UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE TURKEY ANTITRUST LITIGATION	No. 1:19-cv-08318
This Document Relates To: Commercial and Institutional Indirect Purchaser Plaintiffs' Action (1:20-cv-02295)	

MEMORANDUM IN SUPPORT OF COMMERCIAL AND INSTITUTIONAL INDIRECT PURCHASER PLAINTIFFS' MOTION FOR APPROVAL OF THEIR SETTLEMENT WITH DEFENDANTS TYSON FOODS, INC., TYSON FRESH MEATS, INC., TYSON PREPARED FOODS, INC., AND THE HILLSHIRE BRANDS COMPANY

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules

I. INTRODUCTION

The Commercial and Institutional Indirect Purchase Plaintiffs ("CIIPPs") through their Court appointed Settlement Class Counsel hereby seek final approval of their Settlement with Tyson Foods, Inc., Tyson Fresh Meats, Inc., Tyson Prepared Foods, Inc., and the Hillshire Brands Company (collectively "Tyson"). Under the terms of the Settlement Agreement, Tyson will pay the sum of 1,750,000 to the Settlement Class.[1] *See* Decl. of Alec Blaine Finley, Jr. in Supp. of Mot. ("Finley Decl.") ¶ 4.

In granting preliminary approval, the Court found the Settlement Agreement to be fair, reasonable, and adequate to the Settlement Class. *See* Order Granting Preliminary Approval (No. 1:20-cv-2295, Dkt. No. 196) ¶ 6. The Court also appointed Blaine Finley of Cuneo Gilbert & LaDuca, LLP and Sterling Aldridge of Barrett Law Group, P.A. as Settlement Class Counsel. *Id.* ¶ 7. Thereafter, the Court approved the CIIPPs' notice plan and authorized CIIPPs to utilize Epiq Class Action & Claims Solutions, Inc. ("Epiq") and Hilsoft Notifications ("Hilsoft") as the notice administrator for the settlement with Tyson, and ordered notice to be provided to the Settlement Class members. *See* Order Grant. Mot. for Approval of Notice Plan, Dkt. No. 206 ¶ 2, No. 1:20-cv-2295 (N.D. Ill. Oct. 4, 2021) (hereinafter referred to as "Order Granting Notice Plan").

Settlement Class Counsel, Epiq and Hilsoft have executed the Notice Plan in accordance with the Order Granting Preliminary Approval and the Order Granting Notice Plan. Finley Decl.

[1] The Settlement Class is defined as "All commercial and institutional purchasers in the United States and its territories that purchased turkey, once or more, other than directly from Defendants, entities owned or controlled by Defendants, or other producers of turkey, From January 1, 2010 to January 1, 2017. Excluded from the Nationwide Class are the Court and its personnel, and any Defendants and their parent or subsidiary companies." Order Grant. Com. and Inst.'l Indirect Purchaser Pltfs.' Mot. For Prelim. Approval of Proposed Settlement with Tyson Defs. and Provisional Certification of Settlement Class, Dkt. No. 196, No. 1:20-cv-2295 (N.D. Ill. July 28, 2021) (hereinafter referred to as "Order Granting Preliminary Approval").

¶ 5; *see also* Declaration of Cameron R. Azari ("Azari Decl."). This process has confirmed that the Settlement Agreement with Tyson is fair, reasonable, adequate and in the best interests of the Settlement Class. The Settlement Class has reacted positively to the Settlement Agreement. There have been no objections to the Settlement Agreement, and Settlement Counsel are aware of only one[2] request for exclusion from the Settlement Agreement. *See* Azari Decl. ¶ 32. Settlement Class Counsel do not intend to distribute proceeds from the Settlement Agreement to qualifying members of the Settlement Class at this time. Instead, they intend to use the settlement amount to: (1) pay taxes and tax-related costs associated with the escrow account for proceeds from the Settlement; and (2) fund costs and expenses in the prosecution of this matter in order to create value for Class Members via future settlements and verdicts.[3]

This Settlement provides $1,750,000 in relief as well as cooperation from Tyson to the Settlement Class members while eliminating the risk, uncertainty, and expense of continuing litigation, and preserving CIIPPs' right to obtain additional settlements or other recoveries from the numerous remaining Defendants in the litigation. Therefore, Settlement Class Counsel respectfully request that the Court grant final approval to the Settlement and enter final judgment.

