

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RICHARD DENNIS and PORT 22, LLC, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THE ANDERSONS, INC., and CARGILL,
INC., and JOHN/JANE DOES NOS. 1-50
Defendants.

Case No.: 1:20-cv-4090

Honorable Robert W. Gettleman
Magistrate Judge Keri L. Holleb Hotaling

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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Plaintiffs Richard Dennis and Port 22, LLC (“Plaintiffs”) respectfully submit this memorandum of law in support of their unopposed motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for entry of the Proposed Order of Final Approval of Settlement and Final Judgment and Proposed Order Approving Distribution Plan.¹

I. INTRODUCTION

After more than five years of hard-fought litigation, Plaintiffs have resolved all claims against Defendants Cargill, Incorporated (“Cargill”) and The Andersons, Inc. (“TAI,” and together with Cargill, “Defendants”) and secured \$10,000,000 in non-reversionary all-cash payments for the benefit of the Class. The Court preliminarily approved the Settlement on July 14, 2026.

Since the Court granted preliminary approval on July 14, 2026, the Settlement Administrator has begun distributing direct and paid media notice to Class Members according to the schedule in the approved Notice Plan described in the Declaration of Elaine Pang (ECF No. 285-3) (“Pang Decl.”). While the deadline to object is September 28, 2026, no Class Members have objected to date, which is a positive indication of the Class’s support.

Procedurally, the Settlement is the result of months of arm’s-length negotiations between experienced counsel. Based on their five-plus-year prosecution of this Action and extensive experience in similar cases, Class Counsel believe that the Settlement is in the best interest of the Class and recommend that the Court grant final approval, approve the Distribution Plan, and enter

¹ Unless otherwise noted, capitalized terms not defined herein have the same meaning as in the Stipulation and Agreement of Settlement with Cargill, Incorporated and the Stipulation and Agreement of Settlement with The Andersons, Inc. dated May 27, 2026 (together, the “Stipulations”), attached as Exhibits 1 and 2 to the Joint Declaration of Raymond P. Girnys and Anthony F. Fata dated May 28, 2026 (ECF No. 285). Unless otherwise noted, internal citations and quotation marks are omitted, and ECF citations are to the docket in this Action. Unless otherwise noted, references to “Joint Decl.” or “Joint Declaration” refer to the Joint Declaration of Raymond P. Girnys and Anthony F. Fata in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement and Class Counsel’s Motion for an Award of Attorneys’ Fees, Award of Expenses, and Request for Service Awards to Class Representatives dated August 31, 2026, submitted herewith.

Final Judgment dismissing the claims against Defendants with prejudice.

The Settlement is also substantively fair, reasonable, and adequate. If Class Counsel had not secured the Settlement in this complex matter, the Class may have had to wait years for any monetary relief and may have received nothing at all. During the litigation, Plaintiffs successfully litigated numerous substantive motions and engaged in extensive discovery. *See* Joint Decl. ¶¶ 25-42. Nevertheless, there are substantial risks of continued prosecution of the claims in the absence of approval of the proposed Settlement. *Id.* ¶ 5. Class Counsel respectfully submits that the terms of the Settlement are fair, reasonable, and adequate. *See* Section III.B., *infra*. The Settlement satisfies the criteria for final approval under Rule 23 of the Federal Rules of Civil Procedure.

II. BACKGROUND

A. Overview of the Litigation

The lengthy history of this case is set forth in detail in the Joint Declaration. Plaintiffs allege that Defendants manipulated CBOT Wheat Futures and Options prices in violation of the Commodity Exchange Act (“CEA”), Sections 1 and 2 of the Sherman Antitrust Act, and the common law. After Defendants’ two fully-briefed motions to dismiss were denied, the Parties engaged in extensive fact discovery, including fact witness depositions. *See* Joint Decl. ¶ 26. The Parties then disclosed the opinions of competing experts. *Id.* ¶ 29. On May 7, 2025, the Court certified the Class, appointed Richard Dennis and Port 22 as class representatives, and appointed Lowey and Kirby as Class Counsel. *Id.* ¶ 36. After Defendants’ Rule 23(f) petition to the Seventh Circuit and petition for *en banc* review were denied, the case returned to this Court. *Id.* ¶¶ 37-41. The Court-approved Notice of Pendency of Class Action went to potential Class Members. *Id.* ¶ 42. The Parties commenced merits expert discovery, and Plaintiffs served their opening merits expert report on September 19, 2025. *Id.* ¶ 44. The deadline for Class Members to exclude

