IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE TURKEY ANTITRUST LITIGATION This Document Relates To: *Direct Purchaser Plaintiff Actions*	Case No.: 1:19-CV-08318 Hon. Sunil R. Harjani Hon. Keri L. Holleb Hotaling

MEMORANDUM IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR INTERIM PAYMENT OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

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I. INTRODUCTION

After more than five years of hard-fought litigation in this complex antitrust class action, and without any guarantee of compensation, Co-Lead Counsel for the Direct Purchaser Plaintiff Class ("Co-Lead Counsel")[1] have secured settlements with the Tyson Defendants[2] and the Cargill Defendants[3] (collectively, "Settling Defendants").[4] Under the terms of these settlements, the Settling Defendants have paid a total of $37,125,000.00 into escrow for the benefit of the DPP Class. These funds, plus interest earned in escrow, constitute the "Gross Settlement Fund." Co-Lead Counsel have commenced the Court-approved process to distribute the Settlement Fund to qualified settlement class members.

These settlements reflect the skill, expertise, and hard work of Co-Lead Counsel and other Direct Purchaser Plaintiff Counsel (collectively, "Class Counsel"),[5] and the benefit to the DPP Class members is substantial, real, and concrete, compared to the significant risks in this case. As such, Direct Purchaser Plaintiffs ("DPPs") respectfully ask the Court to (a) award Class Counsel

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[1] The Court appointed Lockridge Grindal Nauen PLLP and Hagens Berman Sobol Shapiro LLP as Interim Co-Lead Counsel of the class of DPPs at the outset of the litigation (*see* ECF No. 143) and as Co-Lead Counsel for the certified DPP Class on January 22, 2025, (*see* ECF No. 1107).

[2] The Tyson Defendants are Tyson Foods, Inc., Tyson Fresh Meats, Inc., Tyson Prepared Foods, Inc., and the Hillshire Brands Company. (*See* ECF No. 265, Order Granting Preliminary Approval to Settlement with the Tyson Defendants, at 1.)

[3] The Cargill Defendants are Cargill, Incorporated and Cargill Meat Solutions Corporation. (*See* ECF No. 1128, Order Granting Preliminary Approval with Cargill Defendants, at 1.)

[4] The Court granted final approval to DPPs' settlement with the Tyson Defendants on February 3, 2022 (*see* ECF No. 406) and preliminary approval to the settlement with the Cargill Defendants on January 30, 2025 (*see* ECF No. 1128). The Court has scheduled a fairness hearing on final approval of the Cargill settlement for June 18, 2025. (*Id*.) The Court will hear arguments on this motion during the June 18, 2025, fairness hearing. (*Id*.)

[5] Under Co-Lead Counsel's direction, two other firms prosecuted this case on DPPs' behalf. At all times, Co-Lead Counsel directed and organized Class Counsel's work. *See* Declaration of Brian D. Clark ("Clark Decl."). Co-Lead Counsel will have discretion to allocate an award of attorneys' fees among Direct Purchaser Plaintiff Counsel. Co-Lead Counsel's good-faith determination will reflect each individual Class Counsel's contribution to the commencement, prosecution, and resolution of the litigation.

33 and 1/3 percent of the Net Settlement Fund[6] (equal to $10,509,888.01)[7] as an interim payment of attorneys' fees, (b) approve $4,500,000 in reimbursement to Co-Lead Class Counsel of current and ongoing litigation expenses, and (c) award $25,000 in service awards to each of the two named Class Representatives, Maplevale Farms, Inc. and John Gross and Company, Inc.

All class members will have notice and an opportunity to be heard on this motion. In the Court-approved notice to the class members regarding the claims process for the Tyson and Cargill settlements, Class Counsel informed all DPP Class members that they would seek an award of attorneys' fees in an amount not to exceed 33 and 1/3 percent of the Net Settlement Fund and reimbursement of litigation expenses not to exceed $4,500,000.00.[8] DPP Class members were also informed that this motion will be posted on the case website, https://turkeylitigation.com, contemporaneously with the filing of this motion. Class Counsel also informed DPP Class members that the Court will determine the amount of the attorneys' fees paid and litigation expenses reimbursed to Class Counsel in this case. Finally, class members were told that they may object to any aspect of the Cargill settlement and that the deadline to do so is April 21, 2025.[9] Prior to the Court's fairness hearing on June 18, 2025, Class Counsel will report on any objections

[6] "Net Settlement Fund" means the Gross Settlement Fund (Tyson and Cargill settlement payments of $37,125,000.00 plus interest of $60,909.26), less expenses. *See infra*, § III.

[7] There is an opt-out reduction mechanism in the Cargill settlement agreement that could result in a reduction of the total amount of that settlement, depending on how many class members opt-out. (*See* ECF No. 1100-1 at 16-18.) The deadline to opt-out of the Cargill settlement is April 21, 2025. If that reduction mechanism is triggered, DPPs will advise the Court in advance of the June 18, 2025, fairness hearing, provide the amount of reductions, and provide a new calculation for 33 and 1/3 percent of the Net Settlement Fund as a proposed award of attorneys' fees. There is no opt-out reduction mechanism in the Tyson Settlement.

[8] *See* https://turkeylitigation.com/docs/CourtDocsCargill/Turkey%20-%20Cargill-Long%20Form%20Notice.pdf (last visited April 7, 2025); *see also* ECF No. 1128 (Order granting DPPs' motion for preliminary approval of the Cargill settlement and accompanying long form class notice document).

[9] *Id.*

received, including any objections to this motion.

II. LITIGATION BACKGROUND

The Court is very familiar with this case, and DPPs will dispense with a detailed recitation of its background. However, for the purposes of this motion, DPPs provide below a summary of the major litigation outcomes that have resulted from Class Counsel's efforts on behalf DPPs and the DPP Class from inception of the case through March 31, 2025.

A. Co-Lead Counsel were the First to File a Complaint in this Case.

Co-Lead Counsel filed the first antitrust complaint on behalf of turkey purchasers on December 19, 2019. (*See* ECF No. 1.) Co-Lead Counsel conceived of and brought this case without the benefit of existing related civil or criminal governmental investigations or prosecutions. (Clark Decl. ¶ 4.) The allegations contained in the complaint were the product of Co-Lead Counsel's extensive preparation, independent investigation, research into the turkey industry, and the role of Agri Stats. (*Id*.) Indeed, it was the government that piggy-backed on Co-Lead Counsel's work: on September 28, 2023, the United States Department of Justice ("DOJ") filed *U.S. et al. v. Agri Stats, Inc.*, Case No. 0:23-cv-03009 (D. Minn.), alleging that Agri Stats allowed turkey processors and other meat producers to exchange competitively sensitive information in violation of the antitrust laws. (*Id*.) Many of the allegations in the DOJ's complaint regarding turkey mirror DPPs' allegations in this case. (*Id*.) Class Counsel also prepared and filed multiple amended complaints reflecting information Class Counsel learned in discovery. (Clark Decl. ¶ 6.) Each of those complaints survived Defendants' formidable motions to dismiss. (*See* ECF Nos. 173, 639.)