II. BACKGROUND

CIIPPs are all commercial and institutional indirect purchasers of turkey that purchased

[2] The sole opt-out request is from is from Caesars Entertainment, which included in its request to be excluded from the Settlement Class 34 of its related affiliates and/or subsidiaries. These affiliates/subsidiaries are listed in Attachment 8 to the Azari Declaration and Exhibit A to the proposed order granting this motion.

[3] It is common for courts to award portions of settlement funds to pay for future litigation expenses. *See*, *e.g.*, *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) (noting that a partial "settlement provides class plaintiffs with an immediate financial recovery that ensures funding to pursue the litigation against the non-settling defendants"); *In re WorldCom, Inc. Sec. Litig.*, No. 02 CIV 3288, 2004 WL 2591402, at *22 (S.D.N.Y. Nov. 12, 2004) (creating $5 million fund for continuation of litigation against non-settling defendants).

turkey other than directly from a defendant or co-conspirator in the United States beginning at least as early as January 1, 2010 through January 1, 2017. *See* Second Am. Compl., Dkt. No. 133 at 1, No. 1:20-cv-2295 (N.D. Ill. Feb. 9, 2021).[4] They bring this action under Section 1 of the Sherman Act, as well as under a number of state law causes of action, seeking redress for alleged anticompetitive conduct by the leading Turkey suppliers in the United States. CIIPPs allege that Defendants and their Co-conspirators entered into an agreement that reduced or suppressed competition in the market for Turkey.

CIIPPs' filed this action on April 13, 2020. Compl., Dkt. No. 1, No. 1:20-cv-2295. With the exception of Defendant Kraft, the majority of CIIPPs' claims survived Defendants' motions to dismiss. *See* Mem. Op. and Order, Dkt. No. 88 at 1, No. 1:20-cv-2295 (N.D. Ill. Oct. 26, 2020).[5] CIIPPs subsequently amended their complaint (Am. Compl., Dkt. No. 91 (N.D. Ill. Nov. 16, 2020)), and shortly thereafter Defendants moved for judgement on the pleadings as to CIIPPs' unjust enrichment claims. Dkt. No. 108, No. 1:20-cv-2295 (N.D. Ill. Dec. 10, 2020). CIIPPs' claims were again sustained on nearly all counts, with only their Florida and North Dakota state law unjust enrichment claims being dismissed. *See* Mem. Op. and Order, Dkt. No 153 at 1, No.

[4] Consistent with the CIIPPs' Second Amended Complaint, the term "Turkey" is defined in the Settlement Agreement as "turkey meat, which may be sold in a variety of forms, including fresh or frozen, ground or parts, and raw or cooked. 'Turkey' includes, but is not limited to: breasts, wings, drums, legs, thighs, tenderloins, necks, tails, gizzards, feet, trim, tenders, mechanically separated turkey ('MST'), ground turkey, and further processed and value added turkey products. Turkey includes, but is not limited to, products containing turkey such as lunch meat, deli meat, sausage, franks, bacon, and corn dogs." *See* Long-Form Settlement Agreement Between Com. and Inst.'l Indirect Purchaser Pltfs. and Tyson Foods, Dkt. No. 190-1 ¶ 1(c), No. 1:20-cv-2295 (N.D. Ill. July 6, 2021) (hereinafter "Settlement Agreement").

[5] CIIPPs' Utah state antitrust claim and their Arkansas consumer protection claim were both dismissed with prejudice, and CIIPPs' unjust enrichment claims were dismissed without prejudice. *Id.* CIIPPs' also voluntarily withdrew their Missouri and Rhode Island consumer protection claims, and therefore those claims were likewise dismissed. *See id.* n.3.

1:20-cv-2295 (N.D. Ill. Mar. 15, 2021).