themselves from the Class passed on February 3, 2026. Class Counsel received three requests for exclusion from related corporate entities. *Id.* ¶ 43.

B. Overview of the Settlement

Plaintiffs and Cargill reached a settlement in principle and executed a binding term sheet in November 2025. *See* Joint Decl. ¶ 49. The litigation proceeded against TAI alone. TAI served merits expert reports on December 19, 2025, and Plaintiffs served a rebuttal report on February 20, 2026. *Id.* ¶¶ 45-46. Plaintiffs and TAI reached a settlement in principle shortly thereafter. *Id.* ¶ 50. Class Counsel and TAI’s Counsel executed a binding term sheet on April 30, 2026. *Id.* ¶ 54. After the parties exchanged drafts, Class Counsel and Defendants’ Counsel executed the Stipulations on May 27, 2026. *Id.* ¶ 56. Plaintiffs moved for preliminary approval on May 28, 2026. *Id.* ¶¶ 56-57. Following a hearing, the Court granted preliminary approval of the Settlement on July 14, 2026. *Id.* ¶ 58. During the hearing, the Court ordered certain changes be made to the Long and Short Form Notices and Proof of Claim, which Class Counsel implemented. Plaintiffs will file a status report upon the completion of the Notice Plan on September 17, 2026, consistent with the Court’s order granting preliminary approval, *see* ECF No. 286.

C. Class Notice

Class Counsel and the Settlement Administrator, A.B. Data, Ltd. (“A.B. Data”), implemented a robust Notice Plan, which mirrored the notice plan the Court approved following class certification. *See* Joint Decl. ¶ 42. Since the notice period began, the Postcard Notice was mailed directly to 4,333 potential Class Members and other entities. Declaration of Jack Ewashko on Behalf of A.B. Data, Ltd. Regarding Notice Administration (“Ewashko Decl.” or the “Ewashko Declaration”) ¶ 8. To date, there have been no objections. *Id.* ¶ 16. The Class’s favorable reaction to the Settlement thus far confirms that this Court should finally approve it. The deadline to object to the Settlement and the Fee and Expense Application is September 28, 2026.

Direct Mail Notice. The Settlement Administrator sent direct mail notice, formatted as a postcard, to, *inter alia*, (i) “large traders” identified by the CME, (ii) CME clearing firm members who cleared CBOT SRW wheat futures contracts during the Class Period, (iii) futures commission merchants (“FCMs”) registered with the Commodity Futures Trading Commission (“CFTC”) as of December 31, 2017, and (iv) “regular for delivery” grain elevators certified by the CBOT during the Class Period. *See* ECF No. 285-3; *see also* Ewashko Decl. ¶ 4.

Paid Digital Media. The Settlement Administrator has arranged for digital advertisements to be placed on traders.com, the website of *Stocks & Commodities*, and in an email blast and e-newsletters to *Stocks & Commodities* newsletter subscribers. Ewashko Decl. ¶¶ 9-12.

Settlement Website and Toll-Free Information Line. The Settlement Administrator has created and maintained a case-specific website, www.2017CBOTWheatFuturesClassAction.com, which prominently displays the relevant deadlines and pertinent updates, describes Class Members’ rights and options, and provides access to all relevant Court documents, the Claim Form, and the Long Form and Short Form Notices. Ewashko Decl. ¶¶ 13-14.

