

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

*IN RE CATTLE AND BEEF ANTITRUST  
LITIGATION*

This Document Relates to:

*Consumer Indirect Purchaser Plaintiff  
Action*

No. 0:22-md-03031-JRT-JFD

Honorable John R. Tunheim

Honorable John F. Docherty

**MEMORANDUM IN SUPPORT OF CONSUMER INDIRECT PURCHASER  
PLAINTIFFS' MOTION FOR INTERIM PAYMENT OF ATTORNEYS' FEES,  
REIMBURSEMENT OF LITIGATION COSTS, AND  
CLASS REPRESENTATIVE SERVICE AWARDS**

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## I. INTRODUCTION

Consumer Indirect Purchaser Plaintiffs (“Consumer IPPs”) filed this class action lawsuit in April 2019. After more than six years of hard-fought litigation and over 72,000 hours of work, Consumer IPPs reached icebreaker settlements with Cargill, Inc. and Cargill Meat Solutions Corporation (collectively “Cargill”) for \$32.5 million, and Tyson Foods, Inc. and Tyson Fresh Meats, Inc. (collectively “Tyson”) for \$55 million. The total monetary value of these settlements is \$87.5 million, representing a significant recovery for the Settlement Classes.<sup>1</sup> In addition to monetary relief, Cargill and Tyson have agreed to provide cooperation for Consumer IPPs’ case against the remaining Defendants. The relief obtained for the Settlement Classes to date reflects the skill, expertise, and hard work of Co-Lead Counsel and other Plaintiff Counsel (collectively, “Class Counsel”).<sup>2</sup> The benefit to the Settlement Classes is substantial, real, and concrete, compared to the significant litigation risks this case presented.

This Court previously granted Consumer IPPs’ Motion for Preliminary Approval of the Cargill and Tyson Settlements. ECF No. 1494. Now, Consumer IPPs respectfully request this Court grant interim payment of attorneys’ fees, reimbursement of litigation

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<sup>1</sup> The Court defined the Cargill and Tyson Settlement Classes in its Amended Order Granting Consumer Indirect Purchaser Plaintiffs’ Motion for Preliminary Approval of Settlement Agreements with Cargill and Tyson Defendants and Approval of Notices, Plan of Notice, and Plan of Allocation. ECF No. 1494.

<sup>2</sup> The Court appointed Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) and Lockridge Grindal Nauen PLLP (“LGN”) as Interim Co-Lead Counsel. ECF No. 68. The firm Shindler, Anderson, Goplerud, & Weese P.C. also contributed to the prosecution of this case on behalf of the Consumer IPPs. *See* Declaration of Brian D. Clark (“Clark Decl.”) ¶ 28; Ex. 3.

costs, and service awards to class representatives. Courts in this District use the “percentage-of-the-fund” approach to award attorneys’ fees. Accordingly, Class Counsel requests attorneys’ fees in an amount not to exceed \$29,567,998.60, which represents 33 and 1/3 percent of the Gross Settlement Fund, plus anticipated interest.<sup>3</sup> The litigation costs of \$8,871,642.26 represent the amount Co-Lead Counsel incurred to cover the costs of litigating this complex class action case through to this point. And class representative service awards of \$2,000 per representative help to acknowledge the effort and time class representatives put into this case on behalf of the Settlement Classes. Consumer IPPs’ request for attorneys’ fees, costs, and service awards is supported by the relevant law, the time, effort, and expenses incurred in this case by Interim Co-Lead Counsel and the Class Representatives, and the results obtained in the litigation.

## II. LITIGATION BACKGROUND

The Court is very familiar with this case, thus Consumer IPPs will dispense with a detailed recitation of its background. For the purposes of this motion, Consumer IPPs provide the below summary of major events in the litigation leading up to the instant Motion and the Court’s Preliminary Approval of the instant settlements. ECF No. 1494.

The Consumer IPPs’ lawsuit was filed on April 26, 2019, ECF No. 1 (19-cv-1129), and was later consolidated into an MDL before this Court. The Court appointed Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) and Lockridge Grindal Nauen PLLP

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<sup>3</sup> The escrow agent for the settlements, The Huntington National Bank, estimates the interest accrued on the settlements will total \$1,203,995.80 by the May 12, 2026 fairness hearing. Clark Decl. ¶ 4.

