UNITED STATES DISTRICT COURT
DISTRICT COURT OF MINNESOTA

IN RE PORK ANTITRUST LITIGATION

This Document Relates To:

THE DIRECT PURCHASER PLAINTIFF ACTION

Case No. 18-cv-01776 (JRT)

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS AND HORMEL FOODS CORPORATION

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I. INTRODUCTION

The Direct Purchaser Plaintiffs ("DPPs") seek final approval of the Settlement[1] with Defendant Hormel Foods Corporation[2] ("Hormel Foods" or "Settling Defendant"). This is the fourth settlement in this litigation, and it provides the Certified Class[3] with significant and substantial relief. Pursuant to the Settlement Agreement, Hormel Foods has paid $4,856,000 into an interest-bearing escrow account and will provide other non-monetary relief for the benefit of the DPP Class, as defined in the Agreement. Combined with DPPs' earlier settlements with the JBS, Smithfield, and Seaboard Defendants, this brings the total settlements to date to $116,470,300. *See* Declaration of Michael H. Pearson in Support of Motion ("Pearson Decl.") at ¶ 3.

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[1] Unless otherwise noted, all capitalized terms shall have the same meaning as in the Settlement Agreement (ECF No. 2179-1, also referred to herein as "Settlement").

[2] The DPPs previously stipulated to—and the Court then ordered—the dismissal without prejudice of a Hormel affiliate, Hormel Foods, LLC. (Stipulation for Dismissal, ECF No. 622; Order Granting Stipulation for Dismissal, ECF No. 640.)

[3] The term "Class" or "Certified Class" is consistent with the definition of the term in the Court's Order granting class certification and Preliminary Approval Order: "All persons and entities who directly purchased one or more of the following types of pork, or products derived from the following types of pork, from Defendants, or their respective subsidiaries or affiliates, for use or delivery in the United States from June 29, 2014 through June 30, 2018: fresh or frozen loins, shoulders, ribs, bellies, bacon, or hams. For this lawsuit, pork excludes any product that is marketed as organic or as no antibiotics ever (NAE); any product that is fully cooked or breaded; any product other than bacon that is marinated, flavored, cured, or smoked; and ready-to-eat bacon. Excluded from this Class are the Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded from this Class are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, any juror assigned to this action, and any Co-Conspirator identified in this action." *See* ECF No. 1887; Preliminary Approval Order at 2-3.

In granting preliminary approval of this Settlement, the Court found it fell within the range of reasonableness and ordered notice to be provided to the Class members. *See* Preliminary Approval Order, May 6, 2024, ECF No. 2218, at 2. Co-Lead Class Counsel[4] and A.B. Data Ltd., the Court-appointed claims administrator,[5] have executed the Notice Plan in accordance with the Court's Preliminary Approval Order. *Id*. The reaction of the Class members has been uniformly positive, with no member of the Certified Class objecting to the Settlement.[6] Declaration of Eric Schachter ("Schachter Decl.") filed concurrently herewith at ¶ 15; Sections IV.A and IV.B.4 below. This process has confirmed that the Settlement with Hormel Foods is fair, reasonable, and adequate, and should be granted final approval by the Court.

This Settlement provides substantial relief to the Class members while eliminating the risk, uncertainty, and expense of continuing litigation against Hormel, and preserves DPPs' right to pursue the remaining Defendants. DPPs therefore respectfully request that the Court grant final approval to the Settlement and enter final judgment.

II. LITIGATION BACKGROUND

This is an antitrust class action against certain producers of Pork. DPPs filed their class action lawsuit on June 29, 2018, and it and subsequently filed cases were consolidated

[4] Co-Lead Class Counsel are Lockridge Grindal Nauen P.L.L.P. and Pearson Warshaw, LLP. *See* ECF No. 1887 at 5. Co-Lead Class Counsel was appointed Class Counsel of the Hormel Foods Settlement. *See* Preliminary Approval Order at 3.

[5] Preliminary Approval Order, May 6, 2024, ECF No. 2218, at 3-4.

