

**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

**[PROPOSED] ORDER GRANTING CONSUMER INDIRECT PURCHASER
PLAINTIFFS' MOTION FOR INTERIM PAYMENT OF ATTORNEYS' FEES,
REIMBURSEMENT OF LITIGATION COSTS, AND
CLASS REPRESENTATIVE SERVICE AWARDS**

This Court, having held a hearing on May 12, 2026, and having considered Consumer Indirect Purchaser Plaintiffs' ("Consumer IPPs") Motion for Interim Payment of Attorneys' Fees, Litigation Costs, and Class Representative Service Awards (the "Motion") and the Memorandum of Law in support thereof (the "Memorandum"), hereby finds that payment of attorneys' fees, costs, and service awards are appropriate under Federal Rules of Civil Procedure 23(h) and 54(d)(2).

Attorneys' Fees

1. The Motion seeks an award of interim attorneys' fees in an amount not to exceed \$29,567,998.60, which represents 33 1/3% of the Cargill and Tyson gross settlement funds, plus interest. The Court **GRANTS** this request because the amount is fair and reasonable under the percentage-of-the-fund method, which is confirmed by a lodestar "cross-check." Such a lodestar range is well within what is allowed by courts in this

District.

2. The Court will award fees to counsel for Consumer IPPs using the percentage-of-the-fund approach. “A routine calculation of fees involves the common-fund doctrine, which is based on a percentage of the common fund recovered.” *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)); see also *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole”). “In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common- fund case is not only approved, but also ‘well established.’” *In re Xcel*, 364 F. Supp. 2d at 991 (quoting *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); see also *Khoday v. Symantec Corp.*, No. 11-180, 2016 WL 1637039, at *8-9 (D. Minn. April 5, 2016).

3. When using the percentage-of-the-fund approach, the court considers seven factors: “(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 similar cases.” *Khoday*, 2016 WL 1637039, at *9 (quoting *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1062 (D. Minn. 2010)); see also *In re Xcel*, 364 F. Supp. 2d at 993. When applied here, these factors indicate that the

requested fee is fair.

a. Counsel Secured Valuable Benefits for Consumer IPPs.

The Settlements confer clear benefits onto the class. In addition to the \$87,500,000.00 monetary relief provided to Consumer IPPs by the Settlements, the Settling Defendants have also agreed to assist in the prosecution of the claims against the non-settling defendants and provide other nonmonetary relief. The cooperation terms in the Settlements provide significant value to Consumer IPPs. *See, e.g., 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). Fee awards in antitrust actions also provide a public benefit. There is a “need in making fee awards to encourage attorneys to bring class actions to vindicate public policy (e.g., the antitrust laws) as well as the specific rights of private individuals.” *In re Folding Carton Antitrust Litig.*, 84 F.R.D. 245, 260 (N.D. Ill. 1979); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534 (E.D. Mich. 2003) (“Society also benefits from the prosecution and settlement of private antitrust litigation”). Society benefits when those who have violated laws fostering fair competition and honest pricing are required to reimburse affected consumers in civil proceedings. *Vendo v. Lektro-Vend Corp.*, 433 U.S. 623, 635 (1977); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (concluding that it is “especially important to provide appropriate incentives to attorneys pursuing antitrust actions because public policy relies on private sector enforcement of the antitrust laws”). The benefit conferred on the class by these Settlements supports the requested attorneys’ fees.

b. Class Counsel Assumed Considerable Risk.

Counsel for the Consumer IPPs assumed considerable risk by pursuing this case on a contingent basis, advancing the costs of the litigation, and preparing for trial without a guaranteed recovery. *See Khoday*, 2016 WL 1637039, at *10; *In re Xcel*, 364 F. Supp. 2d at 994; *Yarrington*, 697 F. Supp. 2d at 1062. Defendants have vigorously defended the claims throughout the course of this case. Counsel for the Consumer IPPs risked recovering nothing in this litigation. “[W]ithin the set of colorable legal claims, a higher risk of loss does argue for a higher fee.” *In re Trans Union Corp. Privacy Litig.*, 629 F.3d 741, 746 (7th Cir. 2011). The risk undertaken by counsel for the Consumer IPPs supports the requested fee award. *See Khoday*, 2016 WL 1637039, at *10; *In re Xcel*, 364 F. Supp. 2d at 994; *Yarrington*, 697 F. Supp. 2d at 1062. The risk undertaken by Class Counsel in pursuing this litigation and reaching this recovery for the Consumer IPPs supports the requested attorneys’ fees.

c. The Case Presented Difficult and Novel Legal and Factual Issues.