("LGN") as Interim Co-Lead Counsel. ECF No. 68 (19-cv-1129). Defendants moved to dismiss the complaint, which this Court granted with leave to amend on September 29, 2020. ECF No. 205 (19-cv-1129). After amendment and a second round of motions to dismiss, on September 14, 2021, the Court largely denied Defendants' motions to dismiss. ECF No. 331 (19-cv-1129).

On September 25, 2024, Consumer IPPs moved for class certification. ECF No. 868; Clark Decl. ¶ 10. With their motion, Consumer IPPs submitted the declaration of an expert economist, Dr. Russell W. Mangum, who testified as to how common evidence demonstrates liability, impact on the Consumer IPPs' class, the amount of the overcharge, and pass-through of the overcharge to Consumer IPPs. ECF No. 874. On January 24, 2025, Defendants filed oppositions to class certification, contrary expert opinions, and a motion to exclude certain portions of Dr. Mangum's opinions. ECF Nos. 1139, 1150, 1200. Consumer IPPs filed their reply on April 4, 2025. ECF No. 1261. The parties argued their positions on Consumer IPPs' class certification motion in a hearing on November 5, 2025. ECF Nos. 1471, 1472. Co-Lead Counsel worked closely with experts and deployed a team of dozens of attorneys to discover and review relevant documents in support of their motion for Class Certification. Co-Lead Counsel paid and incurred millions of dollars in expert fees throughout the case and during the class certification process. Co-Lead Counsel are expected to incur additional costs related to expert fees should the case proceed to summary judgment and trial.

Up to this point, Class Counsel have put 72,108.25 hours of work into pursuing Consumer IPPs' claims and interests. Co-Lead Counsel engaged in a deposition schedule

reflective of the complexity of this class action antitrust case, which included: 79 depositions of Defendant employees, and 13 non-party depositions noticed by plaintiffs; 25 non-party depositions noticed by Defendants; defending the depositions of the 28 Consumer IPP class representatives; deposing Defendants' class certification expert (Dr. Stiroh), and defending the deposition of Consumer IPPs' class certification expert (Dr. Mangum). Clark Decl. ¶ 9.

Despite the significant risks faced in this litigation, Consumer IPPs have reached settlements with two of the four defendant groups, Cargill and Tyson. These settlements total \$87,500,000.00. Clark Decl. ¶ 4. In addition to the monetary component, each of these settlements provide for cooperation which will assist the Consumer IPPs in subsequent litigation against the remaining defendants. Clark Decl. ¶ 12-13. Co-Lead Counsel retained Epiq Class Action & Claims Solutions, Inc. ("Epiq") to serve as notice and claims administrator, and have commenced the Court-approved notice plan for the settlements. *See* ECF No. 1494.

On October 30, 2025, Co-Lead Counsel moved for preliminary approval of the settlements with Cargill and Tyson. ECF No. 1468. The motion for preliminary approval outlined the settlement agreements, plan of notice, and plan of allocation of the settlements. This Court granted Co-Lead Counsel's motion for preliminary approval of the Settlements on December 10, 2025, and amended that Order on December 17, 2025. ECF Nos. 1493, 1494. Notice of the settlements commenced on December 29, 2025. Since then, Consumer IPPs have only received one written objection to the settlements. Clark Decl. ¶ 56. In other words, support for the settlements to date has been overwhelmingly positive.

The deadline to object to the settlements is March 30, 2026, and objectors to the settlements will have an opportunity to be heard at the May 12, 2026 fairness hearing. *See* ECF No. 1494.

### III. CALCULATION OF THE GROSS SETTLEMENT FUND

The Net Settlement Fund is comprised of the settlements reached with Defendants Cargill and Tyson in addition to interest accrued to the settlement proceeds that have been placed in escrow.