On July 28, 2021, the Court granted CIIPPs' Motion for Preliminary Approval of Proposed Settlement with Tyson Defendants and Provisional Certification of Settlement Class, certified the Settlement Class, appointed Settlement Class Counsel for the CIIPPs, and appointed Epiq and Hilsoft as the notice and claims administrator. *See* Order Granting Preliminary Approval, Dkt. No. 196. Thereafter, the Court approved CIIPPs' proposed Notice Plan. *See* Order Granting Notice Plan, Dkt. No. 206. Settlement Class Counsel along with their co-counsel for CIIPPs continue to vigorously prosecute CIIPPs' claims in this litigation. Finley Decl. ¶ 7.

III. SUMMARY OF THE SETTLEMENT AGREEMENT

CIIPPs reached the Settlement Agreement with Tyson after hard-fought, arm's-length negotiations. *See* Finley Decl. ¶ 8; *see also* Settlement Agreement at 2. Tyson has agreed to pay $1,750,000 into escrow for the benefit of the Settlement Class and to cooperate with CIIPPs in their ongoing investigation and prosecution of their claims. *See* Settlement Agreement ¶¶ 9–10. Tyson's cooperation includes providing CIIPPs with (a) documents and data related to Tyson's sales of Turkey during the relevant time period, (b) documents from two mutually agreed-upon document custodians responsive to the parties' agreed upon search terms, (c) direct communications between competitors relating Turkey from two mutually agreed-up document custodians, (d) any documents it produces to any other party in connection with this litigation, including any documents it produced to a State Attorney General or the U.S. Department of Justice regarding an investigation into the Turkey industry, and (e) any information or proffers given to any plaintiff in matters substantially similar to this one. *See id.* ¶10.

In consideration, CIIPPs and the proposed Settlement Class agree, among other things, to release claims against Tyson that were, or could have been, brought in this litigation arising from

the conduct alleged in the Complaint. The release does not extend to any other Defendants. *See* Settlement Agreement ¶¶ 14–15.

Subject to the approval and direction of the Court, the settlement amount (with accrued interest) will be used to: (1) pay taxes and tax-related costs associated with the escrow account for proceeds from the Settlement; and (2) fund costs and expenses in the prosecution of this matter in order to create value for Class Members via future settlements and verdicts.[6] Settlement Class Counsel do not intend to request legal fees in connection with the Tyson settlement. Instead, subject to final approval by the Court, the settlement funds will be used to pay for, *inter alia*, the substantial expert witness fees that are expected to be incurred in prosecuting this action on behalf of the CIIPPs, with the aim of generating future verdicts and settlements benefitting the CIIPP class.[7]

IV. THE SETTLEMENT MEETS THE LEGAL STANDARD FOR FINAL APPROVAL

There is an overriding public interest in settling litigation, and this is particularly true in class actions. *See* *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation.").[8] Class action settlements minimize the litigation

---

[6] Pursuant to the Settlement Agreement and this Court's Order Granting Preliminary Approval, Settlement Class counsel have been authorized to pay notice costs and costs incurred in the administration and distribution of the Settlement out of the Settlement Fund. *See* Settlement Agreement ¶ 6(c); Order Granting Preliminary Approval ¶ 14.

[7] At this time CIIPPs are not seeking to distribute the Tyson settlement amount to qualified class members or seek an award of attorneys' fees. Settlement Class Counsel intend to defer such motions until later in the litigation. CIIPPs are seeking an award for costs and expenses incurred thus far in the litigation. Finley Decl. ¶ 6.

[8] *See also* *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888–89 (7th Cir. 1985) (noting that there is a general policy favoring voluntary settlements of class action disputes); *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 312 (7th Cir. 1980), *overruled on other grounds by* *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) ("It is axiomatic that the federal courts look with great favor upon the voluntary resolution of litigation through settlement.").

expenses of the parties and reduce the strain such litigation imposes upon already scarce judicial resources. *Armstrong*, 616 F.2d at 313.

