on and equipped with online and telecommunication systems to monitor and connect with class members. Associates routinely monitor class member communication for all class action administrations, including antitrust, consumer, and securities.

Utilizing monitoring software, associates watch multiple social media channels simultaneously, allowing for instantaneous routing of inquiries and interaction with claimants. Detailed and concise analytical reports outlining Contact Center activities are always provided.

Our Contact Center and case websites are capable of handling millions of class member engagements, as recently displayed in a campaign which garnered over 1.2 million website visits in two months and had more than 72,500 Facebook engagements. Facebook comments and threads are monitored and claimants are guided to the website for more information. Google AdWords and display advertising have also brought hundreds of thousands of visitors to various case websites.

A.B. Data's Contact Center also has Spanish language associates in-house and we can accommodate any language, given proper lead time. Traditional call center facilities are also available, if needed.

## Case Websites

**We offer a state-of-the-art technology platform** that supports every step of our class action administration process. Our expert marketing professionals design customized case-specific websites that provide potential class members easy access to case information, critical documents, important deadlines, as well as the capability to file claim forms and register for future mailings about the case. Claimants can use the website to elect to receive their settlement payments by mail or by one of several digital payment options, all accessible by mobile devices.

## Settlement Fund Distribution

**From complete escrow services to establishment of qualified settlement funds**, check printing and mailing, electronic cash or stock distribution and tax services, A.B. Data has always provided a full-service solution to Settlement Fund Distribution. Our IT team has decades of experience in developing and implementing fast, secure databases and claims administration systems that ensure class members receive the correct amount in their settlement disbursement. Today's digital capabilities allow even greater convenience for class members. In certain instances, claimants can now elect to instantaneously receive settlement payments through popular digital-payment options, such as PayPal, Amazon, and virtual debit cards.

## A.B. Data's Leadership



**A.B. Data's administration team** is composed of the following key executives, who collectively have decades of experience settling and administering class actions:

**Bruce A. Arbit, Co-Managing Director** and one of the founders of the A.B. Data Group, serves as Chairman of the Board and oversees the day-to-day operations of the A.B. Data Group of companies, employing almost 400 people in the United States and Israel. Mr. Arbit is also Chairman of the Board of Integrated Mail Industries, Ltd. and has served as a member of the Board of Directors of University National Bank and State Financial Bank. He is the past Chairman of Asset Development Group, Inc., Home Source One, and American Deposit Management and is a member of the National Direct Marketing Association, the Direct Marketing Fundraising Association, and the American Association of Political Consultants. He was named 1996 Direct Marketer of the Year by the Wisconsin Direct Marketing Association.

A.B. Data's work in class action litigation support began with the Court selecting A.B. Data to oversee the restitution effort in the now-famous Swiss Banks Class Action Case, the International Commission on Holocaust Era Insurance Claims, and every other Holocaust Era Asset Restitution program, in which it was the company's job to identify, contact, and inform survivors of the Holocaust. A.B. Data delivered by reaching out to millions of people in 109 countries who spoke more than 30 languages. Since those days, Mr. Arbit has guided the class action division through phenomenal growth and success. Today, A.B. Data manages hundreds of administrations annually that distributes billions of dollars to class members.

**Thomas R. Glenn, President**, Mr. Glenn's management of A.B. Data's Class Action Administration Company includes designing and implementing notice plans and settlement administration programs for antitrust, securities, and Securities and Exchange Commission settlements and SEC disgorgement fund distributions, as well as consumer, employment, insurance, and civil rights class actions. Mr. Glenn previously served as Executive Vice President at Rust Consulting and has more than 30 years of executive leadership experience.

**Eric Miller, Senior Vice President**, as a key member of A.B. Data's Class Action Administration Leadership Team, oversees the Case Management Department and supervises the operations and procedures of all of A.B. Data's class action administration cases. Mr. Miller is recognized in the class action administration industry as an expert on securities, SEC, consumer, product recall, product liability, general antitrust, pharmaceutical antitrust, and futures contract settlements, to name a few settlement types. Prior to joining A.B. Data, Mr. Miller served as the Client Service Director for Rust Consulting, responsible there for its securities practice area. He has more than 20 years of operations, project management, quality assurance, and training experience in the class action administration industry. In addition, Mr. Miller manages A.B. Data's office in Palm Beach Gardens, Florida.

**Ravin Raj, Vice President-Operations**, has more than 15 years of experience in class action claims management, document management, and insurance claims remediation. Mr. Raj's responsibilities for A.B. Data's Class Action Administration Company include heading the shared operations center, which includes mailroom, contact center, claims processing, quality control, and information systems operations. His areas of expertise include business process development, strategic/tactical operations

planning and implementation, risk analysis, budgeting, business expansion, growth planning and implementation, cost reduction, and profit, change, and project management. In his previous position, as Assistant Vice President-Operations at RR Donnelley India Pvt. Ltd., in Chennai, India, he led a team of more than 400 employees with the capacity to process more than 4 million claims a year, servicing several leading claims administrators. Mr. Raj managed six of the top ten securities class action settlements, by settlement value, including several multibillion-dollar settlements. His background also includes work as a Project Lead for iMarque Solutions Pvt. Ltd., Chennai, India.

**Linda V. Young, Vice President, Media**, oversees the Media Department and is responsible for the direction, development, and implementation of media notice plans for A.B. Data's clients. Ms. Young is an expert in media planning using most forms of advertising including digital, print, and broadcast. She developed some of the first Court-approved Notice Plans using an all-digital approach for cases such as *In re Vizio Consumer Privacy Litigation*, *In re Qualcomm Antitrust Litigation*, and *In re Google Inc. Street View Electronic Communications Litigation*, among others. Her ability to create notice plans that efficiently extend reach and drive class member engagement and participation has made a significant impact across many types of administrations. Ms. Young has developed and implemented national and international print, digital-, and earned-media notice plans for some of the industry's leading pharmaceutical, insurance, and securities class action cases, including Libor-based Financial Instruments Antitrust Litigation, Cipro Antitrust Cases I and II, Euribor and Euroyen-based Derivatives cases, and many more. She has more than 20 years of general market and ethnic media advertising and media planning experience, having managed advertising for brands such as Georgia-Pacific, American Express, Denny's, and Coca-Cola USA.

**Eric Schachter, Vice President**, is a member of A.B. Data's Class Action Administration Leadership Team. He has over 15 years of experience in the legal settlement administration services industry. Mr. Schachter's responsibilities include ensuring successful implementation of claims administration services for A.B. Data's clients in accordance with settlement agreements, court orders, and service agreements. He also works closely with Project Managers to develop plans of administration to provide the highest level of effective and efficient delivery of work product. A frequent speaker on claims administration innovation and best practices at industry events nationwide, Mr. Schachter has a bachelor's degree in sociology from Syracuse University, earned his law degree at Hofstra University School of Law, and was previously an associate at Labaton Sucharow LLP in New York City.

**Paul Sauberer, Director of Quality Assurance**, is responsible for overseeing quality assurance and process management, working diligently to mitigate risk, ensure exceptional quality control, and develop seamless calculation programming. Mr. Sauberer brings more than 20 years of experience as a quality assurance specialist with a leading claims-processing company where he developed extensive knowledge in securities class action administration. He is recognized as the class action administration industry's leading expert on claims and settlement administrations of futures contracts class actions.

