

**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

*All End-User Consumer Plaintiff Actions*

**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**

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**GLOSSARY OF DEFINED TERMS**

<b>Term</b>	<b>Definition</b>
Schachter Decl.	Declaration of Eric Schachter in Support of Plaintiffs' Motion to Approve the Manner and Form of Class Notice, filed concurrently herewith.
Claxton	Norman W. Fries, Inc. d/b/a Claxton Poultry Farms
EUCPs	End User Consumer Plaintiffs
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
Scarlett Decl.	Declaration of Shana E. Scarlett 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, Summons, and Wayne Farms Defendants, filed concurrently herewith.
Settlement Agreements	Scarlett Decl., Exhibits A (Claxton Settlement Agreement), B (Foster Settlement Agreement), C (House of Raeford Settlement Agreement), D (Koch Settlement Agreement), E (Mountaire Settlement Agreement), F (O.K. Foods Settlement Agreement), G (Perdue Settlement Agreement), H (Sanderson Settlement

Term	Definition
	Agreement), I (Simmons Settlement Agreement), and J (Wayne Settlement Agreement)
Settling Defendants	Claxton, Foster, House of Raeford, Koch Foods, Mountaire Farms, O.K. Foods, Sanderson, Simmons, Wayne
Settling Trial-Track Defendants	House of Raeford, Koch Foods, Mountaire Farms, O.K. Foods, Sanderson, Simmons
Settling Summary Judgment Defendants	Claxton, Foster, Perdue, Wayne
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))



## I. INTRODUCTION

After more than eight years of litigation, End-User Consumer Plaintiffs move this Court for approval of settlements with the 10 remaining Processor Defendants.<sup>1</sup> The only remaining Defendant in the EUCP case is Agri Stats, Inc. (“Agri Stats”).<sup>2</sup>

Six of the Settling Defendants will pay monetary relief to the EUCP Class: House of Raeford (\$4.5 million), Koch (\$5 million), Mountaire (\$3 million), O.K. Foods (\$3.2 million), Sanderson (\$750,000), and Simmons (\$3 million). The other four Settling Defendants – Claxton, Foster, Perdue, and Wayne – received favorable summary judgment rulings, but agreed to waive any potential right to costs, attorney fees, or any other form of recovery; in exchange, EUCPs agreed to waive their right to appeal their summary judgment orders. These settlements bring the recovery for the EUCP Class to \$203,350,000. Settling Defendants do not contest this motion.

These settlements were the product of separate and extensive arm’s length negotiations. The Settling Defendants deny the allegations against them and believe they could prevail at trial or on appeal, but they have agreed to the settlements to avoid the cost and burden of continuing litigation and eliminate the risk of a ruling in favor of the EUCPs at trial or on appeal. Similarly, the EUCPs believe they could prevail at trial and on appeal but have agreed to the settlements to eliminate the risk of a loss at either stage, the burden of continuing litigation, and the risk of having to pay any recoverable costs if an appeal was lost. Accordingly, these settlements are the product of compromise and reflect the independent decisions of the EUCPs’ Co-Lead Counsel, on the one hand, and each Settling Defendant, on the other hand, to resolve this matter.

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<sup>1</sup> The full list of corporate entities among Settling Defendants are numerous and appear in full in the Glossary of Defined Terms, *supra*.

<sup>2</sup> EUCPs intend to appeal this Court’s granting of summary judgment to Agri Stats.

Because these settlements fall within the range of possible approval under Federal Rule of Civil Procedure 23(e), and because this Settlement Class for the House of Raeford, Koch, Mountaire, O.K. Foods, Wayne, Sanderson, and Simmons settlements is identical to the one certified on the litigation track, the Settlement Class also satisfies the requirements of Rule 23(a) and (b). The Settlement Class is also similar to those entered with earlier settling defendants.<sup>3</sup> The Claxton, Perdue, and Foster settlements do not request the certification of a separate Settlement Class.

EUCPs also respectfully request that this Court direct notice to the Class and join notice of all settlements under Rule 23(e). Notice of all previous settlements, except for the Harrison Poultry settlement, began in 2021. *See* ECF No. 5248, ¶ 17. Sample advertisements are provided with this motion and will direct consumers to the Settlement Class website. This website – [www.overchargedforchicken.com](http://www.overchargedforchicken.com) – is dedicated to communications with Class Members. It includes important case-related documents, notices, and frequently asked questions, and will allow Class Members to submit simple online claims.

The proposed form and manner of notice dissemination are similar to those already approved by the Court for the EUCP Class, and are supported by an experienced notice and claims administrator, A.B. Data, Ltd. (“A.B. Data”). A.B. Data has been appointed as notice, claims, and/or settlement administrator in hundreds of high-volume class action cases. The proposed notices provide the information required by Rule 23(c)(2)(B) to the Class, in language – both in

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<sup>3</sup> On March 22, 2021, this Court preliminarily approved settlements between EUCPs and Defendants Fieldale (\$1.7 million), Peco (\$1.9 million), George’s (\$1.9 million), and Tyson (\$99 million). ECF Nos. 4450–4451. It similarly granted preliminary approval to EUCPs’ settlement with Mar-Jac (\$1 million) and Pilgrim’s (\$75.5 million) on August 12, 2021, ECF No. 4938, and granted final approval to these six settlement agreements on December 20, 2021. ECF No. 5304. Last year, this Court preliminarily approved the settlements between EUCPs and Defendant Harrison Poultry for \$2.9 million on July 18, 2023. ECF No. 6676.

English and Spanish – that is plain and engaging. With this motion, EUCPs provide the proposed forms for the abbreviated email notice, full website notice, and claims form. The notice campaign itself will involve direct notice in the form of email, and indirect notice through a robust online campaign of banner and internet ads. The class notice and the manner of dissemination proposed here meet the requirements of Rule 23 and of constitutional due process. The proposed forms of class notice and the related dissemination plan are very similar to the plan A.B. Data developed and that this Court previously approved.

Distribution to the EUCP Class has not yet started. One Class Member appealed the first award of attorney fees to the Seventh Circuit.<sup>4</sup> After additional briefing on this topic, this Court approved a \$51.6 million attorney fees award on July 3, 2024. ECF 7309. This same objector has appealed this renewed order granting attorney fees. ECF No. 7346.

EUCPs respectfully request that the Court preliminarily approve these settlements, certify the Settlement Class as to the Settling Trial-Track Defendants, and direct notice of settlement to Class Members.<sup>5</sup>

## II. SUMMARY OF LITIGATION

This Court is familiar with the history of this litigation; the case has been pending for over eight years. The Court appointed Hagens Berman Sobol Shapiro LLP (“Hagens Berman”) and Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”) as Co-Lead Counsel for the Class during that time. The Court certified an EUCP Class in May 2022. ECF No. 5644. The parties extensively briefed and argued motions for summary judgment, which were resolved in June 2023. ECF No.