[6] The DPP Class was simultaneously provided notice of DPPs' Motion for Interim Payment of Litigation Expenses, ECF No. 2406. There were no objections to that motion.

before Judge John R. Tunheim in this Court. DPPs allege that Defendants conspired to fix, raise, maintain, or stabilize prices of Pork sold in the United States in violation of the Sherman Act, 15 U.S.C. § 1. *See generally* DPP Third Consolidated and Amended Complaint, ECF No. 431. DPPs allege that Defendants implemented their conspiracy in various ways, including via coordinated supply restrictions, sharing competitively sensitive price and production information, and otherwise manipulating Pork prices. *Id.*[7]

Defendants moved to dismiss all Plaintiffs' complaints. In August 2019, the Court granted their motions and granted Plaintiffs leave to amend. ECF No. 360. DPPs amended their complaint, and after extensive briefing by the parties, on October 16, 2020, the Court largely denied Defendants' motions to dismiss. ECF No. 519, *amended* Oct. 20, 2020, ECF No. 520.

Since the initial complaint was filed, DPPs have continued their factual investigation into the conspiracy alleged in their complaint, and once the Court largely denied Defendants' motions to dismiss Plaintiffs' complaints, DPPs commenced extensive discovery. *See* Pearson Decl. ¶ 4. During discovery, DPPs obtained responses to multiple sets of interrogatories, and received millions of documents in response to their requests for production and third-party subpoenas. *See Id*. ¶ 5. DPPs, along with other plaintiffs, have taken dozens of depositions of the Defendants and third parties. *Id*. DPPs have also

[7] Unlike other civil antitrust actions, this case was developed and brought without the benefit of a formal antitrust investigation by the U.S. Department of Justice or the assistance of a leniency applicant under the Department of Justice's Corporate Leniency Program. *See* Corporate Leniency Policy, U.S. Dep't of Justice, https://www.justice.gov/atr/corporate-leniency-policy.

provided responses to written discovery, produced documents, and appeared for depositions noticed by the Defendants. *Id*.

On November 17, 2020, DPPs and the JBS Defendants entered into a settlement that provided for a payment of $24,500,000 and meaningful cooperation. Pearson Decl. ¶ 6. The Court granted final approval of that settlement on July 26, 2021. *See* ECF No. 838. On June 29, 2021, DPPs and the Smithfield Defendants entered into a settlement that provided for a payment of $83 million[8] and meaningful cooperation. Pearson Decl. ¶ 6. The Court granted final approval of that settlement on January 31, 2022. *See* ECF No. 1154. On June 12, 2023, DPPs and Seaboard Foods LLC entered into a settlement that provided for a payment of $9,750,000 and meaningful cooperation. Pearson Decl. ¶ 6. The Court granted final approval of that settlement on March 5, 2024. (*See* ECF No. 2137.) Notice to the DPP Class of these prior settlements was approved by the Court and successfully implemented by A.B. Data, Ltd. (the Court-appointed Settlement Administrator, *see* ECF Nos. 631, 845) each time. *See* ECF Nos. 838, 1154.

On March 29, 2023, the Court certified the DPP Class. *See* ECF No. 1887 at 4-5, and at 69 (granting class certification). In October 2023, Co-Lead Class Counsel and the Claims Administrator commenced the initial distribution of settlement proceeds from the JBS and Smithfield settlements to qualified claimants.[9] *See* Pearson Decl. ¶ 7.

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[8] The Smithfield settlement was subject to a $5,635,700 reduction based on the opt-outs received during the settlement administration process. The total net amount paid by Smithfield equaled $77,364,300. *See* Pearson Decl. ¶ 6.

[9] Currently, Co-Lead Class Counsel are working with A.B. Data to complete the Court-approved claims process. *See* ECF No. 2204. Like the Seaboard settlement, the Hormel Foods Settlement is not part of this current claims process and distribution, but instead will

DPP Class Counsel performed a thorough investigation prior to reaching the Hormel Foods Settlement and, given that the case had proceeded for almost six years and that class certification proceedings and fact discovery were completed by the time of the settlement, Class Counsel were well informed by the time the parties agreed to settle. *See* Pearson Decl. ¶ 8. This settlement, the terms of which are detailed in this brief and the supporting documents, represents a significant recovery for DPPs given Hormel Foods's relatively small market share.