<b><u>Defendant</u></b>	<b><u>Settlement Amount</u></b>	<b><u>Reference</u></b>
Cargill	\$32,500,000.00	ECF No. 1436
Tyson	\$55,000,000.00	ECF No. 1442
<b><u>Total of Settlements at Issue</u></b>	<b>\$87,500,000.00</b>	
Interest earned on the Settlements (projected amount through May 12, 2026)	\$1,203,995.80	Clark Decl. ¶ 4
<b><u>Gross Settlement Fund</u></b>	<b>\$88,703,995.80</b>	

Interest will continue to accrue and the funds in which the settlements are invested will not mature until after the hearing on this motion on May 12, 2026. Consumer IPPs propose that their actual award of attorneys' fees be calculated on the lesser of (i) the estimated interest presented here (\$1,203,995.80), or (ii) the actual interest earned at the time of maturity. Consumer IPPs will file a status report no later than one week after May 12, 2026 fairness hearing confirming the final amount of interest accrued on the settlement proceeds through May 12, 2026.

#### IV. ARGUMENT

Co-Lead Counsel for Consumer IPPs request: (1) an award of attorneys' fees in the amount of 33 and 1/3 percent of the \$87.5 million settlement fund, plus interest; (2) reimbursement of litigation costs Co-Lead Counsel has incurred to date on behalf of the class; and (3) service awards of \$2,000 for each of the twenty-eight class representatives.

As discussed below, Co-Lead Counsel's request for \$29,567,998.60 in fees from the onset of the case until January 31, 2026, is reasonable and in line with the fees awarded in similar cases. Applying a lodestar cross-check, Co-Lead Counsel's request represents a negative .83 multiplier, which is well in line with other cases. *See infra* Section IV.C. Co-Lead Counsel's request for reimbursement for out-of-pocket funds to advance this litigation is similarly reasonable and should be granted. Likewise, Co-Lead Counsel's request for service awards for each of the twenty-eight class representatives is reasonable, particularly given the significant amount of time and years of service that the class representatives have dedicated to this case, and should be granted.

##### A. **The Requested Fee is Appropriate Under Controlling Law**

Rule 23(h) permits a district court in a class action to "award reasonable attorney's fees and nontaxable costs that are authorized by law[.]" The Eighth Circuit reviews decisions by district courts regarding attorney fees in a class action settlement under an "abuse of discretion" standard.<sup>4</sup> When a party obtains compensation for the class's benefit

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<sup>4</sup> *See Keil v. Lopez*, 862 F.3d 685, 700-01 (8th Cir. 2017) (citing *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1156 (8th Cir. 1999)).

in the form of a common fund, courts have long recognized that the costs of the litigation, including an award of attorneys' fees, should be recovered from that common fund.<sup>5</sup> This approach equitably apportions the costs of litigation, including attorneys' fees, among the class members who benefit from the common fund.<sup>6</sup>

**1. Consumer IPPs Seek a Percentage of the Settlement Fund as an Award of Fees.**

There are two methods for determining attorneys' fee awards in common-fund class actions: the percentage of the benefit method and the lodestar method.<sup>7</sup> Under the percentage of the benefit method, fees equate to a fraction of the common settlement fund gathered during the litigation.<sup>8</sup> When a party obtains compensation for the class's benefit in the form of a common fund, courts have long recognized that an award of attorneys' fees and other costs of the litigation should be recovered from that common fund.<sup>9</sup> This approach equitably apportions the costs of litigation, including attorneys' fees, among the class members who benefit from the common fund.<sup>10</sup> "In the Eighth Circuit, use of a

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<sup>5</sup> *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970).

<sup>6</sup> *Boeing Co.*, 444 U.S. at 478-79.

<sup>7</sup> *See Keil*, 862 F.3d at 701 (citing *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244-45 (8th Cir. 1996)).

<sup>8</sup> *In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 622 (8th Cir. 2017).

<sup>9</sup> *Boeing Co.*, 444 U.S. at 478; *Mills*, 396 U.S. at 392; *In re Xcel Energy, Inc., Sec. Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 991 (D. Minn. 2005) (citing *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984)); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002).