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<sup>4</sup> *In re Broiler Chicken Antitrust Litig.*, 80 F.4th 797, 805 (7th Cir. 2023).

<sup>5</sup> Since Class Members have not yet received notice of the Harrison Poultry settlement, EUCPs’ request to direct notice of settlement includes Harrison Poultry. Payment of the Harrison Poultry settlement has been made and is currently being held in escrow.

6641, *amended by* ECF No. 7028. As for the Defendants remaining in the EUCP case, the Court denied summary judgment in part for House of Raeford, Koch, Mountaire, O.K. Foods, Sanderson, and Simmons. The Court granted summary judgment for Agri Stats, Claxton, Foster, Perdue, and Wayne. The EUCP case was essentially stayed from June 2023 through May 2024 while the DPP and CIIPP classes and certain direct action plaintiffs prepared for their trials.

On June 28, 2024, the EUCPs noticed the Court of their settlement with House of Raeford. ECF No. 7302. In the following months, the EUCPs noticed settlements with the remaining Processor Defendants headed to trial.<sup>6</sup> The Court vacated the trial previously set to begin September 4, 2024. ECF No. 7344. The EUCPs then reached settlements with the remaining Processor Defendants, who had been dismissed at summary judgment.

### **III. SUMMARY OF SETTLEMENT NEGOTIATIONS AND TERMS**

The proposed settlements fall into two groups – those Defendants who were facing a trial, who settled for monetary relief; and those Defendants who had prevailed at summary judgment who settled for agreed-upon waiver of costs. EUCPs group the settlements accordingly below.

#### **A. Settlement Classes and ability to opt-out.**

On May 27, 2022, the Court certified the following EUCP Class:

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 or breaded—from defendants or co-conspirators for personal consumption in the Repealer Jurisdictions from January 1, 2012 to July 31, 2019.<sup>7</sup>

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<sup>6</sup> Simmons on July 12, 2024, ECF No. 7328; O.K. Foods on July 17, 2024, ECF No. 7336; Mountaire and Koch on July 23, 2024, ECF No. 7342. Between July and August 2024, EUCPs settled in principle with Sanderson, Wayne, Claxton, Foster, and Perdue.

<sup>7</sup> The “Repealer Jurisdictions” are California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New

ECF No. 5644. Seven of the settlements request certification of a Settlement Class identical to the litigation Class certified in 2022, and give Class Members the opportunity to opt-out.<sup>8</sup> 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.<sup>9</sup> These three Defendants are Foster, Perdue, and Claxton. Because Class Members were already provided with notice and the opportunity to opt-out (ECF No. 6603), a further opt-out period and certification of a settlement class is not necessary.<sup>10</sup> This Court approved the same procedure in the Direct Purchaser Plaintiffs' ("DPPs") settlements. ECF No. 7177.

**B. Settlements with Defendants scheduled for the EUCP-September 2024 trial.**

In the lead-up to the September 2024 EUCP trial, settlements were reached with six of the trial defendants for monetary compensation and cooperation at any trial. These settlements were reached through confidential, arm's length settlement negotiations. Negotiations with each Defendant took place through a series of direct negotiations between sophisticated counsel well familiar with the facts of this case; an experienced mediator – Hon. Daniel Weinstein (Ret.) – assisted with some of these negotiations. EUCPs provide additional detail on these settlements below.

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Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, and Wisconsin.

<sup>8</sup> See Ex. C (House of Raeford) at ¶ 6; Ex. D (Koch) at ¶ 7; Ex. E (Mountaire) at ¶ 5; Ex. F (O.K. Foods) at ¶ 5; Ex. H (Sanderson) at ¶ 5; Ex. I (Simmons) at ¶ 5; and Ex. J (Wayne) at ¶ 6.

<sup>9</sup> Ex. B (Foster) at ¶ 6; Ex. G (Perdue) at ¶ 6; and Ex. A (Claxton) at ¶ 6.

<sup>10</sup> 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.

**1. House of Raeford**

The Settlement Agreement with House of Raeford was reached through the assistance of Judge Weinstein, a mediator familiar with this litigation and with extensive experience in mediating complex matters. The mediation took place on June 27, 2024 and resulted in an agreement. Scarlett Decl., ¶ 8. The final settlement agreement was signed on August 9, 2024. *Id.*; Scarlett Decl., Ex. C.

The settlement provides that House of Raeford will pay \$4.5 million for the benefit of Class Members. *Id.*, ¶ 9; Scarlett Decl., Ex. C, ¶ 10. In the event of an EUCP trial, House of Raeford agreed to provide certain cooperation, including authenticating and providing foundation for admissibility of documents. *Id.*, Ex. C, ¶ 3. In exchange, EUCPs agree to release all claims relating to the subject matter of this litigation. *Id.*, Ex. C, ¶ 14. Released Claims do not include claims asserted against any other Defendant. *Id.* EUCPs' settlement with House of Raeford also contains a provision relating to the judgment sharing agreement, which would remove House of Raeford's portion of damages from any award after an EUCP trial, should there be one. *Id.*, Ex. C, ¶ 37.

**2. Koch Foods**

Negotiations between EUCPs and Koch took over four months and required Judge Weinstein's mediation assistance. EUCPs first participated in a mediation session before Judge Weinstein on June 25, 2024, but were unable to reach agreement. Scarlett Decl., ¶ 12. Discussions continued between the parties and Judge Weinstein over the summer of 2024. The final settlement agreement was signed on September 10, 2024. *Id.*; Scarlett Decl., Ex. D.

The settlement provides that Koch will pay \$5 million into a settlement fund for the benefit of the EUCP Class. *Id.*, Ex. D, ¶ 11. Co-Lead Counsel believe this sum is fair and reasonable given Koch's market share of class products, and the cooperation Koch agreed to provide at any EUCP trial, including authenticating documents and providing foundation for admissibility of up to 50

documents. *Id.*, Ex. D, ¶ 3. In exchange, EUCPs agree to release all claims related to the subject matter of the action. *Id.*, Ex. D, ¶ 15. Released Claims do not include claims asserted against any other Defendant. *Id.* EUCPs' settlement with Koch also contains a provision relating to the judgment sharing agreement, which would remove Koch's portion of damages from any award after trial, should there be one. *Id.*, Ex. D, ¶ 43. The settlement with Koch may be terminated in the unlikely event that more than 1,000 claimants opt out of the Settlement Class. *Id.*, Ex. D, ¶ 22.