Any dismissal, compromise, or settlement of a class action is subject to court approval. Rule 23 jurisprudence has led to a defined procedure and specific criteria for class action settlement approval, namely: certification of a settlement class and preliminary approval of the proposed settlement; dissemination of notice of the settlement to all affected class members, including an opportunity to object to the proposed settlement; and a fairness hearing at which class members may be heard regarding the settlement, and counsel may present evidence, and argument concerning the fairness, adequacy, and reasonableness of the settlement. *See* 4 Newberg on Class Actions, §§ 13:39, *et seq*. Final Judicial Approval of Proposed Class Action Settlements (5th ed.). All class members must be given notice of the proposed settlement in the manner the court directs. Fed. R. Civ. P. 23(e). This procedure safeguards class members' due process rights and enables the court to fulfill its role as the guardian of class interests. *See id.*

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

The Court-approved Notice Plan for this Settlement has been successfully implemented and Settlement Class members have been notified of the Settlement. Finley Decl. ¶ 5. 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 certain specifically identified items in the notice be "clearly and concisely state[d] 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); *Mangone v. First USA Bank*, 206 F.R.D. 222, 233 (S.D. Ill. 2001).

The Notice Plan approved by this Court (*see* Order Granting Notice Plan)—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)); *City of Greenville v. Syngenta Crop Prot. Inc.*, No. 3:10-cv-188, 2012 WL 1948153, at *4 (S.D. Ill. May 30, 2012) (same); 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 both the Long Form Notice and direct email notice complies with the requirements of Rule 23(c)(2)(B). Both notices clearly and concisely explain the nature of the action and the terms of the Settlement using plain language. *See* Azari Decl. ¶¶ 33-36. The Long Form Notice provided substantial information to the Settlement Class, including a summary page, which provided a concise overview of the important information and a table, which highlighted key options available to the Settlement Class. *Id.* ¶ 36. A table of contents, categorized into logical sections, helped to organize the information, while a question-and-answer format made it easy to find answers to common questions by breaking the information into simple headings. *Id.* The direct email notice likewise provides a clear description of who is a member of the Settlement Class and the binding effects of Class membership. Azari Decl., Attachment 2 at 1. It also explains how to exclude oneself from the Settlement Class and how to object to the Settlement. *Id.* at 1-2. The direct email notice also explains that it provides only a summary of the settlement, and that more details regarding the settlement are available on the settlement website. *Id*. at 2.

The Notice Plan was implemented by the Court appointed notice administrators Epiq and Hilsoft. A settlement website was established, www.TurkeyCommercialCase.com, and allows members of the Settlement Class to obtain detailed information about the case and review key

documents, including the Second Amended Complaint, Long Form Notice, Settlement Agreement, Motion for Preliminary Approval, Preliminary Approval Order and Notice Order, as well as answers to frequently asked questions. Azari Decl. ¶ 27. As of February 2, 2022, there have been 27,005 unique visitor sessions to the website. *Id.* ¶ 28. Direct email notice was provided to approximately 118,711 class members, and included a summary of the settlement with a link to the settlement website, whereby recipients were able to access the Long Form Notice, Settlement Agreement and other information about the settlement. *See id.* ¶ 13; *see also* Attachment 2 to the Azari Decl. Additionally, the notice plan included internet Banner notices, which received a combined total of more than 200.2 million targeted impressions. *Id.* ¶ 21; *see also* Attachment 3 to the Azari Decl. Clicking on a Banner notice linked the reader to the settlement website, allowing them to easily obtain more detailed information about the case. *Id.* Sponsored internet search listings were also displayed 24,924 times and resulted in over 701 clicks to the settlement website. *Id.* ¶ 24. Examples of the sponsored search listing as displayed on each search engine is included as Attachment 5 to the Azari Declaration. The notice also reached class members via PR Newswire to approximately 5,000 general media outlets and approximately 4,500 websites, and included the address of the settlement website and the toll-free telephone number. *Id.* ¶ 24. This informational release is attached as Exhibit 6 to the Azari Declaration. Relatedly, the toll-free telephone number established to allow members of the Settlement Class to call for additional information and listen to answers to frequently asked questions had handled 19 calls representing 62 minutes of use. *Id.* ¶¶ 29-30.

