UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

IN RE PORK ANTITRUST LITIGATION	Case No. 18-cv-1776 (JRT/JFD)
This Document Relates To: COMMERCIAL AND INSTITUTIONAL INDIRECT PURCHASER PLAINTIFF ACTION	**Memorandum of Law in Support of Commercial and Institutional Indirect Purchaser Plaintiffs' Motion for Final Approval of the Class Action Settlement with Defendants Clemens Food Group, LLC and The Clemens Family Corporation**

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INTRODUCTION

The Commercial and Institutional Indirect Purchaser Plaintiffs ("CIIPPs") seek final approval of their settlement (the "Settlement") with Defendants Clemens Food Group, LLC and The Clemens Family Corporation ("Clemens"), as well as entry of judgment dismissing Clemens and retaining jurisdiction for implementation and enforcement of the Settlement Agreement.[1] The Settlement provides the CIIPPs with substantial monetary relief of $7,750,000.00, as well as non-monetary relief which will assist the CIIPPs in the pursuit of their claims against the remaining Defendants.

The Settlement provides excellent benefits to the CIIPPs, considering the alleged conduct and damages, and the litigation risks related to CIIPPs' claims against Clemens. The cash component is a reasonable compromise of the liability claims in comparison to the volume of commerce believed to be affected by Clemens' alleged conduct. The Settlement also reflects the value of receiving money and other benefits now, without needing to try the case against Clemens and waiting for final resolution of any potential appeals.

Notice of the Settlement, as required by Federal Rule of Civil Procedure 23, was provided through the notice plan the Court previously approved. (*See* Dkt. 3124). The

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[1] Unless otherwise set forth herein, capitalized terms in this memorandum that are defined in the Settlement Agreement between CIIPPs and Clemens shall have the same meaning as ascribed to them in the Settlement Agreement, Exhibit A to the Declaration of Shawn Raiter in Support of Motion for Preliminary Approval of the Class Action Settlement Between the Commercial and Institutional Indirect Purchaser Plaintiffs and Defendants Clemens Food Group, LLC and The Clemens Family Corporation (Dkt. 3048), and the Court's Order Granting Preliminary Approval of the Class Action Settlement Between Commercial and Institutional Indirect Purchaser Plaintiffs and Clemens Food Group, LLC and The Clemens Family Corporation (Dkt. 3072).

response from the members of the Certified Classes was uniformly positive. No Certified Class member objected to the Settlement, attorneys' fees, litigation expenses, or requests for class representative service awards. This is significant given that the Certified Classes include sophisticated businesses with their own counsel who can analyze the merits of the Settlement. The favorable reception of the Settlement provides good evidence that final approval should be granted, and final judgment be entered.

BACKGROUND

This class action alleges that Defendants[2] engaged in a supply-suppression conspiracy to artificially constrict the supply and raise the price of Pork in the domestic market of the United States. (*See* CIIPP's Fourth Consolidated and Amended Class Action Complaint (Dkt. 808)). The CIIPPs[3] allege that Defendants—through their co-conspirator, Agri Stats, Inc.—exchanged detailed, competitively sensitive, and closely guarded non-public information about price, capacity, sales volume, and demand. (*Id.* ¶ 2). The CIIPPs allege that Agri Stats provided highly sensitive "benchmarking" reports to most Pork integrators, thereby allowing competitors to compare their profits or performance against that of other companies. (*Id.* ¶ 3). The CIIPPs also allege the effect of this anti-competitive exchange of non-public

[2] Defendants in this action include Agri Stats, Inc.; Clemens Food Group, LLC and The Clemens Family Corporation; Hormel Foods Corporation and Hormel Foods, LLC; JBS USA Food Company; Seaboard Foods LLC; Smithfield Foods, Inc.; Triumph Foods, LLC; and Tyson Foods, Inc., Tyson Fresh Meats, Inc. and Tyson Prepared Foods, Inc.