### **3. Mountaire**

Negotiations between EUCPs and Mountaire took just over one month. Scarlett Decl., ¶ 16. The final settlement agreement was signed on August 22, 2024. *Id.*; Scarlett Decl., Ex. E. The settlement provides that Mountaire will pay \$3 million into a settlement fund for the benefit of the EUCP Class. *Id.*, Ex. E, ¶ 9. Mountaire also agreed to provide cooperation in the event of an EUCP trial, including authenticating and providing foundation for admissibility of up to 50 documents produced in this case. In exchange, EUCPs agree to release all claims relating to the subject matter of the litigation. *Id.*, Ex. E, ¶ 13. Released Claims do not include claims asserted against any other Defendant. *Id.* EUCPs' settlement with Mountaire also contains a provision relating to the judgment sharing agreement, which would remove Mountaire's portion of damages from any award after trial, should there be one. *Id.*, Ex. E, ¶ 37. The settlement with Mountaire may be terminated in the unlikely event that more than 1,000 claimants opt out of the Settlement Class.

### **4. O.K. Foods**

Negotiations between EUCPs and O.K. Foods took just over one month and required the assistance of Judge Weinstein and his colleague Simone Lelchuk. EUCPs participated in a mediation session before Judge Weinstein on July 16, 2024 and reached an agreement that day. Scarlett Decl., ¶ 20. The settlement provides that O.K. Foods will pay \$3.2 million for the benefit of the EUCP Class. *Id.*, ¶ 21; Scarlett Decl., Ex. F, ¶ 9. O.K. Foods also agreed to provide

cooperation at any EUCP trial, including using reasonable efforts to authenticate and provide foundation for admissibility of up to 25 documents. *Id.*, Ex. F, ¶ 15. In exchange, EUCPs agree to release all claims relating to the subject matter of the action as well as all claims arising from the purchase of all chicken products. *Id.*, Ex. F, ¶ 13. Released Claims do not include claims asserted against any other Defendant. *Id.* The final settlement agreement was signed on September 4, 2024, 2024. *Id.*, Ex. F. The settlement with O.K. Foods may be terminated in the unlikely event that more than 1,000 claimants opt out of the Settlement Class. *Id.*, Ex. F, ¶ 18.

## **5. Sanderson**

Negotiations between EUCPs and Sanderson occurred directly between counsel, although at arm's length and with experienced attorneys well-informed regarding the merits of this action. Scarlett Decl., ¶ 23. The negotiations also occurred after Sanderson prevailed at the first trial against the DPP class and the opt-out plaintiffs. The final settlement agreement was signed on August 12, 2024. Scarlett Decl., Ex. H. The settlement provides that Sanderson will pay \$750,000 into a settlement fund for the benefit of the class. *Id.*, Ex. H, ¶ 9. Co-Lead Counsel believe this sum is fair and reasonable given Sanderson's market share of class products and the outcome of the first DPP trial. In exchange, EUCPs agree to release all claims relating to the subject matter of this action. *Id.*, Ex. H, ¶ 13. Released Claims do not include claims asserted against any other Defendant. *Id.* EUCPs' settlement with Sanderson removes Sanderson's portion of damages from any award after trial, should there be one, under the judgement sharing agreement. *Id.*, Ex. H, ¶ 36. The settlement with Sanderson may be terminated in the unlikely event that more than 1,000 claimants opt out of the Settlement Class. *Id.*, Ex. H, ¶ 17.

## **6. Simmons**

Negotiations between EUCPs and Simmons occurred over a lengthy period (14 months) and required Judge Weinstein's mediation assistance. Between May and August of 2023, the



parties negotiated but were unable to reach an agreement. EUCPs and Simmons revisited negotiations discussions in April 2024. The parties agreed to mediate with Judge Weinstein; the mediation took place on July 11, 2024, and resulted in an agreement. Scarlett Decl., ¶ 28. The final settlement agreement was signed on August 15, 2024. *Id.*; Scarlett Decl., Ex. I.

The settlement provides that Simmons will pay \$3 million for the benefit of the EUCP Class. *Id.*, Ex. I, ¶ 9. Simmons also agreed to provide cooperation at any EUCP trial, including authenticating and providing business records foundation for certain documents if the case went to trial. *Id.*, Ex. I, ¶ 17. In exchange, EUCPs agree to release all claims relating to the subject matter of this action. *Id.*, Ex. I, ¶ 13. Released Claims do not include claims asserted against any other Defendant. *Id.* EUCPs release Simmons' portion of damages from any award after trial under the judgment sharing agreement. *Id.*, Ex. I, ¶ 39. The settlement with Simmons may be terminated in the unlikely event that more than 1,000 claimants opt out of the Settlement Class. *Id.*, Ex. I, ¶ 20.

### **C. Settlements with Settling Summary Judgment Defendants.**

After the settlements with the Settling Trial-Track Defendants seemed likely to moot a trial, EUCPs also sought and reached agreements with the Settling Summary Judgment Defendants, except for Agri Stats.<sup>11</sup> Settlements with the Settling Summary Judgment Defendants are similar to those with the DPP class, with both parties agreeing to waive any costs incurred during this litigation. Settlements of this nature are common practice following a trial or summary judgment.<sup>12</sup>

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<sup>11</sup> A settlement was reached with Wayne, a Defendant who prevailed at summary judgment, at the same time as a settlement was reached with Sanderson. These entities now share joint ownership, given a merger that occurred during the course of this litigation.

<sup>12</sup> *See, e.g., Downing v. Abbott Laboratories*, 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.”).

**1. Claxton**

Negotiations between EUCPs and Claxton took place directly between sophisticated counsel between July and December 2024. Scarlett Decl., ¶ 33. The final settlement agreement was signed on December 20, 2024. Scarlett Decl., Ex. A. In consideration of settlement, EUCPs and Claxton agreed not to seek “any claim for costs, fees, attorney’s fees or any other form of recovery in connection with the Action.” *Id.*, Ex. A, ¶ 4. In exchange, the EUCP Class has agreed to not appeal or otherwise challenge the summary judgment order as to Defendant Claxton in exchange for a waiver by Claxton of its right to seek recovery of any and all fees and costs against the EUCP Class in conjunction with this Action. *Id.*, Ex. A, ¶¶ 2–3. *Id.*, Ex. A, ¶¶ 1(b), 2–3. EUCPs release Claxton’s portion of damages from any award after trial, under the judgment sharing agreement. *Id.*, Ex. A, ¶ 23. EUCP Class Members will not be given an opportunity to opt-out of the Claxton settlement. *Id.*, Ex. A, ¶ 1(1).

**2. Foster Farms**

Negotiations between EUCPs and Foster occurred directly between sophisticated counsel between July and December 2024. Scarlett Decl., ¶ 38. The final settlement agreement was signed on December 5, 2024. Scarlett Decl., Ex. B. In consideration of settlement, EUCPs and Foster agreed not to seek “any claim for costs, fees, attorney’s fees or any other form of recovery in connection with the Action.” *Id.*, Ex. B, ¶ 4. In exchange, EUCPs agree to release all claims that could have been brought in this action. *Id.*, Ex. B, ¶ 8. Released Claims do not include claims asserted against any other Defendant. *Id.* EUCPs release Foster’s portion of damages from any award after trial, under the judgment sharing agreement. *Id.*, Ex. B, ¶ 29. EUCP Class Members will not be given an opportunity to opt-out of the Foster settlement. *Id.*, Ex. B, ¶ 16.