Class Counsel and the Settlement Administrator confirm that the Notice Plan was implemented as described in Plaintiffs’ preliminary approval papers. Ewashko Decl. ¶ 4.

III. ARGUMENT

A. Judicial Policy Favors Settlement

Public policy strongly favors settlements in the federal courts, especially in complex class actions. *See, e.g., Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) (“Federal courts naturally favor the settlement of class action litigation.”); *Armstrong v. Bd. of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 312 (7th Cir. 1980) (“[T]he federal courts look with great favor upon the voluntary resolution of litigation through settlement.”).

B. The Settlement is Fair, Reasonable, and Adequate

Under the Federal Rules of Civil Procedure, class settlements must be “fair, reasonable, and adequate.” FED. R. CIV. P. 23(e). To determine whether a settlement is fair, reasonable, and adequate, courts consider whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

FED. R. CIV. P. 23(e)(2). Factors (A) and (B) constitute the “procedural” analysis factors and examine “the conduct of the litigation and of the negotiations leading up to the proposed settlement.” FED. R. CIV. P. 23 advisory committee’s note to 2018 amendment. Factors (C) and (D) constitute the “substantive” analysis factors and examine “[t]he relief that the settlement is expected to provide to class members[.]” *Id.* Additionally, Seventh Circuit precedent provides that:

[W]hen conducting a fairness determination relevant factors [for courts to consider] include: (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to the settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed.

Wong v. Accretive Health, Inc., 773 F.3d 859, 863 (7th Cir. 2014). Each factor under FED. R. CIV. P. 23(e)(2) and *Wong* supports final approval of the Settlement.

1. The Proposed Settlement is Procedurally Fair

a) Plaintiffs and Class Counsel Adequately Represented the Class

Rule 23 requires that “the class representatives and class counsel have adequately represented the class.” Fed. R. Civ. P. 23(e)(2)(A). “[A]t the final approval stage courts focus ‘on the actual performance of counsel acting on behalf of the class.’” *T.K. Through Leshore v. Bytedance Tech. Co.*, No. 19 Civ. 7915, 2022 WL 888943, at *11 (N.D. Ill. Mar. 25, 2022) (quoting FED. R. CIV. P. 23 advisory committee’s note to 2018 amendment). Courts may consider a number of factors when evaluating the adequacy of representation, including the “nature and amount of discovery,” which “may indicate whether counsel negotiating on behalf of the class had an adequate information base.” *Id.* Courts also assess whether the class representatives or their counsel have such conflicts of interest with the class such that counsel or the representatives may not act in the best interest of the class. *Johnson v. Meriter Health Servs. Emp. Ret. Plan*, 702 F.3d 364, 372 (7th Cir. 2012) (“Conflicts of interest . . . create an issue of adequacy of representation by requiring the class representative to choose between competing class members.”).

As the Court found in its order granting class certification, Plaintiffs and Class Members do not have antagonistic or conflicting claims. *See* ECF No. 237. In addition, Lowey and Kirby have vigorously and effectively prosecuted this action, including litigating multiple substantive motions, engaging in extensive discovery, and negotiating this Settlement for the Class. *See* Joint Decl. ¶¶ 12-58. Finally, the “nature and amount of discovery”—including thousands of pages of documents; eight depositions of Defendants’ witnesses, three expert depositions, depositions of each Defendant’s Rule 30(b)(6) designee, and three depositions of named plaintiffs; seven total expert reports; and written interrogatories—confirm that Class Counsel had an adequate information base when negotiating the Settlement. *See id.* ¶ 26.