III. SUMMARY OF THE SETTLEMENT AND NOTICE

A. Settlement Negotiations and the Settlement Terms

The parties have had ample opportunity to assess the merits of DPPs' claims and Hormel Foods's defenses, through investigation, research, settlement discussions and contested motion practice; and to balance the value of Class members' claims against the substantial risks and expense of continuing litigation. The Settlement comes after extensive arm's-length negotiations between the parties. *See Id.* ¶¶ 3-5, 8, 9. These discussions commenced in February 2024 and continued for six weeks until the parties ultimately executed the Settlement Agreement. *Id*. ¶ 9. Prior to entering into the Settlement, the parties completed fact discovery, litigated class certification, and engaged in highly confidential, extensive arm's-length negotiations. *Id*. ¶¶ 8-9. The hard-fought negotiations were kept confidential as the parties vigorously litigated the case. *Id*. The negotiations included many

be part of a future distribution. However, any Class member who submits a valid claim as part of the current distribution will not be required to resubmit its claim for this or future recoveries.

conferences and written exchanges between counsel. *Id*. The parties ultimately executed the Settlement Agreement on March 29, 2024. *Id*. ¶ 10; *see also* Settlement Agreement. The Settlement Agreement does not contain any reduction or termination provisions. Throughout all of these settlement discussions, counsel for DPPs focused on obtaining the best possible result for the DPP Class. *Id*. ¶ 9.

In addition to the payment of money, the Settlement permits DPPs to prove their claims against the remaining Defendants at trial. *See* Settlement Agreement ¶ 3. This consists of Hormel assisting DPPs with authenticating documents for trial and providing DPPs the same access to potential trial witnesses as provided to any non-settling Defendant. *Id.*

In consideration for these settlement benefits, DPPs and the proposed Certified Class agree to release certain Released Claims (as defined in the Settlement Agreement) against the Hormel Foods Released Parties (as defined in the Settlement Agreement). *See* Settlement Agreement ¶¶ 10, 14, 15. The release does not extend to any other Defendants or co-conspirators, or to unrelated claims for breach of contract, negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, or securities claims. *Id*. ¶¶ 14, 15.

The Settlement (with accrued interest) will be used to: (1) pay notice costs and costs incurred in the administration of the Settlement and distribution of Settlement; (2) pay taxes and tax-related costs associated with the escrow account for proceeds from the Settlement; (3) make a distribution to Class members in accordance with a proposed plan of distribution (to be filed in the future and approved by the Court); (4) pay any Court-awarded attorneys'

fees and expenses to Counsel for the Class (to be filed in the future and approved by the Court);[10] and (5) pay any Court-awarded service awards to the named Plaintiffs (to be filed in the future and approved by the Court). DPPs do not intend to distribute settlement proceeds to qualified Class members or to seek attorneys' fees from the Settlement at this time. In separate motions at appropriate dates in the future, DPPs will move the Court to approve a plan to distribute net settlement proceeds, and will move the Court for an award of attorneys' fees, costs, and service awards to the named Plaintiffs.

In sum, the Settlement Agreement: (1) is the result of extensive good faith negotiations between knowledgeable and skilled counsel; (2) was entered into after extensive factual investigation and legal analysis; and (3) in the opinion of experienced class counsel, is fair, reasonable, and adequate. Based on both the monetary and non-monetary elements of the Settlement, Co-Lead Class Counsel believes the Settlement is in the best interests of the Class members and warrants the Court's approval. Pearson Decl. ¶ 15.

[10] DPPs have filed a motion requesting Court approval to replenish the DPPs' future litigation expense fund in an amount up to $1,460,600.00, which is 10 percent of the total amount of undistributed proceeds from the settlements with Seaboard ($9,750,000.00) and Hormel Foods ($4,856,000.00, and with the Seaboard settlement proceeds $14,606,000.00 total). ECF No. 2406. Class members had ample notice of this expense reimbursement request, and no Class member objected to the motion. *See* Schachter Decl. ¶ 15. DPPs may seek additional reimbursement of litigation expenses in the future, subject to a separate motion, notice, and court approval. *See* Pearson Decl. ¶ 12.