### **3. Perdue**

Negotiations between EUCPs and Perdue took place directly between sophisticated and well-informed counsel over a period of five months. Scarlett Decl., ¶ 43. The final settlement agreement was signed on December 2, 2024. *Id.*; Scarlett Decl., Ex. G. In consideration of settlement, EUCPs and Perdue agreed not to seek “any claim for costs, fees, attorney’s fees or any other form of recovery in connection with the Action.” *Id.*, Ex. G, ¶ 4. In exchange, EUCPs agree not to appeal or otherwise challenge the Court’s summary judgment order as to Perdue. *Id.*, Ex. G, ¶¶ 1(b), 2–3. EUCP’s settlement with Perdue contains a provision relating to the judgment sharing agreement, which would remove Perdue’s portion of damages from any award after trial, should there be one. *Id.*, Ex. G, ¶ 23. EUCP Class Members will not be given an opportunity to opt-out of the Perdue settlement. *See id.*, Ex. G, ¶ 1(1).

### **4. Wayne Farms**

Negotiations between EUCPs and Wayne took place directly between counsel, at arm’s length, over a period of three and a half months. Scarlett Decl., ¶¶ 47–48. The final settlement agreement was signed on August 12, 2024. *Id.*; Scarlett Decl., Ex. J. In consideration of settlement, EUCPs and Wayne agreed not to seek “any claim for costs, fees, attorney’s fees or any other form of recovery in connection with the Action.” *Id.*, Ex. J, ¶ 4. In exchange, EUCPs agreed to release all claims that could have been brought in this action. *Id.*, Ex. J, ¶ 9. Released Claims do not include claims asserted against any other Defendant. *Id.* EUCPs’ settlement with Wayne contains a provision relating to the judgment sharing agreement, which would remove Wayne’s portion of damages from any award after trial, should there be one. *Id.*, Ex. J, ¶ 30.

#### IV. ARGUMENT

##### A. The settlements satisfy the standard for preliminary approval.

Federal courts favor settlement<sup>13</sup> but must review class action settlements to ensure they are “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). “The first step in district court review of a class action settlement is a preliminary, pre-notification hearing to determine whether the proposed settlement is within the range of possible approval.”<sup>14</sup> In other words, the Court must consider whether it “will likely be able to” approve the settlement as fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(1)(B)(i); *see also* Fed. R. Civ. P. 23(e)(2).

A proposed settlement falls within the “range of possible approval” when it is conceivable that the proposed settlement will meet the standards applied for final approval.<sup>15</sup> The standard for final approval of a class action settlement is whether the proposed settlement is fair, reasonable, and adequate.<sup>16</sup> Fed. R. Civ. P. 23(e).

The requirement that class action settlements be fair is designed to protect against collusion among the parties.<sup>17</sup> There is usually an initial presumption that a proposed settlement is fair and reasonable when it is the result of arm’s length negotiations.<sup>18</sup> Settlements that are proposed by experienced counsel and result from arm’s length negotiations are entitled to deference from the

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<sup>13</sup> *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 312 (7th Cir. 1980)), *overruled on other grounds, Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998).

<sup>14</sup> *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982).

<sup>15</sup> *See* NEWBERG ON CLASS ACTIONS, § 11.25 at 38–39 (4th ed. 2002) (quoting Manual for Complex Litigation, § 30.41 (3rd ed. 1995)).

<sup>16</sup> *Uhl v. Thoroughbred Tech. & Telecomms, Inc.*, 309 F.3d 978, 986 (7th Cir. 2002).

<sup>17</sup> *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1383 (D. Md. 1983).

<sup>18</sup> *See* 2 NEWBERG ON CLASS ACTIONS, § 11.40 at 451 (2d ed. 1985); *Goldsmith v. Tech. Solutions Co.*, No. 92-cv-4374, 1995 WL 17009594, at \*3 n.2 (N.D. Ill. Oct. 10, 1995) (“[I]t may be presumed that the agreement is fair and adequate where, as here, a proposed settlement is the product of arm’s length negotiations.”).

court.<sup>19</sup> The initial presumption in favor of such settlements reflects courts’ understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness concerns of Rule 23(e). In making the determination as to whether a proposed settlement is fair, reasonable, and adequate, the Court necessarily will evaluate the judgment of the attorneys for the parties regarding the “strength of plaintiffs’ case compared to the terms of the proposed settlement.”<sup>20</sup>

**1. The settlements are the result of arm’s length negotiations between sophisticated counsel informed by the facts of the case.**

As outlined above, each of the settlements is the product of negotiations between informed and sophisticated counsel, litigating this case for over eight years. The settlements came within months of the EUCP September 2024 trial, and after extensive discovery and motion practice in this case. There is no question that on both sides, counsel was well-informed of the strengths and weaknesses of the case.

The negotiations themselves were hard fought and took many meetings, calls, and communications between counsel. For the House of Raeford, Koch, O.K. Foods, and Simmons negotiations, the assistance of an experienced mediator, Hon. Daniel Weinstein (Ret.) was needed. At times, Judge Weinstein spent multiple days assisting the parties before a final resolution was found. In all the settlement discussions, Co-Lead Counsel focused on obtaining the best possible result for the Class. Scarlett Decl., ¶¶ 8, 12, 16, 20, 28.

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<sup>19</sup> See, e.g., *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) (“A presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.”).

<sup>20</sup> *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 346 (N.D. Ill. 2010).

**2. The settlements with Settling Trial-Track Defendants provide substantial monetary recovery to the Class.**

Even though such a finding is not required at the preliminary approval stage, the fairness, reasonableness, and adequacy of the settlements is also supported by the relief obtained on behalf of the Certified Class. The monetary recovery for the six Settling Trial-Track Defendants provides \$19.45 million in relief for EUCP Class Members, and is in addition to the \$183.9 million which already received preliminary approval from the Court. The following chart shows the totality of settlements achieved by the EUCPs in this case, and the market share for each Defendant:

<b>Defendant Family</b>	<b>EUCP Market Share</b>	<b>EUCP Settlements</b>
<b>Previously Settled Defendants</b>		
Tyson	22.8%	\$99,000,000
Pilgrims	17.8%	\$75,500,000
Fieldale	1.8%	\$1,700,000
Peco Foods	3.4%	\$1,900,000
George's	3.0%	\$1,900,000
Harrison Poultry	0.6%	\$2,900,000
Mar-Jac	1.8%	\$1,000,000
<b>SUBTOTAL</b>		<b>\$183,900,000</b>
<b>Settling Trial-Track Defendants</b>		
Sanderson Farms	8.3%	\$750,000
Mountaire Farms	5.4%	\$3,000,000
Koch Foods	5.9%	\$5,000,000
O.K. Foods	1.7%	\$3,200,000
House of Raeford	3.0%	\$4,500,000
Simmons	1.6%	\$3,000,000
<b>SUBTOTAL</b>		<b>\$19,450,000</b>
<b>TOTAL</b>		<b>\$203,350,000.00</b>

Each of these settlements was reached after extensive motion practice regarding class certification, summary judgment, expert reports at both stages, and pre-trial preparation. The settlements fall within the range of possible final approval, and thus should be preliminarily approved by the Court.

