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 FINAL APPROVAL OF THE SETTLEMENT AGREEMENTS WITH CARGILL AND TYSON DEFENDANTS

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I. INTRODUCTION

Consumer IPPs respectfully move this Court for final approval of their settlements totaling $87,500,000 with two Defendant families: Cargill and Tyson.[1] Pursuant to the settlements, Cargill paid $32,500,000 and Tyson paid $55,000,000 in monetary relief to Consumer IPPs.

On December 10, 2025, this Court granted preliminary approval of these settlements, provisionally certifying the Cargill and Tyson Settlement Classes.[2] In granting preliminary approval, the Court found the settlements fell within the range of reasonableness, appointed Hagens Berman Sobol Shapiro LLP and Lockridge Grindal Nauen PLLP as Settlement Class Counsel, appointed Epiq Class Action & Claims Solutions, Inc., as Claims Administrator, and directed notice to be distributed to the members of the Cargill and Tyson Settlement Classes.[3]

Settlement Class Counsel and the Claims Administrator have effectuated the notice plan approved by the Court.[4] Notice of the settlements was sent directly to 34,478,859 valid email addresses for potential class members.[5] Together with an online media campaign,

[1] ECF Nos. 1446-1, 1446-2. The Court granted preliminary approval of the Settlements on December 10, 2025, ECF No. 1493, and entered an amended order on December 17, 2025, ECF No. 1494. Hereafter, all citations will be to the December 17, 2025 amended order ("Preliminary Approval Order").

[2] ECF Nos. 1493, 1494.

[3] ECF No. 1494 at 2–5.

[4] ECF No. 1493.

[5] Declaration of Cameron R. Azari, Esq. Regarding Implementation and Adequacy of Notice Program, Dated April 27, 2026, at ¶¶ 12–13 (hereinafter, "Azari Decl.").

the notice plan resulted in 19,093,891 page views of the settlement website as of April 27, 2026, where class members can review the Settlement Agreements, submit an online claim form, or access instructions on how to object to or request exclusion from the settlements.[6] This robust, state-of-the-art campaign ensured notice of the settlements reached more than 75% of potential class members, certainly within the range of what is constitutionally required.[7]

Class members reacted very positively to the settlements. Tens of millions of potential class members received notice of the settlements; yet, only 13 class members requested exclusion and only two objected to the settlements.[8] These two objections reflect matters of personal philosophy—one of the objectors explicitly explained he was objecting "on general principles"—and a misunderstanding of the prerequisites to submit a valid claim,[9] but their objections do not point to any particular infirmity with the settlements.[10]

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[6] Azari Decl., ¶ 30.

[7] Azari Decl., ¶ 10.

[8] Azari Decl., ¶¶ 37–38; Exs. 9–11. These two objections are extraordinarily less than 0.00001% of settlement class members. *See Bynum v. Dist. of Columbia*, 412 F. Supp. 2d 73, 77 (D.D.C. 2006) ("The low number of opt-outs and objectors (or purported objectors) supports the conclusion that the terms of the settlement were viewed favorably by the overwhelming majority of class members."); *Pallas v. Pac Bell*, No. C-89-2373 DLJ, 1999 WL 1209495, at *8 (N.D. Cal. 1999) ("The small percentage—less than 1%—of persons raising objections is a factor weighing in favor of approval of the settlement.").

[9] Azari Decl., Ex. 38.

[10] A third individual submitted a letter to the Court about the claims process, but he did not object to the Settlements and the Claims Administrator confirmed he is satisfied that his claim submission includes his eligible purchases. *See* Azari Decl., ¶ 39 n.15, Ex. 12.

The outcome of the notice process confirms that the settlements are fair, reasonable, and adequate, and should be finally approved by the Court.

The settlements provide $87,500,000 in relief to the Cargill and Tyson Settlement Classes while avoiding the risk, uncertainty, and expense of litigating the case against Cargill and Tyson through trial. The settlements also preserve Consumer IPPs' right to obtain additional settlements or judgments against the remaining Defendants. Consumer IPPs therefore respectfully request that the Court grant final approval of the settlements and enter final judgment.

II. BACKGROUND

This litigation has been pending for seven years. The Court is familiar with Plaintiffs' allegations and the procedural posture of this case, and Consumer IPPs therefore do not repeat them here. Consumer IPPs included a detailed discussion of the procedural history and Consumer IPPs' efforts in litigating this case in their motions for preliminary approval[11] and for attorneys' fees.[12]

A. The negotiations and terms of the Settlement Agreements.

The Settlement Agreements with Cargill and Tyson were reached separately through confidential, protracted, intense, arm's length settlement negotiations.[13] The Cargill Settlement Agreement was the product of a negotiation process that commenced in

[11] ECF No. 1468.

[12] ECF No. 1543.

[13] Declaration of Brian D. Clark in Support of Consumer Indirect Purchaser Plaintiffs' Motion for Final Approval of the Settlement Agreements with Cargill and Tyson Defendants, Dated April 28, 2026, at ¶¶ 8–10, Exs. A–B (hereinafter, "Clark Decl.").

March 2025.[14] The Tyson Settlement Agreement was negotiated separately, beginning in April 2025, and involved the work of a respected mediator, Fouad Kurdi.[15]

Throughout the settlement negotiations, the parties had access to ample information obtained through investigation, research, dispositive motion practice, fact and expert discovery, and the settlement discussions themselves that allowed them to assess the merits of Consumer IPPs' claims and the Settling Defendants' defenses, including balancing the value of the Consumer IPPs' claims against the substantial risks of continued litigation.[16] The core settlement terms are substantially similar in each of the Settlement Agreements, and the settlement amounts reflect the size and other factors specific to the respective Settling Defendants. Together, the settlements provide $87,500,000 to the Cargill and Tyson Settlement Classes. Settlement Class Counsel believe the sums are fair, reasonable, and adequate considering Cargill's and Tyson's respective market shares, the evidence against Cargill and Tyson, and the meaningful cooperation Cargill and Tyson each agreed to provide, which will help strengthen Consumer IPPs' chances of prevailing at trial against the remaining Defendants.[17]

These Settlement Agreements thus represent an outstanding result for the Consumer IPPs and guarantee compensation for class members in this long-running litigation. The

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[14] Clark Decl., ¶¶ 8–9, Ex. A.

[15] Clark Decl., ¶¶ 8, 10, Ex. B.

[16] Clark Decl., ¶¶ 4, 9.

[17] Clark Decl. ¶¶ 9–11; *see* R. Mangum Reply Report in Support of Class Certification Mot., ¶ 268, ECF No. 1267 (estimating the total damages to the Consumer IPP class as $1.9 billion).