[3] The CIIPP representative plaintiffs are: Sandee's Bakery; Francis T. Enterprises d/b/a Erbert & Gerbert's; Joe Lopez, d/b/a Joe's Steak and Leaf; Longhorn's Steakhouse; The Grady Corporation; Mcmjoynt LLC d/b/a The Breakfast Joynt; Edley's Restaurant Group, LLC; Basil Mt. Pleasant, LLC; Basil Charlotte, Inc.; Farah's Courtyard Deli, Inc.; and Tri-Ten LLC.

information allowed Pork integrators to control the supply and price of Pork. (*Id.*). The named CIIPPs allege that they and the class members paid artificially inflated prices for Pork during the Class Period. (Id. ¶ 7).

Unlike many civil antirust actions, these cases were started without the assistance of a leniency applicant under the Department of Justice's Corporate Leniency Program and without a formal antitrust investigation by the Department of Justice. Since filing their first complaint, the CIIPPs—along with the other plaintiff classes and certain Direct Action Plaintiffs—have continued their investigation and development of their case, resisted multiple rounds of dispositive motions, obtained certification of litigation classes, and negotiated multiple settlements.

This Settlement with Clemens occurred after years of adversarial litigation. Counsel was well-informed and reached the Settlement through arm's length and good-faith negotiations. It is the fifth settlement the CIIPPs have negotiated in this class action. In combination with the CIIPPs' earlier settlements with defendants JBS, Smithfield, Seaboard, and Hormel, this Settlement will bring the total monetary relief for CIIPPs to more than $66 million. (*See* Dkts. 1007, 1548, 2807, & 2809).

I. The Settlement Terms

The Settlement will provide substantial cash benefits: under the Settlement, Clemens will pay $7,750,000.00. The Settlement would, upon the Court's approval, also further benefit CIIPPs by being utilized to help fund litigation expenses incurred in trying the case against the non-settling Defendants. (*See* Dkts. 3138-3140). In addition to monetary relief, Clemens also agreed to certain non-monetary terms, including that it will assist with the authentication of

Clemens documents that CIIPPs may use at trial and will provide CIIPPs the same access to potential trial witnesses as provided to any non-settling Defendant. (*See* Settlement Agreement, ¶¶ 3b, 3c). Clemens also agrees that it will continue to comply with federal antitrust laws. (*Id.* ¶ 10).

II. The Notice Plan

The Court preliminarily approved the Settlement on June 13, 2025 (Dkt. 3072). Separately, the Court approved the CIIPPs' proposed notice plan for the Settlement. (Dkt. 3124). Pursuant to the Court's orders, the CIIPPs effectuated the notice plan through class action notice consultant Epiq Class Action & Claims Solutions, Inc. and Epiq Legal Noticing ("Epiq"). Through Epiq, under the direction of Cameron Azari—a nationally-recognized expert in the field of legal noticing—potential Certified Class members were mailed long-form notices that provided information about the Settlement. (*See* Declaration of Cameron Azari Regarding Implementation and Adequacy of Notice Program ("Azari Decl."), filed herewith). Epiq also sent long-form notices to email addresses associated with potential Certified Class members. (*Id.* ¶¶ 10-13). This multi-faceted notice program was intended to provide the best notice practicable under the circumstances and included:

- Individual Email Notice delivered to approximately 200,000 class members;
- Establishment of a Settlement Website and toll-free telephone number;
- Targeted Banner Notices on advertising networks *Google Display Network* and *Yahoo Audience Network*;
- Advertising on social media websites, including *Facebook* and *LinkedIn*;
- Sponsored search listings on the three most-visited search engines: *Google*, *Yahoo!*, and *Bing*; and
- An Information Release issued over PR newswire to approximately 13,000 general media (print and broadcast) outlets, including local and national newspapers, magazines, national wire services, television, and radio broadcast, as well as approximately 4,000 websites, online databases, internet networks, and social media

> networks, and also distributed to more than 690 journalists that report specifically on restaurants and the food industry.

(*See id.* ¶ 9). The notice plans "reached" approximately 76 percent of the potentially eligible class members with an average frequency of 2.0 times each. (*Id.*). Certified Class members were notified of the Settlement Website, which provided information and case-related documents such as the long-form notices, short-form notices, and the full text of the Settlement Agreements. (*Id.* ¶ 26). The Claims Administrator also provided instructions on how to attend the Court's fairness hearing, details on how to object to the Settlement, and other details regarding the Settlement and approval process. (*Id.*; *see also id.*, Attachment 2).