b) The Settlement Resulted from Arm's-Length Negotiations

The primary focus of this factor is to ensure that the negotiations “were conducted in a manner that would protect and further the class interests.” FED. R. CIV. P. 23 advisory committee’s note to 2018 amendment. “Courts are thus expected to scrutinize proposed class settlement agreements for signs that the named plaintiff or class counsel settled on a final award that more adequately serves the interests of the defendant, the named plaintiff, or class counsel than it does the interests of absent class members.” *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 496 (N.D. Ill. 2015). No such signs exist with respect to the Settlement. Class Counsel and Defendants’ Counsel zealously advocated for their respective clients. The resulting Stipulations are the product of a genuinely adversarial process—executed only after extensive motion practice and discovery, as well as good-faith, arm’s-length negotiations between knowledgeable and skilled counsel. *See* Joint Decl. ¶¶ 12-58; *see also Kolinek*, 311 F.R.D. at 496 (approving settlement after finding, among other things, the parties engaged in vigorous litigation, including extensive motion practice, which provided evidence of non-collusive negotiations).

2. The Settlement is Substantively Fair

a) The Proposed Settlement is Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal

The Court must weigh the benefits afforded to the Class, including the immediacy and certainty of a recovery, against the significant costs, risks, and delay of proceeding with the litigation. *See* FED. R. CIV. P. 23(e)(2)(C)(i). This analysis overlaps with the *Wong* factors including, “the complexity, length and expense of further litigation.” *Armstrong*, 616 F.2d at 322.

The Settlement eliminates uncertainty and reduces delay. The Class will receive immediate, substantial, and definite relief, rather than facing the risk of an adverse summary judgment or jury verdict resulting in no recovery at all. *See Schulte v. Fifth Third Bank*, 805 F.

Supp. 2d 560, 582 (N.D. Ill. 2011) (“Absent settlement, Class Members would face the real risk that they would win little or no recovery. What is assured is that any victory would come only after many months (or years) of hard-fought litigation.”). Even if Plaintiffs prevailed after additional *Daubert* motions, summary judgment, decertification motions, trial, and appeals, there is no guarantee that the Class would have obtained a judgment greater than the \$10 million Settlement.

The complexity, length, and expense of the litigation to date further illustrate that continued litigation would not serve the interest of the Class. Antitrust and CEA claims are inherently difficult to litigate. *See In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 533 (E.D. Mich. 2003) (“Antitrust class actions are inherently complex”); *Arenson v. Bd. of Trade of Chi.*, 372 F. Supp. 1349, 1352 (N.D. Ill. 1974) (“It would be difficult to imagine litigation presenting issues of greater subtlety and complexity” than those involving commodity futures markets). Given the complexity of the issues presented and Defendants’ strong opposition to Plaintiffs’ claims, Class Counsel has expended a substantial amount of time and money in prosecuting the Action, as detailed in the Joint Declaration and each firm’s declaration. Much of Class Counsel’s expenses went to experts, who were indispensable in prosecuting the Action this far. *See* Joint Decl. ¶¶ 63, 84. Specifically, expert analysis was required to adequately plead Plaintiffs’ claims, support their motion for class certification, and begin the merits discovery phase. *Id.* ¶ 27. The remaining *Wong* factors each highlight that, on a substantive basis, this Settlement qualifies for approval:

i. The Strength of Plaintiffs’ Case Compared to the Proposed Settlement Favors the Settlement

In the Seventh Circuit, the most important factor with respect to a proposed class action settlement is “the strength of plaintiff’s case on the merits balanced against the amount offered in the settlement.” *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). While courts often “assess the net expected value of continued litigation” by quantifying

the range of possible outcomes, *Lucas v. Vee Pak, Inc.*, No. 12 Civ. 9672, 2017 WL 6733688, at *8 (N.D. Ill. Dec. 20, 2017), courts need not do so “where there are other reliable indicators that the settlement reasonably reflects the merits of the case.” *In re TikTok, Inc. Consumer Priv. Litig.*, 565 F. Supp. 3d 1076, 1087 (N.D. Ill. 2021) (quoting *Kaufman v. Am. Express Travel Related Servs. Co., Inc.*, 877 F.3d 276, 285 (7th Cir. 2017)); *see also Wong*, 773 F.3d at 864 (finding a district court’s failure to “quantify the net expected value of continued litigation” was not an abuse of discretion because “there were no ‘suspicious circumstances’”).

