

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

IN RE BROILER CHICKEN ANTITRUST
LITIGATION

No. 1:16-cv-08637

This Document Relates To:

Honorable Thomas M. Durkin

End-User Consumer Plaintiffs Action

**MEMORANDUM OF LAW IN SUPPORT OF END-USER CONSUMER PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS WITH
DEFENDANTS CLAXTON, FOSTER FARMS, HARRISON, HOUSE OF RAEFORD,
KOCH, MOUNTAIRE, O.K. FOODS, PERDUE, SANDERSON, SIMMONS, AND
WAYNE FARMS**

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GLOSSARY OF DEFINED TERMS

Short Cite	Long Cite
Claxton	Norman W. Fries, Inc. d/b/a Claxton Poultry Farms
Foster	Foster Farms, LLC and Foster Poultry Farms LLC
Harrison Poultry	Harrison Poultry, Inc.
House of Raeford	House of Raeford Farms, Inc.
Koch	Koch Foods Incorporated, JCG Foods of Alabama LLC, JCG Foods of Georgia LLC, and Koch Meat Co., Inc.
Mountaire	Mountaire Farms Inc., Mountaire Farms, LLC and Mountaire Farms of Delaware, Inc.
O.K. Foods	O.K. Foods, Inc., O.K. Farms, Inc., and O.K. Industries, Inc.
Perdue	Perdue Farms, Inc. and Perdue Foods LLC
Sanderson	Sanderson Farms, LLC (f/k/a Sanderson Farms, Inc.), Sanderson Farms Foods, LLC (f/k/a Sanderson Farms, Inc. (Foods Division)), Sanderson Farms Production, LLC (f/k/a Sanderson Farms, Inc. (Production Division)), and Sanderson Farms Processing, LLC (f/k/a Sanderson Farms, Inc. (Processing Division)); excluding Wayne Farms, LLC
Simmons	Simmons Foods, Inc. and Simmons Prepared Foods, Inc.
Wayne	Wayne Farms, LLC; excluding Sanderson Farms, LLC (f/k/a Sanderson Farms, Inc.), Sanderson Farms Foods, LLC (f/k/a Sanderson Farms, Inc. (Foods Division)), Sanderson Farms Production, LLC (f/k/a Sanderson Farms, Inc. (Production Division)), and Sanderson Farms Processing, LLC (f/k/a Sanderson Farms, Inc. (Processing Division))
Andren Obj.	Contingent Opp. to EUCPs' Corrected Second Mot. for Attorneys' Fees, Costs, and Service Award, Dkt. No. 7716 (May 12, 2025).
CAFA	Class Action Fairness Act, <i>See</i> 28 U.S.C. § 1715.
Class Counsel	Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC
Class Representative Declarations	Exhibit D to the Declaration of Shana E. Scarlett in Support of End-User Consumer Plaintiffs' Second Motion for Attorneys' Fees, Expenses, and Class Representative Service Awards, Dkt. No. 7702-1 (Apr. 28, 2025).

Short Cite	Long Cite
Class Representatives	Plaintiffs Linda Cheslow, Abraham Drucker, Ian Adams, Marilyn Stangeland, Daniel M. Percy, Kristin Davis, Leslie and David Weidner, Matthew Hayward, Dorothy Monahan, Joshua Madsen, Natalie Wilbur, Alison Pauk, Michael Perry, William David Marino, Eric Thomas, Kenneth Cote, Catherine Senkle, Margo Stack, James Flasch, Dina Morris, Dianne Spell, Angela Ashby, Christina Hall, Richard Heftel, and Stephen Holt.
Devery Decl.	Declaration of Brian Devery in Support of End-User Consumer Plaintiffs' Motion for Final Approval of the Settlement, filed concurrently herewith.
Dkt No.	Unless otherwise noted, all "Dkt. No." references are to the docket in <i>In re: Broilers Antitrust Litigation</i> , No. 1:16-cv-08637.
EUCPs	End-User Consumer Plaintiffs
Fee Motion	Memorandum of Law in Support of End-User Consumer Plaintiffs' Corrected Second Motion for Attorneys' Fees, Expenses, and Class Representative Awards, Dkt. No. 7706-2 (Apr. 29, 2025).
Motion for Preliminary Approval	Memorandum of Law in Support of End-User Consumer Plaintiffs' Uncontested Motion for Preliminary Approval of Settlements with Claxton, Foster Farms, House of Raeford, Koch Foods, Mountaire, O.K. Foods, Perdue, Sanderson, Simmons, and Wayne Farms Defendants and Motion to Direct Notice Regarding Harrison Poultry Settlement, Dkt. No. 7495 (Jan. 29, 2025).
Motion for Preliminary Approval of Harrison Poultry Settlement	Memorandum in Support of Motion for Preliminary Approval of Settlement Agreement between End-User Consumer Plaintiffs and Defendant Harrison Poultry, Inc., Dkt. No. 6651 (July 11, 2023).
Motion for Final Approval	Memorandum of Law in Support of End-User Consumer Plaintiffs' Motion for Final Approval of the Class Action Settlements, Dkt. No. 5248 (Dec. 6, 2021).
New Settlements	Settlements with Settling Trial-Track Defendants, Summary Judgment Defendants, and Harrison Poultry, Inc.
Order Granting Harrison Poultry Preliminary Approval	Minute Entry granting Motion for Preliminary Approval of Settlement Agreement Between End-User Consumer Plaintiffs' and Defendant Harrison Poultry, Inc., Dkt. No. 6676 (Jul. 18, 2023).
Order Granting Preliminary Approval	Order Granting End-User Consumer Plaintiffs' Uncontested Motion for Preliminary Approval of Settlements and to Direct Notice, Dkt. No. 7500 (Feb. 11, 2025).
Scarlett Decl.	Declaration of Shana E. Scarlett in Support of End-User Consumer Plaintiffs' Motion for Final Approval of Class Action Settlements, filed concurrently herewith.