B. Class Counsel Negotiated Case Management Plans and Engaged in Motion Practice that Helped Set the Scope and Contours of Discovery.

From the very beginning of the case, Class Counsel developed numerous case management plans and worked cooperatively with indirect purchaser class counsel, certain direct action plaintiffs, and Defendants to implement those plans. (Clark Decl. ¶ 5.) Moreover, Class Counsel

negotiated an ESI protocol (ECF No. 202), a Protective Order (ECF No. 201), and litigated a contested Deposition Protocol and expert discovery order, which took rounds of contested motion practice. (*See* ECF Nos. 307, 396, 397, 496, 661.) Class Counsel successfully opposed Defendants' motion to compel production of DPPs' downstream information (*see* ECF No. 340), Defendants' motion to prevent discovery of their meetings, phone calls, direct communications and use of benchmarking services beyond Agri Stats (*see* ECF No. 305 (order largely denying Defendants' motion).), and Defendants' motion to prevent DPPs from subpoenaing telephone records from non-party telephone carriers (*see* ECF No. 336). DPPs and Defendants fought numerous other discovery skirmishes on search terms and custodians (ECF No. 454), phone records (ECF Nos. 452, 579), and the production of text messages (ECF No. 458). (*See* ECF No. 507.) These efforts helped set the scope and contours of discovery in this case.

C. Class Counsel Coordinated Discovery.

Once the Court denied each of Defendants' initial motions to dismiss (*see* ECF No. 173), DPPs turned to litigating the case against eleven Defendant families. Class Counsel served 569 requests for production, eventually negotiating more than 1.7 million documents and millions of telephone calls and messages. (Clark Decl. ¶ 6.) Class Counsel prepared for and took over 75 depositions of Defendant and non-party fact witnesses, served 26 subpoenas on non-parties, and served 111 interrogatories on Defendants to develop the factual record. (*Id.*) Class Counsel took the lead in coordinating this discovery with Defendants, one indirect purchaser class, and counsel for two Direct Action Plaintiffs. (*Id.*) Class Counsel amended DPPs' complaint to add a *per se* Sherman Act violation claim and facts learned through discovery (*see* ECF No. 380), which resulted in a second joint motion to dismiss from Defendants (*see* ECF No. 500). Class Counsel successfully opposed Defendants' motion to dismiss the *per se* claims, except as to the Prestage Defendants. (*See* ECF No. 639.) DPPs and Class Counsel also fulfilled their own discovery

obligations, in response to aggressive discovery by Defendants. (Clark Decl. ¶ 6.)

D. DPPs' Motion for class Certification was Hotly Contested and Ultimately Successful.

DPPs successfully moved for certification of the DPP Class. (*See* ECF No. 1107.) This process involved numerous attorneys and staff to craft the factual and legal bases for the motion and experts who prepared multiple lengthy opinions in support of DPPs' motion. (Clark Decl. ¶¶ 7-8.) Once DPPs filed the motion in September 2023, Defendants marshalled the full force of their top-tier law firms in opposition. (*Id*.) Like their motions to dismiss, Defendants challenged each and every aspect of DPPs' case factually, procedurally, and legally. (*Id*.) Defendants presented their own experts to bolster their arguments and discredit DPPs' arguments. After extensive briefing and argument (including many expert opinion reports, evidence relating to class certification issues, and a two-day evidentiary hearing), the Court certified the DPP Class. (*Id*.; *see* ECF No. 1107.) The Court of Appeals denied Defendants' Rule 23(f) petition for interlocutory appeal of the decision two business days after briefing was completed. *See In re Turkey Antitrust Litig.*, No. 25-8004 (7th Cir. Mar. 4, 2025). (*See* ECF No. 1160.)

E. Class Counsel have Secured Over $37 million in Settlements for the Benefit of the DPP Class.

Class Counsel engaged in extensive arm's-length and hard-fought negotiations and mediations that resulted in DPPs reaching settlements with the Settling Defendants totaling $37,125,000.00. (Clark Decl. ¶ 10.) This money is held in interest-bearing escrow accounts on behalf of the DPP Class. (*Id*. at ¶ 12.) In addition to the monetary component of these settlements, each settlement contains cooperation provisions that will assist DPPs as the case proceeds to trial. (*Id*. at ¶ 13.) Co-Lead Counsel have prepared and commenced the Court-approved notice and distribution plan for the Tyson and Cargill settlements. (*Id*. at ¶ 14.) DPPs have also reached proposed settlements with Defendants Cooper Farms Inc., and Farbest Foods, Inc. (*See* ECF Nos.

1202-1206.) Seven Defendants remain in the DPP case. (Clark Decl. ¶ 11.)

III. CALCULATION OF THE NET SETTLEMENT FUND

DPPs propose that the Court award Class Counsel 33 and 1/3 percent of the Net Settlement Fund as an interim payment of attorneys' fees. As explained below, the Net Settlement Fund totals $31,529,664.05, which is the Gross Settlement Fund ($37,185,909.26) less (1) previously reimbursed expenses ($1,000,000), (2) the current request for unreimbursed Firm Costs and Litigation Fund Expenses, and ongoing litigation expenses ($4,500,000), and (3) Settlement Administration Costs, and Taxes ($156,245.21).

Settlement	**Amount**	**Reference**
Tyson Settlement Amount	$4,625,000.00	ECF No. 406
Cargill Settlement Amount	$32,500,000.00	ECF No. 1128[10]
Interest Earned on Settlements at Issue[11]	$60,909.26	Clark Decl. ¶ 12
Gross Settlement Fund at Issue	***$37,185,909.26***	
Unreimbursed Firm Costs	($106,313.46)	Clark Decl. ¶ 33
Unreimbursed Litigation Fund Expenses	($4,277,874.68)	Clark Decl. ¶ 33
Ongoing Litigation Expenses	($115,811.86)	Clark Decl. ¶ 41
Reimbursed Firm Costs and Litigation Expenses	($1,000,000.00)	ECF No. 367; Clark Decl. ¶ 31
Settlement Administration Expenses	($94,766.21)	Clark Decl. ¶ 33

[10] The Cargill settlement is included assuming final approval. If, for any reason, the Cargill settlement is not granted final approval, or its approval is appealed, Class Counsel will update this chart.