<sup>10</sup> *Boeing*, 444 U.S. at 478.

percentage method of awarding attorney fees in a common-fund case is not only approved, but also ‘well established.’”<sup>11</sup>

A percentage of the benefit approach to fee awards is appropriate here. Consumer IPPs seek an amount not to exceed \$29,567,998.60, which represents 33 and 1/3 percent of the Gross Settlement Fund. One-third of the settlement fund, plus interest, falls in line with similar fee awards in this Circuit.<sup>12</sup>

Eighth Circuit courts consider fund administration costs part of the “benefit” to a class, and award fees based on the gross settlement fund rather than deducting administrative costs before awarding fees.<sup>13</sup>

## **2. Numerous Factors Support the Requested Attorneys’ Fees**

Courts in the Eighth Circuit rely on a set of factors from other circuits to determine the reasonableness of attorneys’ fee awards under both the percentage of the benefit and the lodestar methods.<sup>14</sup> These factors include:

(1) the benefit conferred on the class; (2) the risk to which plaintiffs’ counsel was exposed; (3) the difficulty and novelty of the legal and factual issues of the case; (4) the skill of the lawyers, both plaintiffs’ and defendants’; (5) the time and labor involved; (6) the reaction of the class; and (7) the comparison between the requested attorney fee percentage and percentages awarded in

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<sup>11</sup> *In re Xcel*, 364 F. Supp 2d at 991 (quoting *Petrovic*, 200 F.3d at 1157); *see also Khoday v. Symantec Corp.*, No. 11-CV-180 (JRT/TNL), 2016 WL 1637039, at \*8-9 (D. Minn. Apr. 5, 2016), *aff’d sub nom. Caligiuri v. Symantec Corp.*, 855 F.3d 860 (8th Cir. 2017).

<sup>12</sup> *See e.g. In re U.S. Bancorp Litig.*, 291 F.3d at 1038 (awarding attorney fees of 36% from a \$3.5 million common fund).

<sup>13</sup> *Keil*, 862 F.3d at 703 (awarding fees based on the gross settlement fund, before administrative costs were deducted); *In re Life Time Fitness, Inc.*, 847 F.3d at 623.

<sup>14</sup> *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1061 (D. Minn. 2010).

similar cases.<sup>15</sup>

Many of these factors overlap,<sup>16</sup> and all of them support the award of attorneys' fees here.

(a) *The Benefit Conferred on the Settlement Classes is Substantial*

Perhaps the most critical factor when considering fee awards is the “degree of success obtained” by counsel.<sup>17</sup> The monetary and equitable benefits conferred on the Settlement Classes are substantial.<sup>18</sup> The \$87.5 million settlement here provides a significant benefit to the Settlement Classes, which faced recovering nothing in this complex, lengthy class action case. The non-monetary relief in the form of cooperation with the ongoing litigation is also a considerable benefit, as there are still two remaining defendants with whom Consumer IPPs are litigating. Both settlements provide for cooperation related to: (a) access to witnesses; (b) authentication and admissibility of documents; (c) experts; and (d) summary judgment. Clark Decl. at ¶ 14. This cooperation is a powerful tool for Consumer IPPs as they continue building their case against the remaining defendants.<sup>19</sup>

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<sup>15</sup> *Yarrington*, 697 F.Supp.2d at 1062 (citing *In re Xcel*, 364 F. Supp. 2d at 993)).

<sup>16</sup> *Khoday*, 2016 WL 1637039, at \*9 (D. Minn. Apr. 5, 2016) (citing *Yarrington*, 697 F.Supp.2d at 1062).

<sup>17</sup> *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

<sup>18</sup> *See In re Xcel*, 364 F. Supp. 2d at 994 (affording “particular weight” to the substantial \$80 million settlement obtained for the class).

<sup>19</sup> This Court has previously highlighted the significance of ongoing cooperation by settling parties when determining fee awards. *See In re Pork Antitrust Litig.*, No. 18-1776 (JRT/JFD), 2025 WL 3653652, at \*2 (D. Minn. Dec. 17, 2025) (citing *In re Packaged Ice Antitrust Litig.*, MDL No. 08-01952, 2010 WL 3070161, at \*6 (E.D. Mich. Aug. 2, 2010); *In re Pressure Sensitive Labelstock Antitrust Litig.*, 584 F. Supp. 2d 697, 702 (M.D. Pa. 2008).