**Justin Parks, Business Development Director**, provides expertise in legal marketing strategies and brings extensive experience in client relations to A.B. Data's business development team. Previously, Mr. Parks served the legal industry as part of the marketing group at a major class action administration firm where he successfully managed and consulted on notice plans and other administrative aspects in hundreds of cases with an estimated value of several hundred million dollars in settlement funds distributed to class members, including some of the largest Employment settlements in history. Mr. Parks is uniquely experienced in Data Privacy matters, having consulted with clients on numerous matters stemming from data breaches as well as violations of the Illinois Biometric Information Privacy Act (BIPA), several of which resulted in the first ever Biometric Privacy related settlements in history. Mr. Parks' knowledge and understanding of the class action industry, as well as his client relationship skills, expand A.B. Data's capacity to achieve its business development and marketing goals effectively.



**Camron Assadi, Vice President, Digital Marketing**, has more than 20 years of experience in digital marketing leadership, which includes directing and overseeing all aspects of the company's digital notice plans and campaigns across multiple networks and platforms. Mr. Assadi is an expert in online advertising and social media campaigns including Facebook, Google Ads, LinkedIn, Twitter, Amazon, Pinterest, Verizon Media, and others. He holds certifications in Google Ads Display and Search, and is a Facebook Certified Digital Marketing Associate. His ability to create and optimize business opportunities, extend brand reach, and capture the interest and support of local and international audiences has proven him an invaluable leader of A.B. Data's effort to maximize and streamline class member notice and engagement. Mr. Assadi has managed the notice plans for cases that have garnered millions of unique visitors and social media interactions. He holds a BS in Psychology from the University of Utah.

**Adam Walter, PMP, Senior Project Manager**, has nearly fifteen years of experience managing the administration of securities class action settlements and SEC disgorgements totaling more than \$4 billion. He has managed settlement programs in engagements involving some of the largest securities class action settlements and is a key contributor to the development of administration strategies that meet the evolving needs of our clients. His responsibilities include developing case administration strategies to ensure that all client and court requirements and objectives are met, overseeing daily operations of case administrations, ensuring execution of client deliverables, providing case-related legal and administration support to class counsel, overseeing notice dissemination programs, implementing complex claims-processing and allocation methodologies, establishing quality assurance and quality control procedures, and managing distribution of settlement funds. Mr. Walter holds a bachelor's degree in business administration from Florida Atlantic University, Boca Raton, Florida. He also has been an active member of the Project Management Institute since 2010 and is PMP®-certified.

**Steve Straub, Senior Project Manager**, joined A.B. Data in February 2012. As a Senior Project Manager, his responsibilities include developing case administration strategies, overseeing daily operations of case administrations, ensuring execution of client deliverables, providing case-related legal and administration support to case counsel, overseeing notice dissemination programs, implementing complex claims processing and allocation methodologies, establishing quality assurance and quality control procedures, and managing distribution of settlement funds. Mr. Straub's experience in administering class action settlements includes securities, consumer, and antitrust settlements, with a primary focus on antitrust cases. He holds a Juris Doctor degree from Seton Hall University School of Law, Newark, New Jersey.

**Patty Nogalski, Project Manager**, is a veteran in the equity and securities industry and now contributes her talents to A.B. Data as a Project Manager specializing in class action administrations for securities litigation. Ms. Nogalski brings to A.B. Data many new ideas, methods, and technologies to achieve project efficiency and organizational integration. For much of her twenty-year career, she served as Vice President Equity Trading for BMO Global Asset Management Corporation where she managed equity trading for mutual funds and institutional accounts. She works closely with Eric Miller and the project management team to deliver strategies that meet the unique needs of securities and commodities settlements. Ms. Nogalski attended the University of Wisconsin-Milwaukee where she earned her Bachelor of Arts in Communications, and has also obtained her Financial Industry Regulatory Authority (FINRA) Series 7, Series 63, and Series 65 licenses.

**Eric Schultz, MCSE, Information Technology Manager and Security Team Chairperson**, has been with A.B. Data for more than 19 years, and is currently responsible for overseeing all information technology areas for all A.B. Data divisions across the United States and abroad, including network infrastructure and architecture, IT operations, data security, disaster recovery, and all physical, logical, data, and information systems security reviews and audits required by our clients or otherwise. As a Microsoft Certified Systems Engineer (MCSE) with more than 25 years of experience in information technology systems and solutions, Mr. Schultz has developed specializations in network security, infrastructure, design/architecture, telephony, and high-availability network systems.

## Secure Environment



**A.B. Data's facilities provide the highest level of security** and customization of security procedures, including:

- A Secure Sockets Layer server
- Video monitoring
- Limited physical access to production facilities
- Lockdown mode when checks are printed
- Background checks of key employees completed prior to hire
- Frequency of police patrol - every two hours, with response time of five or fewer minutes
- Disaster recovery plan available upon request

## Data Security



**A.B. Data is committed to protecting the confidentiality, integrity, and availability of personal identifying information** and other information it collects from our clients, investors, and class members and requires that its employees, subcontractors, consultants, service providers, and other persons and entities it retains to assist in distributions do the same. A.B. Data has developed an Information Security Policy, a suite of policies and procedures intended to cover all information security issues and bases for A.B. Data, and all of its divisions, departments, employees, vendors, and clients. A.B. Data has also recently taken the necessary, affirmative steps toward compliance with the EU's General Data Protection Regulation and the California Consumer Privacy Act.

A.B. Data has a number of high-profile clients, including the Securities and Exchange Commission (SEC), the United States Department of Justice, the Attorneys General of nearly all 50 states, other agencies of the United States government, and the Government of Israel, as well as direct banking and payment services companies with some of the most recognized brands in United States financial services and some of the largest credit card issuers in the world.

We are therefore frequently subjected to physical, logical, data, and information systems security reviews and audits. We have been compliant with our clients' security standards and have also been determined to be compliant with ISO/IEC 27001/2 and Payment Card Industry (PCI) data-security standards, the Gramm-Leach-Bliley Act (GLB) of 1999, the National Association of Insurance Commissioners (NAIC) Regulations, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, and the Health Information Technology for Economic and Clinical Health Act (HITECH).

The Government of Israel has determined that A.B. Data is compliant with its rigorous security standards in connection with its work on Project HEART (Holocaust Era Asset Restitution Taskforce).

A.B. Data's fund distribution team has been audited by EisnerAmper LLP and was found compliant with class action industry standards and within 99% accuracy. EisnerAmper LLP is a full-service advisory and accounting firm and is ranked the 15th-largest accounting firm in the United States.



In addition, as part of PCI compliance requirements, A.B. Data has multiple network scans and audits from third-party companies, such as SecurityMetrics and 403 Labs, and is determined to be compliant with each of them.

## Fraud Prevention and Detection



**A.B. Data is at the forefront of class action fraud prevention.**

A.B. Data maintains and utilizes comprehensive proprietary databases and procedures to detect fraud and prevent payment of allegedly fraudulent claims.

We review and analyze various filing patterns across all existing cases and claims. Potential fraudulent filers are reported to our clients as well as to the appropriate governmental agencies where applicable.