Epiq also made itself available to receive requests for exclusion or objections to the Settlement. Azari Decl. ¶ 32. The deadline to request exclusion from the Settlement or to object to the Settlement was January 4, 2022, and as of February 2, 2022, Epiq is not aware of any objections

to the Settlement and has only received one request for exclusion from the Settlement.[9] *Id.* Attachment 7 to the Azari Declaration identifies the sole request for exclusion and the only valid opt-out received by Epiq.

B. Final Approval Should Be Granted Because the Settlement is Fair, Reasonable and Adequate.

The standard for final approval of a class action settlement is whether the settlement is fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e); *Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002); *Isby*, 75 F.3d at 1198–99. There is an overriding public interest in settling litigation, and this is particularly true in class actions. *See Isby*, 75 F.3d at 1196 ("Federal courts naturally favor the settlement of class action litigation."); *accord Redman v. RadioShack Corp.*, No. 11-C-6741, 2014 WL 497438, at *3 (N.D. Ill. Feb. 7, 2014); *Armstrong*, 616 F.2d at 312–13. Class action settlements minimize the litigation expenses of the parties and reduce the strain such litigation imposes on already scarce judicial resources. *See Armstrong*, 616 F.2d at 313.

Evaluation and approval of a class action settlement are committed to the discretion of the court. *See Isby*, 75 F.3d at 1197. The proper focus "is upon 'the general principles governing approval of class action settlements' and not upon the 'substantive law governing the claims asserted in the litigation.'" *Id.* (quoting *Armstrong*, 616 F.2d at 315). As a part of the court having wide latitude in making its determination, there is "no requirement that an evidentiary hearing be conducted as a precondition to approving a settlement in a class action suit." *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994).

[9] The sole opt-out request is from Caesar's Entertainment, which included in its request to be excluded from the Settlement Class 34 of its related affiliates and/or subsidiaries. These affiliates/subsidiaries are listed Exhibit A to the proposed order granting this motion.

Courts typically consider the following factors when evaluating the fairness of a proposed class action settlement: (1) the strength of plaintiffs' case compared to the amount of defendants' settlement offer; (2) an assessment of the likely complexity, length, and expense of the litigation; (3) an evaluation of the amount of opposition to the settlement among affected parties and the response of the class members; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed at the time of settlement. *See* *Isby*, 75 F.3d at 1198–99.

In addition, there is an initial presumption that a proposed class action settlement is fair, reasonable, and adequate when the settlement was the result of arm's-length negotiations. *See* 4 Newberg on Class Actions, § 13:43 Presumptions governing approval process—Generally (5th ed.); *Great Neck Cap. Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002); *see also* *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution[.]") Here, the Court already found that a number of these facts were satisfied in granting preliminary approval to this Settlement (*see generally* Order Granting Preliminary Approval), but the Class members themselves had yet to be heard. Now that Class members have received notice and have had an opportunity to be heard, their reaction has been extremely favorable (*see* Section IV.B.3 *infra*). Thus, each of these factors support granting final approval to this Settlement, which was the production of extensive arm's-length negotiations.

1. The Settlement Provides a Substantial Recovery to the Settlement Class.

As the Seventh Circuit has recognized, "[i]n complex litigation with a plaintiff class, 'partial settlements often play a vital role in resolving class actions.'" *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247 (7th Cir. 1992) (quoting Part A Manual for Complex Litigation Second,

Moore's Federal Practice § 30.46 (1986)). Here, the consideration from Tyson for the Settlement (i.e., $1,750,000 as well as meaningful cooperation) is significant and will play a vital role in resolving this class action. Further, the Settlement allows CIIPPs to continue prosecuting their case against the remaining Defendants, and will enable CIIPPs to maximize their recovery from those Defendants. As such, this "icebreaker" Settlement for the CIIPPs constitutes an excellent recovery for the Class, falls well within the range of possible approval, and should be granted final approval by the Court.