Short Cite	Long Cite
Scarlett Fee Decl.	Corrected Declaration of Shana E. Scarlett in Support of End-User Consumer Plaintiffs' Second Motion for Attorneys' Fees, Expenses, and Class Representative Awards, Dkt. No. 7706-3 (Apr. 29, 2025).
Settlement Agreements	Exhibits A (Claxton Settlement Agreement), B (Foster Settlement Agreement), C (Harrison Poultry Settlement Agreement), D (House of Raeford Settlement Agreement), E (Koch Settlement Agreement), F (Mountaire Settlement Agreement), G (O.K. Foods Settlement Agreement), H (Perdue Settlement Agreement), I (Sanderson Settlement Agreement), J (Simmons Settlement Agreement), and K (Wayne Settlement Agreement) to the Declaration of Shana E. Scarlett in Support of End-User Consumer Plaintiffs' Motion for Final Approval of Class Action Settlements, filed concurrently herewith
Settling Defendants	Claxton, Foster, Harrison Poultry, House of Raeford, Koch, Mountaire Farms, O.K. Foods, Sanderson, Simmons, and Wayne
Settling Trial-Track Defendants	House of Raeford, Koch, Mountaire Farms, O.K. Foods, Sanderson, and Simmons
Settling Summary Judgment Defendants	Claxton, Foster, Perdue, and Wayne
The Settlement Class	<i>See page 2, supra.</i>

I. INTRODUCTION

The EUCPs seek final approval of settlements with the eleven remaining Processor Defendant families: these include Claxton, Foster Farms, Harrison Poultry, House of Raeford, Koch, Mountaire, O.K. Foods, Perdue, Sanderson, Simmons, and Wayne Farms.¹ Seven of the Settling Defendants have paid monetary relief to the EUCP Class, and these settlements total \$22,350,000. The remaining Settling Defendants received favorable summary judgment rulings, but agreed to waive any potential rights to costs, attorney fees, or any other form of recovery, in exchange for EUCPs' agreement to waive their right to appeal said rulings. The new Settlement Agreements resolve EUCPs' claims against all Defendants in the litigation, except for Agri Stats, Inc.²

This Court granted preliminary approval of EUCPs' settlements on February 11, 2025,³ except for the Harrison Poultry settlement, which had been preliminarily approved on July 18, 2023.⁴ The Court also ordered dissemination of notice to class members on February 11, 2025.⁵ Class Counsel and the settlement administrator, A.B. Data, have now successfully executed the notice plan approved by this Court, and the administrator estimates that notice reached more than 80 percent of potential class members.⁶ EUCPs sent direct notice to more than 28 million

¹ The list of corporate entities among Settling Defendants appears in full in the Glossary of Defined Terms, *supra*.

² EUCPs intend to appeal this Court's granting of summary judgment as to Agri Stats, Inc. ("Agri Stats").

³ See Order Granting Preliminary Approval.

⁴ See Order Granting Harrison Poultry Preliminary Approval. At the time of EUCPs' settlement with Harrison Poultry, the parties requested the Court defer notice of this settlement until subsequent settlements were signed, so as to make the transmittal of notice cost-effective. See Motion for Preliminary Approval of Harrison Poultry Settlement.

⁵ See Order Granting Preliminary Approval.

⁶ See Devery Decl. ¶ 22.

potential class members, accompanied by indirect notice through a robust online campaign of banner and internet ads, which generated more than 330 million impressions across Google, Facebook, Instagram, and YouTube.⁷ Class Counsel and the settlement administrator also managed a settlement website (www.overchargedforchicken.com) through which class members can view important case-related documents and submit online claims.

This class encompasses millions of consumers, with over 10.4 million claims filed for the new settlements. Yet despite the class's size, only one objection has been filed, and only four class members have timely requested exclusion from the settlements.⁸ Including earlier exclusions, only 22 class members – just 0.0002% of all claimants – have timely opted out.⁹ The small number of opt-outs and objections represent not only an outstanding result for the class, but also the success of the direct and indirect notice program, further supporting final approval.

II. SUMMARY OF SETTLEMENT TERMS

The Court is very familiar with this case, as it has been pending for over eight years, and so EUCPs will dispense with a detailed account of its background. For the purposes of this motion, EUCPs will instead proceed to summarizing the new settlements.