## Representative Class Action Engagements



**A.B. Data and/or its team members have successfully administered hundreds of class actions, including many major cases. Listed below are just some of the most representative or recent engagements.**

### Consumer & Antitrust Cases

- *Phil Shin, et al. v. Plantronics, Inc.*
- *In re: Qualcomm Antitrust Litigation*
- *In re Resistors Antitrust Litigation*
- *The Hospital Authority of Metropolitan Government of Nashville and Davidson County, Tennessee v. Momenta Pharmaceuticals, Inc. and Sandoz Inc. ("Lovenox Antitrust Matter")*
- *William Kivett, et al. v. Flagstar Bank, FSB, and DOES 1-100, inclusive*
- *Adelphia, Inc. v. Heritage-Crystal Clean, Inc.*
- *LLE One, LLC, et al. v. Facebook, Inc.*
- *Bach Enterprises, Inc., et al. v. Advanced Disposal Services South, Inc., et al.*
- *JWG Inc., et al. v. Advanced Disposal Services Jacksonville, L.L.C., et al.*
- *State of Washington v. Motel 6 Operating L.P. and G6 Hospitality LLC*
- *In re GSE Bonds Antitrust Litigation*
- *Wave Lengths Hair Salons of Florida, Inc., et al. v. CBL & Associates Properties, Inc., et al.*
- *In re Loestrin 24 FE Antitrust Litigation*
- *Office of the Attorney General, Department of Legal Affairs, State of Florida v. Pultegroup, Inc. and Pulte Home Company, LLC*
- *In re Cigna-American Specialties Health Administration Fee Litigation*
- *In re: Intuniv Antitrust Litigation*
- *High Street, et al. v. Cigna Corporation, et al.*
- *Gordon Fair, et al. v. The Archdiocese of San Francisco, San Mateo, and Marin County*

- *Bizzarro, et al. v. Ocean County Department of Corrections, et al.*
- *Meeker, et al. v. Bullseye Glass Co.*
- *MSPA Claims 1, LLC v. Ocean Harbor Casualty Insurance Company*
- *Tennille v. Western Union Company - Arizona*
- *Garner, et al. v. Atherotech Holdings, Inc. and Garner, et al. v. Behrman Brothers IV, LLC, et al.*
- *Robinson, et al. v. Escallate, LLC*
- *Josefina Valle and Wilfredo Valle, et al. v. Popular Community Bank f/k/a Banco Popular North America*
- *Vision Construction Ent., Inc. v. Waste Pro USA, Inc. and Waste Pro USA, Inc. and Waste Pro of Florida, Inc.*
- *Plumley v. Erickson Retirement Communities, et al.*
- *In re London Silver Fixing, Ltd. Antitrust Litigation*
- *In re EpiPen Marketing, Sales Practices and Antitrust Litigation*
- *Ploss v. Kraft Foods Group, Inc. and Mondelēz Global LLC*
- *In re Mexican Government Bonds Antitrust Litigation*
- *In re Ready-Mixed Concrete Antitrust Litigation*
- *In re: Marine Hose Antitrust Litigation*
- *Iowa Ready Mixed Concrete Antitrust Litigation*
- *In re Potash Antitrust Litigation (II)*
- *In re Evanston Northwestern Healthcare Corp. Antitrust Litigation*
- *In re Polyurethane Foam Antitrust Litigation*
- *In re LIBOR-Based Financial Instruments Antitrust Litigation*
- *In re Lorazepam and Clorazepate Antitrust Litigation*
- *In re Cardizem CD Antitrust Litigation*
- *Vista Healthplan, Inc., and Ramona Sakiestewa v. Bristol-Myers Squibb Co., and American BioScience, Inc.*
- *In re Lupron Marketing and Sales Practices Litigation*
- *In re Terazosin Hydrochloride Antitrust Litigation*
- *In re Warfarin Sodium Antitrust Litigation*
- *Rosemarie Ryan House, et al. v. GlaxoSmithKline PLC and SmithKline Beecham Corporation*
- *Carpenters and Joiners Welfare Fund, et al. v. SmithKline Beecham*
- *New Mexico United Food and Commercial Workers Union's and Employers' Health and Welfare Trust Fund, et al. v. Purdue Pharma L.P.*
- *In Re Pharmaceutical Industry Average Wholesale Price Litigation*
- *Alma Simonet, et al. v. SmithKline Beecham Corporation, d/b/a GlaxoSmithKline*
- *In re Relafen Antitrust Litigation*
- *In Re Remeron Direct Purchaser Antitrust Litigation*
- *In re TriCor Indirect Purchasers Antitrust Litigation*
- *Nichols, et al., v. SmithKline Beecham Corporation*
- *In re: DDAVP Indirect Purchaser Antitrust Litigation*

### Securities Cases

- *Laydon v. Mizuho Bank, Ltd., et al.*
- *Lomingkit, et al. v. Apollo Education Group, Inc., et al.*
- *In re Caraco Pharmaceutical Laboratories, Ltd. Shareholder Litigation*
- *Norfolk County Retirement System, et al. v. Community Health Systems, Inc., et al.*
- *Chester County Employees' Retirement Fund v. KCG Holdings, Inc., et al.*
- *Oklahoma Law Enforcement Retirement System, et al. v. Adeptus Health Inc., et al.*
- *Di Donato v. Insys Therapeutics, Inc., et al.*
- *Lundgren-Wiedinmyer, et al. v. LJM Partners, Ltd, et al.*

- *Martin, et al. v. Altisource Residential Corporation, et al.*
- *Stephen Appel, et al. v. Apollo Management, et al.*
- *In re Medley Capital Corporation Stockholder Litigation*
- *Forman, et al. v. Meridian BioScience, Inc., et al.*
- *Public Employees' Retirement System of Mississippi, et al. v. Endo International PLC, et al.*
- *In Re Flowers Foods, Inc. Securities Litigation*
- *Jiangchen, et al. v. Rentech, Inc., et al.*
- *In re Liberty Tax, Inc. Stockholder Litigation*
- *In re RH, Inc. Securities Litigation*
- *Lazan v. Quantum Corporation, et al.*
- *Nabhan v. Quantum Corporation, et al.*
- *Edmund Murphy III, et al. v. JBS S.A.*
- *Public Employees' Retirement System of Mississippi, et al. v. Sprouts Farmers Market, Inc., et al.*
- *In re Starz Stockholder Litigation*
- *Judith Godinez, et al. v. Alere Inc., et al.*
- *Rahman and Giovagnoli, et al. v. GlobalSCAPE, Inc., et al.*
- *Arthur Kaye, et al. v. ImmunoCellular Therapeutics, Ltd., et al.*
- *In re CPI Card Group Inc. Securities Litigation*
- *Daniel Aude, et al. v. Kobe Steel, Ltd., et al.*
- *In re Quality Systems, Inc. Securities Litigation*
- *Cooper, et al. v. Thoratec Corporation, et al.*
- *Washtenaw County Employees' Retirement System, et al. v. Walgreen Co., et al.*
- *Elkin v. Walter Investment Management Corp., et al.*
- *In Re CytRx Corporation Securities Litigation*
- *Ranjit Singh, et al. v. 21Vianet Group, Inc., et al.*
- *In re PTC Therapeutics, Inc. Securities Litigation*
- *Securities and Exchange Commission v. Mark A. Jones*
- *In re Sequans Communications S.A. Securities Litigation*
- *In re Henry Schein, Inc. Securities Litigation*
- *Ronge, et al. v. Camping World Holdings, Inc., et al.*
- *Oklahoma Firefighters Pension & Retirement System v. Lexmark International, Inc.*
- *Christakis Vrakas, et al. v. United States Steel Corporation, et al.*
- *Emerson et al. v. Mutual Fund Series Trust, et al. ("Catalyst")*
- *In re Fannie Mae 2008 Securities Litigation*
- *In re Anadarko Petroleum Corporation Class Action Litigation*
- *Ge Dandong, et al., v. Pinnacle Performance Limited, et al.*
- *In Re: Rough Rice Commodity Litigation*
- *Xuechen Yang v. Focus Media Holding Limited et al.*
- *In re Massey Energy Co. Securities Litigation*
- *In re Swisher Hygiene, Inc.*
- *The City of Providence vs. Aeropostale, Inc., et al.*
- *In re Metrologic Instruments, Inc. Shareholders Litigation*
- *Public Pension Fund Group v. KV Pharmaceutical Company et al.*
- *Pension Trust Fund for Operating Engineers, et al. v. Assisted Living Concepts, Inc., et al.*
- *In re Lehman Brothers Equity/Debt Securities Litigation*
- *In re: Platinum and Palladium Commodities Litigation (Platinum/Palladium Physical Action)*
- *In re: Platinum and Palladium Commodities Litigation (Platinum/Palladium Futures Action)*
- *In re General Electric Co. Securities Litigation*
- *In re CNX Gas Corporation Shareholders Litigation*
- *Oscar S. Wyatt, Jr. et al. v. El Paso Corporation, et al.*
- *In re Par Pharmaceutical Securities Litigation*