[11] The Tyson and Cargill settlements entitle Class Counsel to apply to the Court for a fee award based on the proceeds of the Settlement Fund from each settlement. (*See* ECF No. 262-1 (Tyson) at 15; *see also* ECF No. 1100-1 (Cargill) at 21.) Each settlement agreement defines the Settlement Fund as including accrued interest. (*See* ECF No. 262-1 (Tyson) at 7; *see also* ECF No. 1100-1 (Cargill) at 7-8.)

Taxes	($61,479.00)	Clark Decl. ¶ 33
Total Expenses to Subtract from Gross Settlement Fund	($5,656,245.21)	Clark Decl. ¶ 33
Net Settlement Fund	***$31,529,664.05***	

IV. THE REQUESTED FEE AWARD IS APPROPRIATE UNDER CONTROLLING LAW

A. DPPs Seek a Percentage of the Net Settlement Fund as an Award of Interim Attorneys' Fees.

Rule 23 permits the Court to award reasonable attorneys' fees and expenses in class actions. Fed. R. Civ. P. 23(h). When a party obtains compensation for the class's benefit 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. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970). This approach equitably apportions the costs of litigation, including attorneys' fees, among the class members who benefit from the common fund. *Boeing Co.*, 444 U.S. at 478-79.

The Seventh Circuit has repeatedly endorsed the percentage-of-the-fund methodology. *See Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (collecting cases) ("When a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund, in recognition of the fact that most suits for damages in this country are handled on the plaintiffs' side on a contingent-fee basis."); *Williams v. Gen. Elec. Cap. Auto Lease*, No. 1:94-cv-07410, 1995 WL 765266, at *9 (N.D. Ill. Dec. 26, 1995) (collecting cases) ("The approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred on the class."); *see also Williams v. Rohm & Haas Pension Plan* ("*Rohm & Haas II*"), 658 F.3d 629, 635-36 (7th Cir. 2011) (finding the district court acted within its discretion when determining attorney's fees as a contingency fee between 25 and 33 percent); *Montgomery v. Aetna Plywood, Inc.*, 231

F.3d 399, 408 (7th Cir. 2000) (upholding a percentage-of-recovery award); *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 3:12-cv-00660, 2018 WL 6606079, at *7-8 (S.D. Ill. Dec. 16, 2018) (finding the percentage method appropriate and class counsel's request of one-third of the common fund reasonable); *Heekin v. Anthem, Inc.*, No. 1:05-cv-01908, 2012 WL 5878032, at *2-5 (S.D. Ind. Nov. 20, 2012) (finding 33.3% attorneys' fee award reflected the *ex ante* market rate and took into account risks of nonpayment); *In re Northfield Lab., Inc. Secs. Litig.*, No. 1:06-cv-01493, 2012 WL 2458445, at *3 (N.D. Ill. June 26, 2012) (approving a percentage-of-fund fee award). The percentage-of-the-fund method utilizes an *ex ante* approach, in which courts award a fee approximating a hypothetical *ex ante* bargain between the class and its attorneys. *Americana Art China Co., Inc. v. Foxfire Printing and Packaging, Inc.*, 743 F.3d 243, 246-47 (7th Cir. 2014); *Rohm & Haas II*, 658 F.3d at 635.

In *Broilers*, Judge Durkin originally awarded 33 1/3% to each of the three sets of class counsel. On appeal from one of the fee awards, the Seventh Circuit vacated and remanded the award instructing the district court to consider fee bids made by class counsel in auctions in other cases as well as out-of-circuit fee awards. *In re Broiler Chicken Antitrust Litig.*, 80 F.4th 797 (7th Cir. 2023). On remand, Judge Durkin awarded the consumer class counsel 30% of the fund. *In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, 2024 WL 3292794, at *1 (N.D. Ill. July 3, 2024). Hagens Berman was counsel for the consumer class in *Broilers*, and the second fee award is currently on appeal to the Seventh Circuit. The three bids at issue in the *Broilers* litigation occurred in 2010, 2013 and 2015, which made them somewhat contemporaneous with the filing of the *Broilers* litigation in 2016, but between four to nine years away from the filing of this litigation in 2019, making them even more inapt to this litigation.[12] Judge Durkin approved a 33

[12] The accompanying declaration of Shana E. Scarlett confirms that no such fee bids or sliding

1/3% fee for both the commercial and DPP classes in *Broilers*. *Broilers*, No. 1:16-cv-08637, ECF 5543 (Apr. 19, 2022) (awarding Commercial IPPs 33 1/3% of the net settlement fund); *Broilers*, No. 1:16-cv-0 8637, 2021 WL 5709250 (N.D. Ill. Dec. 1, 2021) (awarding DPPs' 33 1/3% of the net settlement fund). In any event, given this particular fee request by DPPs in *Turkey* constitutes a negative multiplier on current lodestar, the issues addressed by the Court in *Broilers* are inapplicable.

To determine the reasonableness of attorney's fees in a common fund case such as this, courts must "do their best to award counsel the market price for [the] legal services" they provided. *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007) (quoting *In re Synthroid Mktg. Litig*., 264 F.3d 712, 718 (7th Cir. 2001); *see also Silverman v. Motorola Sols., Inc*., 739 F.3d 956, 957 (7th Cir. 2013) ("[A]ttorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services."). A contingent fee based on a percentage of the recovery is the most common form of compensation for counsel representing classes in class action litigation. Similarly, in antitrust class action litigation, "the 'market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time' is a contingent fee in the amount of one-third (1/3) of the common fund recovered." *In re Ready-Mixed Concrete Antitrust Litig.*, No. 1:05-cv-00979, 2010 WL 3282591, at *3 (S.D. Ind. Aug. 17, 2010) (citing *Sutton*, 504 F.3d at 692); *In re Dairy Farmers of Am., Inc*., 80 F. Supp. 3d 838, 862 (N.D. Ill. 2015); *In re Lithotripsy Antitrust Litig.*, No. 1:98-cv-08394, 2000 WL 765086, at *2 (N.D. Ill. June 12, 2000) (noting that "[m]any courts in this district have utilized" the percentage method to set fees in class actions); *Kirchoff v. Flynn*, 786 F.2d 320, 324

scale fee agreements have been entered into by Hagens Berman since 2015. (Scarlett Decl., ¶ 10). Lockridge Grindal Nauen has not submitted any bids in auctions in antitrust cases or agreed to any terms with decreasing attorney fee recovery as the case proceeds and reaches certain litigation milestones in an antitrust case. (Clark Decl., ¶ 55.)