Settlement Agreements are "fair, reasonable, adequate, and in the best interests of the Cargill and Tyson Settlement Classes, raise[] no obvious reasons to doubt [their] fairness, and raise[] a reasonable basis for presuming that the Settlement Agreement[s and their] terms satisfy the requirements of Federal Rules of Civil Procedure 23(a), 23(b)(3), 23(c)(2), and 23(e), and due process."[18]

Subject to the Court's approval, the settlements (with accrued interest) will be used to: (1) pay costs of notice and those incurred in the administration of the settlements and distribution of the settlements; (2) pay taxes and tax-related costs associated with the escrow account for proceeds from the settlements; (3) make a distribution to the class members in accordance with the proposed plan of distribution; (4) pay attorneys' fees to Settlement Class Counsel, as well as costs and expenses, that may be awarded by the Court[19]; and (5) pay service awards to each of the class representatives.[20]

1. Cargill.

Settlement negotiations between Consumer IPPs and Cargill commenced in March 2025. Negotiations regarding the settlement terms lasted nearly five months, ultimately resulting in the execution of the Cargill Settlement Agreement by both parties on August 22, 2025.[21] Both parties were represented by experienced and highly sophisticated counsel

[18] ECF No. 1494; Prelim. App. Order, ECF No. 1493, at ¶ 6.

[19] *See* ECF Nos. 1541, 1543, 1544, 1544-1.

[20] *Id.*

[21] Clark Decl., ¶¶ 8, 9.

throughout the entire process. The Cargill Settlement Agreement required Cargill to pay $32,500,000 and requires meaningful cooperation from Cargill.[22]

2. Tyson.

Settlement discussions between Consumer IPPs and Tyson began in April 2025. Negotiations regarding the settlement terms lasted several months, ultimately resulting in the execution of the Tyson Settlement Agreement, signed by both parties on September 29, 2025.[23] Both parties were represented by experienced and highly sophisticated counsel throughout the entire process. The settlement negotiations included the work of an experienced mediator, Fouad Kurdi.[24] The Tyson Settlement Agreement required Tyson to pay $55,000,000 and requires meaningful cooperation from Tyson.[25]

B. The Court has provisionally certified the Settlement Classes.

The Court entered the Preliminary Approval Order on December 10, 2025, provisionally certifying the Cargill and Tyson Settlement Classes, each defined as: [26]

> All persons and entities who indirectly purchased for personal consumption one or more of the following beef products in the Repealer Jurisdictions[27] between August 1, 2014 to December 31, 2019: beef from Defendants (whether fresh or frozen) made from chuck, loin, rib or round primal cuts.

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[22] Clark Decl., ¶¶ 9, 12.

[23] Clark Decl., ¶¶ 8, 10.

[24] *Id*.

[25] Clark Decl., ¶¶ 10, 13, Ex. B.

[26] ECF No. 1493; *see also* ECF 1494.

[27] The Repealer Jurisdictions are: Arizona, California, District of Columbia, Florida, Illinois, Iowa, Kansas, Massachusetts, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, West Virginia, and Wisconsin.

> For this lawsuit, beef excludes any product that is marketed as USDA Prime, organic, No Antibiotics Ever ("NAE"), antibiotic free, 100% grass-fed, kosher, halal, certified humane, Wagyu, "American-Style Kobe Beef," as well as any products that are ground, marinated, seasoned, flavored, breaded, or cooked.

C. Notice has been successfully provided to the Settlement Classes.

Pursuant to the Court's Preliminary Approval Order, the Claims Administrator sent notice of the settlements and the fairness hearing to all known class members.[28] Specifically, the Claims Administrator provided direct email notice to approximately 35 million potential class members.[29] The email notice included an embedded link to the case-specific website, which enabled class members to access the frequently asked questions, important case documents, an easy-to-complete online claim form, and other information about the case, like instructions on how to object to the settlements and instructions on how to attend the Court's fairness hearing.[30] Additionally, the Claims Administrator has operated a toll-free telephone number to field questions and made available and maintained a post office box for correspondence about the case, permitting class members to contact the Claims Administrator.[31]

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[28] Via the Settlement Website and notice, the Class was informed of the original fairness hearing date of May 12, 2026, but also that "The judge may decide to move the hearing to a different date or time. Check this website for updates." ECF No. 1447-3 at FAQ No. 25. On April 27, 2026, the Court requested the fairness hearing date be moved to May 26, 2026, at 3:00 p.m. Central, and the Settlement Website was updated with that new hearing date.

[29] Azari Decl., ¶ 12.

[30] Azari Decl., Ex. 1.

[31] Azari Decl., ¶¶ 30–32.

The notice administrator also engaged in an extensive public notice campaign, including:

a. Digital banner and newsfeed advertisements appearing on various websites and social media platforms. Over 315 million impressions have been delivered across Google Display Network, Google AdWords, Facebook, Instagram, and YouTube;[32]

b. Creating a case-specific Facebook page as a landing page for the links in the Facebook and Instagram newsfeed advertisements;[33]

c. Releasing a national, party-neutral press release. This news release was distributed via PR Newswire to the news desks of approximately 13,000 newsrooms, including those of print, broadcast, and digital websites across the United States. The news release was also translated and published to PR Newswire's U.S. Hispanic media contacts and Hispanic news websites.[34]

In total, the indirect notice efforts generated over 315 million impressions. The notice administrator confirms that at least 75% of the target audience (potential settlement class members) were effectively reached by the notice plan.[35]

D. Settlement Class Counsel will move to distribute the net settlement proceeds in the near future.

As noted in Consumer IPPs' motion for preliminary approval of the settlements, the plan is to allocate the settlement funds based on the purchase of qualifying class products, and then distribute those funds, *pro rata*, to each class member of the Cargill and Tyson

[32] Azari Decl., ¶¶ 17–27.

[33] *Id.*

[34] *Id.*, ¶¶ 28–29.

[35] *Id.*, ¶ 10.

Settlement Classes through an electronic method based on qualifying purchases.[36] In the near future, Settlement Class Counsel will move the Court to approve a distribution of the net settlement proceeds to qualified claimants.[37] In the meantime, the Settlement Administrator will continue to confirm the validity of the claims received and follow up with potential claimants regarding any deficiencies to enable distribution of the settlement proceeds at the earliest practicable time.

III. ARGUMENT

To approve a settlement in a class action, district courts in the Eighth Circuit conduct a multiple-step inquiry. *First*, courts assess whether defendants have met the notice requirements under the Class Action Fairness Act (CAFA).[38] *Second*, courts determine whether the provisions of Rule 23(e) have been satisfied. *Third,* courts determine whether the constitutional notice has been provided to the class pursuant to Federal Rule of Civil Procedure 23(c)(2)(B). *Finally*, courts conduct a hearing to determine whether the settlement agreement is "fair, reasonable, and adequate."[39] Each of these requirements is met here.

A. The parties have complied with the Class Action Fairness Act.

CAFA requires that each defendant participating in the proposed settlement serve the notice of the proposed settlement upon the appropriate State official of each State in

[36] ECF No. 1445, at 13, 27–28.

[37] *See* ECF No. 1445, at 27–28.

[38] *See* 28 U.S.C. § 1715(d).

[39] *See* Fed. R. Civ. P. 23(e)(2).

which a class member resides and the appropriate Federal official.[40] CAFA provides that a court may not grant final approval to a proposed settlement sooner than 90 days after such notice is served.[41] Cargill and Tyson have served the required CAFA notice of the settlements.[42] The 90-day period has passed, and no federal or state officials have submitted statements of interest or objections in response to these notices.

B. The settlement classes meet all requirements of Rule 23(e).

On December 10, 2025, this Court granted preliminary approval of these settlements, provisionally certifying the Cargill and Tyson Settlement Classes.[43] The same analyses—which also address the adequacy of counsel and class representatives consistent with the requirements of Rule 23(e)(2)(a)—also apply here, and the Court should affirm its order certifying the class for settlement purposes.

