UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

IN RE PORK ANTITRUST LITIGATION	Civil No. 18-1776 (JRT-JFD) Honorable John R. Tunheim
This Document Relates to: All Consumer Indirect Purchaser Actions	

[CORRECTED] PROPOSED MEMORANDUM OPINION AND ORDER GRANTING CONSUMER INDIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

Consumer Indirect Purchaser Plaintiffs ("Consumer IPPs")[1] entered into settlement agreements with Tyson Foods, Inc., Tyson Fresh Meats, Inc., and Tyson Prepared Foods, Inc. (collectively, "Tyson") for $85,000,000; Seaboard Foods LLC ("Seaboard") for $10,000,000; Hormel Foods, LLC ("Hormel") for $4,465,000; Clemens Food Group, LLC ("Clemens") for $13,500,000; and Triumph Foods, LLC ("Triumph") for $4,100,000, and secured conduct relief from Agri Stats, Inc. ("Agri Stats"). The total monetary recovery at issue in this motion is $117,065,000. Consumer IPPs now move for an award of attorneys'

[1] The current Consumer IPP Class Representatives are: Michael Anderson, Sandra Steffen, Michael Pickett, David Look, Joseph Realdine, Ryan Kutil, Kory Bird, Duncan Birch, Robert Eccles, Jennifer Sullivan, Kenneth King, Sarah Isola, Wanda Duryea, Edwin Blakey, Michael Reilly, Jeffrey Allison, Kenneth Neal, Chad Nodland, Chris Deery, Laura Wheeler, Christina Hall, Donya Collins, Thomas Cosgrove, Charles "Rich" Dye, Eric Schaub, Kate Smith, Stacey Troupe, James Eaton, and Isabelle Bell.

fees, reimbursement of litigation expenses, and class representative service awards. (Mot., Oct. 14, 2026, Docket No. 3520).

The Court, having reviewed the Consumer IPPs' motion, the accompanying memorandum, and the declarations and exhibits thereto, and after hearing the arguments of counsel, will grant the Consumer IPPs' motion.

DISCUSSION

The Court has considered the relevant case law and authority and finds that awards of attorneys' fees and reimbursement of expenses to the Consumer IPPs and their counsel are appropriate under Federal Rules of Civil Procedure 23(h) and 54(d)(2). Notice of the request for fees and reimbursement of expenses was provided to the potential class members via direct and published notice and a settlement website that identified and provided copies of relevant documents and pleadings.

The Court has considered the reaction of the class members to this fee and reimbursement request. As of the filing of the motion, one class member had objected and under a dozen have opted out. The objection and opt-out deadline was October 29, 2026.

The Court will grant the Consumer IPPs' request for reimbursement of litigation expenses in the amount of $3,372,602.69 from the Settlement fund. "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.*, Civ. No. 11-2781, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015).

The Court concludes that 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 v. Symantec Corp.*, Civ. No. 11180, 2016 WL 1637039, at *12 (D. Minn. Apr. 5, 2016) ("Courts generally allow plaintiffs' counsel in a class action to be reimbursed for costs and expenses out of the settlement fund, so long as those costs and expenses are reasonable and relevant to the litigation."); *In re Zurn Pex Plumbing Prod. Liab. Litig.*, MDL No. 08-1958, 2013 WL 716460, at *5 (D. Minn. Feb. 27, 2013); *Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1067 (D. Minn. 2010). The past litigation expenses incurred in the prosecution of this case shall be reimbursed from the Settlement fund. The Court approves (as part of that total $3,372,602.69) a reserve of $1,830,000 for future claims administration and distribution expenses, consistent with the cap agreed to by Epiq Class Action & Claims Solutions, Inc. (Dkt. 3415 ¶ 46).

The Court will award fees to counsel for the 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 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." (citations omitted)); *In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002). "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*, 2016 WL 1637039, at *8-9.

Counsel for the Consumer IPPs request a fee award of one-third (33 1/3%) of the $117,065,000 in settlement funds at issue in this motion, plus a proportionate one-third share of accrued interest. The requested fee, which totals $39,021,666.67 before accrued interest, is well within the range allowed by courts in this district.

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; *In re Xcel*, 364 F. Supp. 2d at 993; *Yarrington*, 697 F. Supp. 2d at 1062. When applied here, these factors indicate that the requested fee is fair.

Counsel Secured Valuable Benefits for Consumer IPPs. The $212,065,000 in non-reversionary settlements is coupled with significant conduct relief from Agri Stats. Agri Stats permanently ended its sales reports and agreed to safeguards governing any future pork reporting, including restrictions on plant-level price and production data, aggregation and data-aging requirements, and protections against disclosure and de-anonymization. These terms provide substantial value to Consumer IPPs and the Class.

See, e.g., *In re Packaged Ice Antitrust Litig.*, MDL No. 08-1952, 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) ("[T]here exists a strong national interest in antitrust enforcement."); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) ("[I]t 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 Agri Stats conduct relief provides an additional public and market-wide benefit beyond the monetary recovery.