(7th Cir. 1986) ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee *is* the 'market rate.'").

The percentage-of-the-fund method also conserves judicial resources. Unlike a lodestar-based calculation, percentage fees not only are directly related to class counsel's success, they are simple to calculate and are not subject to manipulation by counsel. Courts are not forced to review years of bills or scrutinize each decision made by counsel during a complex, multi-year case. *See Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 565 (7th Cir. 1994) (noting "there are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration."); *Gaskill v. Gordon* ("*Gaskill I*"), 942 F. Supp. 382, 386 (N.D. Ill. 1996) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)) (observing that "the percentage of the fund method saves the court the time it would have to spend reviewing eight years of billing documents."). Instead, compensation is based on the level of class counsel's success, as it would be in a similar contingency case on behalf of a private party. The percentage-of-the-fund method also allows a court to "dispose of [the] last issue in [] prolonged proceedings as expeditiously as possible." *Gaskill I*, 942 F. Supp. at 386. (quoting *Sec. & Exch. Comm'n v. First Sec. Co. of Chicago*, 528 F.2d 449, 454 (7th Cir. 1976)).

The Seventh Circuit permits courts to consider four factors to determine the "market rate" in a case such as this: (1) the actual agreements between the parties, as well as fee agreements reached by entities in the market for legal services; (2) the risk of non-payment at the outset of the case; (3) the caliber of class counsel's performance; and (4) information from other cases, including fees awarded in comparable cases. *Hale*, 2018 WL 6606079, at *1, *8 (citing *In re Synthroid*, 264 F.3d at 719). As this Court held in approving the DPP's previous request for attorneys' fees, these considerations weigh heavily in favor of the Court granting DPPs' request.

1. DPPs' Requested Fee is an Appropriate Market-Based Fee.

A fee award of 33 and 1/3 percent in this case reflects a hypothetical real-world arm's length transaction between the DPP Class and Class Counsel and is a generally accepted percentage in the Seventh Circuit. *In re Dairy Farmers*, 80 F. Supp. 3d at 846; *In re Lithotripsy*, 2000 WL 765086, at *2. Courts in this District have held the same when awarding DPPs an interim fee. *See e.g.*, *In re Broiler Chicken Antitrust Litig.*, Case No. 1:16-cv-08637 (N.D. Ill. Dec. 1, 2021) (ECF No. 5229) at 10 ("**There is simply little to no precedent recommending anything other than an award of 33 percent. With the only real evidence of the 'market rate' being one-third, that is what the Court will award**.") (emphasis added). The requested fee award is justified by the remarkable results obtained for the DPP Class and the risks faced by Class Counsel and is well within the acceptable range of attorneys' fee awards in protracted, complex, and expensive litigation such as this. *See generally id.*

Thirty-three and one-third percent is a standard percentage in many fee agreements, including large, complex non-class cases. *See* Lester Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 FORDHAM L. REV. 247, 248 (1996) (noting that "standard contingency fees" are "usually thirty-three percent to forty percent of gross recoveries"); *see also Blum v. Stenson*, 465 U.S. 886, 903 (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery."); *In re Broiler Chicken Antitrust Litig.*, Case No. 1:16-cv-08637 (N.D. Ill., Nov. 30, 2021), ECF No. 5048-1 (Declaration of Brian T. Fitzpatrick Regarding Direct Purchaser Plaintiffs' Motion for Attorney's Fees) (discussing the appropriateness of a market-based 33 and 1/3 percent request for attorneys' fees) (*see* Clark Decl. Ex. 13).

Courts in the Seventh Circuit routinely award contingency fees of 33 and 1/3 percent or more. *E.g.*, *In re Dairy Farmers*, 80 F. Supp. 3d at 862 (awarding one-third of the common fund);

In re Potash Antitrust Litig., No. 1:08-cv-06910 (ECF No. 589) (N.D. Ill. June 12, 2013) (ECF No. 4552-2 at 189-92) (awarding fees of one-third of $90 million fund, plus $791,124.63 in expenses); *Heekin*, 2012 WL 5878032, at *5 (awarding one-third fee of $90 million fund, plus $6,243,278.10 in expenses); *Pavlik v. FDIC*, No. 1:10-cv-00816, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (one-third fee); *In re Lithotripsy*, 2000 WL 765086, at *2 ("33.3% of the fund plus expenses is well within the generally accepted range of the attorneys fee awards"); *Goldsmith v. Tech. Sols. Co.*, No. 1:92-cv-04374, 1995 WL 17009594, at *8 (N.D. Ill. Oct. 10, 1995) (citing *Matter of Cont'l Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992), *as amended on denial of reh'g* (May 22, 1992)) ("Thirty three percent appears to be in line with what attorneys are able to command on the open market in arms-length negotiations with their clients."); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 597 (N.D. Ill. 2011) (one-third fee); *Retsky Family Ltd. Partnership v. Price Waterhouse LLP*, No. 1:97-cv-07694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) ("A customary contingency fee would range from 33 1/3% to 40% of the amount recovered."); *Martin v. Caterpillar Inc.*, No. 1:07-cv-01009, 2010 WL 11614985, at *4 (C.D. Ill. Sept. 10, 2010) (one-third fee); *Kitson v. Bank of Edwardsville*, No. 3:08-cv-00507, 2010 WL 331730, at *2 (S.D. Ill. Jan. 25, 2010) (one-third fee); *Will v. Gen. Dynamics Corp.*, No. 3:06-cv-00698, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) (one-third fee); *Burkholder v. City of Ft. Wayne*, 750 F. Supp. 2d 990, 997 (N.D. Ind. 2010) (one-third fee); *Campbell v. Advantage Sales & Mktg. LLC*, No. 1:09-cv-01430, 2012 WL 1424417, at *2 (S.D. Ind. Apr. 24, 2012) (one-third fee plus costs); *In re Ready-Mixed Concrete*, 2010 WL 3282591, at *3 (one-third fee plus expenses).