- *In re Par Pharmaceutical Companies, Inc. Shareholders Litigation*
- *In re Delphi Financial Group Shareholders Litigation*
- *In re SLM Corporation Securities Litigation*
- *In re Del Monte Foods Company Shareholder Litigation*
- *Leslie Niederklein v. PCS Edventures!.com, Inc. and Anthony A. Maher*
- *In re Beckman Coulter, Inc. Securities Litigation*
- *Michael Rubin v. MF Global, Ltd., et al.*
- *Allen Zametkin v. Fidelity Management & Research Company, et al.*
- *In re BP Prudhoe Bay Royalty Trust Securities Litigation*
- *Police and Fire Retirement System of the City of Detroit et al. v. SafeNet, Inc., et al.*
- *In re Limelight Networks, Inc. Securities Litigation*
- *In re Gilead Sciences Securities Litigation*
- *In re ACS Shareholder Litigation, Consolidated C.A. No. 4940-VCP*
- *Lance Provo v. China Organic Agriculture, Inc., et al.*
- *In re LDK Solar Securities Litigation*

### Labor & Employment Cases

- *Talisa Borders, et al. v. Wal-mart Stores, Inc.*
- *Reale v. McClain Sonics Inc., et al.*
- *Larita Finisterre and Songhai Woodard, et al. v. Global Contact Services, LLC*
- *Adebisi Bello v. The Parc at Joliet*
- *Garcia, et al. v. Vertical Screen, Inc.*
- *Brook Lemma and Matthieu Hubert, et al. v. 103W77 Partners LLC, et al. ("Dovetail Settlement")*
- *American Federation of Government Employees, Local 1145 v. Federal Bureau of Prisons, U.S. Penitentiary, Atlanta, Georgia*
- *Lisa Ferguson, Octavia Brown, et al. v. Matthew G. Whitaker, Acting AG, DOJ Bureau of Prisons ("USP Victorville")*
- *American Federation of Government Employees, Local 2001 v. Federal Bureau of Prisons, Federal Correctional Institution, Fort Dix, New Jersey*
- *American Federation of Government Employees, Local 506 v. U.S. Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary Coleman II, Coleman, Florida*
- *Vargas v. Sterling Engineering*
- *Rosenbohm v. Verizon*
- *Alex Morgan, et al. v. United States Soccer Federation, Inc.*
- *Iskander Rasulev v. Good Care Agency, Inc.*
- *Kyndl Buzas, et al., v. Phillips 66 Company and DOES 1 through 10*
- *American Federation of Government Employees, Local 408 v. U.S. Dept. of Justice, Federal Bureau of Prisons, Federal Correctional Complex, Butner, NC*
- *In re 2014 Avon Products, Inc. ERISA Litigation*
- *In re Eastman Kodak ERISA Litigation*
- *Taronica White, et al. v. Attorney General Loretta Lynch, Department of Justice*
- *Lisa Ferguson, et al. v. Acting Attorney General Matthew Whitaker, Department of Justice*
- *Melissa Compere v. Nusret Miami, LLC, et al.*
- *Abelar v. American Residential Services, L.L.C., Central District of California*
- *Flores, et al. v. Eagle Diner Corp., et al., Eastern District of Pennsylvania*
- *Michael Furman v. Godiva Chocolatier, Inc., 15<sup>th</sup> Judicial Circuit, Palm Beach County, Florida*
- *Finisterre et. al v. Global Contact Services, LLC, New York State Supreme Court, Kings County*
- *McGuire v. Intelident Solutions, LLC, et al., Middle District of Florida, Tampa Division*
- *Duran De Rodriguez, et al. v. Five Star Home Health Care Agency, Inc. et al., Eastern District of New York*

### Data Breach/BIPA Cases

- *In re: Vizio, Inc. Consumer Privacy Litigation*
- *In re: Google, Inc. Street View Electronic Communications Litigation*
- *Devin Briggs and Bobby Watson, et al. v. Rhinoag, Inc.* ("Briggs Biometric Settlement")
- *Trost v. Pretium Packaging L.L.C.*

### Telephone Consumer Protection Act (TCPA) Cases

- *Lowe and Kaiser, et al. v. CVS Pharmacy, Inc., et al.*
- *Johansen v. HomeAdvisor, Inc., et al.*
- *Charvat, et al. v. National Holdings Corporation*
- *Hopkins, et al. v. Modernize, Inc.*
- *Diana Mey vs. Frontier Communications Corporation*
- *Matthew Donaca v. Dish Network, L.L.C.*
- *Matthew Benzion and Theodore Glaser v. Vivint, Inc.*
- *John Lofton v. Verizon Wireless (VAW) LLC, et al.*
- *Lori Shamblin v. Obama for America et al.*
- *Ellman v. Security Networks*

## For More Information

For more detailed information regarding A.B. Data's experience, services, or personnel, please see our website at [www.abdataclassaction.com](http://www.abdataclassaction.com)