Plaintiffs' Counsel Was Exposed to Risk. Counsel for the Consumer IPPs assumed considerable risk by investigating and pursuing this case without a DOJ investigation or leniency applicant, working on a contingent basis for approximately eight years, advancing litigation costs, and preparing for trial without a guaranteed recovery. Consumer IPP counsel had to prove a nationwide price-and-supply conspiracy, processor overcharges, retail pass-through, and claims under many states' laws against sophisticated,

well-resourced opposition. Counsel devoted more than 54,000 hours and advanced $4,392,533.25 in expenses, and although they received partial payment through the Court's prior orders, there was no guarantee of further payment or reimbursement. Decl. of Shana E. Scarlett ¶¶ 22, 44, Docket No. 3520. At any point in this litigation, plaintiffs could have lost and Class Counsel would have recovered nothing further and lost any recovery of expenses. "[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 *9; *In re Xcel*, 364 F. Supp. 2d at 994; *Yarrington*, 697 F. Supp. 2d at 1062–63.

The Difficulty and Novelty of the Legal and Factual Issues of the Case. 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." (citations and internal quotation marks omitted)). This litigation presented challenging legal and factual issues, including analysis of nearly four million documents and terabytes of data, proof of pass-through and multistate claims, extensive expert work, and complex conduct-relief negotiations. This factor also supports the fee requested.

Skill and Experience of Counsel. Hagens Berman Sobol Shapiro LLP and Gustafson Gluek PLLC, Co-Lead Counsel for the Consumer IPPs, are experienced and skilled antitrust counsel. Counsel faced a coordinated and vigorous defense by sophisticated counsel for the processor defendants and Agri Stats, defeated summary

judgment and Daubert challenges, prepared for trial, and negotiated substantial monetary and structural relief. This factor also supports the requested fee. *See Khoday*, 2016 WL 1637039, at *10; *In re Xcel*, 364 F. Supp. 2d at 995–96; *Yarrington*, 697 F. Supp. 2d at 1063; *In re Packaged Ice Antitrust Litig.*, 2011 WL 6209188, at *19.

The Time and Labor Involved. Counsel working on behalf of the Consumer IPPs invested more than 54,000 hours over approximately eight years. The work included reviewing nearly four million documents, issuing 79 non-party subpoenas, taking almost 100 depositions, obtaining nationwide class certification on March 29, 2023 (Dkt. 1887), responding to summary judgment and Daubert challenges, briefing reconsideration, appeal, and recusal issues, preparing for trial, and negotiating every settlement and the Agri Stats conduct relief. This factor supports the requested fee.

The Reaction of the Class. As of the filing of the motion, one class member had objected and under a dozen had opted out. The objection and opt-out deadline was October 29, 2026.

Comparison with Percentages Awarded 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, e.g.*, *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 and awards of between 30 and 36 percent have also been approved); *In re U.S. Bancorp*, 291 F.3d at 1038 (affirming a fee award representing 36 percent of the settlement fund as reasonable); *In re Xcel*, 364 F. Supp. 2d at 998–99 (collecting cases routinely approving fee awards of 33 percent); *Carlson v. C.H. Robinson Worldwide, Inc.*, Civ. 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 Eighth Circuit and other federal courts have approved awards exceeding one-third of the settlement funds created by counsel representing the settlement class. *See, e.g.*, *In re U.S. Bancorp*, 291 F.3d at 1038 (affirming a fee of 36 percent); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10 (D.D.C. 2001) (awarding one third of $359 million antitrust recovery, which is "within the fifteen to forty-five percent range established in other cases"); *Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291, 1292–94 (11th Cir. 1999) (affirming a fee of one-third of the settlement fund); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 498 (D.D.C. 1981) (awarding fee of 45 percent); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1133, 1142 (W.D. La. 1997) (awarding fee of 36 percent and noting that "[u]sually 50 percent of the fund is the upper limit on a reasonable fee award from a common fund").

The Court has carefully analyzed the settlements and the factors considered by courts within the Eighth Circuit and Federal Rule of Civil Procedure 23 and concludes that the factors are met and justify a fee award to counsel for the Consumer IPPs. The settlements provide substantial cash benefits totaling $212,065,000 and additional conduct relief from Agri Stats. Consumer IPPs' counsel has worked on a contingent basis, and the results of this litigation have never been certain. The legal and factual issues are complicated, and the parties have zealously asserted their claims and defenses. Given the length and tenacity of this litigation, the Court is satisfied that the settlements were the

result of arms' length negotiations between informed and experienced counsel. The requested fees are well within the range allowed by courts in this district.

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 fees requested constitute fair and reasonable compensation for the risks assumed, the work done, and the benefits achieved for the members of the class.