Below, Consumer IPPs present their arguments as to why the requirements of Rule 23(e) are satisfied. The settlements at issue do not involve any admission of liability, and Cargill and Tyson disagree with any assertion or suggestion that they have engaged in wrongdoing or that Consumer IPPs have proven any of their claims or entitlement to a litigation class. Cargill and Tyson continue to maintain that their conduct was lawful, and

[40] 28 U.S.C. § 1715(b).

[41] 28 U.S.C. § 1715(d). ("An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under [28 U.S.C. § 1715(b)].").

[42] 28 U.S.C. § 1715(b); Clark Decl., ¶ 21 & Ex. C.

[43] ECF Nos. 1493, 1494.

do not believe that Consumer IPPs' assertions in this section regarding Defendants' alleged liability are required by the Rule 23(e) inquiry.

1. Rule 23(b)(3)'s requirement that common questions predominate is relaxed when the class is being certified for settlement.

Rule 23(b)(3)'s requirement that common issues of fact or law must predominate over individual questions "tests whether proposed class members are sufficiently cohesive to warrant adjudication by representation."[44] Individual issues are those which require "evidence that varies from member to member" to make a prima facie showing.[45] "Common questions are those for which a prima facie case can be established through common evidence."[46] The predominance question at class certification is not whether the Plaintiffs have already proven their claims through common evidence.[47] "Rather, it is whether questions of law or fact capable of resolution through common evidence predominate over individual questions."[48]

"[W]hether a proposed class is sufficiently cohesive to satisfy Rule 23(b)(3) is informed by whether certification is for litigation or settlement."[49] "A class that is certifiable for settlement may not be certifiable for litigation if the settlement obviates the

[44] *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 618 (8th Cir. 2011) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997)).

[45] *In re Zurn Pex*, 644 F.3d at 618.

[46] *Id.*

[47] *Id.* at 619.

[48] *Id.* (citing *Blades v. Monsanto Co.*, 400 F.3d 562, 566 (8th Cir. 2005)).

[49] *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 558 (9th Cir. 2019).

need to litigate individualized issues that would make a trial unmanageable."[50] When a class is being certified for settlement, "a district court need not inquire whether the case, if tried, would present intractable management problems."[51]

The inquiry required is a "preliminary" look behind the pleadings to determine whether, given the factual setting of the case, "if the plaintiffs' general allegations are true, common evidence could suffice to make out a prima facie case for the class."[52] This does not mean that the court must call witnesses and review documents to determine that common questions of law predominate, only that the court must analyze "the underlying elements necessary to establish liability for plaintiffs' claims" to determine whether those elements "can be proven on a systematic, class-wide basis."[53] At this stage, the court's analysis is "necessarily prospective."[54]

Common questions clearly predominate here. Consumer IPPs share a common grievance in this case concerning inflated prices of beef during the class period. This common remedial theory—recovery of a portion of the supra-competitive price paid for beef products—is reflected in the settlement agreements and negotiations.[55]

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[50] *Id.* (citing 2 William B. Rubenstein, *Newberg on Class Actions* § 4:63 (5th ed. 2018) ("Courts ... regularly certify settlement classes that might not have been certifiable for trial purposes because of manageability concerns.")).

[51] *Amchem*, 521 U.S. 591 at 620.

[52] *In re Zurn Pex*, 644 F.3d at 618.

[53] *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 267 F.R.D. 549, 560 (D. Minn. 2010).

[54] *In re Zurn Pex*, 644 F.3d at 613.

[55] Clark Decl., ¶¶ 9–11.

The common remedial theory proffered by these settlements is thus precisely the sort of common question that courts hold predominate when analyzing a settlement between sophisticated parties reached after years of protracted litigation.[56] As the Supreme Court has stressed, even if just one common question predominates, "the action may be considered proper under Rule 23(b)(3)."[57] Predominance is thus easily satisfied here.

2. An illegal price-fixing scheme impacts all purchasers of a price-fixed product in a conspiratorially affected market.

Even in the context of litigated classes, predominance is routinely satisfied in antitrust actions alleging a conspiracy to fix prices.[58] Because the gravamen of a price-fixing claim is that the price in a given market is artificially high, courts recognize a presumption that an illegal price-fixing scheme affects all purchasers of a price-fixed product in the market affected by the conspiracy.[59] The presumption of predominance exists because liability evidence in a price fixing conspiracy "will focus on the actions of

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[56] *In re Zurn Pex*, 2013 WL 716088, at *5 (D. Minn. Feb. 27, 2013) (final approval).

[57] *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453–54 (2016) (quoting 7AA Charles Alan Wright et al., *Federal Practice and Procedure* § 1778, pp. 123124 (3d ed. 2005)).

[58] *See Amchem Prod.,* 521 U.S. at 625 ("Predominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws."); *see also In re Potash Antitrust Litig.,* 159 F.R.D. 682, 693 (D. Minn. 1995); *In re Workers' Compensation,* 130 F.R.D. 99, 108 (D. Minn. 1990).

[59] *In re Potash.*, 159 F.R.D. at 695–97; *see also In re Alcoholic Beverages Litig.,* 95 F.R.D. 321, 327 (E.D.N.Y. 1982); *In re Catfish Antitrust Litig.,* 826 F. Supp. 1019, 1041 (N.D. Miss. 1993) ("[i]n an illegal price fixing scheme, there is a presumption that all purchasers will be impacted/injured by having to pay the higher price"); *In re Master Key Antitrust Litig.,* 528 F.2d 5, 12 n. 11 (2d Cir. 1975) ("jury could reasonably conclude that [Defendants'] conduct caused injury to each [class member]" if national conspiracy had the effect of "stabilizing prices above competitive levels").

the defendants, and, as such, proof for these issues will not vary among class members."[60] As aptly described by the *In re Potash* court, proof that defendants agreed to inflate prices "relates solely to Defendants' conduct, and as such proof for these issues will not vary among class members."[61] Likewise, identifying "reasonable substitute" products (if any exist) when proving the relevant product market in a price fixing case is a common inquiry.[62] Finally, pass-through of the overcharges to the Consumer IPP class is also demonstrated using data from non-parties and documents from the Defendants' own files—all of which are common to the class.[63] Courts need only be satisfied that this case is not "so dissimilar from the litany of antitrust price-fixing cases" routinely found to be appropriate for 23(b)(3) certification.[64]

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[60] *In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 264 (D.D.C. 2002) (citing *In re Lorazepam & Clorazepate Antitrust Litig.*, 202 F.R.D. 12, 29 (D.D.C. 2001) ("As is true in many antitrust cases, the alleged violations of the antitrust laws at issue here respecting price-fixing and monopolization relate 'solely to Defendants' conduct, and as such proof for these issues will not vary among class members.'"); *Lumco Indus., Inc. v. Jeld-Win., Inc.,* 171 F.R.D. 168, 172 (E.D. Pa. 1997) ("The fact-finder's focus of inquiry will be on the . . . Defendants' words and actions; it will not vary among individual class members.").