# **EXHIBIT B**

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

**If you purchased Boxed or Case-Ready Beef directly from Cargill, JBS, National Beef, or Tyson (as defined herein) in the United States from January 1, 2015 through February 10, 2022, a class action settlement may affect your rights.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- A Settlement Agreement (or “Settlement”) has been reached in a class action antitrust lawsuit filed on behalf of Direct Purchaser Plaintiffs with Defendants JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively, “JBS”). This Settlement only applies to JBS and does not affect claims against other Defendants in the case entitled *In re Cattle and Beef Antitrust Litigation, et al. (In re DPP Beef Litigation)*, Case No. 20-cv-01319 JRT-HB (D. Minn).
- If approved by the Court, the Settlement will resolve a lawsuit over whether JBS conspired with other beef producers (Cargill, National Beef and Tyson), the purpose and effect of which was to suppress competition and to allow these companies to charge supra-competitive prices for case-ready and boxed beef during the Settlement Class Period. If approved, the Settlement will avoid litigation costs and risks to Direct Purchaser Plaintiffs and JBS, and will release JBS from liability to members of the Settlement Class.
- The Settlement requires JBS to pay \$52,500,000. In addition to this monetary payment, JBS has agreed to provide specified cooperation in the Direct Purchaser Plaintiffs in their continued prosecution of the litigation.
- The Court has not decided whether JBS did anything wrong, and JBS denies any wrongdoing.
- Your legal rights are affected whether you act or do not act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>ASK TO BE EXCLUDED</b>	This is the only option that allows you to be part of any <i>other</i> lawsuit against JBS concerning the Released Claims (as defined in the Settlement Agreement). You will not be included in this Settlement. You will receive no benefits from the Settlement, but you will keep any rights you currently have to sue JBS about the claims in the lawsuit. Requests for Exclusion must be postmarked or received by [REDACTED], 2022.
<b>OBJECT</b>	If you do not exclude yourself, you may object to the settlement. Objections must be postmarked or received by [REDACTED], 2022.
<b>ATTEND THE FAIRNESS HEARING</b>	If you are objecting, you may ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	If you do nothing, you will remain part of the Settlement, and you may participate in any monetary distribution to qualified purchasers. The Settlement will resolve your claims against JBS and you will give up your rights to sue JBS about the Released Claims (as defined in the Settlement Agreement). You will be bound by the judgment. Class Counsel for the Direct Purchaser Plaintiffs anticipates having a claims filing deadline and process to distribute the money from this settlement at a later date in the litigation. Please continue to monitor the settlement website so that you may remain apprised of any claims filing deadline.

- **Questions? Read on and visit [www.xxxxxxxx.com](http://www.xxxxxxxx.com) or call toll-free 1-xxx-xxx-xxxx.**



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## BASIC INFORMATION

### 1. Why did I receive a notice?

Defendants, including JBS, produce boxed and case-ready Beef. Defendants' records show that you may have purchased case-ready or boxed beef (defined in Section 2, below) directly from one or more of the Defendants in the United States between January 1, 2015 and February 10, 2022. The list of Defendants is in Section 2, below. The Court authorized this notice because you have a right to know about the Settlement of certain claims against JBS in this class action lawsuit and about your options before the Court decides whether to approve the Settlement. If the Court approves it, and after objections and appeals are resolved, you may be bound by the judgment and terms of the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights.

### 2. What is this lawsuit about?

This class action is called *In re Cattle and Beef Antitrust Litigation, et al. (In re DPP Beef Litigation)*, Case No. 20-cv-01319 JRT-HB and is pending in the United States District Court for the District of Minnesota. U.S. District Court Judge John R. Tunheim is presiding over this class action.

Direct Purchaser Plaintiffs allege that Defendants and their co-conspirators conspired to fix, raise, maintain, and stabilize the price of case-ready or boxed beef, beginning at least as early as January 1, 2015, with the result of increasing prices of such beef in the United States, in violation of federal antitrust laws. For inclusion in the Settlement Class, the term "beef" means boxed and case-ready beef that has been processed from fed cattle by Defendants. The definition excludes ground beef made from culled cows. "Fed cattle" means steers and heifers raised in feedlots on a concentrated diet for the production and sale of beef.

The Defendants named in Direct Purchaser Plaintiffs' Third Consolidated Amended Class Action Complaint are producers of such beef in the United States. For the purpose of the Settlement, "Defendants" refers to

- Cargill, Inc. and Cargill Meat Solutions Corporations (a/k/a Cargill Protein) (collectively, "Cargill");
- JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively, "JBS");
- National Beef Packing Company ("National Beef"); and
- Tyson Foods, Inc. and Tyson Fresh Meats, Inc. (collectively, "Tyson").

Direct Purchaser Plaintiffs have reached the Settlement with only JBS, but the Direct Purchasers' case is proceeding against the other Defendants. Those other Defendants may be subject to separate settlements, judgments, or class certification orders. If applicable, you will receive a separate notice regarding the progress of the litigation and any resolution of claims against other Defendants.

JBS has denied all allegations of wrongdoing in this lawsuit and would allege numerous defenses to Plaintiffs' claims if the case against it were to proceed.

### 3. What is a class action, and who is involved?

In a class action lawsuit, one or more people or businesses called class representatives sue on behalf of others who have similar claims, all of whom together are a "class." Individual class members do not have to file a lawsuit to participate in the class action Settlement or be bound by the judgment in the class action. One court resolves the issues for everyone in the class, except for those who exclude themselves from the class.

### 4. Why is there a Settlement?

The Court has not decided in favor of the Direct Purchaser Plaintiffs or JBS. But litigation involves risks to both sides, and therefore Direct Purchaser Plaintiffs and JBS have agreed to the Settlement. The Settlement requires JBS to pay \$52.5 million, as well as provide specified cooperation that may be used by the Direct Purchaser Plaintiffs in their continued prosecution of the litigation against the other Defendants. Direct Purchaser Plaintiffs and their attorneys believe the Settlement is in the best interests of all Settlement Class Members.

**5. What if I received previous communications regarding this lawsuit?**

You may have received other communications regarding this lawsuit, including solicitations by other attorneys seeking to represent you as a plaintiff in an individual (or “direct action”) lawsuit against Defendants. These communications were not approved by the Court and did not come from Court-appointed Co-Lead Counsel. You should carefully review this notice and your rights as a potential member of the Settlement Class before deciding whether to opt out or stay in the Settlement Class. If you have questions about this litigation and your rights as a potential member of the Settlement Class, please contact Co-Lead Counsel, whose contact information is listed in Question 15 below. They will be happy to discuss your claim with you.

**WHO IS IN THE CLASS?****6. Am I part of the Class?**

The Court decided that, for settlement purposes, members of the Settlement Class are defined as:

All persons and entities who, from January 1, 2015 through February 10, 2022, purchased for use or delivery in the United States, directly from any of the Defendants or their respective subsidiaries and affiliates, boxed or case-ready beef processed from Fed Cattle, excluding ground beef made from culled cows.

If you fall within this definition, then you are a member of the Settlement Class, subject to the exception listed in Question 7 below.

While this Settlement is only with JBS, the Settlement Class includes persons or entities that purchased boxed or case-ready beef from *any* of the Defendants. If you are a member of the Settlement Class and do not exclude yourself, you may be eligible to participate in (or exclude yourself from) any additional settlements which may arise with any other Defendants in the case. The Defendant corporate families, defined above, are: Cargill, JBS, National Beef, and Tyson.

**7. Are there exceptions to who is included in the Class?**

Yes. Specifically 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 governmental 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.

If you are in one of these categories, you are not a member of the Settlement Class and not eligible to participate in the Settlement.

**8. I’m still not sure if I’m included.**

If you are still not sure if you are included, please review the detailed information contained in the Settlement Agreement, available for download at [www.xxxxxxxxxxxxxx.com](http://www.xxxxxxxxxxxxxx.com). You may also call the Settlement Administrator at 1-xxx-xxx-xxxx or call or write to Co-Lead Counsel at the phone numbers or addresses listed in Question 15 below.