Such reliable indicators are present where, as here, the Settlement was reached through arm’s-length negotiations by experienced counsel, based on substantial discovery that facilitated Class Counsel’s analysis of the strengths and weaknesses of the case. Moreover, the amount of the Settlement is excellent by this Circuit’s standards, recovering an estimated 21.8% of the high end of estimated damages to 38.6% of the low end of estimated damages, while avoiding the prospects of further prolonged litigation and the possibility of receiving nothing. *See Schulte*, 805 F. Supp. 2d at 583 (accepting a settlement that represented “approximately 10%” of the class’s maximum potential recovery and recognizing that “[n]umerous courts have approved settlements with recoveries around (or below) this percentage”); *see also Shah v. Zimmer Biomet Holdings, Inc.*, No. 16 Civ. 815, 2020 WL 5627171, at *5 (N.D. Ind. Sept. 18, 2020) (noting that a settlement recovering 8% of maximum damages was a “superb result for the class”); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 634 (7th Cir. 2011) (affirming approval of settlement that awarded class members about 24.3% of their estimated maximum recovery); *Rensin, Tr. of Rensin Joint Tr. v. Array Digital Infrastructure, Inc.*, No. 23 Civ. 02764, 2025 WL 3079149, at *1 (N.D. Ill. Sept. 4, 2025) (granting final approval where \$7,750,000 settlement represented 11.9% of maximum damages in a securities matter). While Plaintiffs believe that they would have ultimately

prevailed if the Action had proceeded to trial, Defendants have raised credible arguments concerning, among other things, statutes of limitations defenses, damages, and intent that, if accepted, might have precluded recovery for the Class. In light of these risks, the Settlement Amount is well within the range of reasonableness, weighing in favor of final approval.

ii. The Reaction of the Class to the Settlement and Lack of Opposition to the Settlement Support Final Approval

The absence of opposition “indicates that the class members consider the settlement to be in their best interest.” *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 Civ. 2898, 2012 WL 651727, at *6 (N.D. Ill. Feb. 28, 2012). “Courts assess whether opposition levels are ‘low’ by comparing the number of objectors and opt-outs to the number of individuals reached by the notice plan.” *Charvat v. Valente*, No. 12 Civ. 5746, 2019 WL 5576932, at *6 (N.D. Ill. Oct. 28, 2019).

The deadline for Class Members to object to the Settlement is September 28, 2026. Class Counsel has received no objections to date in response to the 4,333 direct mail notices sent to potential Class Members or the extensive digital media notice provided. *See* Ewashko Decl. ¶¶ 8-16. The reaction of the Class thus far weighs in favor of final approval. Should any Class Member file an objection, Plaintiffs will address the arguments in their reply brief.

iii. Class Counsel Support the Settlement

Courts often defer to the judgment of experienced counsel, understanding that vigorous, skilled negotiation protects against collusion and advances the fairness interests of the class. FED. R. CIV. P. 23(e). *See, e.g., TikTok*, 565 F. Supp. 3d at 1091 (plaintiffs’ “well qualified” counsel attested to their belief that the settlement was fair, reasonable, and adequate); *Lucas*, 2017 WL 6733688, at *12 (plaintiffs’ counsel had relevant “extensive experience” and believed settlement to be in the best interest of the class). “What matters here is that ‘experienced counsel—particularly

counsel experienced in class action litigation—have reached’ the settlement ‘and are proposing it.’” *Bytedance*, 2022 WL 888943, at *16.