[61] *In re Potash.*, 159 F.R.D. at 694 (citing *In re Catfish.*, 826 F.Supp. at 1039 ("[e]vidence of a national conspiracy to fix the prices of catfish and processed catfish products would revolve around what the defendants did, and said, if anything, in pursuit of a price fixing scheme")); *see also Transamerican Refining Corp. v. Dravo Corp.*, 130 F.R.D. 70, 75 (S.D. Tex. 1990) (holding that proof of conspiracy is susceptible to generalized proof because focus is on what defendants did and said).

[62] *In re Wholesale Grocery Prod. Antitrust Litig.*, No. 09-MD-2090 ADM/TNL, 2016 WL 4697338, at *14 (D. Minn. Sept. 7, 2016).

[63] *In re Optical Disk Drive Antitrust Litig.*, No. 3:10-MD-2143 RS, 2016 WL 467444, at *8 (N.D. Cal. Feb. 8, 2016) (accepting proposed theory and methodology to permit Consumer IPPs to attempt to prove pass-through on a class-wide basis and certifying a Rule 23(b) class).

[64] *In re Potash*, 159 F.R.D. at 697.

3. The record contains ample evidence that Plaintiffs' claims are subject to common proof.

Further supporting certification is the evidence offered by Consumer IPPs in their memorandum in support of their motion for class certification,[65] as well as in their reply in support of that motion.[66] Consumer IPPs have proffered ample evidence of: (a) Defendants' conduct—common to all beef consumers—illegally agreeing to stabilize price and supply; (b) inflated wholesale prices—again, common to all beef consumers—that broke significantly from the Defendants' pre-class-period margins; and (c) analyses of the consumer price index showing that overcharges were passed through from producers to all Consumer IPPs.[67] The focus of this litigation is on the conduct of Defendants and the stabilization of the pricing and supply of beef.

a. Consumer IPPs can show through common proof that Defendants successfully conspired to restrain supply during the class period.

Consumer IPPs demonstrate through common proof that Defendants restrained beef supply and increased beef prices throughout the conduct period.[68] Consumer IPPs have provided evidence that Defendants used a market-share agreement, along with other means, to restrict beef supply and raise beef prices during the class period.[69] Together, this

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[65] Memorandum in Support of Consumer Indirect Purchaser Plaintiffs' Motion for Class Certification, ECF No. 868 (filed Sept. 25, 2024) (hereinafter "Memo ISO Class Cert").

[66] Consumer Indirect Purchaser Plaintiffs' Reply in Support of Motion for Class Certification, ECF No. 1261 (filed April 4, 2025) (hereinafter "Reply ISO Class Cert.").

[67] *See generally* Memo ISO Class Cert.; Reply ISO Class Cert.

[68] Memo ISO Class Cert. at §§ III.A–B; Reply ISO Class Cert. at §§ II.A–B.

[69] Memo ISO Class Cert. at § III.C; Reply ISO Class Cert. at §§ III.C.

evidence constitutes common proof that Defendants successfully conspired to restrain the supply of beef during the class period.

b. Consumer IPPs can show through common proof that Defendants' conspiracy inflated the price of beef during the class period.

Consumer IPPs offer evidence in the form of a multiple regression analysis that proves empirically that Defendants' collusion caused higher prices.[70] By controlling for supply and demand factors, Consumer IPPs' expert, Dr. Mangum, calculates the artificially inflated prices caused by Defendants' anticompetitive conduct.[71] The aggregate results of regression analyses are widely accepted by courts as evidence capable of showing common impact.[72]

c. Consumer IPPs can show through common proof that overcharges due to the cartel were passed through to the indirect purchaser class.

The fact of and amounts of overcharge and pass-through are also common and class-wide. Pass-through damages are subject to common proof measuring the inelasticity of the

[70] Memo ISO Class Cert. at § V.B.1.b(4).

[71] Reply ISO Class Cert. at § III.C.

[72] *See, e.g.*, *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 677 (9th Cir. 2022), *cert. denied* (recognizing that "[i]n antitrust cases, regression models have been widely accepted as a generally reliable econometric technique to control for the effects of the differences among class members and isolate the impact of the alleged antitrust violations on the prices paid by class members."); *Kleen Prods. LLC v. Int'l Paper Co.*, 831 F.3d 919, 927–29 (7th Cir. 2016); *In re Broiler Chicken Antitrust Litig.*, No. 16-cv-8637, 2022 WL 1720468, at *12 (N.D. Ill. May 27, 2022) ("Courts have held that a pooled regression analysis can be an appropriate tool to demonstrate 'class-wide impact even when the market involves diversity in products, marketing, and prices.'").

beef market.[73] Consumer IPPs have measured pass-through based on millions of observations from market participants, finding consistently high, positive rates of pass-through for each and every market participant.[74] In fact, Consumer IPPs have found that the average pass-through rate is 95.7 to over 100% for distributors and 76.2 to over 100% for retail stores.[75] In addition, Defendants themselves repeatedly acknowledged that direct purchasers passed through cost changes.[76] This constitutes admissible common evidence that supra-competitive prices were passed through to consumers.

4. A class action is a superior means of resolving Consumer IPPs' claims.

Rule 23(b)(3) also requires plaintiffs to demonstrate that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In price-fixing litigation, some courts hold that superiority is satisfied "almost *a fortiori* if common questions are found to predominate."[77]

Rule 23(b)(3) lists four non-exclusive factors pertinent to a superiority finding: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy

[73] *See In re ODD*, 2016 WL 467444, at *8 ("[T]he IPPs have presented a sufficient theory and methodology to permit them to attempt to prove pass-through on a class-wide basis. In broad terms, plaintiffs have proffered evidence that in competitive markets, economic theory (supported by empirical studies) consistently predicts that pass-through rates will be at or near 100%.").

[74] Memo ISO Class Cert. at § V.B.1.b(6).

[75] *Id.*

[76] *Id.*

[77] *In re ODD*, 2016 WL 467444, at *12.

already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.[78] These factors must be considered in light of the reason for which certification is sought—litigation or settlement.[79] As noted above, in deciding whether to certify a settlement-only class, "a district court need not inquire whether the case, if tried, would present intractable management problems."[80] So the fourth factor is moot in the settlement context because there will not be any further litigation or trial for the Court to manage.[81]

The first Rule 23(b)(3) factor is readily satisfied—only 13 class members have opted out of the Tyson and Cargill settlements, and no individual class member has expressed an interest in litigating these claims separately.[82] The second factor—any other litigation—is also easily met. Consumer IPPs were the first to file litigation in this district against the beef industry for their antitrust violations on behalf of consumer purchaser plaintiffs. Consumer IPPs are unaware of other litigation by consumer purchasers seeking recovery of the overcharge paid for beef resulting from Defendants' alleged conspiracy to fix prices.

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[78] Fed. R. Civ. P. 23(b)(3); *In re Zurn Pex.*, 267 F.R.D. at 566 (D. Minn. 2010) (district court order on certification of the litigation class); *aff'd*, 644 F.3d 604 (8th Cir. 2011).

[79] *See In re Hyundai*, 926 F.3d at 558; *Amchem*, 521 U.S. at 619.

[80] *Amchem*, 521 U.S. at 620.

[81] *Id.*

[82] *See In re Zurn Pex*, 2013 WL 716088, at *5.