The benefits conferred on the Settlement Classes support awarding fees as a percentage of the fund.

(b) Consumers Faced Substantial Risk in Pursuing this Action

“The risk of no recovery in complex cases of this sort is not merely hypothetical.”<sup>20</sup> Investigating and proving an unlawful conspiracy is difficult, especially when not derived from a related criminal investigation.<sup>21</sup> Class Counsel pursued this case on a contingent basis and fronted the cost of this litigation for nearly seven years. This case’s procedural history underscores the risks counsel took. Class Counsel survived formidable motions to dismiss brought by sophisticated counsel, navigated a complicated discovery process, briefed and argued for class certification and presented extensive expert reports in support, and were granted preliminary approval of these settlements. The numerous issues of law and fact required substantial preparation spanning many years and tens of thousands of hours of work, all of which were undertaken without assurance of a favorable outcome.<sup>22</sup>

The significant risk undertaken by counsel, both prior to and looking forward from these settlements, supports the reasonableness of the requested 33 1/3 percent attorney fees award.

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<sup>20</sup> *In re Xcel*, 364 F. Supp 2d at 994.

<sup>21</sup> *In re Linerboard Antitrust Litig.*, No. 2:98-cv-05055, 2004 WL 1221350, at \*10 (E.D. Pa. June 2, 2004), *amended*, 2004 WL 1240775 (June 4, 2004) (observing that “an antitrust class action is arguably the most complex action to prosecute.”) (quoting *In re Motorsports Merchandise Antitrust Litig.*, 112 F.Supp.2d 1329, 1337 (N.D. Ga. 2000)).

<sup>22</sup> *See Khoday*, 2016 WL 1637039, at \*9 (D. Minn. Apr. 5, 2016) (citing *Yarrington*, 697 F.Supp.2d at 1062).

(c) Consumer IPP Class Counsel Faced Complex Issues

Although Consumer IPPs survived motions to dismiss in this case, there are still many difficult legal questions to come. Within the Consumer IPP case alone, Class Counsel are asserting violations of the laws of twenty-seven states. Looking beyond the complexities of the Consumer IPP case, *In re Cattle and Beef* involves unique allegations of an upstream and downstream antitrust conspiracy, involving multiple plaintiff classes with different legal arguments.

In addition to the complexity of the class structure, the process and scope of discovery in this case were complex. Over *four million* documents were produced in this case. Clark Decl. ¶ 8. Class Counsel, with the help of their litigation teams, reviewed and analyzed those documents and used them to prove their case. *Id.* Class Counsel used documents from discovery when pursuing their aggressive deposition schedule, which included conducting and defending over 100 depositions. *Id.* at ¶ 9. After discovery closed, Consumer IPPs moved for certification of the Consumer IPP class, which the Court currently has under advisement. Should the Consumer IPP class be certified, this case will proceed to the summary judgment and trial phases. It is not certain when or in what order the classes and direct-action plaintiffs' cases would be tried, adding further uncertainty on the length of these proceedings for the Settlement Classes.

The complexity of the factual and legal issues in this case supports the reasonableness of the requested 33 and 1/3 percent attorney fees.

(d) Consumer IPP Class Counsel Utilized Significant Skill and Dedicated Substantial Resources to Achieve the Settlements

Complex class action antitrust cases require highly skilled and specialized attorneys who use their experience to prosecute such claims. Such is the case here. Class Counsel bring to the table extensive years of specialized antitrust and complex class action litigation experience. *See* Clark Decl., ¶ 3. Counsel for Defendants likewise possess a high degree of skill and experience litigating class action antitrust cases. Defense counsel have zealously challenged all Plaintiffs' claims throughout all stages of this litigation.<sup>23</sup> The commensurate skills, understanding of the subject matter, and recognition of the risks to all Parties helped the Parties reach these hard-fought, arm's length settlements. The quality of representation provided by Class Counsel and Defendants' counsel supports the reasonableness of the requested 33 and 1/3 percent attorney fees.