**3. Settlements with the Settling Summary Judgment Defendants provide substantial benefits to the Class.**

Four of the Processor Defendants prevailed at summary judgment. For these four, EUCPs agreed to settle for a waiver of costs on both sides. As the Seventh Circuit recognized, “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.”<sup>21</sup> In deciding whether to continue with an appeal against these four Settling Summary Judgment Defendants, EUCP counsel considered the strength of Plaintiffs’ claims and the Settling Defendants’ defenses, and the substantial benefits that the settlements will bring to the Class.

The only EUCP path to litigation victory is to obtain reinstatement of the case by prevailing on appeal and then also prevail at a new trial. EUCPs believe in their case and appellate arguments, but the burden of overturning summary judgment against the Processor Defendants is significant.

The relief provided by the settlements is substantial, especially when accounting for the risks. The settlements eliminate the possibility that the Settling Summary Judgment Defendants as prevailing parties could recover taxable litigation costs from the EUCP Class. As reflected in the extensive docket, this case is more than eight years old, with over 7,000 entries, hundreds of depositions, and millions of documents exchanged. As a result, the costs associated with the litigation are significant. Recoverable costs are estimated to be in the millions. While EUCPs

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<sup>21</sup> See *Isby v. Bayh*, 75 F.3d 1191, 1198–99 (7th Cir. 1996).

would challenge any cost petitions if these settlements are not approved, the potential sum is substantial, and Co-Lead Counsel believe that the settlements are in the best interests of the Class.

In exchange for the Settling Summary Judgment Defendants forgoing the right to seek costs, the EUCP Class will forgo an expensive and time-consuming appeal against the Settling Summary Judgment Defendants, which would pose risks to both sides. Such settlements have been recognized as commonplace and rational.<sup>22</sup> Thus, the settlements provide significant recovery from the Settling Summary Judgment Defendants.

**4. Further opportunities to opt out of the Claxton, Foster, and Perdue settlements are not required.**

Three of these settlements, with Settling Summary Judgment Defendants Claxton, Foster, and Perdue, do not provide an opportunity for Class Members to opt out. This is a similar procedure to that approved by the Court in the DPP class. As with the DPP class, over the course of the case, the Class has received many notices of case developments and opportunities to opt out. While Class Members will be allowed to opt out of the seven other settlements, class members would not be allowed another opportunity to opt out of these three settlements. Scarlett Decl., ¶¶ 35, 40, 45.

Up through and including the class notice of the Court's certification of the litigated class, Class Members were given many opportunities to opt out. As this Court ruled for the DPP class *see* ECF No. 7177; *see also* ECF No. 7172, p. 12, at this stage fairness no longer requires giving Class Members another opportunity to opt out. While Rule 23(e)(4) grants district courts the

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<sup>22</sup> *See, e.g., Downing*, 2023 WL 6173468, at \*3 (“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.”).



discretion to afford members of a previously certified class an additional opportunity to opt out of the proposed settlement, it is often unnecessary and not required.<sup>23</sup>

Class Members have now had two opportunities to opt out. First, in connection with the first group of settlements, notice was sent and allowed a period to opt out. ECF No. 5443. Only seven opt-outs were received. ECF No. 5248-1; Schachter Decl., Ex. F. Next, at class certification, a further notice to the Class was sent. ECF No. 6196. Only 11 opt-outs were received in response to this notice. ECF No. 6603; Schachter Decl., Ex. E. In total, only 18 Class Members have opted out of the EUCP Class. This would tend to suggest that not only have Class Members received sufficient notice of their right to individually pursue claims, but that there is also near universal agreement to remain in the Class.

Moreover, the policy arguments against allowing another opportunity to opt-out apply here. The purpose of providing Class Members with notice and an opportunity to opt out is to ensure that due process is satisfied and they can be bound by the judgment in the case, whether good or bad.<sup>24</sup> But to allow Class Members another opportunity to opt out after summary judgment and trial, the Court would invite Class Members to make their opt-out decisions based on after-the-fact assessments of rulings and developments in the case and in a manner that permits them to avoid judgment. Such a result is contrary to the principles of Rule 23 and this Court's prior orders.

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<sup>23</sup> See *DaSilva v. Esmor Correctional Servs. Inc.*, 215 F.R.D. 477, 483 (D.N.J. 2003), *aff'd*, 167 Fed. Appx. 303 (3d Cir. 2006) (“In class action litigation ‘potential class members retain the option to participate in or withdraw from the class action only until a point in the litigation ‘as soon as practicable after the commencement’ of the action when the suit is allowed to continue as a class action and they are sent notice of their inclusion within the confines of the class.”). Indeed, “a second opt-out opportunity might inject additional uncertainty into settlement and create opportunities unrelated to the purpose of the second opt-out, potentially defeating some settlements and making others more costly.” See *Manual for Complex Litigation*, § 22.611 (4th ed. 2004) at 313; *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, No. 1:15-md-2627, 2022 WL 2128630, \*6 n.9 (E.D. Va. 2022).

<sup>24</sup> See *DaSilva*, 215 F.R.D. at 483.

For these reasons, EUCPs request that the three settlements be approved without the further ability for the Class to opt out.

**B. Certification of the Settlement Class is appropriate.**

In connection with the House of Raeford, Koch, Mountaire, O.K. Foods, Sanderson, Simmons, and Wayne settlements, EUCPs request certification of a Settlement Class that is identical to the one certified by the Court in May 2022. *See* section III.A, *supra*. As it did during the extensive litigation proceedings, this Settlement Class satisfies all the requirements of Rule 23.

**1. The proposed Settlement Class satisfies Rule 23(a).**

**a. Numerosity**

The numerosity requirement of Rule 23(a)(1) is satisfied where joinder of all putative class members is “impracticable.”<sup>25</sup> As explained in the motion for class certification, EUCPs are seeking to certify a class of millions of chicken consumers, which clearly meets this bar. *See* ECF No. 3971, p. 20.

**b. Commonality**

There are also “questions of law or fact common to the [EUCP] class.” Fed. R. Civ. P. 23(a)(2). Commonality exists where plaintiffs’ claims depend on a “common contention of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.”<sup>26</sup> EUCPs are relying on several common contentions, including that: (1) Defendants conspired to stabilize the price and supply of chicken sold in the United States; and (2) this collusion caused the plaintiff class to pay overcharges for chicken. ECF No. 3971, pp. 20–21.