As to the third superiority factor—the desirability or undesirability of concentrating the litigation of the claims in the particular forum, here again the nature of antitrust price fixing litigation supports superiority. Courts explain that separate proceedings would produce duplicate efforts, generate unnecessary litigation costs, create an "unwarranted burden on this Court and other courts throughout the country," and risk inconsistent results for similarly situated parties.[83] And most importantly, the cost of pursuing an individual claim would prohibit most indirect purchasers from bringing suit, resulting in unjust enrichment to the Defendants, which is "precisely the result antitrust laws are designed to remedy."[84] As the *United States Steel* court explained:

> [I]t is extremely difficult to bring an antitrust action against six major steel fabricators without the financial aid made possible by the class action device. Few are the individual claimants with a sufficient interest at stake or resources to bring a suit requiring proof of a conspiracy among business corporations. Discovery expense alone normally would be prohibitive. The court therefore deems the class action device to be superior to any other alternative.... Since avoidance of multiplicity of litigation is greatly to be favored, the class action device as invoked in this instance well serves such purpose.[85]

Here, as in *United States Steel*, the average beef purchaser does not have the resources to take on the major beef producers like Cargill, Tyson, JBS, and National Beef. Nor would it make sense for the Court and others to expend resources in the litigation and trial of tens of thousands of claims, most with less than 100 dollars at stake. As the Eighth Circuit has

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[83] *In re Potash Antitrust Litig.*, 159 F.R.D. at 699.

[84] *Id.*

[85] *State of Minn. v. U.S. Steel Corp.*, 44 F.R.D. 559, 572 (D. Minn. 1968).

cautioned, courts have "a duty to the silent majority as well as the vocal minority" in evaluating class settlements.[86] Certifying the settlement classes and granting final approval is consistent with that duty.

C. The proposed settlements are fair, adequate, and reasonable.

"The policy in federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context."[87] But the approval of a class action settlement is nevertheless in the Court's sound discretion, and district courts must review class action settlements to ensure that they are "fair, reasonable, and adequate."[88]

Cargill's and Tyson's settlements with the Consumer IPPs are fair, adequate, and reasonable under Rule 23(e)(2). First, the settlements are presumptively valid because 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

[86] *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005).

[87] *White v. Nat'l Football League*, 822 F.Supp. 1389, 1416 (D. Minn. 1993).

[88] Fed. R. Civ. P. 23(e)(2). Rule 23(e)(2)(C)(iii) also requires courts to consider "the terms of any proposed award of attorney's fees, including timing of payment." Plaintiffs address this subsection in their brief requesting attorney's fees, ECF No. 1543.

discovery."[89] Second, even without this presumption, the settlements meet the four-factor test established by the Eighth Circuit for evaluating fairness under Rule 23(e)(2).[90]

1. The settlements are entitled to a presumption of fairness.

Counsel involved here are experienced complex antitrust litigators, both in class actions generally and in antitrust class action litigation specifically. There is no question the settlements were negotiated at arm's length. Consumer IPPs and Settling Defendants were engaged in extensive negotiations at an appropriate stage in litigation, where fact and expert discovery, contested motion practice, and the settlement discussions themselves permitted them to properly evaluate the strengths and weaknesses of their claims and defenses. This enabled Consumer IPPs and Settling Defendants to balance the value of the settlements against the substantial risks and expense of continuing litigation.[91] And in the

[89] *Grier v. Chase Manhattan Auto Fin. Co.*, No. Civ. A. 99–180, 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*, 836 F. Supp. at 147677; *see also*, *4 Alba Conte & Herbert Newberg, Newberg on Class Actions* § 11.41 at 90 (4th ed. 2002) ("There is usually a presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for approval.").

[90] *See In re Zurn Pex*, 2013 WL 716088, at *7 (applying four-factor test after determining that the settlement was presumptively valid).

[91] *See, e.g., In re Emp. Benefit Plans Sec. Litig*., Civ. No. 3-92-708, 1993 WL 330595, at *5 (D. Minn. June 2, 1993) (noting that "intensive and contentious negotiations likely result in meritorious settlements . . . ."); *In re Zurn Pex*, 2013 WL 716088, at *6 (observing that "[s]ettlement agreements are presumptively valid, [ ] particularly where a 'settlement has been negotiated at arm's length, discovery is sufficient, [and] the settlement proponents are experienced in similar matters . . .."") (citation omitted).

case of the Tyson Settlement, a skilled mediator, Fouad Kurdi, ensured that the negotiations were conducted at arm's length.[92]

Furthermore, as set forth in Consumer IPPs' Motion for Preliminary Approval, Consumer IPPs have conducted meaningful investigation and discovery to assess the merits of their claims, starting at least six months before the first complaint was filed.[93] These efforts have given the Consumer IPPs sufficient information to understand the strength and weaknesses of their claims and Smithfield's defenses. The settlements should therefore be accorded a presumption of fairness.

Moreover, the Court is entitled to rely on the judgment of the Settlement Class Counsel concerning the adequacy of the settlements.[94] Indeed, courts give substantial weight to the experience of the attorneys who prosecuted the case and negotiated the settlements.[95]

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[92] *See In re UnitedHealth Grp. Inc. Shareholder Derivative Litig.*, 631 F. Supp. 2d 1151, 1156 (D. Minn, 2009) (citations omitted) (noting that a court may consider "whether a skilled mediator was involved"); ECF No. 1445, at 7; ECF 1446, ¶ 10.

[93] ECF No. 1445, at 3–4, 11–12; ECF No. 1446, ¶¶ 5–7.

[94] *In re Employee Benefit Plans Sec. Litig.*, 1993 WL 330595, *5 (citation omitted) ("The Court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement."); *see also Welsch v. Gardebring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987) (affording "great weight" to opinions of experienced counsel).

[95] *Christina A. v. Bloomberg*, No. Civ. 00-4036, 2000 WL 33980011, *4 (D.S.D. Dec. 13, 2000) ("The Court attributes significant weight to Plaintiffs' attorneys assertion that the Settlement Agreement is fair, reasonable and provides significant benefits to the Plaintiff class. Indeed, Plaintiffs' lead attorney . . . based this assertion on his 22 years of experience in this field and his participation in similar cases in 15 other states."). The approval of a settlement by the class's counsel weighs in favor of the settlement's fairness. *E.E.O.C. v. Faribault Foods, Inc.*, Civ. Nos. 07-3976, 07-3986, 07-3977, 07-3985

2. Four fairness factors weigh in favor of settlement.

Even if a presumption of fairness did not attach, the settlements meet the four-factor test established by the Eighth Circuit for evaluating fairness, reasonableness, and adequacy under Rule 23(e).[96] Under that test, district courts consider: (1) the merits of the plaintiffs' case weighed against the terms of the settlement; (2) the defendants' financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement.[97] District courts "need not make a detailed investigation consonant with trying the case," rather, they need only provide a basis for determining that the decision rests on "well-reasoned conclusions" and is not "mere boilerplate."[98] The most important consideration in deciding whether settlements are fair, reasonable, and adequate is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement."[99]

a. The strength of Plaintiffs' case, weighed against the terms of the settlements, supports final approval.