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

While CIIPPs believe their case is strong, the Settlement eliminates significant risks that they would face if the case were to proceed against Tyson, including the complexity, length, and expense associated with this type of litigation. The Settlement allows Class members to recover a significant sum from one of the Defendants that will undoubtedly put pressure on, and allow the CIIPPs to maximize future recoveries from, the remaining Defendants. Absent settlement, CIIPPs would need to successfully obtain class certification, go to trial, and bear the burden of establishing liability, impact, and damages before obtaining any recovery from Tyson. *See, e.g.*, *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("'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, 476 (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 mitigates at least as to Tyson, also favor final approval. *See* *Larsen v. Trader Joe's Co.*, No. 11-cv-05188, 2014 WL 3404531, at *4 (N.D. Cal. July 11, 2014)

("Avoiding such unnecessary and unwarranted expenditure of resources and time would benefit all parties, as well as conserve judicial resources . . . . Accordingly, the high risk, expense, and complex nature of the case weight in favor of approving the settlement.") (citation omitted); *In re Lawnmower Engine Horsepower Mktg. & Sales Practices Litig.*, 733 F. Supp. 2d. 997, 1008 (E.D. Wis. 2010) ("The 'complexity, length, and expense of further litigation' factor strongly favors this settlement . . . .").

3. No Class Member Has Objected to the Settlement.

The unanimous and positive reaction of the Class members to the Settlement supports final approval. Epiq sent 118,712 Email Notices to potential Settlement Class Members with a facially valid email address, as obtained from the potential Settlement Class Member List, and only 15,997 of those notices Email Notices were undeliverable. Azari Decl. ¶¶ 13, 14. Additionally, Epiq maintained a settlement website, toll-free telephone number, sponsored internet search listings, banner notices and media releases as described in Section IV.A., *supra*. After this vast outreach, no Class member objected to the Settlement, and only one entity opted out of the Settlement. *Id*. ¶ 32. Undeniably, the vast majority of the Class did not opt out of the Settlement.

The opt-out percentage for the Settlement is consistent with what the parties anticipated when entering into the Settlement Agreement. *See* Settlement Agreement ¶ 20 (stating the conditions for Tyson to rescind the Settlement Agreement). Settlement Class Counsel provided Tyson with an accurate list of Settlement opt-outs on January 12, 2022. Finley Decl. ¶ 9. Tyson has not sought to rescind the Settlement Agreement. *Id*. ¶ 10.

The unanimous and positive response of the Class supports finding that the Settlement is fair, reasonable, and adequate. *See Bynum v. Dist. of Columbia*, 412 F. Supp. 2d 73, 77 (D.D.C. 2006) ("The low number of opt outs and objectors (or purported objectors) supports the conclusion that the terms of the settlement were viewed favorably by the overwhelming majority of class

members."); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("A very small percentage of affected parties have opposed the settlement…. only 342 [of more than 100,000] Class Members excluded themselves from the settlement and only 15 Class Members submitted documents that could be considered objections."); *Pallas v. Pac. Bell*, No. C-89-2373, 1999 WL 1209495, at *8 (N.D. Cal. July 13, 1999) ("The small percentage—less than 1%—of persons raising objections is a factor weighing in favor of approval of the settlement."). In fact, the absence of objections to and limited opt-outs from the Settlements especially favor approval when, as here, "much of the class consists of sophisticated business entities[.]" *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 14-CV-2058, 2015 WL 9266493, at *7 (N.D. Cal. Dec. 17, 2015) (citing *In re Linerboard*, 321 F. Supp. 2d at 629).

4. The Settlement Resulted from Hard-Fought, Arm's-Length Negotiations and Experienced Counsel Recommend Approval

The fact that the Settlement is the product of hard-fought, arm's-length negotiations strongly supports a presumption that the Settlements are fair, reasonable, and adequate. *See* 4 Newberg on Class Actions, § 13:43; *Great Neck*, 212 F.R.D. at 410; *see also Rodriguez*, 563 F.3d at 965.

As detailed in this Memorandum and supporting declarations, the Settlement was the product of extensive arm's-length negotiations, which included several rounds of give-and-take with the assistance of an experienced and nationally renowned mediator, the Hon. Daniel Weinstein (Ret.) *See* Sections II and III *supra*; *see also* Finley Decl. ¶ 8. These protracted arm's-length settlement negotiations support approval of the Settlement by demonstrating that they are free from collusion. *See, e.g., In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 640.