Public policy also favors an attorneys' fee award at the market rate. The Supreme Court has repeatedly held that private enforcement of antitrust laws is essential to effective antitrust enforcement. *See, e.g.*, *Blue Shield of Va. v. McCready*, 457 U.S. 465, 472 (1982) ("Congress

sought to create a private enforcement mechanism that would deter violators and deprive them of the fruits of their illegal actions, and would provide ample compensation to the victims of antitrust violations."); *Zenith Radio Corp. v. Hazeltine Rsch., Inc.*, 395 U.S. 100, 130-31 (1969) ("[T]he purpose of giving private parties treble-damage and injunctive remedies was not merely to provide private relief, but was to serve as well the high purpose of enforcing the antitrust laws."). And a market-rate fee award incentivizes competent, experienced counsel to take on high-risk, complex class action litigation.

Here, the retainer agreements between Class Counsel and the DPP Class Representatives do not specify the amount of attorneys' fees but simply say that Class Counsel would receive as fees a percentage of any recovery as awarded by the Court. (Clark Decl. ¶ 17.) As the fee request here is consistent with the actual agreement with the DPP Class Representatives, is market-based, and consistent with the practice of courts in the Seventh Circuit, DPPs submit that the present request is appropriate.

2. Class Counsel Faced Significant Risk of Nonpayment.

A material consideration in determining an appropriate fee is the risk of nonpayment. *See Silverman*, 739 F.3d at 958; *In re Synthroid*, 264 F.3d at 718. "The lawyers for the class receive no fee if the suit fails." *Cont'l Illinois*, 962 F.2d at 568. "Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman*, 739 F.3d at 958 (citing *Kirchoff*, 786 F.2d at 320).

To determine a fee award in a class action settlement, a court must assess counsel's risk of taking a particular case and the probability of success as it existed "*at the outset* of the litigation." *Florin*, 34 F.3d at 565. Therefore, a court must do its best to estimate the terms of the contract that

private plaintiffs would have negotiated with their lawyers at the outset of the case, when the risk of loss still existed, rather than at the end of a successful case:

> The best time to determine this rate is the **beginning of the case**, not the end (when hindsight alters the perception of the suit's riskiness, and sunk costs make it impossible for the lawyers to walk away if the fee is too low). This is what happens in actual markets.

In re Synthroid, 264 F.3d at 718 (emphasis added); *see also In re Capital One Telephone Consumer Protection Act Litig.*, 80 F. Supp. 3d 781, 788-89 (N.D. Ill. 2015) (the probability of success at the outset of litigation helps determine the reasonableness of the fee).

As discussed below, throughout the lengthy duration of this case Class Counsel faced a significant risk of nonpayment. DPPs alleged a price-fixing conspiracy by the United States' leading turkey processors and claimed that they and the DPP Class paid significant overcharges as a result. Class Counsel conceived and brought this case without the benefit of any related government investigation or enforcement action. (Clark Decl. ¶ 4.) Class Counsel believed in DPPs' case, invested extensive amounts of their time, effort, and money, and prosecuted it vigorously. Class Counsel did so at the risk of no recovery and declined other opportunities because of the complexity, time, and expense this case demanded. (*Id.*) To date, Class Counsel have not been paid for the time they have invested in this case. (Clark Decl. ¶ 27.)

In the face of all these risks, Class Counsel have achieved significant recoveries on behalf of the DPP Class. (Clark Decl. ¶¶ 9-13.) An overview of the relevant factors courts consider when evaluating risk is provided below.

(a) Antitrust Class Actions are Inherently Risky.

In a study analyzing class actions against insurers, only 12% of 564 attempted class actions led to a class settlement. Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. EMPIR. L. STUD. 248, at 280 (2010) (citing Nicholas

M. Pace, Stephen J. Carroll, Ingo Vogelsang, & Laura Zakaras, *Insurance Class Actions in the United States,* 47 tbl.3.16 (2007)). Antitrust class actions are riskier still, due in part to their unpredictable nature, as well as the tremendous time and expense required to successfully resolve them. *In re Cathode Ray Tube (CRT) Antitrust Litig.*, MDL No. 1917, 2016 WL 721680, at *17 (N.D. Cal. Jan. 28, 2016) (quoting *In re NASDAQ Mkt-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998)); *see In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003) (emphasizing a strong public interest in encouraging settlement of complex, class-action lawsuits because they are "notoriously difficult and unpredictable" and settlement preserves judicial resources) (internal quotes and citation omitted). "The 'best' case can be lost and the 'worst' case can be won, and juries may find liability but no damages. None of these risks should be underestimated." *Matter of Superior Beverage/Glass Container Consol. Pretrial*, 133 F.R.D. 119, 127 (N.D. Ill. 1990).

Here, the risks were extremely high. DPPs alleged a nationwide conspiracy to fix, raise, maintain, and stabilize the price of turkey. While Tyson settled in May 2021, shortly after the Court denied Defendants' initial motions to dismiss DPPs' complaint (ECF No. 173), the remaining Defendants continued to aggressively litigate the case, fiercely fighting DPPs on their motion to certify the DPP Class. (Clark Decl. ¶¶ 6-8.) In the face of these risks, Class Counsel vigorously represented DPPs and obtained a substantial recovery for the DPP Class.

(b) Class Counsel Faced Complex Issues.

Investigating and proving an unlawful conspiracy is difficult, especially when not derived from a related criminal investigation. *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)).

Here, Class Counsel brought this case without the benefit of any related government investigation or enforcement and faced numerous, highly complex issues and uncertainties inherent in antitrust class action litigation. (*See supra* § II.) Resolving these complex issues on behalf of DPPs involved a significant degree of risk for Class Counsel as is demonstrated by the tremendous resources Class Counsel dedicated to this matter. (*See infra* § IV(A)(3).)

(c) Defendants Marshalled Tremendous Resources for Their Defense.

Not only did Class Counsel confront the inherent uncertainties of an antitrust class action alleging a nationwide conspiracy, but they also faced some of America's wealthiest corporations, whose skilled and experienced legal counsel mounted a strong, united defense up through settlement. The fact that the nation's top legal counsel represented Defendants is an important factor in analyzing the value of Class Counsel's services. *E.g.*, *In re Schering-Plough Corp. Enhance Secs. Litig.*, No. 2:08-cv-02177, 2013 WL 5505744, at *25 (D.N.J. Oct. 1, 2013) (emphasizing the importance of evaluating the result in light of the fact that the case was "litigated to the hilt by highly-experience [*sic*] and first-rate defense counsel to the eve of trial"); *In re Avandia Mktg., Sales Practices. & Prods. Liab. Litig.*, MDL No. 1871, 2012 WL 6923367, at *5 (E.D. Pa. Oct. 19, 2012) (collecting cases) (considering "the performance and quality of opposing counsel" as a factor in awarding attorneys' fees); *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 121 (D.N.J. Mar. 30, 2012) (concluding the skill and efficiency of the attorneys involved favored approval of attorneys' fees in part because the settling defendants were represented by experienced attorneys from prominent law firms); *In re WorldCom, Inc. Secs. Litig.*, 388 F. Supp. 2d 319, 357-58 (S.D.N.Y. 2005) (finding that counsel "obtained remarkable settlements for the

Class while facing formidable opposing counsel from some of the best defense firms in the country."); *In re Warner Comm'ns. Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."); *Arenson, et al. v. Bd. of Trade of City of Chicago*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974) (noting that the quality, vigor, and prior success of opposing counsel is an important factor when assessing the quality of work performed by plaintiffs' counsel).