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<sup>25</sup> *Prac. Mgmt. Support Servs., Inc. v. Cirque du Soleil, Inc.*, 301 F. Supp. 3d 840, 849 (N.D. Ill. 2018).

<sup>26</sup> *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

**c. Typicality**

Under Rule 23(a), typicality is satisfied if “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a). The typicality requirement “directs the district court to focus on whether the named representatives’ claims have the same essential characteristics as the claims of the class at large.”<sup>27</sup> A “plaintiff’s claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members.”<sup>28</sup> Here, typicality is satisfied because EUCPs’ claims are based on the same antitrust conspiracy as the Class’s claims. *See* ECF No. 3971, pp. 21–22.

**d. Adequacy**

The named plaintiffs are adequate representatives of the EUCP Class. Fed. R. Civ. P. 23(a)(4). 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.<sup>29</sup> The named plaintiffs have no material conflict with other Class Members. Each purchased chicken from grocery stores, unaware of the existence of Defendants’ alleged agreement to suppress the price and supply of chicken. No one individual Class Member could avoid the claimed overcharges. Each named plaintiff is aligned with the Class in establishing Defendants’ liability and maximizing class-wide damages. *See* ECF No. 3971, p. 22.

**2. The proposed Settlement Class satisfies Rule 23(b)(3).**

Under Rule 23(b)(3), plaintiffs must show that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class

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<sup>27</sup> *Retired Chicago Police Ass’n v. City of Chicago*, 7 F.3d 584, 597 (7th Cir. 1993).

<sup>28</sup> *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983); *see also In re Rubber Chems. Antitrust Litig.*, 232 F.R.D. 346, 351 (N.D. Cal. 2005) (“plaintiffs and all class members alleg[e] the same antitrust violations by defendants”).

<sup>29</sup> *Saltzman v. Pella Corp.*, 257 F.R.D. 471, 480 (N.D. Ill. 2009).

action is superior to other methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Both of these requirements are satisfied here.

*First*, common questions of law or fact predominate over individual questions. “[C]ommon questions can predominate if a common nucleus of operative facts and issues underlies the claims brought by the proposed class.”<sup>30</sup> Here, a series of common questions lies at the heart of all EUCPs’ claims, including: whether Defendants conspired to stabilize the price and supply of chicken (market manipulation); whether Defendants’ alleged information exchange was anticompetitive; whether Defendants occupy a relevant antitrust market and collectively wielded power in that market; whether Defendants’ conspiracy caused market-wide supra-competitive chicken prices; and whether higher chicken prices were passed on to chicken consumers. *See* ECF No. 3971, pp. 23–43.

*Second*, a class action is the superior mechanism for resolving Plaintiffs’ claims. “Rule 23(b)(3)’s superiority requirement . . . is comparative: the court must assess efficiency [of a class action] with an eye toward other available methods.”<sup>31</sup> Rule 23 instructs that the matters pertinent to this inquiry include: (a) class members’ interests in individually controlling the prosecution of separate actions; (b) whether other litigation exists concerning this controversy; (c) the desirability of concentrating the litigation in this forum; and (d) any difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3). In this case, the first three factors weigh heavily in favor of class certification: Class Members have “little economic incentive to sue individually based on the

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<sup>30</sup> *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 815 (7th Cir. 2012); *see also Kleen Prods. LLC v. Int’l Paper Co.*, 831 F.3d 919, 925 (7th Cir. 2016).

<sup>31</sup> *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 664 (7th Cir. 2015).

amount of potential recovery involved, there are no known existing individual lawsuits [filed by end-user consumers], and judicial efficiency is served by managing claims in one proceeding.”<sup>32</sup>

At the same time, there are no difficulties in managing this Settlement Class as a class action. Litigating the claims of the Class Members from different states in this Court does not present manageability concerns because all Class Members purchased chicken in states that have an antitrust or consumer statute that tracks the federal Sherman Act, ensuring that the core questions of liability will be proved with common evidence.<sup>33</sup> Indeed, “[c]onfronted with a request for settlement-only class certification,” the Supreme Court directs that a “district court need not inquire whether the case, if tried, would present intractable management problems, . . . for the proposal is that there be no trial.”<sup>34</sup>

Finally, the proposed Settlement Class is ascertainable. Here, a Class Member may self-identify simply by reviewing the class definition. Moreover, as mentioned in the next section, EUCPs can use grocery store data as an additional mechanism to help identify Class Members.

**C. The Court should direct notice to the Settlement Class.**

**1. EUCPs’ proposed form of class notice clearly and fairly apprises Class Members of the nature of this action and the scope of their rights.**

In any class action certified under Rule 23(b)(3), the Court must direct notice of class certification to Class Members using 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 class notice must “clearly and concisely state in plain, easily understood language” the following: “(i) the nature of the action; (ii) the definition of the class certified;

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<sup>32</sup> *Cirque du Soleil*, 301 F. Supp. 3d at 856.

<sup>33</sup> *Id.*

<sup>34</sup> *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *see also* ECF No. 3971, pp. 43–44.

(iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3).” *Id.*

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.<sup>35</sup> Here, constitutional due process requirements for notice may have been met after class certification, when notice to the Class was sent. *See* ECF No. 6196. However, many courts have used their discretion under Rule 23(e)(4) to afford members of a previously certified class a final opportunity to opt out of settlements.<sup>36</sup> Here, the Court should permit notice to allow Class Members a final opportunity to submit a claim, object to the settlements, or opt out of the settlements that allow for that opportunity (House of Raeford, Koch, Mountaire, O.K. Foods, Wayne, Sanderson, and Simmons).<sup>37</sup> As previously mentioned, the Claxton, Perdue, and Foster settlements do not request the certification of a separate Settlement Class and do not allow Class Members an additional period to opt-out.

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<sup>35</sup> *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.”).

<sup>36</sup> *See* Advisory Committee Notes to 2003 Amendments to Fed. R. Civ. P. Rule 23 (“The decision whether to approve a settlement that does not allow a new opportunity to elect exclusion is confided to the court’s discretion. . . A decision to remain in the class is likely to be more carefully considered and is better informed when settlement terms are known.”) *Low v. Trump Univ., LLC*, 246 F. Supp. 3d 1295, 1306 (S.D. Cal. 2017), *aff’d*, 881 F.3d 1111 (9th Cir. 2018) (“there is no blanket rule that due process requires a settlement-stage opt-out opportunity. In fact, there is clear precedent to the contrary. . . Rule 23(e)(4) expressly confers discretion, rather than a mandate, upon a district court to refuse to approve a settlement that does not allow for an opportunity to opt out.”).