The Settlement Agreements provide significant monetary relief for the Cargill and Tyson Settlement Classes. Cargill has paid $32,500,000, and Tyson has paid

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(RHK/AJB), 2008 WL 879999, *4 (D. Minn. Mar. 28, 2008); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005).

[96] *See In re Zurn Pex*, 2013 WL 716088, at *7 (applying four-factor test after determining that the settlement was presumptively valid).

[97] *In re Wireless*, 396 F.3d at 932–33.

[98] *Id.* (citing *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988) (citations omitted)).

[99] *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150 (8th Cir. 1999) (internal quotations omitted).

$55,000,000.[100] Together, they provide members of the Cargill and Tyson Settlement Classes with $87,500,000 after seven years of hard-fought litigation. This is an outstanding result.

In addition to monetary relief, the Settlement Agreements also have a non-monetary component. Specifically, the Settlement Agreements require Cargill and Tyson to cooperate with the Consumer IPPs, including by providing access to witnesses at trial if the non-Settling Defendants are also given access to those witnesses, and by authenticating and establishing the admissibility of documents at a trial involving Consumer IPPs' claims.[101] The cooperation aspect of the Settlement Agreements is significant because, under to the Sherman Act, the remaining Defendants are jointly and severally liable for any damages resulting from Consumer IPPs' purchases of beef processed by Cargill and Tyson during the class period.[102] The cooperation that Consumer IPPs have secured through the Settlement Agreements will help Consumer IPPs advance their case and recover the maximum amount of their damages from the remaining Defendants.

In consideration for the monetary and non-monetary relief provided by the settlements, the Cargill and Tyson Settlement Classes agree to release and discharge Cargill and Tyson from any and all claims seeking relief that they have or ever may have relating in any way to their indirect purchase of beef produced, processed, or sold by Cargill or

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[100] Clark Decl., ¶ 11.

[101] Clark Decl., ¶¶ 12-13, Ex. A, at 7–8, Ex. B, at 7–8.

[102] *See Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 646 (1981); *Paper Sys. Inc. v. Nippon Paper Indus. Co.*, 281 F.3d 629, 633 (7th Cir. 2002).

Tyson at prices that were allegedly inflated by the claimed anticompetitive conduct between Tyson, Cargill, and their co-conspirators. The release does not extend to any other classes, Defendants, or co-conspirators, or to claims not related to the alleged anticompetitive conduct.[103]

Given the uncertainty of continued litigation and the immediate benefit provided to the class members,[104] the settlements provide substantial monetary and non-monetary relief to the Cargill and Tyson Settlement Classes and this factor supports final approval of the settlement terms.

b. Cargill's and Tyson's financial condition and ability to pay did not impact the amount of settlements.

While Plaintiffs believe that Cargill and Tyson are well-funded companies, their financial condition and ability to pay is a neutral factor in the analysis.[105]

c. The complexity and expense of further litigation support final approval.

Courts consistently hold that the complexity, expense, and likely duration of litigation are all factors supporting approval of a settlements.[106] In particular, "antitrust cases, by their nature, are highly complex."[107] Not only are antitrust cases highly complex,

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[103] Clark Decl., Ex. A, at 15–16, Ex. B, 15–16.

[104] *In re Wireless*, 396 F.3d at 933.

[105] *Id.*; *see also Petrovic*, 200 F.3d at 1152 ("While it is undisputed that Amoco could pay more than it is paying in this settlement, this fact, standing alone, does not render the settlement inadequate.").

[106] *See, e.g.*, *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 217 (5th Cir. 1981).

[107] *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 122 (2d Cir. 2005), *cert. denied*, 544 U.S. 1044 (2005); *In re Shopping Carts Antitrust Litig.*, MDL No. 451, 1983

but they are regarded as "arguably the most complex action to prosecute . . . . The legal and factual issues involved are always numerous and uncertain in outcome."[108] This case thus represents one of the most complicated types of litigation: a nationwide conspiracy involving four Defendants families to reduce beef output and raise beef prices.[109]

While Settlement Class Counsel have total confidence in the strength of the case and its merits, the settlements allow Consumer IPPs to avoid the significant risks they would face if the lawsuit were to continue against Cargill and Tyson. This case has been pending for seven years, and Consumer IPPs have undertaken considerable efforts to defeat motions to dismiss, undertake fact and expert discovery, and brief class certification, all without any recovery. Without these settlements, Consumer IPPs would need to prevail on class certification, overcome the challenges of merits expert discovery and motion practice, defeat summary judgment motions, proceed to trial, establish liability, impact, and damages, and win on appeal before obtaining any recovery from Cargill and Tyson. Succeeding at any one stage does not guarantee a favorable outcome at the next.[110] The settlements guarantee a certain, substantial, and prompt recovery for the settlement class

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WL 1950, *6 (S.D.N.Y. Nov. 18, 1983) ("[A]ntitrust price fixing actions are generally complex, expensive and lengthy.").

[108] *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *10 (E.D. Pa. June 2, 2004) (citations omitted).

[109] Memo ISO Class Cert. at 1.

[110] *See, e.g.*, *Wal-Mart Stores*, 396 F.3d at 118 ("'Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.'") (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998)).

members, without further delay and expense. The settlements will also undoubtedly put pressure on, and allow Consumer IPPs to maximize future recoveries from, the remaining Defendants.

That the settlements eliminate the significant risk of continuing litigation against Cargill and Tyson favors final approval.

d. Settlement class members' positive reaction supports final approval.

As discussed above, the Court approved the form of the proposed class notice and notice program.[111] The Court-appointed Claims Administrator implemented a direct notice campaign via email, as well as a publication notice campaign using targeted internet digital advertising.[112] The notice itself informed settlement class members of the nature of the action, the terms of the settlements, the effect of the action and the release of claims, the process for submitting a claim online or by mail, and their rights to exclude themselves from the action and to object to the settlements.[113]

Even with nearly 35 million potential members of the Cargill and Tyson Settlement Classes receiving direct notice via email, just 13 class members requested exclusion and only two objected to the settlements, both on general principles.[114] This means that fewer than 0.000001% of direct notice recipients opted out or objected to the settlements. This is

[111] ECF Nos. 1493, 1494.

[112] Azari Decl., ¶¶ 10–29.

[113] Azari Decl., ¶¶ 33–36.

[114] Azari Decl., ¶ 38.

particularly significant considering the success of the notice program, which is estimated to have reached over 75% of potential class members.[115]

These figures are impressive for settlements of this size in a case of this significance, and they support the fairness, reasonableness, and adequacy of the settlements.[116] While the two objectors deserve to have their opinions heard, the number of objections is even fewer than what the Eighth Circuit called "miniscule,"[117] and a duty exists to the "silent majority."[118]

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[115] Azari Decl., ¶ 10.