This Motion for Final Approval covers proposed settlements between EUCPs and eleven defendant families, totaling \$22,350,000. The EUCP Class, as certified by the Court on May 27, 2022, is defined as follows:

All persons and entities who indirectly purchased the following types of raw chicken, whether fresh or frozen: whole birds (with or without giblets), whole cut-up birds purchased within a package, breast cuts or tenderloin cuts, but excluding chicken that is marketed as halal, kosher, free range, organic, diced, minced, ground, seasoned, flavored

⁷ See *id.* ¶ 11.

⁸ *Id.* ¶ 18.

⁹ *Id.*

or breaded—from defendants or co-conspirators for personal consumption in the Repealer Jurisdictions from January 1, 2012 to July 31, 2019.¹⁰

Seven of the settlements request certification of a settlement class identical to the class certified in 2022 and give class members the opportunity to opt-out.¹¹ Three settlements, each with a Defendant who prevailed at summary judgment, do not request the certification of a separate settlement class and do not allow class members an additional period to opt-out.¹² These three Defendants are Foster, Perdue, and Claxton. Because class members were already provided with notice and the opportunity to opt-out,¹³ a further opt-out period and certification of a settlement class is not necessary.¹⁴

There are two groups of proposed settlements: those with Defendants who were facing a trial but settled for monetary relief instead, and those with Defendants who had prevailed at summary judgment and settled for agreed-upon waiver of costs. These groups will be discussed in turn.

A. Settlements with Settling Trial-Track Defendants.

Ahead of the trial set to begin September 4, 2024, which the Court ultimately vacated, the EUCPs reached settlements with six of the trial defendants for monetary compensation and

¹⁰ The “Repealer Jurisdictions” are California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, and Wisconsin.

¹¹ See Harrison Poultry, Exhibit C, at 7–8, 15; House of Raeford, Exhibit D, at 1–2, 16; Koch, Exhibit E, at 2, 18; Mountaire, Exhibit F, at 2, 15; O.K. Foods, Exhibit G, at 2, 16; Sanderson, Exhibit I, at 2, 15; Simmons, Exhibit J, at 2, 16; and Wayne, Exhibit K, at 1–2, 6.

¹² See Claxton, Exhibit A; Foster Farms, Exhibit B; Perdue, Exhibit H.

¹³ Decl. of Eric Schachter Regarding Class Notice and Requests for Exclusion, Dkt. No. 6603.

¹⁴ 4 NEWBERG ON CLASS ACTIONS, § 13:18 (5th ed. 2011) (“If the court has certified a class prior to settlement, it does not need to re-certify it for settlement purposes.”). Internal citations and quotation marks omitted throughout the brief unless otherwise indicated.

cooperation at any trial. These settlements were noticed alongside a settlement that the EUCPs had reached with another Trial-Track Defendant, Harrison Poultry, the year prior, but not yet provided notice on. These settlements were reached after hard-fought arm's length negotiations. Discussions between counsel lasted several months, and in some cases, over a year. An experienced mediator – Hon. Daniel Weinstein (Ret.) or his colleague Simone Lechuck assisted counsel with some of these negotiations. As the table below demonstrates, each of the settlements provides a significant recovery:

Settling Defendant	Date of Agreement	Proposed Settlement
Harrison Poultry	5/22/2023	\$2.9 million
House of Raeford	8/9/2024	\$4.5 million
Koch	9/10/2024	\$5 million
Mountaire	8/22/2024	\$3 million
O.K. Foods	9/4/2024	\$3.2 million
Sanderson	8/12/2024	\$750,000
Simmons	8/15/2024	\$3 million
TOTAL		\$22.35 million

Class Counsel previously moved for approval of a plan that would allocate to class members on a *pro rata* basis, and the Court granted preliminary approval of Class Counsel's motion.¹⁵ After the claims period closes, EUCPs will provide the Court with a status report with additional details on the number of claimants and the amounts per claimant. Should a balance remain after the first round of distributions, EUCPs might propose an additional round of distribution to class members. At the end, any unclaimed funds (whether because of tax refunds, uncashed checks, or otherwise), will escheat to state governments. No amount will revert to the Settling Defendants.

¹⁵ See Motion for Preliminary Approval, 28; Order Granting EUCPs' Uncontested Mot. for Prelim. Approval of Settlements and to Direct Notice, Dkt. No. 7500.

If the settlements are approved, the EUCPs will have recovered over \$203 million. In addition to monetary relief, the Settling Defendants agreed to provide material cooperation to the EUCPs, which included authenticating documents and providing foundation for the admissibility of documents and/or things produced in the Action.¹⁶ In exchange, EUCPs and the proposed settlement class agree, among other things, to release claims against Settling Defendants that were, or could have been, brought in this litigation arising from the conduct alleged by EUCPs in this action. These releases do not extend to any other Defendants. These settlements represent a significant achievement and reflect Class Counsel's fierce representation of the consumers.