B. The Court-Approved Notice Plan Has Been Implemented and No Class Member Has Objected to the Settlement

The Court entered the Preliminary Approval Order on May 6, 2024, and approved sending notice of the proposed Settlement to the Class. ECF No. 2218. Pursuant to the Preliminary Approval Order, DPPs sent notice to all known Class members of the proposed Settlement and the fairness hearing to be held on September 19, 2024. The Claims Administrator, A.B. Data Ltd., using customer information obtained from Defendants, mailed 70,104 print notices and emailed 4,330 electronic notices to potential class members. *See* Schachter Decl. ¶¶ 7, 9. On a public website dedicated to this litigation, www.porkantitrustlitigation.com, the Claims Administrator also posted notice of the objection deadline (August 3, 2024) and many other case-related documents, including the full text of the Settlement Agreement, instructions on how to attend the Court's fairness hearing, instructions on how to object to the Settlement, and other details regarding the Settlement and the approval process. *Id*. ¶ 13. The Claims Administrator has also operated a toll-free telephone number to field Class member questions. *Id.* ¶ 14.

Importantly, and as explained in Section IV.A and B.4 below, no Class member has objected to the proposed Settlement. Pearson Decl. ¶ 14; Schachter Decl. ¶ 15.

On April 15, 2024, Hormel Foods notified the appropriate federal and state officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b), which requires that appropriate federal and state officials (in this case, the U.S. and state attorneys general) be notified of any proposed class action settlement. The statute provides that a court may not grant final approval to a proposed settlement sooner than 90 days after such notice is

served. The 90-day waiting period has long passed, and none of the notified federal or state officials have objected to or otherwise commented on the proposed settlement. Schachter Decl. ¶¶ 2-5.

IV. LEGAL ARGUMENT

A. The Court-Approved Notice Program Satisfies Due Process and Has Been Fully Implemented

When a proposed class action settlement is presented for court approval, the Federal Rules require "the best notice that is practicable under the circumstances," and that certain specifically identified items in the notice be "clearly and concisely state in plain, easily understood language." Fed. R. Civ. P. 23(c)(2)(B). A settlement notice is a summary, not a complete source, of information. *See, e.g.*, *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1153 (8th Cir. 1999); *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988).

The Notice Plan approved by this Court (*see* Preliminary Approval Order at 4-5)—which relies primarily on direct notice to Class members supplemented by publication notice—is commonly used in class actions like this one. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (quoting Fed. R. Civ. P. 23(c)(2)); Fed. R. Civ. P. 23(c)(2)(B). It constitutes valid, due, and sufficient notice to class members, and is the best notice practicable under the circumstances. The content of the Court-approved notice complies with the requirements of Rule 23(c)(2)(b). Both the summary and long-form notice clearly and concisely explained in plain English the nature of the action and the terms of the Settlements. *See* Schachter Decl. ¶ 10. The notices provided a clear description of who is

a member of the Class and the binding effects of Class membership. *Id.* They also explained how to exclude oneself from the Class, how to object to the Settlement, and how to contact Co-Lead Class Counsel. *Id.* The notices also explained that they provided only a summary of the Settlement, and that the Settlement Agreement, as well as other important documents related to the litigation, are available online at www.porkantitrustlitigation.com. *See id.* In addition, the information from that website, as well as the toll-free call-in number for the Settlements, were available in both English and Spanish. *See id.* ¶¶ 13, 14. Consequently, every provision of the Settlement was available to each Class member.