The resources available to opposing parties are also significant when considering the gravity of the risk class counsel faced. *See Brewer v. S. Union Co.*, 607 F. Supp. 1511, 1531 (D. Colo. 1984); *Trist v. First Fed. Savings & Loan Ass'n of Chester*, 89 F.R.D. 8, 13 (E.D. Pa. 1980). In *Brewer*, the court remarked that inequality of resources available to the parties greatly increases the risk to class counsel. *Brewer*, 607 F. Supp. at 1531. That inequality was prominent here; available resources vastly favored Defendants, who are among America's largest and wealthiest businesses. The DPP Class, meanwhile, was represented by small regional distributors who purchased turkey, and their lawsuit was funded and prosecuted by Class Counsel with the hope of a successful result for the DPP Class.

3. Class Counsel Dedicated Enormous Resources to this Matter.

In addition to the efforts described in Section II, Class Counsel have dedicated tremendous time and expense to this litigation on a contingent basis, with no guarantee of compensation or even reimbursement of expenses. Since the inception of the case through February 28, 2025, Class Counsel invested 52,882.60 hours of attorney and other legal professional time in this case. (Clark Decl. ¶¶ 25-28.) Co-Lead Counsel have worked diligently to ensure that, throughout the case, Class Counsel's efforts have been coordinated, detailed, vigorous, and efficient. (*Id*. at ¶ 25.)

In addition to the 52,882.60 hours of attorney and other legal professional time invested in this case, Class Counsel have incurred over $5.6 million in total expenses. (*See infra* § V; *see also*

Clark Decl., ¶ 33.) These expenses were required to frame the complex issues of fact and law in the pleadings, to defeat Defendants' motions to dismiss, to effectively manage the case, to undertake well-organized discovery for a complex antitrust case against enormous (and enormously wealthy) business entities, and to support class certification. (Clark Decl. ¶¶ 30-40.)

4. Comparable Cases Provide the Basis for this Request.

"Another relevant data point for the market price for attorneys' fees is those awarded in 'analogous class action settlements.'" *Hale*, 2018 WL 6606079 at *10 ("Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.33% or higher to counsel in class action litigation."); *see also Taubenfeld v. AON Corp*., 415 F.3d 597, 600 (7th Cir. 2005) (noting the relevance of "attorneys' fees from analogous class action settlements"); *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 501 (N.D. Ill. 2015) ("[A]ttorney's fee awards in analogous class action settlements shed light on the market rate for legal services in similar cases."); *Gaskill I*, 160 F.3d 361, 363 (7th Cir. 1998) (collecting cases).

As set forth is Section IV.A.1 above, in this instance DPPs' requested fee *is* the market rate, and courts in this District have recently awarded 33 and 1/3 percent of the Net Settlement Fund to class counsel in similar antitrust actions. (*See e.g., In re Broiler Chicken Antitrust Litig.*, ECF 5543 (awarding 33 and 1/3 percent of the net settlement fund plus interest to CIIPP class counsel).)

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

While the percentage-of-the-fund method is favored in the Seventh Circuit for calculating fees in common fund cases, (*see In re Dairy Farmers*, 80 F. Supp. 3d at 844), courts may use a lodestar cross-check to understand class counsel's time and effort and determine the reasonableness of a fee. *Id.* But this cross-check is not required. *See Rohm & Haas II*, 658 F.3d at 636 ("[C]onsideration of a lodestar check is not an issue of required methodology"); *accord Leung*

v. XPO Logistics, Inc., 326 F.R.D. 185, 204 (N.D. Ill. 2018) ("The Court is not required to check its percentage-of-fee determination against the lodestar."); *Wright v. Nationstar Mortg. LLC*, No. 1:14-cv-10457, 2016 WL 4505169, at *17 (N.D. Ill. Aug. 29, 2016) (noting that a lodestar cross-check is not required); *Heekin*, 2012 WL 5878032, at *2 (criticizing a class member for "overstat[ing] the importance of the lodestar method in this Circuit."). In fact, "[t]he use of a lodestar cross-check has fallen into disfavor." *George v. Kraft Foods Glob., Inc.*, Nos. 1:08-cv-03799; 1:07-cv-01713, 2012 WL 13089487, at *3 (N.D. Ill. June 26, 2012). And the Seventh Circuit has "never ordered [a] district judge to ensure that the lodestar result mimics that of the percentage approach." *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998).

The lodestar is derived by multiplying the hourly rate of the attorney or professional by the number of hours reasonably expended. *See Wright*, 2016 WL 4505169, at *14. A reasonable hourly rate is one that is consistent with the common rate in the "community for similar services by lawyers of reasonably comparable skill, experience and reputation." *See Jeffboat, LLC v. Dir., Office of Workers' Comp. Progs.*, 553 F.3d 487, 489 (7th Cir. 2009) (quoting *Blum*, 465 U.S. at 995); *see also Denius v. Dunlap*, 330 F.3d 919, 930 (7th Cir. 2003) (holding that the attorney's billing rate for comparable work is generally appropriate).

The base lodestar is often augmented by a multiplier that considers factors that affect the amount of the fees awarded. *See Cook*, 142 F.3d at 1015; *Florin*, 34 F.3d at 565; *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 255 (7th Cir. 1988). These include the complexity of the legal issues, the degree of success, and the public interest advanced by the litigation. *Paz v. Portfolio Recovery Assocs., LLC*, 924 F.3d 949, 954 (7th Cir. 2019); *Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010). Also considered is the risk of non-payment. *See Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991).