B. Settlements with Settling Summary Judgment Defendants.

Once the EUCPs made settlements with the Settling Trial-Track Defendants – likely mooted a trial – the class sought agreements with the remaining Defendants. Agreements were reached with all remaining Defendants, other than Agri Stats. These settlements are similar to those made by the DPP Class, with both parties agreeing to waive any costs incurred during this litigation. The EUCP Class also agreed not to appeal or otherwise challenge the summary judgment order as to the Defendants, which include Claxton, Foster Farms, Perdue, and Wayne Farms. Settlements of this nature are common practice after a trial or summary judgment.¹⁷

III. THE SETTLEMENTS SATISFY THE STANDARD FOR FINAL APPROVAL.

There is an overriding public interest in settling litigation, and this is particularly true in class actions.¹⁸ Still, settlements of class action litigation must be reviewed to ensure they are

¹⁶ See Harrison Poultry, Exhibit C, at 11; House of Raeford, Exhibit D, at 7; Koch, Exhibit E, at 7–8; Mountaire, Exhibit F, at 15; O.K. Foods, Exhibit G, at 16; Simmons, Exhibit J, at 2, 16.

¹⁷ See, e.g., *Downing v. Abbott Lab's*, No. 23-1440, 2023 WL 6173468, at *3 (7th Cir. 2023) (“A party which prevails at the end of a lengthy and hard-fought trial and then attempts to settle to avoid the attorneys’ fees and costs of an appeal acts rationally. Such an offer is not uncommon in civil litigation practice.”).

¹⁸ See *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996).

“fair, reasonable, and adequate.”¹⁹ The Seventh Circuit reviews a district court’s final approval determination for abuse of discretion.²⁰

To determine whether a proposed class action settlement meets the final approval requirements, Rule 23(e)(2) instructs courts to consider whether: (1) the class representatives and class counsel have adequately represented the class; (2) the proposal was negotiated at arm’s length; (3) the proposal treats class members equitably relative to each other; and (4) the relief provided by the settlement 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; (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).²¹ The Seventh Circuit also instructs courts to consider (5) the strength of the plaintiffs’ case compared to the amount of the defendants’ settlement offer, (6) the opinion of experienced counsel, (7) the reaction of the class, and (8) the stage of the proceedings and the amount of discovery completed.²²

The Court must also determine whether the parties have provided sufficient notice to class members, both under the Class Action Fairness Act²³ and the requirements of Federal Rule of Civil Procedure 23(c)(2)(B). Here, the proposed settlement agreements meet these standards, and final approval should be granted.

¹⁹ Fed. R. Civ. P. 23(e)(2).

²⁰ *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 862 (7th Cir. 2014) (citing *Isby*, 75 F.3d at 1199).

²¹ Fed. R. Civ. P. 23(e)(2).

²² *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006) (citing *Isby*, 75 F.3d at 1199).

²³ See 28 U.S.C. § 1715(b)–(d).

A. The settlements are fair, reasonable, and adequate.

The proposed settlement agreements satisfy each of the prongs listed under Rule 23(e)(2), as well as the additional four prongs used by the Seventh Circuit. Taken together, these agreements meet the standards required for the Court to grant final approval.

1. Rule 23(e)(2)(A): Class Representatives and Class Counsel adequately represented the class.

The Class Representatives and Class Counsel have more than adequately represented the EUCP Class. It is well-established in the Seventh Circuit that the judgment and opinion of experienced and competent counsel should be taken into account when assessing the fairness, reasonableness, and adequacy of a settlement.²⁴ And as the Court noted in its Order Granting Preliminary Approval, Class Counsel is “highly experienced”; the firms in this role have extensive experience litigating antitrust class actions and took seriously representing this class of consumers.²⁵ As described in their fee motion, Class Counsel has also dedicated nearly 90,000 hours to developing and litigating Plaintiffs’ claims over the course of more than eight years.²⁶ During this time, Class Counsel overcame steep obstacles, including a protracted class certification fight, multiple rounds of expert challenges and motions to dismiss, and an exhaustive 100,000-page summary judgment gauntlet.²⁷ Class Counsel also coordinated more

²⁴ “What matters here is that experienced counsel—particularly counsel experienced in class action litigation—have reached the settlement and are proposing it. . . . this factor weighs in favor of approval of the Proposed Settlement.” *T.K. Through Leshore v. Bytedance Tech. Co.*, No. 19-cv-7915, 2022 WL 888943, at *16–17 (N.D. Ill. Mar. 25, 2022); *Henry v. Sears Roebuck & Co.*, No. 98-cv-4110, 1999 WL 33496080, at *11 (N.D. Ill. Jul. 23, 1999) (“It is appropriate for the Court to rely on the judgments of the experienced counsel who litigated this case that this settlement is fair.”) (citing *Phemister v. Harcourt Brace Jovanovich, Inc.*, No. 77 C 39, 1984 WL 21981, at *12 (N.D. Ill. Sept. 14, 1984)).

²⁵ Order Granting Preliminary Approval ¶ 3.

²⁶ Fee Motion at 1.