The Notice Plan was implemented by the Court-appointed settlement administrator, A.B. Data Ltd. (*See* Preliminary Approval Order at 4.) Specifically, using customer information obtained from Defendants, A.B. Data Ltd. mailed 70,104 print notices and emailed 4,330 electronic notices to potential class members. *See* Schachter Decl. ¶¶ 7, 9. A.B. Data Ltd. also published notice on multiple websites for 30 days, including Supermarket News (www.supermarketnews.com) and Nation's Restaurant News (www.nrn.com). *See id.* ¶ 12. In addition, A.B. Data Ltd. continues to maintain the case website, where Class members can view and print important documents and obtain other information related to the litigation. *See id.* ¶ 13. A.B. Data Ltd. also continues to maintain a toll-free call-in number to answer Class members' questions. *See id.* ¶ 14.

As this Settlement was on behalf of the Certified Class, and occurred after the last day to opt out of the Certified Class, no additional opportunity for Class members to opt out of the Settlement was provided. *See* Preliminary Approval Order at 3.

The Court set August 3, 2024, as the deadline for Class members to object to the Settlement. Preliminary Approval Order at 6. No Class member has objected to the proposed Settlement. Pearson Decl. ¶ 14; Schachter Decl. ¶ 15.

B. The Settlement Satisfies the Standard for Final Approval

Whether a proposed settlement should be approved is within the sound discretion of the district court, which should be exercised in the context of public policy strongly favoring the pretrial settlement of controversies, particularly in the context of class action lawsuits. *See MSK Eyes, Ltd. v. Wells Fargo Bank, N.A.*, 546 F.3d 533, 541 (8th Cir. 2008) (noting "strong public policy of encouraging settlement"); *Petrovic*, 200 F.3d at 1148 ("[S]trong public policy favors agreements, and courts should approach them with a presumption in their favor.") (internal citation omitted); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation[.]"); *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975) (approval of a settlement "is committed to the sound discretion of the trial judge").

Review of a proposed settlement generally proceeds in two stages: first, preliminary approval, followed by a fairness hearing on final approval. *See Manual for Complex Litigation*, § 21.632 (4th ed. 2004). Between preliminary and final approval, in this case the class was notified of the proposed settlement and given an opportunity to object to the settlement and to appear at the fairness hearing if they choose. This procedure safeguards class members' procedural due process rights and enables courts to fulfill their roles as

guardians of class interests. *See* 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions*, §§ 11.22, *et seq*. (4th ed. 2002).

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, before a class action may be settled, voluntarily dismissed or compromised, the court must determine whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(1)(A); *Van Horn v. Trickey*, 840 F.2d 604, 606 (8th Cir. 1988) (quoting *Grunin*, 513 F.2d at 123); *see also DeBoer v. Mellon Mortg. Co*., 64 F.3d 1171, 1176 (8th Cir. 1995). In determining whether a settlement is fair, reasonable, and adequate, courts in the Eighth Circuit examine a range of factors, which typically include: "(1) the merits of the plaintiff's case, weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement." *In re UnitedHealth Grp. Inc. Shareholder Derivative Litig*., 631 F. Supp. 2d 1151, 1156 (D. Minn. 2009). The court must also assess whether a proposed settlement is "within the range of possible approval due to an absence of any glaring substantive or procedural deficiencies." *Martin v. Cargill, Inc*., 295 F.R.D. 380, 383 (D. Minn. 2013).

This Court preliminarily approved the Settlement and now, DPPs respectfully submit, it should grant final approval.

1. <u>The Settlement was Negotiated at Arm's-Length and has the Support of Experienced Class Counsel</u>

"Before approving a class action settlement, the district court must reach a reasoned judgment that the proposed agreement is not the product of fraud or overreaching by, or collusion among, the negotiating parties[.]" *Ficalora v. Lockheed Cal. Co*., 751 F.2d 995,

997 (9th Cir. 1985); *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) ("[P]rior to approving settlement . . . the court must determine there has been no fraud or collusion in arriving at the settlement agreement[.]").