Class Counsel has extensive experience in class actions alleging violations of the CEA and federal antitrust law. *See* Girnys Decl. Ex. C and Fata Decl. Ex. E (Firm Resumes). Based on Class Counsel’s prior experience and their extensive investigations into the merits of Plaintiffs’ claims and the risks herein, Class Counsel respectfully submit that the proposed Settlement is fair, reasonable, and in the best interest of the Class.

iv. The Stage of the Proceedings and the Amount of Discovery Completed Confirm that the Settlement is Appropriate

This factor principally concerns the “nature and amount of discovery” taken at settlement, which “may indicate whether counsel negotiating on behalf of the class had an adequate information base.” FED. R. CIV. P. 23(e)(2)(A) advisory committee’s note to 2018 amendment. The stage of the proceedings and the discovery completed are “important” in determining whether a settlement is fair, reasonable, and adequate “because it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs’ claims.” *Armstrong*, 616 F.2d at 325.

Here, when the Parties negotiated this Settlement after more than five years of vigorous litigation, substantial discovery had been completed. This discovery included thousands of pages of documents and data, more than a dozen depositions, and seven expert reports. *See* Joint Decl. ¶¶ 25-26. Class Counsel was therefore fully aware of the merits of Plaintiffs’ claims and Defendants’ defenses based on the extensive factual record and substantive briefing.

b) The Proposed Method for Distributing Relief to the Class is Effective, and Class Members are Treated Equitably Under the Distribution Plan

Rule 23(e)(2)(C)(ii) evaluates the “effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” The methods of

processing claims should not be “so complex that they discourage class members from pursuing valid claims.” *Bytedance*, 2022 WL 888943, at *14. Additionally, Rule 23(e)(2)(D) requires courts to consider whether “the proposal treats class members equitably relative to each other.” FED. R. CIV. P. 23(e)(2)(D). “Generally, a settlement that provides for pro rata shares to each class member will meet this standard.” *Bytedance*, 2022 WL 888943, at *15; *see also Summers v. UAL Corp. ESOP Comm.*, No. 03 Civ. 1537, 2005 WL 3159450, at *2 (N.D. Ill. Nov. 22, 2005) (“Given that the settlement funds in the instant action will be disbursed on a pro rata basis to all class members, we find that the allocation plan is reasonable.”). Both requirements are satisfied here.

The Net Settlement Fund will be allocated to Class Members who submit valid Claim Forms in accordance with the Distribution Plan. The Settlement Administrator will process claims under Class Counsel’s guidance, allow claimants an opportunity to cure deficiencies or request Court review, and mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund after Court approval. The proposed Distribution Plan is based on Dr. Pirrong’s artificiality estimates and is similar to Distribution Plans used successfully across the federal courts. *See* Joint Decl. ¶ 66 (collecting cases). The Plan provides for distribution of 75% of the Net Settlement Fund based on *pro rata* “Recognized Suppression Loss” and 25% on the basis of *pro rata* transaction volume subject to a guaranteed minimum payment. *See* Joint Decl. ¶¶ 67-68. This system guarantees that Class Members are treated equitably and their claims can be calculated efficiently.

c) The Proposed Award of Attorneys’ Fees and Expenses Supports Final Approval

Under Rule 23(h), a court may award reasonable attorneys’ fees “that are authorized by law or by the parties’ agreement.” Rule 23(e)(2)(C)(iii) evaluates the “terms of any proposed award of attorney’s fees, including timing of payment.”

Here, the fact that approval of the requested attorneys' fees is separate from approval of the Settlement weighs in favor of final approval. *See Bytedance*, 2022 WL 888943, at *15 ("Most importantly, with respect to the Court's consideration of the Settlement's fairness, the approval of attorneys' fees remains entirely separate from approval of the Settlement"). Class Counsel seek an award of attorneys' fees of \$3,333,333.33 and an award of Class Counsel's expenses. As described more fully in connection with the Fee and Expense Application, the requested attorneys' fee is within the range of fees awarded in this Circuit. The expenses for which Class Counsel seeks an award were reasonably incurred and necessary for the prosecution of the case and therefore may be awarded. Finally, the proposed Service Award is within the range of awards granted by courts in this Circuit considering Plaintiffs' time and efforts to advance the litigation.