Antitrust class actions are inherently complex. *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 639 (E.D. Pa. 2003) (“An antitrust class action is arguably the most complex action to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome.”) (internal citations and quotation marks omitted). This litigation presents challenging legal and factual issues that support the requested fees and expenses.

d. Class Counsel Are Skilled and Experienced.

Consumer IPPs, Cargill, and Tyson are all represented by experienced and skilled counsel, with specializations in class action and antitrust cases, which supports awarding

the requested fee. *See Khoday*, 2016 WL 1637039, at *10; *In re Xcel*, 364 F. Supp. 2d at 994; *Yarrington*, 697 F. Supp. 2d at 1063; *In re Polyurethane Foam Antitrust Litig.*, MDL No. 10-2196, 2015 WL 1639269, at *7 (N.D. Ohio Feb. 26, 2015); *In re Packaged Ice Antitrust Litig.*, MDL No. 08-01952, 2011 WL 6209188, at *19 (E.D. Mich. Dec. 13, 2011).

e. Significant Time and Labor Were Involved.

Counsel for Consumer IPPs have invested tens of thousands of hours litigating this case, resulting in the instant Settlements. This case has been pending for over seven years and will continue to require significant time and labor. The past and ongoing time and labor expended by Counsel supports awarding the requested fees.

f. The Reaction of the Class is Largely Positive.

The reaction of the Consumer IPP Settlement Classes has been largely positive. Of the estimated millions of people in the Consumer IPP Settlement Classes, only one individual has submitted an objection and ten have requested exclusion from the class. ECF Nos. 1511, 1526. The positive reaction of the Settlement Classes supports awarding the requested fee.

g. The Percentage is Comparable to Awards in Similar Cases.

Courts in this district routinely approve attorneys' fees in class actions of at least one-third of the common fund created for the settlement class. *See Khoday*, 2016 WL 1637039, at *11; *Yarrington*, 697 F. Supp. 2d at 1064 (noting that awards between 25 and 36 percent of a common fund are common); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming a fee award representing 36 percent of the settlement fund as

reasonable); *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) (approving a fee award representing 35.5 percent of the settlement fund). The requested 33 1/3% fee is consistent with fees awarded in similar cases in this District.

4. An award of 33 1/3% of the Net Settlement Funds as attorneys' fees is reasonable and warranted for the reasons set forth in the Memorandum, including the following: the outstanding result obtained for the Class – payment by Settling Defendants Cargill and Tyson of \$87,500,000; the quality and quantity of work performed by Class Counsel, including extensive motion practice; substantial discovery efforts and mediation, all involving complex issues of fact and law that were zealously litigated since the first amended complaint was filed in 2019; and the risks faced through litigation, which existed from the outset and will continue beyond settlement given that Consumer IPPs still have charges pending against two other groups of defendants.

5. Although not required, courts may apply a lodestar “cross-check” on the reasonableness of the fee calculated as a percentage of the fund. *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017). A cross-check of the lodestar incurred by counsel for the Consumer IPPs indicates that the fee requested constitutes fair and reasonable compensation for the risks assumed, the work done, and the benefits achieved for the members of the Settlement Classes. The Court finds that Class Counsel's lodestar as of January 31, 2026, based on historical hourly rates, is reasonable. Class Counsel's requested fee award of 33 1/3% of the Net Settlement Fund represents a negative multiplier of

approximately .83 based on their historical hourly rates through January 31, 2026. This multiplier is especially reasonable considering the complexity of this litigation, the result achieved for the Consumer IPP Class members, the risks assumed by counsel for the Consumer IPPs, and the work remaining to be done on the case and for which fees may or may not be available. *See, e.g., Khoday*, 2016 WL 1637039, at *11 (multipliers typically range between two and five); *In re St. Paul Travelers Sec. Litig.*, No. 14-3801, 2006 WL 1116118, at *1 (D. Minn. Apr. 25, 2006) (using a multiplier of 3.9). Class Counsel have continued to incur attorneys' fees since January 31, 2026, which are not included in this lodestar calculation.