**THE BENEFITS OF THE SETTLEMENT AGREEMENT WITH JBS****9. What does the Settlement with JBS provide?**

If the Settlement is approved, JBS will pay \$52,500,000 to resolve all Settlement Class members’ claims against JBS for the Released Claims (as defined in the Settlement Agreement). In addition to this monetary benefit, JBS has also agreed to provide specified cooperation in the Direct Purchaser Plaintiffs’ continued prosecution of the litigation.

**10. What are the Settlement benefits being used for?**

A portion of the Settlement proceeds are being used for the administration of the notice of the Settlement to potential members of the Settlement Class by the Settlement Administrator. Co-Lead Counsel do not intend to distribute proceeds from this Settlement to qualifying members of the Settlement Class at this time. Instead, Class Counsel intend to distribute the net settlement funds to qualified class members at a later date. You will be provided further notice informing you of any

such deadlines. Please continue to monitor the case on the public docket and the settlement website for any updates about the claims filing and distribution process.

The Settlement proceeds will also be used to pay attorneys' fees, to establish a litigation fund, and provide service awards to the named Class Representatives, as approved by the Court. Co-Lead Counsel will seek to establish a litigation fund of \$5 million to cover current and ongoing litigation expenses in connection with approval of this settlement and in accord with the Court-approved notice program. Co-Lead Counsel will file a motion for approval of the \$5 million Litigation Fund on [REDACTED], 2022. At this time, however, Direct Purchaser Plaintiffs and their counsel are not seeking attorneys' fees, or service awards from the Settlement proceeds. However, they will do so in the future, subject to additional notice to you and approval by the Court. With respect to attorneys' fees, Class Counsel will seek an amount not to exceed one-third of the Settlement proceeds. Class Counsel will seek up to \$75,000 in service awards for each of the named plaintiffs that are serving as Class Representatives. A copy of any motion for attorneys' fees, litigation expenses, or service awards will be filed on the Court's docket and will be publicly available and available on the Settlement website.

### 11. What am I giving up by staying in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class, which means that you can't sue, continue to sue, or be part of any other lawsuit against JBS that pertains to the Released Claims (as defined in the Settlement Agreement). It also means that all of the Court's orders will apply to you and legally bind you. The Released Claims are detailed in the Settlement Agreement, available at [www.aaaaaaaaaaaa.com](http://www.aaaaaaaaaaaa.com).

You are not releasing your claims against any Defendant other than JBS by staying in the Settlement Class.

### 12. What happens if I do nothing at all?

If you do nothing, you will remain a member of the Settlement Class, and participate in this Settlement. You will also have the opportunity to participate in (or exclude yourself from) any future settlements or judgments obtained by Direct Purchaser Plaintiffs.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 13. How do I exclude myself from the Settlement with JBS?

If you do not want the benefits offered by the Settlement and you do not want to be legally bound by the terms of the Settlement, or if you wish to pursue your own separate lawsuit against JBS, you must exclude yourself by submitting a written request to the Settlement Administrator stating your intent to exclude yourself from the Settlement Class (an "Exclusion Request").

Your Exclusion Request must include the following: (a) your name, including the name of your business which purchased Beef, and address; (b) a statement that you want to be excluded from the Settlement Class in *In re Cattle and Beef Antitrust Litigation, et al. (In re DPP Beef Litigation)*, Case No. 20-cv-01319 JRT-HB; and (c) your signature. If you intend to exclude subsidiaries, affiliates, divisions, related or controlled entities, predecessors in interest, or any other related entity, such entities must be expressly identified by name and address in your request.

Additionally, if you intend to exclude claims that were assigned to you from another potential Settlement Class member, you must include: the assignor's name; whether the assignor fully or partially assigned their Beef claims; the annual value of Beef purchases assigned, identify the Defendant or Co-Conspirator from whom the purchases were made; and a copy of the executed assignment agreement or a statement outlining the assignment signed by both the assignor and assignee. You must mail or email your Exclusion Request, postmarked or received by [REDACTED], 2022, to: DPP Beef Litigation, Attn: EXCLUSIONS, c/o A.B. Data, Ltd., P.O. Box 173001, Milwaukee, WI 53217; or [info@aaaaaaaaaaaa.com](mailto:info@aaaaaaaaaaaa.com).

### 14. If I don't exclude myself, can I sue JBS for the same thing later?

No. Unless you exclude yourself, you give up the right to sue JBS for the claims that the Settlement resolves. If you have a pending lawsuit against JBS, speak to your lawyer in that lawsuit immediately to determine whether you must exclude yourself from this Settlement Class to continue your own lawsuit against JBS.

By staying in the lawsuit, you are not releasing your claims in this case against any Defendant other than JBS.

## OBJECTING TO THE SETTLEMENT

### 15. How do I tell the Court that I don't like the Settlement?

If you are a member of the Settlement Class and have not excluded yourself from the Settlement, you can object to the Settlement if you don't like part or all of it. The Court will consider your views.

To object, you must send a letter or other written statement saying that you object to the Settlement with JBS in *In re Cattle and Beef Antitrust Litigation, et al. (In re DPP Beef Litigation)*, Case No. 20-cv-01319 JRT-HB, and the reasons why you object to the Settlement. Be sure to include your full name, the name of your business which purchased Beef, a current mailing address, and an email address. Your objection must be signed. You may include or attach any documents that you would like the Court to consider. Do not send your written objection to the Court or the judge. Instead, mail the objection to the Settlement Administrator, Co-Lead Counsel, and counsel for JBS at the addresses listed below. Your objection must be postmarked no later than [REDACTED], 2022.

#### **Settlement Administrator:**

DPP Beef Litigation  
ATTN: OBJECTIONS  
c/o A.B. Data, Ltd.  
P.O. Box 173001  
Milwaukee, WI 53217

#### **Counsel for JBS**

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Sami H. Rashid  
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& SULLIVAN, LLP**  
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[samirashid@quinnemanuel.com](mailto:samirashid@quinnemanuel.com)

#### **Direct Purchaser Plaintiffs' Co-Lead Counsel:**

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Adam J. Zapala  
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Jason S. Hartley  
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Megan E. Jones  
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San Francisco, CA 94111  
(415) 633-1908  
[JBSBeefSettlement@hausfeld.com](mailto:JBSBeefSettlement@hausfeld.com)

### 16. What is the difference between excluding myself and objecting?

Objecting is telling the Court that you do not like something about the Settlement. You can object only if you do not exclude yourself from the Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you may not object because the Settlement no longer affects you.

## THE LAWYERS REPRESENTING YOU

### 17. Do I have a lawyer in this case?

The Court has appointed Gustafson Gluck PLLC, Cotchett, Pitre, & McCarthy, LLP, Hausfeld LLP, and Hartley LLP as Co-Lead Counsel for the Settlement Class. Their contact information is provided above in Question 15.

If you wish to remain a member of the Settlement Class, you do not need to hire your own lawyer because Co-Lead Counsel is working on your behalf.

If you wish to pursue your own case separate from this one, or if you exclude yourself from the Settlement Class, these lawyers will no longer represent you. You will need to hire your own lawyer if you wish to pursue your own lawsuit against JBS.