²⁷ *Id.*

than 180 depositions, pored over the equivalent of 1,300 physical filing cabinets of paper, and prepared extensively for trial.²⁸

Likewise, the named plaintiffs have adequately represented the EUCP Class, as required by the Federal Rules.²⁹ The adequacy requirement is satisfied where the named representatives have a sufficient interest in the outcome of the case to ensure vigorous advocacy, and do not have interests antagonistic to those of the class.³⁰ The Class Representatives have the same interest in the case as other class members: they each purchased chicken from grocery stores, unaware of the existence of Defendants' alleged agreement to suppress the price and supply of chicken. The Class Representatives only differ in that they have chosen to spend an average of 43 hours on tasks such as responding to discovery, preparing and sitting for depositions, and reviewing and providing input for each settlement over the past eight years, a significant undertaking.³¹ This undertaking, though only assumed by the named plaintiffs, was done with the entire class in mind: each named plaintiff has provided a declaration stating that they considered the interests of all class members before approving of the settlements.³²

Further, the vast majority of the named plaintiffs approving these settlements have no connection with Class Counsel or any other attorney working on this case. The few who have previously interacted with an attorney connected to this matter have disclosed this information, and certified under oath that these interactions have "not in any way prevented me from

²⁸ *Id.* at 3, 6–7.

²⁹ Fed. R. Civ. P. 23(a)(4).

³⁰ *Saltzman v. Pella Corp.*, 257 F.R.D. 471, 480 (N.D. Ill. 2009), *aff'd*, 606 F.3d 391 (7th Cir. 2010).

³¹ *See* Class Representative Declarations.

³² *Id.*

providing my view on whether the settlements are in the best interests of the class.”³³ And all Class Representatives stated, under penalty of perjury: “If I believed that a settlement was not in the interest of the Class, I would provide that view to Class Counsel and the Court.”³⁴ This is more than enough to satisfy the requirements of Rule 23(e)(2)(A).³⁵

2. Rule 23(e)(2)(B): the proposals were negotiated at arm’s length.

There is generally a presumption that a proposed settlement is fair and reasonable when it is the result of arm’s length negotiations, as each of the relevant settlements were.³⁶ Each of the eleven settlements took months for EUCPs to negotiate, and all were reached only after significant discovery. Many of the settlements also required help from a mediator, Hon. Daniel Weinstein (Ret.) or his colleague Simone Lechuk, who are familiar with this litigation and have extensive experience in mediating complex matters.³⁷ There are no terms in the settlement

³³ *Id.* In *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 714 (7th Cir. 2015), the Seventh Circuit admonished class counsel for not disclosing that one of the two class representatives was *working with class counsel as co-counsel* in another case. Here, *none* of the named plaintiffs have any business relationship with Class Counsel, nor do any have familial relationships. See Motion for Final Approval 9 n.23. And all Class Representatives disclosed whether, prior to this case, they knew any attorney who worked at Class Counsel’s law firms (whether or not that attorney has appeared in this case, and even if the attorney no longer works for Class Counsel) or knew any attorneys who appeared in this matter as non-lead counsel on behalf of EUCPs. Of the twenty-five class representatives, eight know attorneys who currently or previously worked at Class Counsel’s firms (*Mxes.* Flasch, Hayward, Madsen, Ashby, Davis, Holt, Morris, and Weidner). Four know attorneys who have worked as non-lead counsel (*Mxes.* Drucker, Stack, Marino, and Stangeland).

³⁴ See Class Representative Declarations.

³⁵ See *Kolinek v. Walgreen Co.*, 311 F.R.D. 483, 492 (N.D. Ill. 2015) (finding adequacy to be met where there was “no evidence on the record to suggest, that [the named plaintiffs] interests are adverse to those of the settlement class. . . . [and] class counsel demonstrated their competence in representing the class’s interests.”).

³⁶ See 2 NEWBERG ON CLASS ACTIONS, § 11.40 at 451 (2d ed. 1985); *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07-cv-2898, 2012 WL 651727, at *10 (N.D. Ill. Feb. 28, 2012) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.”)

³⁷ Motion for Preliminary Approval 5–9.

agreements that would suggest collusion.³⁸ And so this consideration weighs in favor of granting final approval.

3. Rule 23(e)(2)(C): the relief for the class is adequate, considering the four factors.

Under Rule 23(e)(2)(C), a district court may consider four factors in determining whether the relief awarded for the class is adequate. Each of those factors supports granting final approval in the eleven settlements at issue here.

a. The costs, risks, and delay of trial and appeal favor settlement.

The first factor that a court may consider is the costs, risks, and delay of trial and appeal. This case involved high risk at all stages and required significant upfront expenses, with Class Counsel advancing more than \$9.75 million in expenses to litigate this case.³⁹ While EUCPs believe in the strength of their case, the settlements eliminate significant risks that they would face if the case were to proceed against these eleven Defendants, including the complexity, length, and continued expense associated with this type of litigation. Absent these settlements, EUCPs would need to go to trial and bear the burden of establishing liability, impact, and damages before obtaining *any* recovery from Defendant – far from a certainty.⁴⁰ And appeals are likely, exacerbating cost and delay. Further, these settlements eliminate risks for the Defendants, including the risk of a ruling for EUCPs at trial or appeal, the burden of continuing litigation, and the risk of having to pay any recoverable costs if an appeal was lost. Given the nature of these

³⁸ See *Charvat v. Valente*, No. 12-cv-05746, 2019 WL 5576932, at *5 (N.D. Ill. Oct. 28, 2019) (finding “[t]he settlement agreement contains no red flags that would lead the Court to think the settlement agreement resulted from anything other than good faith arm’s length negotiations.”).

³⁹ Fee Motion 20.