d) The Parties Have No Unidentified Additional Agreements That Impact the Adequacy of the Relief for the Settlement Class

Rule 23(e)(2)(C)(iv) evaluates "any agreement required to be identified under Rule 23(e)(3)." In addition to the Stipulations, the Parties entered into Supplemental Agreements, which gave Defendants the option to terminate the Settlement if the Court permitted a second opportunity for Class Members to opt out and if opt-outs exceeded certain thresholds. *See, e.g.,* Cargill Stipulation § 19 (ECF No. 285-1). Because the Court did not require a second opt-out opportunity, the Supplemental Agreements have no impact on the Settlement and this issue is moot.

C. Class Notice Comported with Rule 23 and Due Process

A notice program must satisfy both Rule 23(c)(2)(B) and Rule 23(e)(1). Rule 23(c)(2)(B) requires the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." However, neither individual nor actual notice to every class member is required. *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 665 (7th Cir. 2015) ("The rule does not insist on actual notice to all class members in all cases. It

recognizes it might be impossible to identify some class members for purposes of actual notice.”). Rule 23(e)(1)(B) similarly requires that the Court “direct notice in a reasonable manner to all class members who would be bound by the proposal.” FED. R. CIV. P. 23(e)(1)(B). As explained below, the Notice Plan here satisfies these requirements, comports with due process, and should be finally approved.

1. Notice Was the Best Practicable Under the Circumstances

As described in the Ewashko Declaration filed herewith, Class Notice is being provided to potential members of the Class by direct mail notice and paid media notice. Courts routinely approve notice programs that combine multiple means of distributing notice to potential members, such as this one. *See Mullins*, 795 F.3d at 665 (“When [individual notice] is not possible, courts may use alternative means such as notice through third parties, paid advertising, and/or posting in places frequented by class members, all without offending due process.”). Moreover, less than a year ago, the Court approved a substantially similar notice plan in connection with the notice to the Class that followed class certification. This notice of settlement comes on the heels of that first notice. The Court should similarly find the Notice Plan here adequate.

2. The Notice Plan Fairly Apprised Potential Settlement Class Members of the Settlements and Their Options Thereunder

Here, the Class Notice conveys the information required by Rule 23(c)(2)(B), including a plain language explanation of (a) the nature of the case, the claims and defenses, the Class definition, the background of the Settlement, and how the Settlement Funds will be allocated upon final approval; (b) the right to object to the Settlement and to appear at the Fairness Hearing, as well as the processes and deadlines for doing so; and (c) the binding effect of final judgment.

The Long Form and Short Form Notices also contain other important information for Class Members to evaluate the Settlement, such as Class Counsel’s intent to request attorneys’ fees, an

expense award, and Service Awards. The Notices prominently feature contact information for A.B. Data and Class Counsel, which Class Members can utilize to obtain further information. The Long Form Notice and Settlement Website also provide recipients with information on how to submit a Claim Form to be potentially eligible to receive a distribution from the Settlement.

Finally, the Settlement Website and a toll-free information line provide a means by which potential members of the Class can get more information regarding the Settlement, including key dates, access to important case documents, answers to their questions, and a Claim Form and an electronic filing template. The Class Notice form and procedures satisfy Rule 23 and due process.

D. The Court Should Appoint Huntington Bank as Escrow Agent

Plaintiffs request that The Huntington National Bank (“Huntington”) be appointed Escrow Agent. Huntington is a respected bank providing a broad range of services. Huntington has served as escrow agent in other class actions and should also be appointed as Escrow Agent here. *See, e.g., In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MD 2262, 2020 WL 6381829, at *3 (S.D.N.Y. Oct. 30, 2020).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval to the Settlement, grant final approval of the Distribution Plan, find that Class Notice comports with due process, and appoint Huntington as the Escrow Agent.

Dated: August 31, 2026

LOWEY DANNENBERG, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2026, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF parties of interest.

/s/ Anthony F. Fata
Anthony F. Fata