<sup>37</sup> *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 591 (N.D. Ill. 2011).

EUCPs propose two forms of notice: a more abbreviated email notice, which will be sent directly to Class Members for whom they have email contact information, and a detailed set of questions which will be posted on the website in the form of frequently asked questions. Schachter Decl., Exs. B, C. Both forms of notice satisfy Rule 23 and follow the model class notice guidelines set forth in leading class action treatises.<sup>38</sup> These notices contain all information necessary for Class Members to make informed decisions, including the information required by Rule 23(c)(2)(B). The notice of settlement proposed by EUCPs is sufficiently detailed to permit Class Members to determine the relevant deadlines for submitting a claim, opting out of the settlements that allow for an additional opt-out opportunity, or objecting to the settlements, as well as the claims that certain of the settlements would release.<sup>39</sup>

In clear and simple language, the proposed notices state the Class definition, a brief overview of the case, the procedure for objecting (or opting out for those settlements that allow for an additional opt-out opportunity), and the right of any Class Member who does not opt out to appear at the fairness hearing. And the proposed website notice provides contact information for the claims administrator and Co-Lead Counsel should Class Members require additional information. The proposed notices plainly satisfy the requirements of due process and the specific requirements of Rule 23(c)(2)(B).<sup>40</sup>

Thus, EUCPs respectfully request that the Court approve these modified email and web notices of settlement—which reflect EUCPs’ settlements with both the current Settling Defendants

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<sup>38</sup> See 3 NEWBERG ON CLASS ACTIONS, § 8:31 at 253–59 (4th ed. 2002); Certification Notice, Ann. Manual Complex Litigation, § 21.311 (4th ed.).

<sup>39</sup> See *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 591 (N.D. Ill. 2011).

<sup>40</sup> See *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 232 (N.D. Ill. 2016) (approving notices with form and content that is straightforward and satisfied the Federal Judicial Center’s guidelines).

and Harrison Poultry, who previously settled for \$2.9 million but for whom EUCPs had not yet sent out notice to the Class.<sup>41</sup>

**2. The proposed manner of notice dissemination is reasonable and represents the best notice practicable under the circumstances.**

In a class action certified under Rule 23(b)(3), the rule provides for “the best notice practicable under the circumstances,” including “individual notice to all members who can be identified through reasonable effort.”<sup>42</sup> Notice that is mailed to each member of a settlement class “who can be identified through reasonable effort” constitutes the best notice practicable.<sup>43</sup> But notice may also be by electronic means. Fed. R. Civ. P. 23(c)(2)(B). And “[w]hen that is not possible, courts may use alternative means such as notice through third parties, paid advertising, and/or posting in places frequented by class members, all without offending due process.”<sup>44</sup>

Although Rule 23 requires that reasonable efforts be made to reach all Class Members, it does not require that each individual actually receive notice.<sup>45</sup> And while direct mail notice is typically considered the best form of notice under Rule 23(c)(2)(B), courts routinely approve notice programs that do not include direct mail notice when such notice is impracticable, but include other approaches to notice, tailored to the relevant circumstances and designed to reach

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<sup>41</sup> EUCPs previously settled with Harrison Poultry, but requested the Court defer notice of this settlement until subsequent settlements were signed. ECF No. 6651 at 9–11. The Court has already preliminarily approved the EUCP-Harrison Poultry settlement. ECF 6676. EUCPs now respectfully request the Court direct notice of the EUCP-Harrison Poultry settlement to the EUCP Class, along with the Settling Defendants.

<sup>42</sup> *Eisen*, 417 U.S. at 173.

<sup>43</sup> *Id.* at 176.

<sup>44</sup> *Mullins*, 795 F.3d at 665-66; *Hughes v. Kore of Indiana Enters., Inc.*, 731 F.3d 672, 676–77 (7th Cir. 2013).

<sup>45</sup> *Eisen*, 417 U.S. at 176; *see also Shurland v. Bacci Cafe & Pizzeria on Ogden, Inc.*, 271 F.R.D. 139, 144 (N.D. Ill. 2010).



Class Members.<sup>46</sup> Indeed, the recent amendments to Rule 23(c)(2)(B) that went into effect on December 1, 2018, codify what the caselaw has long held and puts notice by “electronic means, or other appropriate means”—such as notice via email—on an equal footing as notice by “United States mail.”

EUCPs propose a state-of-the-art notice program designed by an experienced notice and claims administrator, A.B. Data. Schachter Decl., Exs. A–C. The notice program includes (1) direct email notice; (2) publication notice, including (a) banner ads, (b) sponsored internet search listings, and (c) a media information release; (3) a case-specific website, and (4) a case-specific toll-free number. *Id.*

**Direct Email.** A.B. Data has received more than 30 million email addresses for Class Members from grocery and retail food outlets, as well as from Class Members submitting claims. The notice administrator will send individual email notice to each potential Class Member whose email addresses are known. The notice administrator will perform several tasks to maximize deliverability and avoid SPAM and junk filters. These tasks include running the list of recipient email addresses through a deliverability analysis to ensure the email addresses are valid, as well as working with email service providers to develop sending strategies to achieve optimal deliverability. The notice administrator will also incorporate certain best practices to maximize deliverability, such as ensuring no inclusion of words or phrases known to trigger SPAM or junk filters, not including attachments to the email, and sending the emails in tranches over a period of days or weeks. Schachter Decl., ¶ 7.

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<sup>46</sup> See, e.g., *Shurland*, 271 F.R.D. at 144–145; *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 351 (N.D. Ill. 2010).

The email notice will also include the case specific website, where Class Members will have access to the updated website (long-form) notice, exclusion and objection deadlines, the Settlement Agreements, and other information about the settlements. *Id.*, ¶ 22. The proposed email notice is included as Exhibit B to the Schachter Declaration. A more detailed set of information will be included on the website as “frequently asked questions” for class members. The proposed website notice is included as Exhibit C to the Schachter Declaration.

**Publication Notice.** To supplement the direct notice program, EUCPs also propose a publication notice program. The publication plan includes paid media and earned media components. The notice administrator proposes using highly targeted advertisements, specifically delivered to the social media feeds of potential Settlement Class Members using their known contact information, and to digital users that have expressed an interest in information relevant to the subject of this case, such as chicken products. Moreover, the notices have been designed to be highly visible and noticeable, being placed in “premium positioning” on websites and social media sites. Each of the following elements of publication notice has been specifically designed to be readable, noticeable, targeted, and widely disseminated to sources calculated to reach potential Settlement Class Members. *Id.*, ¶¶ 8–15.

**Banner Advertisements.** Digital banner and social media newsfeed advertisements, targeted specifically to Settlement Class Members, will provide the Class with additional opportunities to be apprised of the settlements and their rights. These banner advertisements and social media newsfeed advertisements will appear in multiple formats across desktop and mobile devices in both English and Spanish. *Id.*, ¶ 9.