(e) Co-Lead Counsel Expended Significant Time and Labor

Since initiating this case, Class Counsel have expended over 72,000 hours to litigate and reach settlements with two of the four defendants. First, this effort involved conducting factual investigation into the structure of the beef industry and allegations of a conspiracy to fix prices. A team of lawyers spent thousands of hours reviewing and analyzing the over 4.45 million documents produced in this case. The over one hundred depositions also took thousands of hours to prepare for, take, and defend. Interviewing and preparing Consumer IPPs' expert witness, Dr. Russell W. Mangum, required counsel's time and effort. Moving

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<sup>23</sup> *See Khoday*, 2016 WL 1637039, at \*9 (D. Minn. Apr. 5, 2016) (citing *Yarrington*, 697 F.Supp.2d at 1062) (finding the quality of representation as supportive of the reasonableness of attorneys' fees).

for class certification required many hours of motion practice and oral argument. Class Counsel guided twenty-eight class representatives through document discovery, prepared them for depositions, and kept them abreast of all major case developments. And, importantly, Co-Lead Counsel spent a significant amount of time in hard-fought negotiations with opposing counsel to reach these settlements.

The time and effort expended by Class Counsel was reasonable and supports the requested attorneys' fees.

(f) *Prior to the Hearing on this Motion, Consumer Class Counsel Will Report Any Reaction of the Class to This Motion*

Courts consider the reaction of the class when evaluating fees.<sup>24</sup> The size of the Consumer IPP Class is estimated to be in the tens of millions. Of that group, Consumer IPPs have received one written opposition and ten exclusion requests to their settlements with Cargill and Tyson to date. ECF Nos. 1511, 1526. Class Counsel will address the substantive nature of these objections, and any others that may come in, at the May 12, 2026 fairness hearing. Class Counsel is confident that at that time, the overwhelming majority of the class will support the settlements, which in turn will support the reasonableness of the requested attorneys' fees.<sup>25</sup>

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<sup>24</sup> See *In re Xcel*, 364 F. Supp. 2d at 996; *In re CenturyLink Sales Pracs. & Sec. Litig.*, 2020 WL 7133805, at \*12 (D. Minn. Dec. 4, 2020) (finding “little dissatisfaction with the settlement” where only eight class members objected and .07% of the class opted out).

<sup>25</sup> See *Khoday*, 2016 WL 1637039, at \*9 (D. Minn. Apr. 5, 2016) (citing *Yarrington*, 697 F.Supp.2d at 1062) (“the Court has a duty to the silent majority as well as the vocal minority”).

(g) *The Requested Fee Percentage is Appropriate and Supported by Authority*

The Eighth Circuit considers consistency across fee awards for similar cases a factor in determining the award's reasonableness. In this District, "courts have frequently awarded attorney fees between 25 and 36 percent of a common fund in class actions."<sup>26</sup> The requested fee of 33 and 1/3 percent is consistent with other awards in this District and therefore reasonable.

In sum, these seven factors considered by the Eighth Circuit all support a finding that the requested fees of 33 and 1/3 percent of the settlement fund are reasonable and should be granted.

**3. A Lodestar Cross-Check Confirms that the Fee Requested is Proper.**

"Although not required to do so," district courts who use the percentage-of-the-benefit approach *may* verify the reasonableness of the award "by cross-checking it against the lodestar method."<sup>27</sup> The "lodestar" method involves multiplying the hours expended by attorneys on a case "by a reasonable hourly rate of compensation so as to produce a fee amount which can be adjusted, up or down, to reflect the individualized characteristics of a given action."<sup>28</sup> Class Counsel spent 72,108.25 hours through January 31, 2026 pursuing

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<sup>26</sup> See *Khoday*, 2016 WL 1637039, at \*9 (D. Minn. Apr. 5, 2016) (citing *Yarrington*, 697 F.Supp.2d at 1062); see also *In re U.S. Bancorp Litig.*, 291 F.3d at 1038 (36 percent); *In re Xcel*, 364 F. Supp. 2d at 998 (collecting cases routinely approving fee awards of 33 percent); *Carlson v. C.H. Robinson Worldwide, Inc.*, Civil No. 02-3780, 2006 WL 2671105, at \*8 (D. Minn. Sept. 18, 2006) (35.5 percent).