III. Class Member Reaction

The reaction to the Settlement Agreement was uniformly positive. No class member objected to any term of the Settlement. (Azari Decl. ¶ 33; *see also* Declaration of Shawn M. Raiter in Support of Commercial and Institutional Indirect Purchaser Plaintiffs' Motion for Final Approval of the Class Action Settlement with Defendants Clemens Food Group, LLC and The Clemens Family Corporation ("Raiter Decl."), ¶ 9, filed herewith).

LEGAL STANDARD

District courts review class action settlements to ensure that they are "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). "The policy in federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context." *White v. Nat'l Football League*, 822 F. Supp. 1389, 1416 (D. Minn. 1993); *see MSK Eyes, Ltd. v. Wells Fargo Bank, N.A.*, 546 F.3d 533, 541 (8th Cir. 2008); *accord UAW v. General Motors Corp.*, 497 F.3d 615, 632 (6th Cir. 2007) (federal policy favors settlement of class actions). Review of a proposed class-action settlement typically proceeds in two stages: preliminary approval and

final approval. *See Martin v. Cargill, Inc.*, 295 F.R.D. 380, 383 (D. Minn. 2013). Between preliminary and final approval, the class must be notified of the proposed settlement and be given an opportunity to object, opt out of the class, or be heard. 4 Newberg on Class Actions § 11.26.

District courts have "broad discretion in evaluating a class action settlement." *Van Horn v. Trickey*, 840 F.2d 604, 606-07 (8th Cir. 1988). In exercising this discretion, district courts give "great weight" to and may rely on the judgment of experienced counsel in the evaluation of a proposed settlement. *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 08-MDL-1958 (ADM/AJB), 2013 WL 716088, at *6 (D. Minn. Feb. 27, 2013). District courts adhere to "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval." 4 Newberg on Class Actions § 11.41 (4th ed. 2005) (collecting cases). "In examining a proposed compromise for approval or disapproval … the court does not try the case. The very purpose of compromise is to avoid the delay and expense of such a trial." *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975) (quotation omitted).

ARGUMENT

I. The Settlement is Fair, Reasonable, and Adequate.

The Settlement meets the criteria required for final approval under Rule 23 of the Federal Rules of Civil Procedure. It provides meaningful benefits and was reached after negotiations between experienced counsel who were armed with sufficient background about the merits of the claims and defenses to the claims asserted. The Settlement reflects a

reasonable compromise considering the liability, damages, and procedural uncertainties facing both the CIIPPs and Clemens.

In making the Rule 23(e) determination as to whether a settlement is fair, reasonable, and adequate, district courts consider several factors, including: the merits of the plaintiffs' case, weighed against the terms of the settlement; the defendant's financial condition; the complexity and expense of further litigation; and the amount of opposition to the settlement. *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 931 (8th Cir. 2005). District courts may also consider procedural fairness to ensure the settlement is not the product of fraud or collusion, *id.*, and may consider whether a settlement resulted from arm's length negotiations, *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995).

A. The Likelihood of Success on the Merits Weighed Against the Relief Offered in the Settlement Supports Final Approval.

The strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement, is an important consideration in determining whether a settlement is fair, reasonable, and adequate. *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150 (8th Cir. 1999). While the CIIPPs believe they have a strong case against Clemens on the merits, success is by no means guaranteed. The Settlement provides substantial monetary and non-monetary benefits. The fact of certain substantial monetary compensation and other benefits is significant to this factor because, even if the CIIPPs could potentially recover greater damages at trial, the non-settling Defendants remain jointly and severally liable for any damages resulting from Clemens' Pork sales to the CIIPPs during the Class Period. *See Texas Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 646 (1981); *see also In re Pressure Sensitive Lablestock Antitrust Litig.*, 584 F. Supp. 2d 697, 702 (M.D. Pa. 2008) ("[T]he benefit of obtaining the cooperation

of the Settling Defendants tend to offset the fact that they would be able to withstand a larger judgment.").

Co-Lead Counsel have investigated and analyzed, among other things, the strength of the liability claims, the volume of affected commerce, the value of the non-monetary benefits being provided, and the range of damage that could be proven at trial against Clemens. Counsel believe the Settlement is a positive outcome for the CIIPPs—it reflects both the strength of the CIIPPs' case and the risk that Clemens could prevail on at least some of their arguments. (*See* Raiter Decl., ¶¶ 3-4, 11) The Court may afford "great weight" to the opinions of experienced counsel. *See, e.g., Welsch v. Gardenbring*, 667 F. Supp. 1284, 1295 (D. Minn. 1987). This factor weighs in favor of final approval.