⁴⁰ 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)).

settlements as products of compromise and independent decision-making, the Court should grant final approval.⁴¹

b. EUCPs’ plans for distribution and online claims are broadly considered effective in distributing relief to class members.

The claims administrator has designed an efficient and cost-effective plan for the disbursement of settlement funds to class members. Settlement class members must submit a timely, valid claim through the settlement website (www.overchargedforchicken.com) or by mail to be eligible to receive payment. The claim form asks class members basic questions about class membership, such as claimants’ names, locations, and information about their estimated monthly chicken purchases. Class members are not required to provide proof of a receipt, which is often seen by courts as a barrier to effective administration.⁴² Instead, class members simply need to self-identify and attest to their chicken purchases. Payments will then be sent electronically to each eligible claimant using the email address provided on the Claim Form; class members can also request a traditional paper check payment by mail.⁴³ Class members who had already submitted claims – either during the initial round of settlements or after receiving notice of class certification – were not required to submit another claim form to receive relief from the new

⁴¹ See *T.K. Through Leshore*, 2022 WL 888943, at *14 (“[P]arties must compromise to reach a settlement. Accordingly, courts need not—and indeed should not—reject a settlement solely because it does not provide a complete victory to plaintiffs.”); *In re: Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at *12 (N.D. Ill. Feb. 29, 2016) (highly adversarial negotiations favor final approval).

⁴² See *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 658 (7th Cir. 2015) (consumers are unlikely to have documentary proof of purchase in the cases “where class treatment is often most needed”).

⁴³ See Devery Decl. ¶ 21.

settlements.⁴⁴ These methods are “claimant-friendly, efficient, cost-effective, proportional and reasonable” and generally accepted as effective.⁴⁵

c. Class Counsel’s proposed fee award of 30% comports with the standard for fee awards for antitrust cases in this circuit.

Next, courts are to assess the terms, timing, and amount of attorney’s fees in settlements.⁴⁶ The settlement agreements contain no provisions regarding the terms of fees, other than to state that these costs will be covered from the settlement fund.⁴⁷ Courts consider this to be the best practice, in contrast to cases where defendants agree to directly pay class counsel an award for fees.⁴⁸

EUCPs previously filed extensive briefing concerning their proposed fees and expenses on these settlements. EUCPs requested an award of attorneys’ fees of 30% of the \$22.35 million recovered since the last motion, less expenses; 30% of the interest that has accrued on the total settlement fund; and litigation expenses and claims administration costs.⁴⁹ EUCPs also requested a \$2,000 service award for each Class Representative, in addition to the \$2,000 service award Class Representatives were granted as a result of Class Counsel’s first fee motion in 2021.⁵⁰ These awards and expenses are in line with the Court’s order on EUCP’s first fee petition: a 30%

⁴⁴ Order Granting Preliminary Approval ¶ 12.

⁴⁵ *Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *5 (S.D. Ill. Dec. 16, 2018).

⁴⁶ Fed. R. Civ. P. 23(e)(2)(C)(iii).

⁴⁷ See Harrison Poultry, Exhibit C, at 12–13; House of Raeford, Exhibit D, at 9–10; Koch, Exhibit E, at 10; Mountaire, Exhibit F, at 12–13; O.K. Foods, Exhibit G, at 12–13; Sanderson, Exhibit I, at 12; Simmons, Exhibit J, at 12–13.

⁴⁸ See, e.g., *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014).

⁴⁹ See Fee Motion 1–2.

⁵⁰ *Id.* at 21; Dkt. No. 5855 (Order granting EUCP Class Counsel’s first fees motion).

rate for the award to Class Counsel “after deducting the expenses and incentive awards”, as well as reimbursement for expenses incurred.⁵¹

With the Court’s permission, Class Counsel has delayed disbursing the funds from all settlements until all appeals are final and resolved. The settlements have accrued \$9,899,854.04 in interest, which benefits the class.⁵²

There has only been one objector to the settlements – Mr. Andren.⁵³ He only objects to the request Class Counsel made for attorneys’ fees and interest. He does not challenge the fairness of the settlements, or the payment of costs, or the service awards to the named plaintiffs.⁵⁴

Regarding Mr. Andren’s request for a stay on Class Counsel’s request for attorneys’ fees, the parties have previously stipulated that Mr. Andren may fully brief his objection “within 60 days after the mandate returns from the Seventh Circuit in Appeal No. 24-2307.”⁵⁵ EUCPs agree the Court should not award fees until the Seventh Circuit has had the opportunity to resolve the appeal, Mr. Andren has had an opportunity to present his objection, and EUCPs have had a chance to respond.

Even so, Mr. Andren’s objection correctly points out that there is a difference between requesting a percentage of the interest earned on all the settlements, and requesting the interest earned on *only* the fees ordered by the Court if one or more of the firms had taken fees since the initial fee order. Following the award of fees, Class Counsel did not immediately collect all the

⁵¹ Mem. Op. and Order 15, Dkt. No. 7309.

⁵² Scarlett Fee Decl. ¶ 32.

⁵³ See Andren Obj. 2–3.

⁵⁴ See *id.* at 3–5.