<sup>27</sup> *Keil*, 862 F.3d at 701.

<sup>28</sup> *In re Life Time Fitness, Inc.*, 847 F.3d at 622.

this case on behalf of Consumer IPPs. Co-Lead Counsel's fee request results in a negative multiplier of .83 when compared to their lodestar.

Most of the hours spent on this litigation during its pendency have been spent by Co-Lead Counsel. *See* Exhibit 6. Class Counsel's lodestar of \$35,519,864.00 is reasonable and aligns with other lodestars approved in this Circuit.<sup>29</sup> Class Counsel's lodestar is reasonable and commensurate with the work performed over the many years of this litigation, and supports the award of requested attorneys' fees.

**B. Class Counsel's Litigation Expenses Were Reasonably Incurred and Should Be Reimbursed**

Co-Lead Counsel seeks reimbursement for the reasonable out-of-pocket costs paid or incurred to support this litigation over the past seven years, none of which have been previously reimbursed. Class actions carry with them "an enormous burden of costs and expense..."<sup>30</sup> "Where ... the class members' claims involve complex legal questions, conflicts of law analyses, the application of numerous states' laws, and individualized damages for each class member that are speculative and difficult to estimate, the enormity

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<sup>29</sup> *Keil*, 862 F.3d at 701 (finding a lodestar multiple of 2.3 reasonable and "in line with multipliers used in other cases."); *In re Xcel*, 364 F.Supp.2d at 999 (approving a 4.7 lodestar multiplier); *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (upholding a lodestar multiplier of 5.3); *In re Charter Commc'ns, Inc., Sec. Litig.*, 2005 WL 4045741, at \*18 (E.D. Mo. Jun. 30, 2005) (finding reasonable a 5.61 cross-check multiplier and noting that "[t]o overly emphasize the amount of hours spent on a contingency fee case would penalize counsel for obtaining an early settlement and would distort the value of the attorneys' services" (internal quotation omitted)).

<sup>30</sup> *Khoday*, 2016 WL 1637039, at \*6 (D. Minn. Apr. 5, 2016) (quoting *Marshall v. Nat'l Football League*, 787 F.3d 502, 512 (8th Cir. 2015)).

of the burden is obvious.”<sup>31</sup> Such is the case here, in this complex class action antitrust case involving a consumer plaintiff class.

Co-Lead Counsel’s request for reimbursement from the settlement fund is consistent with Eighth Circuit precedent. Reasonably incurred expenses should be “reimbursed proportionally by those class members who benefit from the settlement.”<sup>32</sup> “It is well established that counsel who create a common fund like the one at issue are entitled to the reimbursement of litigation costs and expenses, which include such things as expert witness costs, mediation costs, computerized research, court reports, travel expenses, and copy, telephone, and facsimile expenses.”<sup>33</sup>

Thus far, Co-Lead Counsel has paid or incurred \$8,871,642.26 in expenses to advance this litigation through incurring litigation fund and firm-specific expenses. Clark Decl. ¶¶ 27-41; Ex. 7 & 8. Most of the litigation fund costs are attributable to paying experts and consultants (\$8,076,977.34), hosting defendants’ document production in an online database (\$259,049.36), and paying for phone record subpoenas and analysis of those records (\$122,387.23). *Id.*, ¶ 39. Additional costs were of the kind typically incurred in cases such as this, including: filing fees; legal research; printing and copying; court reporters; mediation; and travel. These costs were paid or incurred by Co-Lead Counsel in

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<sup>31</sup> *Id.*

<sup>32</sup> *Yarrington*, 697 F. Supp. 2d at 1067 (citations omitted).

<sup>33</sup> *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at \*3 (D. Minn. July 13, 2015); *see also Khoday*, 2016 WL 1637039, at \*12 (D. Minn. April 5, 2016) (“Courts generally allow plaintiffs’ counsel in a class action to be reimbursed for costs and expenses out of the settlement fund, so long as those costs and expenses are reasonable and relevant to the litigation.”); *Yarrington*, 697 F. Supp. 2d at 1068 n.4.

furtherance of this case with no guarantee that they would ultimately be recovered. These costs were reasonable, relevant to and necessary for this case, and should be reimbursed.