Using the lodestar cross-check methodology and reviewing the total fees awarded with the lodestar generated on these cases from inception through September 30, 2026, counsel for the Consumer IPPs expended more than 54,000 hours and generated a lodestar of $30,457,351.16. Counsel's full cumulative fee of $70,596,666.67—which includes the $6,600,000 and $24,975,000 already awarded on the JBS and Smithfield settlements (Dkt. 1491; Dkt. 1904)—reflects a lodestar multiplier of approximately 2.32, and the additional $39,021,666.67 counsel seeks now is the balance of that fee. Scarlett Decl. ¶ 26. This multiplier is reasonable considering the complexity of this litigation, the result achieved for the 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 (indicating that multipliers typically range "from two to five"); *In re St. Paul Travelers Sec. Litig.*, Civ. No. 14-3801, 2006 WL 1116118, at *1 (D. Minn. Apr. 25, 2006) (approving a settlement with a lodestar multiplier of 3.9).

The Court will grant an award of attorneys' fees to counsel for the Consumer IPPs in the amount of one-third of the $117,065,000 in settlement funds at issue in this motion, plus a proportionate one-third share of accrued interest. These attorneys' fees, totaling $39,021,666.67 before accrued interest, shall be paid from the Settlement funds.

Co-Lead Counsel for the Consumer IPPs, Hagens Berman Sobol Shapiro LLP and Gustafson Gluek PLLC, will be authorized to allocate the attorneys' fees awarded herein among counsel who performed work on behalf of the Consumer IPPs in accordance with Co-Lead Counsel's assessment of each firm or attorney's contribution to the prosecution of this litigation.

The Court will also grant the requested $3,000.00 service awards to each Consumer IPP Class Representative or their estate. 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"); *Zilhaver v. UnitedHealth Group, Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009) (awarding $15,000 service awards); *see also In re Xcel*, 364 F. Supp. 2d at 1000 (awarding $100,000 to be distributed among the eight lead plaintiffs).

The Consumer IPP Class Representatives took action to benefit the interests of the Class, devoted their own time and effort, and assisted counsel in achieving the settlements and Agri Stats conduct relief. They approved pleadings and settlements, searched for and produced records, answered discovery, remained informed, and sat for deposition hours

under questioning about household purchases and personal records. 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. Ms. Steffen, the California representative, is believed to have passed away. The Court will authorize payment of her service award to her estate or duly authorized representative once identified through reasonable efforts; if no authorized representative can be identified, the award shall be returned to the Settlement fund for distribution to the Class. The requested $3,000.00 award is reasonable when compared to awards issued by courts in this District. *Zilhaver*, 646 F. Supp. 2d at 1085; *In re Xcel*, 364 F. Supp. 2d at 1000; *Khoday*, 2016 WL 1637039, at *12.

Co-Lead Counsel for the Consumer IPPs will be authorized to pay from the Settlement funds $3,000.00 to each of the following Consumer IPP Class Representatives or their estates: Michael Anderson, Sandra Steffen, Michael Pickett, David Look, Joseph Realdine, Ryan Kutil, Kory Bird, Duncan Birch, Robert Eccles, Jennifer Sullivan, Kenneth King, Sarah Isola, Wanda Duryea, Edwin Blakey, Michael Reilly, Jeffrey Allison, Kenneth Neal, Chad Nodland, Chris Deery, Laura Wheeler, Christina Hall, Donya Collins, Thomas Cosgrove, Charles "Rich" Dye, Eric Schaub, Kate Smith, Stacey Troupe, James Eaton, and Isabelle Bell.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that the Consumer Indirect Purchaser Plaintiffs' Motion for an

Award of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Service Awards (Mot., Oct. 14, 2026, Docket No. 3520) is **GRANTED**, as follows:

1. The Court **GRANTS** reimbursement of $3,372,602.69 in litigation expenses from the Settlement funds and approves a reserve of $1,830,000 for future claims administration and distribution expenses.

2. The Court **GRANTS** an award of attorneys' fees to counsel for the Consumer IPPs in the amount of $39,021,666.67, representing one-third of the $117,065,000 in settlement funds at issue in this motion, plus a proportionate one-third share of accrued interest, to be paid from the Settlement funds.

   a. Co-Lead Counsel for the Consumer IPPs, Hagens Berman Sobol Shapiro LLP and Gustafson Gluek PLLC, 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 Counsel's assessment of each firm or attorney's contribution to the prosecution of this litigation.

3. The Court **GRANTS** $3,000.00 service awards to each Consumer IPP Class Representative or their estate.

   b. Co-Lead Counsel for the Consumer IPPs are authorized to pay from the Settlement funds $3,000.00 to each listed Consumer IPP Class Representative or their estate: Michael Anderson, Sandra Steffen, Michael Pickett, David Look, Joseph Realdine, Ryan Kutil, Kory Bird, Duncan Birch, Robert Eccles, Jennifer Sullivan, Kenneth King,

Sarah Isola, Wanda Duryea, Edwin Blakey, Michael Reilly, Jeffrey Allison, Kenneth Neal, Chad Nodland, Chris Deery, Laura Wheeler, Christina Hall, Donya Collins, Thomas Cosgrove, Charles "Rich" Dye, Eric Schaub, Kate Smith, Stacey Troupe, James Eaton, and Isabelle Bell.

DATED: _____, 2026
at Minneapolis, Minnesota.

JOHN R. TUNHEIM
United States District Judge