B. The Complexity, Expense, and Likely Duration of Continued Litigation Favor Final Approval.

The Court has had substantial opportunity to consider the claims and defenses in this litigation and knows that complex antitrust litigation of this scope has many inherent risks that the Settlement extinguishes. This case commenced several years ago, and it may continue for several more years, at significant additional expense, if litigated through an adversarial judgment and any appeals. Even then, "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." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) (quotation omitted), *cert. denied*, 544 U.S. 1044 (2005). This factor also weighs heavily in favor of final approval.

C. The Class Member Reaction Favors Final Approval.

The absence of negative reaction to a settlement favors approval. *In re UnitedHealth Grp., Inc. S'holder Derivative Litig.*, 631 F. Supp. 2d 1151, 1158 (D. Minn. 2009); *accord Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-19 (3d Cir. 1990) (holding that objections by about 10% of class "strongly favors settlement"); *see also TBK Partners, Ltd. v. W. Union Corp.*, 675 F.2d 456, 458, 462 (2d Cir. 1982) (approving settlement despite objections of large number of class). Here, notice of the Settlement was sent and published to potential Certified Class members, and no class member objected to any term of the Settlement. The lack of objection speaks loudly about the benefits of the Settlement. This factor favors final approval.

D. The Circumstances of the Settlement and the Judgment of Experienced Counsel Who Have Evaluated the Case Support Approval.

There are several other miscellaneous factors district courts consider in determining whether a settlement is fair, reasonable, and adequate. All of them support final approval. The experience and opinion of counsel on both sides may be considered in determining whether a settlement is fair, reasonable, and adequate. *DeBoer*, 64 F.3d at 1178. Also, where sufficient discovery has been conducted and the parties have bargained at arm's length, there is a presumption in favor of the settlement. *In re UnitedHealth Grp. Inc. S'holder Derivative Litig.*, 631 F. Supp. 2d at 1158; *see also In re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1959, 2013 WL 716088, at *6 (D. Minn. Feb. 27, 2013) ("Settlement 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.").

The Settlement is the result of extensive negotiations between counsel actively involved in and informed about the case. The judgment of counsel under these circumstances should

be considered. *See Petrovic*, 200 F.3d at 1149. Finally, the "absence of any glaring substantive or procedural deficiencies," in conjunction with the other factors considered, supports final approval. *Martin*, 295 F.R.D. at 383.

II. Notice of the Settlement was Proper Under Federal Rule of Civil Procedure 23 and Met Due Process Requirements.

The Court is required to "direct notice in a reasonable manner to all class members who would be bound by the [proposed settlement]." Fed. R. Civ. P. 23(e)(1). For Rule 23(b)(3) actions, "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

The notice of a class action settlement need only satisfy the broad "reasonableness" standards imposed by due process. *Petrovic*, 200 F.3d at 1153. A notice is adequate if "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). To satisfy due process, the notice must reflect a desire to inform. *Mullane*, 339 U.S. at 315. The mechanics of the notice process "are left to the discretion of the court subject only to the broad 'reasonableness' standard imposed by due-process." *Grunin*, 513 F.2d at 121. The notice plan should take reasonable steps to update addresses before mailing and provide for re-mailing of notices to better addresses when returned as undeliverable. *Jones v. Flowers*, 547 U.S. 220, 226–27 (2006).

The "best notice practicable" does not mean actual notice, nor does it require individual mailed notice where there are no readily available records of class members' individual

addresses or where it is otherwise impracticable. I*n re Zurn Pex Plumbing Prods. Liab. Litig.*, No. 08-MDL-1958 (ADM/AJB), 2012 WL 5055810, at *8 (D. Minn. Oct. 18, 2012); *see Smith v. SEECO, Inc.*, 965 F.3d 1021, 1025-26 (8th Cir. 2017) (stating that best notice practicable "is essentially an interest in due process"). Furthermore, in addition to United States mail, notice may be by electronic means or other appropriate means. Fed. R. Civ. P. 23(c)(2)(B).