[116] *In re Wireless*, 396 F.3d at 933; *see also Petrovic*, 200 F.3d at 1152 ("[F]ewer than 4 percent of the class members objected to the settlement, significantly fewer than the number of objectors to other settlements that have been approved."); *Bynum*, 412 F.Supp. 2d at 77 ("The low number of opt-outs and objectors (or purported objectors) supports the conclusion that the terms of the settlement were viewed favorably by the overwhelming majority of class members."); *Wal-Mart Stores*, 396 F.3d at 118 ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."); *In re Rambus Inc. Derivative Litig*., No. C 06-3513, 2009 WL 166689, *3 (N.D. Cal. Jan. 20, 2009) ("The reaction of the class to the proffered settlement . . . is perhaps the most significant factor to be weighed in considering its adequacy . . . .") (internal quotations and brackets omitted); *In re Lorazepam & Clorazepate Antitrust Litig*., 205 F.R.D. 369, 378 (D.D.C. 2002) (finding that "the settlement group's reaction to this settlement has been overwhelmingly positive and supports approval" and that "[t]he existence of a relatively few objections certainly counsels in favor of approval"); *Pallas v. Pac Bell*, No. C-89-2373 DJL, 1999 WL 1209495, at *8 (N.D. Cal. July 13, 1999) ("The small percentage—less than 1%—of persons raising objections is a factor weighing in favor of approval of the settlement.").

[117] *In re Wireless*, 396 F.3d at 933 (observing that "only .00068% of the class objected to the settlement and only .0024% of the class opted out," which is significantly less than the 4% paraded in *Petrovic*).

[118] *In re Wireless*, 396 F.3d at 933 (holding that disapproval of the settlement is not warranted when such a small percentage of the class objects or opts out of the settlement) (citing *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171 (8th Cir. 1995)).

D. Plaintiffs have complied with Rule 23(c) notice requirements.

When a proposed class action settlement is presented for court approval, the Federal Rules require "the best notice that is practicable under the circumstances," and that certain specifically identified items in the notice be "clearly and concisely state in plain, easily understood language."[119] A settlement notice is a summary, not a complete source, of information.[120]

The Court-approved notice plan relies primarily on direct email notice to class members, supplemented by publication notice using targeted internet digital advertising.[121] This notice plan is commonly used in class actions like this one.[122] It constitutes valid, due, and sufficient notice to class members, and is the best notice practicable under the circumstances. The content of the Court-approved email notice complies with the requirements of Rule 23(c)(2)(b). The email notice clearly and concisely explained in plain English and Spanish the nature of the action and the terms of the settlements.[123] The notice provided a clear description of who is a member of the Cargill and Tyson Settlement Classes and the binding effects of class membership.[124] The email notice also explained how to exclude oneself from the Cargill and Tyson Settlement Classes, how to object to

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[119] Fed. R. Civ. P. 23(c)(2)(B).

[120] *See, e.g.*, *Petrovic*, 200 F.3d at 1153; *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988).

[121] ECF No. 1445, at 19–20, 24–25; Azari Decl., ¶ 26–28, ECF No. 1447.

[122] *Amchem*, 521 U.S. 591 at 617 (quoting Fed. R. Civ. P. 23(c)(2)); Fed. R. Civ. P. 23(c)(2)(B).

[123] ECF No. 1445, at 23–25; Azari Decl., ¶¶ 33–36.

[124] *Id*.

the settlements, and how to contact the Claims Administrator.[125] The notice also explained that it provided only a summary of the settlements, and that the Settlement Agreements, as well as other important documents related to the litigation, are available online on the case-specific website.[126] Like the email notice, the information on that website is available in both English and Spanish.[127]

The Court-appointed Settlement Administrator implemented the notice plan.[128] Specifically, using email addresses obtained from grocery stores and club stores, the Settlement Administrator sent nearly 35 million direct email notices to potential settlement class members.[129] The Settlement Administrator also implemented the publication notice campaign utilizing targeted internet digital advertising.[130] The notice plan used an online based advertising network, and advertised on social media platforms (Facebook, Instagram, YouTube, and Reddit) to reach the vast majority of adults who utilize these platforms.[131] The digital notices were distributed to target audiences and were displayed nationwide with over 315 million online impressions.[132] The Settlement Administrator continuously monitored the effectiveness of the digital notice campaign and ensured that the impression

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[125] *Id*.

[126] Azari Decl., ¶ 30.

[127] Azari Decl., ¶ 30.

[128] *See* Preliminary Approval Order at ¶ 11.

[129] Azari Decl., ¶ 12.

[130] Azari Decl, ¶¶ 17–27.

[131] Azari Decl., ¶¶ 29–33

[132] Azari Decl., ¶ 24.

goals were met to satisfy a combined reach of at least 75% of the Settlement Classes.[133] Further, the notice plan sponsored search listings to facilitate locating the case website on the most highly visited internet search engines.[134] The Settlement Administrator reached more online exposure through a party-neutral informational release.[135] This state-of-the-art notice plan combining direct and publication notice resulted in 20,652,022 page views of the settlement website as of April 27, 2026.[136] The Settlement Administrator also received and responded to thousands of emails, written correspondence, and phone calls following the enactment of the notice plan.[137] The Settlement Administrator continues to maintain the case-specific website and toll-free number.[138]

The Court set a March 30, 2026, deadline for class members to request exclusion from the Cargill and Tyson Settlement Classes or object to the settlements.[139] The reaction to the settlements by the class members has been almost universally positive. The Settlement Administrator reviewed and processed only 13 requests for exclusion.[140] And just two individuals objected to the settlements.[141]

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[133] Azari Decl., ¶ 25.

[134] Azari Decl., ¶¶ 26–27.

[135] Azari Decl., ¶¶ 28–29.

[136] Azari Decl., ¶ 30.

[137] Azari Decl., ¶ 32.

[138] Azari Decl., ¶ 30.

[139] Prelim. App. Order, ECF No. 1494 at ¶ 23.

[140] Azari Decl., ¶ 37 & Ex. 9.

[141] Azari Decl., ¶ 38 & Exs. 10–11.

E. The two objections to the settlements lack merit.

Just two of the approximately 35 million potential class members objected to the settlements totaling $87,500,000, corresponding to a vanishingly small objection rate of 0.0000058%—a rate that is far below the figure that the Eighth Circuit considers concerning.[142] There are several reasons why the two objections are flawed.

1. Objector Strong.

Objector Strong complains the "consumers who paid the allegedly inflated prices will receive virtually nothing,"[143] and that "the pool of claimants will likely be so large that any individual consumer's *pro rata* share will amount to pocket change."[144] But the pool of approximately 2.1 million class members who have already submitted claims is not so large that their *pro rata* share of the settlements totaling $87,500,000 will be "virtually nothing" or "pocket change." Even so, courts have repeatedly recognized that private enforcement of the antitrust laws through the class action mechanism will often not result in a substantial recovery for each individual class member. As Judge Posner bluntly remarked, "[O]nly a lunatic or a fanatic sues for $30."[145] For that reason, using the class

[142] Azari Decl., ¶¶ 38–39; Exs. 10–11; *In re Wireless*, 396 F.3d at 933 (observing that "only .00068% of the class objected to the settlement and only .0024% of the class opted out," which is significantly less than the 4% paraded in *Petrovic*); *see also Petrovic*, 200 F.3d at 1152 ("[F]ewer than 4 percent of the class members objected to the settlement, significantly fewer than the number of objectors to other settlements that have been approved.").

[143] Azari Decl., ¶ 39; Ex. 11.

[144] Azari Decl., ¶ 39; Ex. 11.

[145] *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004).

action mechanism to vindicate the rights of consumers is the best way to ensure enforcement of the antitrust laws.