A lodestar cross-check in this case supports the requested fee. Class Counsel's base lodestar using historical rates is $25,991,034.50 from the inception of the case through February 28, 2025. (Clark Decl. ¶ 27.) The average hourly rate by Class Counsel and their associated professional staff is approximately $491.50 (with a cap of $350.00 per hour on document review, a rate comparable to those charged by other law firms with similar experience, expertise, and reputation, for similar services in the nation's leading legal markets. (*Id.*)

Awarding a 33 and 1/3 percent fee as requested, $10,509,888.01, would result in a *negative* multiplier of 0.4043. (*Id.*; *see In re TFT-LCD (Flat-Panel) Antitrust Litig.*, MDL 1827, 2013 WL 149692, at *1 (N.D. Cal. Apr. 3, 2013) (negative multiplier of 0.86 confirmed amount of attorneys' fees requested was fair and reasonable).) Such a multiplier is well within accepted ranges,[13] and is warranted here at this stage of the litigation and for Class Counsel's first interim payment of attorneys' fees.

[13] *E.g.*, *Cook*, 142 F.3d at 1015 (upholding the district court's decision to "enhance[] the lodestar by a multiplier of 1.5"); *Florin*, 34 F.3d at 565 ("Because class counsel have requested a multiplier of 1.53, the district court need not worry about exceeding what we have suggested is a sensible ceiling of double the lodestar."); *Harman*, 945 F.2d at 976 (internal citations omitted) (observing that "[m]ultipliers anywhere between one and four have been approved."); *Skelton*, 860 F.2d at 258 (suggesting "that a doubling of the lodestar would provide a sensible ceiling."); *In re Dairy Farmers*, 80 F. Supp. 3d at 849 (awarding a fee that equated to a multiplier of 1.34 on a lodestar cross-check); *Standard Iron Works v. ArcelorMittal*, No. 1:08-cv-05214, 2014 WL 7781572, at *2 (N.D. Ill. Oct. 22, 2014) (finding that the requested lodestar multiplier of approximately 1.97 was "well within the range of reasonable multipliers awarded in similar contingent cases."); *Schulte*, 805 F. Supp. 2d at 598 (approving an award that "represent[s] a multiplier of less than 2.5, which is not an unreasonable risk multiplier."); *In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, 733 F. Supp. 2d 997, 1015 (E.D. Wis. 2010) (awarding a fee that represented a multiplier of 2.07 on a lodestar cross-check and recognizing that "the mean risk multiplier in cases involving class settlements comparable in size to the present settlement is 2.70.") (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees & Expenses in Class Action Litigation: 1993–2008*, 7 J. OF EMPIRICAL LEGAL STUD. 248, 274 tbl.15 (2010)); *accord In re Hyundai and Kia Fuel Economy Litig.*, 926 F.3d 539, 572 (9th Cir. 2019) (affirming lodestar multipliers of 1.5521 and 1.22 as "modest or in-line with others"); *Kelly v. Wengler*, 822 F.3d 1085, 1093, 1105 (9th Cir. 2016) (affirming lodestar multipliers of 2.0 and 1.3); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (upholding a lodestar multiplier cross-check showing a multiplier of 3.65).

V. CLASS COUNSEL'S LITIGATION EXPENSES WERE REASONABLY INCURRED AND SHOULD BE REIMBURSED

Under the common fund doctrine, class counsel customarily are entitled to reimbursement of reasonable expenses incurred in the litigation. Fed. R. Civ. P. 23(h); *Mills*, 396 U.S. at 392 (recognizing the right to reimbursement of expenses where a common fund has been produced or preserved for the benefit of a class); Alba Conte, *Attorney Fee Awards* § 2.08, at 50-51 (3d ed. 2004). Reimbursable expenses are those "that are consistent with market rates and practices." *In re Ready-Mixed Concrete*, 2010 WL 3282591, at *3; *see also In re Synthroid*, 264 F.3d at 722 ("Reducing litigation expenses because they are higher than the private market would permit is fine; reducing them because the district judge thinks costs too high in general is not.").

The litigation expenses at issue in this motion fall into six categories: (1) unreimbursed expenses incurred individually by specific Class Counsel ("Firm Costs") from October 1, 2021 through February 28, 2025; (2) unreimbursed common cost litigation fund expenses("Litigation Fund Expenses") from November 4, 2021 through March 31, 2025; (3) reimbursed Firm Costs and Litigation Fund Expenses; (4) ongoing litigation expenses; (5) Administrative Expenses (authorized in each of the monetary settlements and paid directly from the respective settlement fund to the Court-appointed administrator) from inception to March 31, 2025; and (6) Taxes from inception to March 31, 2025.[14] These expenses are described in detail in the Clark Dec., ¶¶ 30-41, and its accompanying exhibits. Based on these expenses, Class Counsel have incurred a total of $5,656,245.21 in expenses. (Clark Decl. ¶ 33.) DPPs propose to net out these expenses to calculate

[14] On January 10, 2021, the Court approved Class Counsel's request for reimbursement of $159,498.95 in Firm Costs incurred from the inception of the litigation through September 30, 2021. *See* ECF Nos. 323, 367. At the same time, the Court approved Class Counsel's request for reimbursement of $430,382.01 in Litigation Fund Expenses incurred from the inception of the case through November 3, 2021. *Id*.

the Net Settlement Fund (*see supra* Section III). Class Counsel endeavored to keep all expenses reasonable and necessary to support the litigation. (Clark Decl. ¶ 30.)

This Court previously approved reimbursement of incurred and ongoing litigation expenses totaling $1,000,000 from the Tyson settlement ("First Expense Reimbursement Award"). (*See* ECF No. 367.) Class Counsel used the First Expense Reimbursement Award to reimburse $589,880.96 in Firm Costs and Litigation Fund Expenses that the Court found to be reasonable and necessary to support this litigation. (*See* ECF No. 367 at ¶ 4.) The Court ordered Class Counsel to use the remaining $410,119.04 to support the litigation as it proceeds to trial. (*See id.* at ¶ 5.) Class Counsel have done this. Attached as **Exhibit 7** to the Clark Decl. is a table summarizing the litigation expenses that Class Counsel incurred and subsequently paid using the balance of the First Expense Reimbursement Award. (Clark Decl. ¶ 31.)

Here, Class Counsel seek reimbursement for unreimbursed Firm Costs and Litigation Fund Expenses totaling $4,384,188.14 to be paid from the Cargill settlement proceeds.[15] Additionally, Class Counsel ask the Court to approve payment of $115,811.86 for ongoing litigation expenses, to be paid from the Cargill and Tyson settlement proceeds.[16] (Clark Decl. ¶ 41.) In notifying DPP Class members of the recent settlements, Class Counsel informed DPP Class members that they would seek reimbursement of litigation expenses in an amount not to exceed $4,500,000.00. (*See* ECF No. 1128-1, Court-approved long form notice.) Thus, Class Counsel's request for reimbursement of litigation expenses in this motion is $4,500,000.00.