6. Co-Lead Counsel for the Consumer IPPs are authorized to allocate the attorneys' fees awarded herein among counsel who performed work on behalf of the Consumer IPPs in accordance with Co-Lead Class Counsel's assessment of each firm's contribution to the prosecution of this litigation.

Litigation Costs

7. The Court **GRANTS** the requested reimbursement of \$8,871,642.26 in litigation expenses, which represents the amount Co-Lead Counsel have spent funding this litigation up to January 31, 2026. "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." *Krueger v. Ameriprise Fin., Inc.*, Civil No. 11-2781, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015).

8. The past litigation expenses incurred by counsel for the Consumer IPPs were reasonable and necessary and were of the type normally awarded in class action litigation. *See, e.g.*, Fed. R. Civ. P. 23(h); *Khoday*, 2016 WL 1637039, at *12 (“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”); *In re Zurn Pex Plumbing Prod. Liab. Litig.*, MDL No. 08-1958, 2013 WL 716460, at *5 (D. Minn. Feb. 27, 2013); *Yarrington.*, 697 F. Supp. 2d at 1067 (D. Minn. 2010). The past litigation expenses incurred in the prosecution of this case shall be reimbursed from the settlement funds.

Service Awards

9. The Court **GRANTS** the requested \$2,000 service awards to each of the 28 named class representatives. Courts routinely grant service awards for named plaintiffs. *See, e.g.*, *Yarrington*, 697 F. Supp. 2d at 1068 (upholding service awards and recognizing that “unlike unnamed Class Members who will enjoy the benefits of the Settlement without taking on any significant role, the Named Plaintiffs [make] significant efforts on behalf of the Settlement Class and [participate] actively in the litigation”); *Zillhaver v. UnitedHealth Group, Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009); *see also In re Xcel*, 364 F. Supp. 2d at 1000; *White v. Nat’l Football League*, 822 F. Supp. 1389, 1406 (D. Minn. 1993) (collecting cases).

10. Each of the Class Representatives has remained apprised of the status of the litigation, actively participated in invasive discovery including searching for and producing documents, and responding to written discovery. All Class Representatives sat for

depositions and were questioned for hours, all in advancement of this litigation. The Class Representatives took a risk both financial and otherwise in representing the Class in this lawsuit. *See Zillhaver*, 646 F. Supp.2d at 1085 (quoting *Koenig v. U.S. Bank*, 291 F.3d 1035, 1038 (8th Cir. 2002)); *In re CenturyLink Sales Prac. & Sec. Litig.*, No. 17-2795, 2020 WL 7133805, at *13 (D. Minn. Dec. 4, 2020). Such awards also compensate representative plaintiffs who “participated and willingly took on the responsibility of prosecuting the case and publicly lending their names to this lawsuit, opening themselves up to scrutiny and attention from both the public and media.” *In re CenturyLink*, 2020 WL 7133805, at *13. The requested \$2,000 award is reasonable when compared to awards issued by other courts in this District.

11. Co-Lead Class Counsel for the Consumer IPPs are authorized to pay from the Net Settlement Fund \$2,000 to each of these 28 class representatives: 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 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.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

12. Therefore, upon consideration of the Motion and accompanying Memorandum, and based upon all matters of record in this action:

a. Class Counsel are awarded attorneys' fees in an amount not to exceed \$29,567,998.60, which represents 33 1/3% of the Cargill and Tyson settlements, plus interest.

b. Class Counsel are awarded \$8,871,642.26 in litigation costs, representing the amount Class Counsel has contributed to the costs of litigation up to January 31, 2026 for firm-specific litigation costs and up to February 28, 2026 for Litigation Fund expenses.

c. The following Class Representatives shall each receive \$2,000 as interim service awards: 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 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.

IT IS SO ORDERED.

DATED: _____

HONORABLE JOHN R. TUNHEIM
UNITED STATES DISTRICT COURT