⁵⁵ See Stip. between Objector Andren and EUCPs to Extend Deadline for Objector to File Mot. for Attorneys’ Fees, Dkt. No. 7411, Sept. 20, 2024.

awarded fees, as the settlements authorized. Instead, they maintained a separate escrow account for the fee award while the appeal has been litigated. A partial, but not full, payment was made to Class Counsel.

To account for that that difference, Class Counsel is modifying their request for interest on the attorneys' fees. The Fee Motion requested \$2,969,956.21 in interest, "which is 30 percent of \$9,899,654.04 interest accrued on the total settlement fund."⁵⁶ Class Counsel instead requests \$2,021,598.23, which is the interest earned on the fees awarded by the Court since the Court's first order, as if that first order had awarded a 30 percent fee (\$51,660,000) and without any interest on any amounts distributed directly to the firms.⁵⁷

d. All agreements have been identified in accordance with Rule 23(e)(3).

Rule 23(e)(3)(iv) allows the Court to consider any agreement required to be identified under the Rule, all of which the parties have produced. EUCPs have publicly filed copies of the executed settlement agreements with their Motion for Preliminary Approval, and these agreements have also been posted on the settlement website. There are no other agreements with the Settling Defendants.

4. Rule 23(e)(2)(D): the proposal treats class members equitably relative to one another.

EUCP's proposed distribution plan provides that all class members will receive a *pro rata* share of the settlement based on their purchases of chicken, thus receiving the same treatment. Courts in the Seventh Circuit have found this distribution model meets the requirements of Rule 23(e)(2)(D), thus weighting the scale toward approving the settlement.⁵⁸

⁵⁶ Fee Motion 22.

⁵⁷ Scarlett Decl. ¶ 15.

⁵⁸ See *T.K. Through Leshore*, 2022 WL 888943, at *15.

Given that EUCPs have addressed all the considerations contained in Rule 23(e), they will turn to the four additional factors identified by the Seventh Circuit in *Synfuel*.⁵⁹

5. The settlements offer significant compensation to class members, especially in light of risks the class faces.

The Seventh Circuit has recognized that “the first factor, the relative strength of plaintiffs’ case on the merits as compared to what the defendants offer by way of settlement, is the most important consideration.”⁶⁰ The Seventh Circuit has also recognized that “[i]n complex litigation with a plaintiff class ‘partial settlements often play a vital role in resolving class actions.’”⁶¹ EUCPs have negotiated \$22.35 million in the newest eleven settlements, totaling a considerable \$203 million. While damages in this case are estimated to be in the billions, the risks of non-recovery are significant. Further, the settlements with Settling Summary Judgment Defendants eliminate the possibility that the Defendants as prevailing parties could recover taxable litigation costs from the EUCP Class. Recoverable costs thus far in the case are estimated to be in the millions, and while EUCPs would challenge any cost petitions if these settlements are not approved, the potential sum is substantial and poses risks to both sides. The settlements provide significant recovery from all Settling Defendants, a factor that strongly favors granting final approval.

6. Experienced counsel recommends the settlements.

The Seventh Circuit also encourages courts to weigh the opinion of experienced counsel when deciding to approve a settlement.⁶² Both Cohen Milstein and Hagens Berman have decades

⁵⁹ *Synfuel*, 463 F.3d at 653 (7th Cir. 2006).

⁶⁰ *Isby*, 75 F.3d at 1199.

⁶¹ *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247 (7th Cir. 1992) (quoting 1-Part A Manual for Complex Litigation Second, Moore’s Federal Practice § 30.46 (1986)).

⁶² *Isby*, 75 F.3d at 1200.

of experience litigating antitrust cases on behalf of consumers, which is why this Court chose to appoint the firms as Class Counsel.⁶³ In the eight years since the firms were appointed, Class Counsel have skillfully and enthusiastically fulfilled their roles, leveraging their experience for the benefit of the class. Thus, Class Counsel's recommendation that the Court grant final approval of these settlements provides significant support for the Court doing so.⁶⁴

7. The positive reaction of the class supports the settlements.

The reaction of the class has been overwhelmingly positive. Over 10.4 million class members have filed claims.⁶⁵ EUCPs expect more claims will be filed before the claims period closes, on July 31, 2025. Despite the massive number of claims, only four people have opted out of the settlements, and only one class member has partially objected to the settlement. Including earlier opt-out requests, only 22 people – just .0002% of all claimants – have opted out. “Such a low percentage of opposition favors a finding that the settlement is fair, reasonable, and adequate under Rule 23.”⁶⁶

8. The stage of the proceedings favors granting final approval of the settlements.

The final factor that the Seventh Circuit asks courts to assess is the stage of the proceedings and the amount of discovery completed at the time of settlement, both of which

⁶³ Order, Dkt. No. 248; Mem. Op. and Order, Dkt. No. 5644.

⁶⁴ *In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d 781, 792 (N.D. Ill. 2015) (“Even though Class Counsel may be considered biased because they stand to benefit from approval, under *Synfuel*, this factor weighs in favor of approval.”).

⁶⁵ See Devery Decl. ¶ 4.