[15] As set forth above, the Court previously approved an interim payment of incurred expenses from the Tyson settlement. Accordingly, the DPPs are limiting the source of the expenses sought in this motion to the Cargill settlement. (Clark Decl., Ex. 12.)

[16] As set forth above, the Court previously approved an interim payment of ongoing litigation expenses from the Tyson settlement. Accordingly, the DPPs are limiting the source of the expenses sought in this motion to the Cargill settlement. (Clark Decl., Ex. 12.)

Many of the costs described above and in the accompanying attorney declarations are not one-time expenses; they are ongoing and will continue until the case is complete. (Clark Decl. ¶ 41.) Class Counsel will, of course, endeavor to keep costs at a minimum. (*Id.*) Allowing a portion of class settlement funds to be used for past unaccounted for and future expenses is a well-accepted practice. *See, e.g.*, *In re Pork Antitrust Litig.*, No. 0:18-cv-01776-JRT (ECF No. 1424) (D. Minn. July 22, 2022) (awarding attorneys' fees at 33 1/3 percent and approving incurred and future litigation expenses totaling $5 million); *Newby v. Enron Corp.*, 394 F.3d 296, 302 (5th Cir. 2004) (affirming 37.5% set aside for establishment of a $15 million litigation expense fund from the proceeds of a partial settlement); *In re Auto Parts Antitrust Litig.*, No. 12-2311, 2018 WL 7108072, at *2-4 (E.D. Mich. Nov. 5, 2018); *In re Auto Parts Antitrust Litig.*, No. 12-2311, 2016 WL 9459355, at *2 (E.D. Mich. Nov. 29, 2016) (approving request to set aside nearly $10 million for use in future litigation); *In re Auto Parts Antitrust Litig.*, No. 12-2311, 2015 WL 13715591, at *2 (E.D. Mich. Dec. 7, 2015); *In re Transpacific Passenger Air Transp. Antitrust Litig.*, No. 07-05634, 2015 WL 3396829, at *3 (N.D. Cal. May 26, 2015); *In re Pressure Sensitive Labelstock*, 584 F. Supp. 2d 697, 702 (M.D. Pa. 2008); *In re WorldCom, Inc. Sec. Litig.*, No. 02-3288, 2004 WL 2591402, at *22 (S.D.N.Y. Nov. 12, 2004); *In re California Micro Devices Sec. Litig.*, 965 F. Supp. 1327, 1337 (N.D. Cal. 1997); *see also* MANUAL FOR COMPLEX LITIGATION (Fourth), § 13.21 ("[P]artial settlements may provide funds needed to pursue the litigation . . . ."). If the Court grants Class Counsel's request for $115,811.86 for ongoing litigation expenses, Class Counsel will later provide the Court with accounting of payment for these expenses.

VI. THE CLASS REPRESENTATIVES SHOULD RECEIVE SERVICE AWARDS

Courts regularly grant service awards to class representatives in recognition of the time and effort they invested in the case. Like in this case, class representatives frequently contribute to the successful resolution of a class action by assisting with the preparation of the pleadings,

participating in discovery, continually providing information to class counsel, and participating in settlement negotiations. *Williams v. Rohm & Haas Pension Plan*, No. 4:04-cv-00078, 2010 WL 4723725, at *2 (S.D. Ind. Nov. 12, 2010), *aff'd*, 658 F.3d 629 (7th Cir. 2011) ("Because a named plaintiff plays a significant role in a class action, an incentive award is appropriate as a means of inducing that individual to participate in the expanded litigation on behalf of himself and others."). Their contributions undoubtedly benefit the DPP Class as a whole, and courts in this circuit often see fit to compensate class representatives for their service to the class. *See, e.g.*, *Cook*, 142 F.3d at 1016 (affirming $25,000.00 service award).

Courts consider various factors when determining an appropriate service award, including "the actions the [representative] has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the [representative] expended in pursuing the litigation." *Cook*, 142 F.3d at 1016 (citing *Spicer v. Chicago Bd. Options Exch., Inc.*, 844 F. Supp. 1226, 1267 (N.D. Ill. 1993)).

As specifically set forth in each of their declarations (*see* Clark Decl. Exs. 10-11), each of the Class Representatives: Maplevale Farms, Inc., and John Gross and Company, Inc., dedicated their valuable time to this litigation. Throughout this lengthy litigation, the Class Representatives advised Class Counsel and approved pleadings, reviewed and responded to written discovery, searched for, gathered, preserved, and produced documents, prepared for and stood for depositions, kept up to date on the progress of the case, and performed other similar activities. (Clark Decl. ¶¶ 44; *see also* ECF Nos. 829-8 to 829-9 (declarations from each class representative in support of DPPs' motion for class certification).) They were never promised that they would receive any additional compensation for leading the case. (*Id.* ¶ 46.) Rather, they devoted their time and efforts solely to recovery some portion of their own overcharges and to enable other DPP Class members

to recover theirs. (*Id.*) Their help has been instrumental to the success of this litigation and, DPPs respectfully submit, each deserves a service award in the amount of $25,000.

VII. CONCLUSION

For these reasons, DPPs respectfully request that this Court (a) award Class Counsel 33 and 1/3 percent of the Net Settlement Fund (equal to $10,509,888.01) as an interim award of attorneys' fees, (b) approve $4,500,000 for current and ongoing litigation expenses, and (c) award $25,000.00 in service awards to each of the two named Class Representatives Maplevale Farms, Inc. and John Gross and Company, Inc.

Date: April 7, 2025

s/ Brian D. Clark
W. Joseph Bruckner
Brian D. Clark
Simeon A. Morbey
Steven E. Serdikoff
LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Avenue South, Suite 2200
Minneapolis, Minnesota 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981
wjbruckner@locklaw.com
bdclark@locklaw.com
samorbey@locklaw.com
seserdikoff@locklaw.com

s/ Shana E. Scarlett
Shana E. Scarlett
Rio S. Pierce
Abby R. Wolf
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 300
Berkeley, California 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
shanas@hbsslaw.com
riop@hbsslaw.com
abbyw@hbsslaw.com

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
455 North Cityfront Plaza Drive, Suite 2410
Chicago, Illinois 60611
Telephone: (708) 628-4949
Facsimile: (708) 628-4950
steve@hbsslaw.com

Co-Lead Counsel for the Direct Purchaser Plaintiff Class

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on April 7, 2025, a copy of the foregoing was electronically filed with the Clerk of the Court using the Courts's CM/ECF system, which will send notification of the filing to all counsel of record.

By: */s/ Brian D. Clark*
Brian D. Clark