Objector Strong also takes issue with the potential documentation requirement, arguing the fact that class members "may need to document purchases going back 11 years . . . is completely unrealistic."[146] The Eighth Circuit has rejected this argument, determining that requiring documentation in a consumer case is a valid means of ensuring that funds are submitted only for valid claims.[147] Furthermore, documentation is not necessarily required for each claim: "No documentation is required unless there is a potentially suspicious number of purchases or amount of costs claimed."[148]

Objector Strong claims his greatest concern is that private antitrust enforcement raises the costs of goods for consumers.[149] This argument is directly contrary to the legislative history of the antitrust laws and courts' interpretation of them. In fact, the Supreme Court has recognized that "Congress created the treble-damages remedy of § 4 precisely for the purpose of encouraging *private* challenges to antitrust violations," observing that "private suits provide a significant supplement to the limited resources available to the Department of Justice for enforcing the antitrust laws and deterring violations."[150] The alternative to private enforcement of the antitrust laws is not lower

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[146] Azari Decl., ¶ 39; Ex. 11.

[147] *Keil v. Lopez*, 862 F.3d 685, 697 (8th Cir. 2017) ("[R]equiring proofs of purchase is a valid technique for preventing fraudulent claims.").

[148] ECF No. 1447 at ¶ 44.

[149] Azari Decl., ¶ 39; Ex. 11.

[150] *Reiter v. Sonotone Corp.*, 442 U.S. 330, 344 (1979).

prices for consumers, like Objector Strong insinuates—it is a world where businesses maintain their supracompetitive prices because there is no one with the power to hold them accountable.

Finally, Objector Strong resorts to an *ad hominem* attack against Settlement Class Counsel, calling them "parasites" and "bottom feeders in the legal profession."[151] Yet, a former member of this bench who watched Settlement Class Counsel litigate this case against Cargill and Tyson views them differently. Magistrate Judge Bowbeer applauded the "general excellence" of Settlement Class Counsel and counsel for the other classes, remarking:

> I don't think it would be improper for me to say that when I talk to the other judges or when I am out visiting with people in other districts, I brag on you and let them know how—just what a pleasure and a privilege it has been to work with you and to watch how you not only zealously represent your own clients but how you work with each other to make this case make sense going forward. It really embodies the spirit of Rule 1.[152]

In sum, the purpose of the nation's antitrust laws and the case law in this jurisdiction require that the Court overrule these objections.

2. Objector Miller.

Objector Miller objects to the settlements for four reasons.

First, Objector Miller argues that $87,500,000 amounts to only a "nominal recovery."[153] But that is not the case. As Settlement Class Counsel already argued in their

[151] Azari Decl., ¶ 39; Ex. 11.

[152] Clark Decl., ¶ 22, Ex. D, (Transcript of Hearing at 41:20–42:13, *In re Cattle and Beef Antitrust Litig.*, 0:20-cv-01319 (D. Minn. June 17, 2022)).

[153] Azari Decl., ¶¶ 38; Ex. 10.

motion for preliminary approval, Cargill settled for approximately 8% of the single damages attributable to them by Consumer IPPs' expert, and Tyson settled for approximately 8.6% of the single damages attributable to them by Consumer IPPs' expert.[154] While Consumer IPPs are the only class to have settled with Cargill, both the Direct Purchaser Plaintiffs and the Commercial and Institutional Indirect Purchaser Plaintiffs have settled with Tyson. Although Consumer IPPs' settlement with Tyson is approximately two-thirds of the value of DPPs' settlement with Tyson,[155] Consumer IPPs are limited to about half the states in the country by comparison. And Consumer IPPs' settlement with Tyson is greater than CIIPPs' settlement with Tyson.[156]

Second, Objector Miller contends the settlements totaling $87,500,000 "do[] nothing to address the long-term nutritional deficit and health impacts caused by making healthy, fresh meat unaffordable for the average household."[157] As discussed above, private enforcement of the antitrust laws and the availability of treble damages is aimed at ensuring competition in the market for beef, which is the most effective way for the legal system to keep beef prices competitive and/or encourage beef production.

Third, like Objector Strong, Objector Miller complains, "Requiring consumers to provide documentation or detailed purchase history from 7 to 12 years ago is an unrealistic

[154] ECF No. 1445 at 18.

[155] ECF No. 1567 at 7.

[156] ECF No. 1556 at 7.

[157] Azari Decl., ¶ 38; Ex. 10.

expectation."[158] However, Objector Miller is mistaken. Documentation is required only for "potentially suspicious" claims.[159] Regardless, the Eighth Circuit has held this is a reasonable requirement.[160]

Finally, Objector Miller claims that "[the] vast majority of people affected by this conduct are completely unaware that this lawsuit even exists."[161] However, as detailed above, the notice plan resulted in the delivery of direct email notice reaching nearly 29 million of the estimated almost 35 million potential class members,[162] as well as 315 million impressions from publication notice efforts.[163] The notice administrator confirms that at least 75% of the target audience received notice of the settlements, which is well within the range of what is constitutionally required.[164]

For these reasons, the Court should overrule Objector Miller's objections.

F. The plan of allocation is fair, reasonable, and adequate.

A plan of allocation "need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel."[165] Here, the two settlements provide for a total cash payment of $87,500,000 which has been deposited into an escrow

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[158] Azari Decl., ¶ 38; Ex. 10.

[159] ECF No. 1447 at ¶ 44.

[160] *Keil*, 862 F.3d at 697.

[161] Azari Decl., ¶ 38; Ex. 10.

[162] Azari Decl., ¶ 12.

[163] Azari Decl., ¶¶ 17–29.

[164] Azari Decl., ¶ 10.

[165] *In re Charter Commc'ns, Inc.*, No. 4:02-cv-1186 CAS, 2005 WL 4045741, at *10 (E.D. Mo. June 30, 2005) (citation omitted).

account.[166] The Settlement Agreements provide that the settlement funds will fund the payment of valid claims of members of the Cargill and Tyson Settlement Classes, costs of notice, claims administration, payment for service awards to the class representatives, and attorneys' fees and costs.[167]

The proposed settlements also "treat[] class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). Funds will be awarded based on the *pro rata* share per class member of qualifying class products purchased and will be distributed through an electronic method. For efficiency's sake, however, Consumer IPPs propose that this plan of distribution and the distribution itself wait until later in the litigation when more monies may be available for distribution.

IV. CONCLUSION

For these reasons, Consumer IPPs respectfully requests that the Court grant final approval of the Settlement Agreements with Cargill and Tyson, and certify the proposed Settlement Classes.

[166] Clark Decl., ¶¶ 17–18.

[167] *See* Clark Decl. Ex. A at ¶¶ 12–13; Ex. B. at ¶¶ 12–13.

Dated: April 28, 2026

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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 **CERTIFICATE OF COMPLIANCE**

I, Brian D. Clark, certify that this brief complies with the type-volume limitation of D. Minn. L.R. 7.1(f) and with the type-size limit of D. Minn. L.R. 7.1(h). The brief contains 9,829 words of type font size 13 and was prepared using Microsoft Word for Microsoft 365, which includes all text, including headings, footnotes, and quotations in the word count.

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Respectfully submitted,

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