⁶⁶ *In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d at 792 (approximately 0.0032% of class members opting out considered “low percentage of opposition”); also *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 965 (N.D. Ill. 2011) (finding scant opposition to the settlement where 0.01% of class members opted out or objected).

strongly support granting final approval to the settlements.⁶⁷ This information is relevant in determining both whether EUCPs and Class Counsel made informed decisions to approve and recommend the settlements, as well as how fully the Court is able to evaluate the merits of EUCPs' claims.⁶⁸ This case is more than eight years old, with over 7,000 docket entries, hundreds of depositions, and millions of documents exchanged. Courts have held that this factor favors settlement when discovery has been much less extensive.⁶⁹ Here, the years of robust discovery that occurred before settlement weigh in favor of granting final approval of the settlements.⁷⁰

B. The Court-approved notice plan is sufficient under both the Class Action Fairness Act and Rule 23.

EUCPs' settlements must satisfy two additional factors related to the sufficiency of the Court-approved notice plan. Both weigh in favor of granting final approval.

1. Defendants have provided notice compliant with the Class Action Fairness Act.

Under CAFA, each defendant participating in a proposed class action settlement "shall serve [notice of the proposed settlement] upon the appropriate State official of each State in which a class member resides and the appropriate Federal official" no later than 10 days after the proposed settlement is filed in court.⁷¹ A court is not permitted to grant final approval of the

⁶⁷ *Synfuel*, 463 F.3d at 653.

⁶⁸ *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d at 966.

⁶⁹ *See, e.g., In re Cap. One Tel. Consumer Prot. Act Litig.*, 80 F. Supp. 3d at 793 (finding six months of discovery to be sufficient); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d at 966 (finding an exchange of informal discovery to be sufficient).

⁷⁰ *Hispanics United of DuPage County v. Village of Addison, Ill.*, 988 F.Supp. 1130, 1170–71 (N.D. Ill. 1997) (where settlement was entered into only after case had been set for trial and trial preparation was virtually complete, the "advanced stage of the proceedings weigh[ed] heavily in favor of approving the settlement.").

⁷¹ 28 U.S.C. § 1715(b).

settlement until these notices have been served.⁷² Here, Settling Defendants have either filed notices on the docket or confirmed to Class Counsel that they served all state Attorneys General and the U.S. Department of Justice, none of whom have objected or submitted statements of interest in response to these notices.⁷³

2. The notice plan satisfies due process under Rule 23 and has been fully implemented.

Class actions certified under Rule 23(b)(3) must satisfy the notice provisions of Rule 23(c)(2), which includes providing the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.”⁷⁴ Because class members are bound by the results of a certified Rule 23(b)(3) class action unless they affirmatively opt out, this class notice is required as a matter of constitutional due process to protect the rights of the absent class members.⁷⁵

This Court approved the form of the proposed class notice and notice program, stating that it “provides the best practicable notice under the circumstances and satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B).”⁷⁶ The Court-appointed notice administrator, ran the notice campaign, which included direct email notice to more than 28 million potential class members, targeted advertisements resulting in over 330 million impressions, sponsored internet search listings, news releases, and the maintenance of a settlement website

⁷² 28 U.S.C. § 1715(d) (“An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under [28 U.S.C. § 1715(b).]”).

⁷³ Scarlett Decl. ¶ 11.

⁷⁴ Fed. R. Civ. P. 23(c)(2)(B).

⁷⁵ *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173–74 (1974); *Burns v. Elrod*, 757 F.2d 151, 156 (7th Cir. 1985) (“Due process requires that class members generally must receive notice of the terms of settlement.”).

⁷⁶ Order Granting Preliminary Approval ¶ 6.

(www.overchargedforchicken.com) and toll-free automated telephone support line. Many of these forms of notice were provided in both Spanish and English, and news releases were distributed directly to the desks of Hispanic media contacts and news websites. The notice itself informed class members of the nature of the action, the terms of the proposed settlements, the effect of the action and the release of claims, as well as class members' right to exclude themselves from the action and their right to object to the proposed settlements. This notice complies with all the requirements of Rule 23.

IV. CONCLUSION

Because the settlements satisfy the standard for final approval, Plaintiffs request that the Court enter an order finally approving the Settlement Agreements.

DATED: June 16, 2025

Respectfully submitted,

/s/ Shana E. Scarlett

SHANA E. SCARLETT
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 300
Berkeley, CA 94710
Telephone: (510) 725-3000
shanas@hbsslaw.com

Steve W. Berman (IL Bar No. 3126833)
Breanna Van Engelen (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
steve@hbsslaw.com
breannav@hbsslaw.com

Brent W. Johnson
Benjamin D. Brown
Daniel H. Silverman
Alison Deich
COHEN MILSTEIN SELLERS & TOLL, PLLC
1100 New York Ave. NW, Suite 800
Washington, DC 20005
Telephone (202) 408-4600

bjohnson@cohenmilstein.com
bbrown@cohenmilstein.com
dsilverman@cohenmilstein.com
adeich@cohenmilstein.com

*Class Counsel for End-User Consumer Plaintiff
Class*

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on June 16, 2025, a true and correct copy of the foregoing was electronically filed via the Court's CM/ECF system, which will cause notice to be sent to all counsel of record.

DATED: June 16, 2025

/s/ Shana E. Scarlett

SHANA E. SCARLETT