A. There Were No Objections to the Notice Content or Plan.

No member of the Certified Classes objected to or criticized the notice program. (Azari Decl. ¶ 33). Through its class administrator, the notice plan was executed and reached an estimated 76% of potential class members. (*Id.* ¶ 9). As described more fully above, potential class members received information concerning all details of the Settlement, as well as information regarding their rights to object to the Settlement. The notice program easily satisfied the requirements of Rule 23 and due process.

B. Timing of CAFA Notices and Final Approval Order.

The Class Action Fairness Act ("CAFA") requires that appropriate federal and state officials (here, the United States and state attorneys general) be notified of any proposed class action settlement. 28 U.S.C. § 1715(b). The Court may not grant final approval to a proposed settlement until 90 days after such notice is served. *Id.* Clemens served the required notices on public officials on May 29, 2025, and none of the attorneys general have objected or requested an opportunity to be heard about the terms of the Settlement. (Dkt. 3059; *see also* Raiter Decl. ¶ 10). The requirements of 28 U.S.C. § 1715(b) have been met.

III. Certification of the Settlement Classes is Appropriate.

The Court granted the CIIPPs' motion for class certification and certified a damages class and an injunctive relief class on March 29, 2023. (Dkt. 1887; *see also* Dkt. 3072). When classes are certified before settlement—as happened in this case—the Federal Rules of Civil Procedure's Advisory Committee notes state that the only class certification issues at the settlement stage are "whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." Fed. R. Civ. P. 23(e)(1) Advisory Committee Note to 2018 amendment.

The Court certified almost identical classes before settlement, which allows it to incorporate its findings from the March 29, 2023 Order and address only the addition of Illinois as a Repealer Jurisdiction. (*See* Dkt. 3072); *see also* Fed. R. Civ. P. 23(e)(1) Advisory Committee Note to 2018 amendment. In this litigation, the Court previously approved an indirect purchaser class that included Illinois as a Repealer Jurisdiction. (*See id.*; *see also* Dkt. 1887 at 8 n.10). Before this Settlement was reached, an attorney from the Illinois Attorney General's Office contacted Co-Lead Counsel for the CIIPPs and indicated that their office viewed Illinois as a Repealer Jurisdiction and further indicated that their office would appear in this MDL to advocate, if necessary, for the inclusion of Illinois class members in settlements. (*See* Dkt. 3047 at 12-13). The CIIPPs therefore sought inclusion of Illinois as a Repealer Jurisdiction in the Settlement.

In its order preliminarily approving this Settlement, the Court incorporated its findings from its March 29, 2023 Order, approved the inclusion of Illinois as a Repealer Jurisdiction for this Settlement, and preliminarily certified the "Certified Classes" as defined in the

Settlement Agreement. (Dkt. 3072; *see also* Settlement Agreement ¶ 5). Accordingly, upon final approval of the Settlement, the Court should certify, for purposes of the Settlement, the Certified Classes as defined in the Settlement Agreement.

Conclusion

For the foregoing reasons, CIIPPs respectfully request that the Court: (1) grant final approval of the Settlement; (2) certify the Certified Classes for purposes of the Settlement; and (3) enter final judgment as to Clemens and retain jurisdiction for implementation and enforcement of the Settlement Agreement.

Dated: December 2, 2025

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UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

IN RE PORK ANTITRUST LITIGATION	Case No. 18-cv-1776 (JRT/JFD)
This Document Relates To: THE COMMERCIAL AND INSTITUTIONAL INDIRECT PURCHASER PLAINTIFF ACTIONS	**Local Rule 7.1(c) Certificate of Word Count Compliance**

I, Shawn M. Raiter, certify that the memorandum of law in support of Commercial and Institutional Indirect Purchaser Plaintiffs' motion for final approval of the class action settlement with Defendants Clemens Food Group, LLC and The Clemens Family Corporation complies with Local Rule 7.1(c).

I further certify that, in preparation of this memorandum, I used Microsoft Word for Office 365, and that this word processing program has been applied specifically to include all text, including headings, footnotes, and quotations in the following word count.

I further certify that the this memorandum contains 3,506 words.

Dated: December 2, 2025

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