Moreover, it is well established that judgment and opinion of experienced and competent counsel should be taken into account when assessing whether a settlement is fair, reasonable, and

adequate. "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 2015 WL 9266493, at *6; *see also* *Kleen Prod. LLC v. Int'l Paper Co.*, No. 1:10-cv-05711, 2017 WL 5247928, at *3 (N.D. Ill. Oct. 17, 2017) ("The Settlement was negotiated by highly skilled and experienced antitrust and class action lawyers, who have held leadership positions in some of the largest class actions around the country.") Settlement Class Counsel consider the Settlement Agreement to be fair, reasonable, and adequate. Finley Decl. ¶ 14. Therefore, the endorsement of the Settlement by Settlement Class Counsel, which the Court determined satisfied the requirements of Rule 23(g), is yet another fact that supports approval. *See* Order Granting Preliminary Approval ¶ 7.

5. The Stage of the Proceedings and Amount of Discovery Support Final Approval.

The stage of the case strongly supports granting final approval to the Settlement. Namely, the parties reached agreement on the Settlement prior to CIIPPs' motion for class certification, Defendants' motion for summary judgment, and trial on the merits. Each of these important hurdles represent time, expense, and risk that are mitigated by the proceeds of the Settlement. *See, e.g.*, *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 494 (N.D. Ill. 2015) ("Although Kolinek withstood Walgreens's motion to dismiss on both grounds, the Court observed in its written orders as to both [defense] issues that further factual development might prove that plaintiffs did indeed consent or that the calls were made for emergency purposes."); *Schulte*, 805 F. Supp. 2d at 582 ("While Plaintiffs maintain that their claims would ultimately succeed, the above discussion establishes that Fifth Third has a number of potentially meritorious defenses. Absent settlement, Class Members would face the real risk that they would win little or no recovery."); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 229 (N.D. Ill. 2016) ("In light of Chase's potential defenses, the legal uncertainty concerning the application of the TCPA, and the time and expense inherent to

litigation, proceeding to trial, and obtaining relief posed risks to Plaintiffs, and a possibility existed that they would have recovered nothing."). Settlement Class Counsel took the stage of this proceeding into consideration when weighing the strength of CIIPPs' claims and Tyson's defenses against the substantial benefits provided by the Settlement to the Settlement Class. Finley Decl. ¶ 11. The Settlement takes into account the fact that the parties reached their Settlement Agreement prior to the CIIPPs' motion for class certification, Defendants' motion for summary judgment, and a trial on the merits. *Id.* Moreover, the amount of discovery and the investigation performed before the parties entered into the Settlement Agreement ensured that CIIPPs and Settlement Class Counsel made informed decisions to approve and recommend the Settlement to the Class and to the Court. Therefore, the stage of the proceedings and the amount of discovery support granting final approval.

V. CONCLUSION

For the aforementioned reasons, Settlement Class Counsel respectfully request that the Court grant final approval of the Settlement between CIIPPs and Tyson.

Dated: February 8, 2021

Respectfully submitted,

CUNEO GILBERT & LADUCA, LLP

By: */s/ Blaine Finley*

Jonathan W. Cuneo (*pro hac vice*)
Blaine Finley (*pro hac vice*)
4725 Wisconsin Ave. NW, Suite 200
Washington, DC 20016
(202) 789-3960 Telephone
jonc@cuneolaw.com
bfinley@cuneolaw.com

Don Barrett (*pro hac vice*)
Katherine Barrett Riley (*pro hac vice*)
Sterling Aldridge (*pro hac vice*)
BARRETT LAW GROUP, P.A.
P.O. Box 927
404 Court Square
Lexington, MS 39095
(662) 834-2488 Telephone
dbarrett@barrettlawgroup.com
kbriley@barrettlawgroup.com
saldridge@barrettlawgroup.com

Settlement Class Counsel for Commercial and Institutional Indirect Purchaser Plaintiffs Sandee's Bakery and Gnemi LLC

CERTIFICATE OF SERVICE

The undersigned attorney, hereby certifies that on February 8, 2021, a copy of the foregoing was electronically filed with the Clerk of the Court using the Court's CM/ECF system, which will send notification of the filing to all counsel of record.

By: */s/ Blaine Finley*
Blaine Finley