**C. The Named Plaintiffs Should Receive Service Awards**

Consumer IPPs request that each class representative receives \$2,000 as a service award to compensate them for their time and effort spent on behalf of the class. Each was subjected to invasive discovery requests and sat for a lengthy deposition about their beef purchasing. Service awards for named plaintiffs in class action suits “promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.”<sup>34</sup> They recognize the significant time and effort that it takes to actively participate in litigation, as compared to unnamed class members who receive the benefit of settlements without bearing the same risks.<sup>35</sup> Courts look to the following factors when considering whether service awards are warranted, “(1) actions the plaintiffs took to protect the class’s interests, (2) the degree to which the class has benefitted from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing litigation.”<sup>36</sup>

The twenty-eight Consumer IPP class representatives in this case<sup>37</sup> have worked diligently for years to prosecute the class’s claims. After reviewing the settlement

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<sup>34</sup> *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017) (citing *Yarrington*, 697 F. Supp. 2d at 1068).

<sup>35</sup> *Yarrington*, 697 F. Supp. 2d at 1067-68; *see also Zilhaver v. UnitedHealth Grp., Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009) (granting service awards and explaining that named plaintiffs bear risks of counterclaim or collateral attack).

<sup>36</sup> *Caligiuri*, 855 F.3d at 867 (citing *In re U.S. Bancorp Litig.*, 291 F.3d at 1038).

<sup>37</sup> The class representatives are: Cindy Abernathy; Dan Campbell; Karen Carter; Andrew Cohen; Sharon Dawson-Green; Jason Falbo; Eric Gauchat; William Gee; Martin Jarmulowicz; Sharon Killmon; Brenda King; Lindsey Lemoi; Marcelo Lopez; Craig

agreements with the entire class's interests in mind, each of the class representatives submitted declarations supporting the settlements and outlining their work on the case.<sup>38</sup> They have spent time following case developments and communicating with counsel about major decisions. Class representatives cooperated with the discovery process by providing documents and/or access to their personal devices, collecting purchase receipts, and assisting in responses to discovery requests. They spent hours preparing for and sitting in nearly one hundred hours (collectively) of depositions. All class representatives worked in support of this litigation and with no immediate benefit to themselves.<sup>39</sup> The settlements with Cargill and Tyson were direct results of the class representatives' involvement, which required each of their understanding, participation, and approval to occur. A \$2,000 service award<sup>40</sup> will reasonably and fairly compensate the class representatives for some of their time and effort in protecting the class's interests and pursuing this litigation up to this point.

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Margulies; Lisa Melegari; Charlie Morgan; Harold Nyanjom; Michelle Oversen; Kenneth Peterson; Brent Rasmussen; David Renz; John Shupe; Mark Sperry; Leigh Tiller; Robert Trepper; Stacey Troupe; Jacquelyn Watson; and Kent Winchester.

<sup>38</sup> See Clark Decl. Exs. 8-35 (Class Representative Declarations).

<sup>39</sup> See Clark Decl. Exs. 8-35 (Class Representative Declarations).

<sup>40</sup> “[C]ourts in this circuit regularly grant service awards of \$10,000 or greater,” while only a \$2,000 service award is sought here. *Caligiuri*, 855 F.3d at 867 (affirming approval of settlement that included \$10,000 service awards to named plaintiffs); see also, *Huyer v. Njema*, 847 F.3d 934, 941 (8th Cir. 2017) (approving settlement that included a \$10,000 service award for each named plaintiffs); *Zilhaver*, 646 F.Supp.2d at 1085 (granting named plaintiffs \$15,000 each in service awards from common fund settlement of \$17,000,000).

## V. CONCLUSION

For these reasons, Counsel respectfully requests an award of \$29,567,998.60 in attorneys' fees, \$8,871,642.26 in litigation costs, and \$2,000 service awards for each of the class representatives.

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Respectfully submitted,

s/ Shana E. Scarlett

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