### 18. How will the lawyers be paid?

You will not have to pay any attorneys' fees or costs out-of-pocket. Co-Lead Counsel are not asking the Court to award any attorneys' fees from the Settlement with JBS at this time. In connection with final approval of this settlement and in accord with the Court approved notice plan, Co-Lead Counsel are asking the Court to award \$5 million from the settlement fund to establish a Litigation Fund to pay for current and ongoing costs and will file their motion for approval for such a fund on [REDACTED], 2022. In the future, Co-Lead Counsel will ask the Court to award attorneys' fees and provide service awards to the Class Representatives. At such time, and prior to any Court approval, members of the Settlement Class will be provided with notice of the amount of fees sought by Co-Lead Counsel and an opportunity to object. When they do file their motion for attorneys' fees at a later date, Co-Lead Counsel anticipate seeking an amount not to exceed **one-third** of the Settlement proceeds, and an amount not to exceed \$75,000 in Class Representative service awards to each of the named plaintiffs. A copy of the motion for attorneys' fees, litigation expenses, and/or service awards will be available on the Settlement website and on the Court docket. The Court will determine the amount of the attorneys' fees and litigation expenses that should be paid to Co-Lead Counsel in this case.

## THE COURT'S FAIRNESS HEARING

### 19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing to decide whether to approve the Settlement (the "Fairness Hearing"). You may attend and you may ask to speak, but you don't have to. The Court will hold a Fairness Hearing on [REDACTED], 2022, at [REDACTED]:\_0\_.m., at the United States District Court for the District of Minnesota, Courtroom [REDACTED], United States District Court, 300 South Fourth Street, Minneapolis, MN 55415. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. Pursuant to any applicable orders relating to the COVID-19 emergency or otherwise, the Fairness Hearing may take place remotely, including via telephone or video conference. The Court may also move the Fairness Hearing to a later date without providing additional notice to the Settlement Class. Updates will be posted to the settlement website regarding any changes to the hearing date or conduct of the Fairness Hearing.

### 20. Do I have to come to the hearing?

No. Co-Lead Counsel will answer any questions the Court may have. However, you are welcome to come at your own expense. If you send an objection, you do not have to come to court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### 21. May I speak at the hearing?

You may ask to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *In re Cattle and Beef Antitrust Litigation, et al. (In re DPP Beef Litigation)*." Be sure to include your name, including the name of your business which purchased Beef, current mailing address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than [REDACTED], 2022, and it must be sent to the Clerk of the Court, Co-Lead Counsel, and counsel for JBS. The address for the Clerk of the Court is: United States District Court, 300

South Fourth Street, Minneapolis, MN 55415. The addresses for Co-Lead Counsel and counsel for JBS are provided in Question 15. You cannot ask to speak at the hearing if you excluded yourself from the Settlement Class.

## GETTING MORE INFORMATION

### 22. How do I get more information about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can find a copy of the Settlement Agreement, other important documents, and information about the current status of the litigation by visiting [www.xxxxxxxxxx.com](http://www.xxxxxxxxxx.com). You may contact the Settlement Administrator at [info@xxxxxxxxxx.com](mailto:info@xxxxxxxxxx.com) or toll-free at 1-xxx-xxx-xxxx. You may also contact Co-Lead Counsel at the addresses, phone numbers, and email addresses provided in Question 15

**PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.**

# EXHIBIT C



**COURT-APPROVED LEGAL NOTICE**

**If you purchased Boxed or Case-Ready Beef directly from Cargill, JBS, National Beef, or Tyson in the United States from January 1, 2015, through February 10, 2022, a class action settlement may affect your rights.**

*Para una notificación en español, llame gratis al 1-xxx-xxx-xxxx  
o visite nuestra página web [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com).*

A settlement has been reached in a class action antitrust lawsuit filed on behalf of Direct Purchaser Plaintiffs with Defendants JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively “JBS”). This Court-ordered notice may affect your rights. Please review and follow the instructions carefully.

The United States District Court for the District of Minnesota authorized this notice. The Court will hold a hearing to decide whether to approve the Settlement.

**WHO IS INCLUDED?**

Members of the Settlement Class are defined as all persons and entities that, from January 1, 2015 through February 10, 2022, directly purchased in the United States from any of the Defendants or their respective subsidiaries and affiliates, boxed or case-ready beef processed from Fed Cattle, excluding ground beef made from culled cows. Defendants in this lawsuit for purposes of the Settlement Agreement are Cargill, Inc., Cargill Meat Solutions Corporations (a/k/a Cargill Protein) (collectively “Cargill”); JBS S.A., JBS USA Food Company, JBS Packerland, Inc., and Swift Beef Company (collectively, “JBS”); National Beef Packing Company (“National Beef”); and Tyson Foods, Inc., and Tyson Fresh Meats, Inc. (collectively “Tyson”) (together “Defendants”). 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 governmental 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 Agreement affects only claims against JBS.

If you are not sure you are included, you can get more information, including a detailed notice, at [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com) or by calling toll-free 1-xxx-xxx-xxxx.

**WHAT IS THIS LAWSUIT ABOUT?**

Direct Purchaser Plaintiffs allege that Defendants and their co-conspirators conspired and combined to fix, raise, maintain, and stabilize the prices of case-ready and boxed beef, beginning at least as early as January 1, 2015, with the result of increasing prices in the United States, in violation of federal antitrust laws. JBS denies it did anything wrong. For inclusion in the Settlement Class, the term “beef” means boxed and case-ready beef that has been processed from fed cattle by Defendants. “Cattle” means fed cattle before they are processed into beef and excludes culled cows. “Fed cattle” means steers and heifers raised in feedlots on a concentrated diet for the production and sale of beef.

The Court did not decide which side was right, but both sides agreed to the Settlement Agreement to resolve the case and get benefits to the Settlement Class. The case is still proceeding on behalf of the Direct Purchaser Plaintiffs against other Defendants that may be subject to separate settlements, judgments, or class certification orders.

**WHO ARE THE DEFENDANTS?**

Defendants are (as described above) Cargill, JBS, National Beef, and Tyson. You must have purchased boxed or case-ready beef directly from one of these defendants in order to be eligible for this settlement.

**WHAT DOES THE SETTLEMENT PROVIDE?**

Under the terms of the Settlement Agreement, JBS will pay \$52,500,000 to resolve all Settlement Class claims against it in this litigation. In addition to this monetary benefit, JBS has also agreed to provide specified cooperation in the Direct Purchaser Plaintiffs’ continued prosecution of the litigation. In connection with final approval of this settlement, Co-Lead Counsel will ask the Court to establish a \$5 million Litigation Fund to cover the current and ongoing costs of this litigation. Co-Lead Counsel are not seeking attorneys’ fees or Class Representative incentive awards at this time, and do not plan for distribution of the net settlement proceeds to the Settlement Class Members at this time, but will do so at a future date subject to further notice and Court approval. At the appropriate time, Co-Lead Counsel will seek attorneys’ fees of up to one-third of the Settlement Fund and Class Representative service awards in an amount not to exceed \$75,000 per named plaintiff. A copy of the motion for attorneys’ fees, future litigation expenses, and service awards, if any, will be available on the Settlement website.