If a settlement is negotiated at arm's length, there is a presumption that the settlement is procedurally sound. *See, e.g.*, *In re UnitedHealth Grp. Inc. Shareholder Derivative Litig.*, 631 F. Supp. 2d at 1158 ("Where sufficient discovery has been provided and the parties have bargained at arms-length, there is a presumption in favor of the settlement.") (quoting *City P'ship Co. v. Atlantic Acquisition Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996)). Indeed, courts consistently find that the terms of a settlement are appropriate where the parties, represented by experienced counsel, have engaged in extensive negotiation at an appropriate stage in the litigation and can properly evaluate the strengths and weaknesses of the case and the propriety of the settlement. *See, e.g., In re Employee Benefit Plans Sec. Litig.*, No. 3-92-708, 1993 WL 330595, *5 (D. Minn. June 2, 1993) (noting that "intensive and contentious negotiations likely result in meritorious settlements . . . ."); *In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958, 2013 WL 716088, at *6 (D. Minn. Feb. 27, 2013) (observing that "[s]ettlement agreements are presumptively valid, particularly where a 'settlement has been negotiated at arm's-length, discovery is sufficient, [and] the settlement proponents are experienced in similar matters . . . .'") (citation omitted).

Here, there is no dispute that the proposed Settlement is the product of extensive, arm's length negotiations. *See* Section III.A above. The parties have had ample opportunity to assess the merits of DPPs' claims and Hormel Foods's defenses through investigation,

research, settlement discussions and contested motion practice, and to balance the value of Class members' claims against the substantial risks and expense of continuing litigation. *See* Pearson Decl. ¶¶ 8-9.

Further, "[t]he court is entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement." *In re Employee Benefit Plans Sec. Litig.*, 1993 WL 330595, *5 (citation omitted); *see also Welsch v. Gardebring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987) (affording "great weight" to opinions of experienced counsel). Indeed, courts give substantial weight to the experience of the attorneys who prosecuted the case and negotiated the settlement. *Christina A. v. Bloomberg*, No. Civ. 00-4036, 2000 WL 33980011, *4 (D.S.D. Dec. 13, 2000) ("The Court attributes significant weight to Plaintiffs' attorney's assertion that the Settlement Agreement is fair, reasonable and provides significant benefits to the Plaintiff class. Indeed, Plaintiffs' lead attorney . . . based this assertion on his 22 years of experience in this field and his participation in similar cases in 15 other states."). Co-Lead Counsel's approval of a settlement weighs in favor of the settlement's fairness. *E.E.O.C. v. Faribault Foods, Inc.*, Civ. Nos. 07-3976, 07-3986, 07-3977, 07-3985 (RHK/AJB), 2008 WL 879999, *4 (D. Minn. Mar. 28, 2008); *Varacallo v. Mass. Mut. Life Ins. Co*., 226 F.R.D. 207, 240 (D.N.J. 2005).

When, as here, experienced counsel represent the parties, and rigorous negotiations were conducted at arms' length, the judgment of the litigants and their counsel concerning the adequacy of the Settlement should be considered. *See Petrovic*, 200 F.3d at 1149; *DeBoer*, 64 F.3d at 1178. Co-Lead Class Counsel unequivocally believes the Settlement is

in the best interests of the Class members and should be approved by the Court. *See* Pearson Decl. ¶ 15.

2. The Settlement Provides Significant Relief to the Class

The Settlement Agreement with Hormel Foods provides substantial monetary and non-monetary relief to the Class and falls well within the range of possible approval. Hormel Foods has paid $4,856,000 into the interest-bearing Settlement Fund. *See* Pearson Decl. ¶ 3. This payment removes any concerns about the ability to pay the settlement amount. *See In re UnitedHealth Grp. Inc. Shareholder Derivative Litig*., 631 F. Supp. 2d at 1156. In addition to the payment of money, the Settlement permits DPPs to pursue their claims against the remaining Defendants. *See* Settlement Agreement ¶ 3. This consists of assisting DPPs with authenticating documents for trial and providing DPPs the same access to potential trial witnesses as provided to any non-settling Defendant. *Id.* This agreement is significant because pursuant to the Sherman Act, the remaining Defendants are jointly and severally liable for any damages resulting from Hormel Foods's Pork sales to DPPs during the Class Period, *see Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 646 (1981); *Paper Sys. Inc. v. Nippon Paper Indus. Co.*, 281 F.3d 629, 633 (7th Cir. 2002), and nothing in the Settlement Agreement changes that. Thus, this agreement will assist Plaintiffs in maximizing their claims against the remaining Defendants.