**WHAT ARE YOUR RIGHTS AND OPTIONS?**

You do not need to take any action to remain a member of the Settlement Class and be bound by the Settlement Agreement. As a Settlement Class member, you may be able to participate in (or exclude yourself from) any future settlement or judgment obtained by Direct Purchaser Plaintiffs against other Defendants in the case. If you don't want to be legally bound by the Settlement Agreement, you must exclude yourself by [REDACTED], 2022, or you won't be able to sue or continue to sue JBS for the Released Claims (as defined in the Settlement Agreement). If you exclude yourself, you can't get money from the Settlement. If you don't exclude yourself from the Settlement Class, you may still object to the Settlement Agreement by [REDACTED], 2022. The detailed notice available on the Settlement website explains how to exclude yourself or object. The Court will hold a hearing in this case (*In re Cattle and Beef Antitrust Litigation, et al. (In re DPP Beef Litigation), Case No. 20-cv-01319 JRT-HB*) on [REDACTED], 2022, at [REDACTED]: 0 \_m. to consider whether to approve the Settlement Agreement. You may ask to speak at the hearing, but you don't have to.

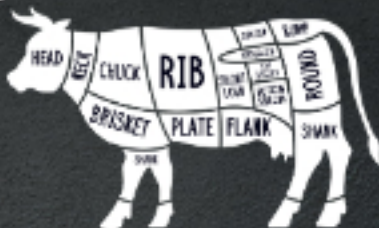
**This notice is only a summary. You can find more details about the Settlement at [www.xxxxxxxxxxxx.com](http://www.xxxxxxxxxxxx.com) or by calling toll-free 1-xxx-xxx-xxxx. Please do not contact the Court.**

# EXHIBIT D

If You Purchased

**BEEF**

Directly from a  
Beef Producer



**A Class Action  
Settlement May  
Affect Your Rights**

[websiteurl.com](http://websiteurl.com)

**LEARN MORE**



**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

IN RE CATTLE AND BEEF ANTITRUST  
LITIGATION

Case No. 0:20-cv-01319 JRT-HB

This Document Relates To:  
IN RE DPP BEEF LITIGATION

**MEET AND CONFER  
STATEMENT**

Pursuant to Local Rule 7.1(a), Plaintiffs certify that counsel for Direct Purchaser Plaintiffs (“DPPs”)<sup>1</sup> met and conferred with Defendants JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively, “JBS”) by email on January 31, 2022, regarding Plaintiffs’ Motion for Preliminary Approval of Settlement between DPPs and JBS, and JBS does not oppose this Motion.

Simultaneously with the filing of this motion, DPPs are reaching out via email to Defendants Cargill, Inc., Cargill Meat Solutions Corporations (a/k/a Cargill Protein), National Beef Packing Company, Tyson Foods, Inc., and Tyson Fresh Meats, Inc. (“Non-Settling Defendants”) to request a meet and confer regarding DPP’s request for an order requiring the Non-Settling Defendants to produce certain information necessary to provide direct notice of the settlement to the DPP class.

Dated: January 31, 2022

Respectfully Submitted,

/s/ Daniel E. Gustafson

Daniel E. Gustafson (#202241)

Daniel C. Hedlund (#258337)

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<sup>1</sup> As used herein, “DPPs” means plaintiffs Howard B. Samuels 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.

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***Interim Co-Lead Counsel for the Proposed  
Direct Purchaser Plaintiffs***

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

IN RE CATTLE AND BEEF ANTITRUST  
LITIGATION

Case No. 0:20-cv-01319 JRT-HB

This Document Relates To:  
IN RE DPP BEEF LITIGATION

**[PROPOSED] ORDER**

Now before the Court is Direct Purchaser Plaintiffs' ("DPPs") Motion for Preliminary Approval of Settlement Between Direct Purchaser Plaintiffs and Defendants JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively, "JBS").

The Court, having reviewed the Motion, its accompanying memorandum, and the exhibits thereto, the Settlement Agreement between JBS and DPPs (the "Settlement"), and the file, hereby ORDERS:

1. Upon review of the record, the Court finds that the proposed Settlement Agreement has been negotiated at arm's length, falls within the range of possible approval and is hereby preliminarily approved, subject to further consideration at the Court's Fairness Hearing. The Court finds that the Settlement Agreement is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Class, raises no obvious reasons to doubt its fairness, and raises a reasonable basis for presuming that the Settlement and its terms satisfy the requirements of Federal Rules of Civil Procedure 23(c)(2) and 23(e) and due process so that notice of the Settlement may be given to the Settlement Class when appropriate.

2. This Court has jurisdiction over this action and each of the parties to the Settlement.

3. This Court preliminarily approves the settlement between DPPs and JBS.

4. This Court certifies a Settlement Class defined as:

All persons and entities who, from January 1, 2015, through February 10, 2022, purchased for use or delivery in the United States, directly from any of the Defendants or their respective subsidiaries and affiliates, boxed or case-ready beef processed from Fed Cattle, excluding ground beef made from culled cows. 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 governmental 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.

This class definition is in all material respects the same class proposed in DPPs'

Corrected Consolidated Amended Class Action Complaint, ECF No. 158 (Filed Under Seal version), ECF No. 159 (Public Redacted version), and is the same settlement class set forth in the Settlement.

5. The Court appoints Howard B. Samuels 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.

6. This Court appoints DPP Interim Co-Lead Counsel as Settlement Class Counsel.

7. This Court approves the proposed form and manner of notice to the Settlement Class, and directs that the notice to the Settlement Class be disseminated by



Claims Administrator A.B. Data in the manner described, establishing a deadline for Settlement Class Members to request exclusion from the Class or file objections to the Settlement.

8. So that the proposed notice plan may be carried out, this Court orders the non-settling Defendants in this action to produce to the Claims Administrator, A.B. Data, customer names, addresses, and email addresses for the settlement class period, pursuant to the schedule below.

9. This Court sets the following proposed schedule for completion of further Settlement proceedings, including scheduling the Final Approval Hearing:

<b>EVENT</b>	<b>DEADLINE</b>
JBS to issue CAFA notice	Within 10 days after the Preliminary Approval Motion is filed
Order approving Plaintiffs' proposed Notice Program ("Order")	N/A
All Defendants to produce reasonably available customer names, mailing addresses and email addresses	30 days after the Court's Order
Direct mail; Mailed and Email notice to potential Settlement Class Members; establish the settlement website; and issue a press release over PR Newswire	60 days after the Court's Order
Publication notice begins	60 days after the Court's Order or as soon as practicable thereafter due to publication schedules

<b>EVENT</b>	<b>DEADLINE</b>
Plaintiffs to file motion for final approval of \$5 million Litigation Fund	75 days after the Court's Order
Deadline for class members to object	105 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	105 days after the Court's Order (requests must be postmarked by this deadline)
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

10. If this Settlement is terminated or rescinded in accordance with its provisions, or otherwise does not become Final, then the Settlement and all proceedings in connection therewith shall be vacated, and shall be null and void, except insofar as expressly provided otherwise in the Settlement, and without prejudice to the status quo ante rights of DPPs, JBS, and the members of the Class. The Parties shall also comply with any terms or provisions of the Settlement applicable to termination, rescission, or the Settlement otherwise not becoming Final.

11. Neither this Order nor this Settlement shall be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, or regulation or of any liability or wrongdoing by JBS or of the truth of any of DPPs' Claims or allegations, nor shall it be deemed or construed to be an admission nor evidence of Released Parties' defenses.

12. The Action with respect to DPPs' Claims is stayed as to the Released Parties (as that term is defined in the Settlement) except as necessary to effectuate this Settlement.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
HON. JOHN R. TUNHEIM  
Chief Judge, United States District Court