3. The Settlement Eliminates Significant Risk to a Class Facing Complex, Lengthy and Expensive Litigation

Courts consistently hold that the complexity, expense and likely duration of litigation are all factors supporting approval of a settlement. *See, e.g.*, *In re Corrugated*

Container Antitrust Litig., 643 F.2d 195, 217 (5th Cir. 1981). In particular, "antitrust cases, by their nature, are highly complex." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 122 (2d Cir. 2005), *cert. denied*, 544 U.S. 1044 (2005); *In re Shopping Carts Antitrust Litig*., MDL No. 451, 1983 WL 1950, *6 (S.D.N.Y. Nov. 18, 1983) ("[A]ntitrust price fixing actions are generally complex, expensive and lengthy.").

This case is no different. While the DPPs believe their case is strong, the Settlement eliminates significant risks they would face if they continued to litigate against Hormel Foods, including the complexity, length and expense of these types of litigations. Indeed, as reflected in the extensive docket, this case is more than six years old, and the DPPs have expended significant effort to defeat motions to dismiss, conduct extensive discovery, litigate class certification, and plan and prepare for trial. The Settlement allows Class members to recover a significant sum from one of the smaller Defendants and allow the DPPs to pursue the case against the remaining Defendants. Absent settlement, the DPPs would need to defeat Hormel Foods's motion for summary judgment, go to trial, and bear the burden of establishing liability, impact and damages before obtaining any recovery from Hormel Foods. *See, e.g.*, *Wal-Mart Stores*, 396 F.3d at 118 ("'Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.'") (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998)). Continued litigation against the remaining Defendants, absent future settlements, will involve significant additional expenses and protracted legal battles.

Therefore, the complexity, length and expense of further litigation, which the Settlement eliminates as to Hormel Foods, also favor final approval.

4. Class Members Support the Settlement

As discussed in Section IV.A, A.B. Data Ltd. implemented the Notice program as Ordered by this Court. *See* Preliminary Approval Order at 4-5. Both the mailed notice and the case website informed Class members of the terms of the Settlement and the August 3, 2024 deadline for objections. Preliminary Approval Order at 6. No Class member has objected. *See* Schachter Decl. ¶ 15.

That no Class member has objected is an impressive result for a settlement of this prominence and for such a class of sophisticated businesses and individuals. The Class's overwhelming affirmation strongly supports the fairness and reasonableness of the Settlement. *See, e.g.*, *Wal-Mart Stores*, 396 F.3d at 118 ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 378 (D.D.C. 2002) (finding that "the settlement group's reaction to this settlement has been overwhelmingly positive and supports approval" and that "[t]he existence of a relatively few objections certainly counsels in favor of approval"); *In re Rambus Inc. Derivative Litig.*, No. C 06-3513, 2009 WL 166689, *3 (N.D. Cal. Jan. 20, 2009) ("The reaction of the class to the proffered settlement . . . is perhaps the most significant factor to be weighed in considering its adequacy . . . .") (internal quotations and brackets omitted).

V. CONCLUSION

For the reasons set forth herein, Co-Lead Class Counsel respectfully request that the Court grant final approval to the Hormel Foods Settlement Agreement.

Date: September 5, 2024

/s/ Michael H. Pearson

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UNITED STATES DISTRICT COURT
DISTRICT COURT OF MINNESOTA

IN RE PORK ANTITRUST LITIGATION This Document Relates To: THE DIRECT PURCHASER PLAINTIFF ACTION	Case No. 18-cv-01776 (JRT-JFD) **LOCAL RULE 7.1(f) WORD COUNT COMPLIANCE CERTIFICATE**

I, Michael H. Pearson, certify that the Memorandum of Law in Support of Motion for Final Approval of the Class Action Settlement Between Direct Purchaser Plaintiffs and Hormel Foods Corporation complies with Local Rule 7.1(f).

This Memorandum contains 4,849 words and was prepared using Microsoft Word, which includes all text, including headings, footnotes, and quotations.

Dated: September 5, 2024

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