The banner advertisements will be placed via *Google Display Networks* and *Google AdWords*, and on the social media platforms *Facebook*, *Instagram*, and *YouTube*, leading social

media sites in the United States. A case-specific Facebook page will also be created as a landing page for the links in the Facebook and Instagram newsfeed ads. The banner advertisements will be displayed for 30 days, which is expected to generate a minimum of 315 million impressions. Clicking on any such banner notice will bring the reader to the case website where they can obtain detailed information about the case. *Id.*, ¶¶ 9–10. An example of a proposed banner notice is included as Exhibit A to the Schachter Declaration.

**Sponsored Internet Search Listings.** Additionally, sponsored search listings, directing Settlement Class Members to the case website, will be acquired on Google, the most visited search engine. When identified target phrases and keywords relevant to the action are used in searches on Google, links to the Settlement website will appear on the search result pages. *Id.*, ¶ 14. This earned media component will be available to Settlement Class Members across the U.S. and will assist them in finding and accessing the case website.

**Informational Release.** To further supplement notice, an “Informational Release” will be issued to approximately 10,000 newsrooms, including those of print, broadcast, and digital websites across the United States. The news release will also be translated and published to *PR Newswire*’s U.S. Hispanic media contacts and Hispanic news websites. News about the Settlement will also be sent via X (formerly known as Twitter) to the followers of *PR Newswire*. *Id.*, ¶¶ 16–17.

**Settlement Website.** Co-Lead Counsel has also developed a case-specific website for this matter, [www.overchargedforchicken.com](http://www.overchargedforchicken.com). This case website has been in existence for years, and periodically updated with information for Class Members on the status of the litigation. The website provides a summary of the case, relevant documents, important deadlines and dates. The website will be updated with the “frequently asked questions” once approved by the Court, as well

as copies of the notice in both English and Spanish. *Id.*, ¶¶ 18, 20. Co-Lead Counsel will continue to ensure that this website remains updated as the litigation proceeds.

**Toll-Free Number and Mailing Address.** The notice administrator will also implement and maintain a toll-free telephone number with an automated interactive voice response system. The automated interactive voice response system will present callers with a series of choices to hear prerecorded information concerning the settlement. *Id.*, ¶ 19.

In short, the proposed notice plan satisfies the requirements of Rule 23 and due process, will provide ample notice to potential members of the Settlement Class, and is the best notice practicable under the circumstances. *Id.*, ¶ 28. The proposed notices also include notice of the settlement with Harrison Poultry, which had not yet been noticed to the Class.

**D. The proposed plan of allocation is fair and reasonable and has been previously approved by the Court.**

Courts evaluate claims processes to ensure that they are fair and reasonable and not so burdensome as to discourage class members from submitting claims.<sup>47</sup> Here, to encourage claim filing, completing the claims form is simple. Schachter Decl., Ex. D. Class Members will be given the opportunity to submit their contact information and the number of qualifying purchases through the website (or through hard copy claims forms) using a brief, simple set of questions. *Id.* No documentation is required unless there is a potentially suspicious number of purchases or amount of costs claimed. *Id.*, ¶ 25. This claims process follows the one previously approved by the Court. ECF No. 6196.

Moreover, the distribution plan provides for efficient and cost-effective disbursement of the settlement funds to Class Members. Settlement Class Members must submit a timely, valid

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<sup>47</sup> See *Schulte*, 805 F. Supp. 2d at 591.

claim through the settlement website or by mail to be eligible to receive payment. Payments will be sent electronically to each eligible claimant using the email address provided on the Claim Form. At the time of distribution, each eligible claimant will be provided with several electronic options to instantaneously receive their payment, such as a virtual debit card, PayPal, or redemption through other ecommerce platforms. This will reduce administrative costs and provide claimants with a convenient and efficient way to receive their funds without having to deposit a check or visit a bank. Settlement Class Members can also request a traditional paper check payment by mail. *Id.*, ¶¶ 23, 26. This comports with current best practices.

EUCPs also request that the claims period for the prior \$183.9 million be reopened to allow Class Members to submit claims regarding all settlements. Previously, this Court ordered (upon the request of EUCPs) that the claims period close on December 31, 2023. ECF No. 6651. Because of the multiple appeals by one Class Member regarding attorney fees, distribution has not yet begun for the EUCP Class. There is no reason why Class Members who receive notice should not participate fully in the settlements. Moreover, for Class Members who have already submitted claims, EUCPs propose that these claims be deemed effective for all settlements. Reducing the burden on Class Members is critical for participation in class actions. That said, the settlements that occurred before the class certification covered a broader period (2009–2019) than the period the Court certified at class certification (2012–2019). So for the current settlements, Class Members who previously submitted claims will only be compensated for their 2012–2019 purchases.

Thus, EUCPs respectfully request that the Court approve the proposed claim form, as well as the proposed plan of allocation, with respect to the settlements between EUCPs and Settling Defendants.

**E. Proposed schedule**

EUCPs propose the following schedule through final approval. The schedule provides for a short period (30 days) to allow for modifications to the website and preparation of email notice. This is followed by a 60-day period for Class Members to receive and review information relating to the settlements. Co-Lead Counsel's motion for attorney fees, costs, and service awards for the named class representatives will be filed 14 days before the objection and exclusion deadline. EUCPs ask that this Court set a final approval hearing approximately 130 days from the date it grants this motion directing notice. Co-Lead Counsel will file the motion for final approval 14 days before that hearing and respond to any objections at that time. The claims period is proposed to remain open until June 2025, after which the settlement proceeds would be distributed to the Settlement Class (unless another appeal is filed). The following summarizes the proposed schedule:

<b>EVENT</b>	<b>DATE</b>
Notice campaign begins through direct email and implementation of publication notice campaign	30 days from order directing notice
Last day for Co-Lead Counsel to move for attorney fees, expenses, and service awards for named plaintiffs	76 days from order directing notice
Last day for Settlement Class Members to request exclusion from the Harrison Poultry, House of Raeford, Koch, Mountaire, O.K. Foods, Sanderson, Simmons, and Wayne settlements, to object to any of the settlements, and to file notices to appear at the final approval hearing	90 days from order directing notice
Co-Lead Counsel to provide Settling Defendants with a list of all persons and entities who have timely and adequately	97 days from order directing notice

EVENT	DATE
requested exclusion from the Harrison Poultry, House of Raeford, Koch, Mountaire, O.K. Foods, Sanderson, Simmons, and Wayne settlements	
Co-Lead Counsel shall file a motion for final approval of the settlements and all supporting documents, as well as responses to any objections to the settlements or attorney fees	14 days before the Final Approval Hearing
Final Approval Hearing, and hearing on request for attorney fees and expenses	130 days from order directing notice, or as soon thereafter as may be heard by the Court
Distribution to Settlement Class	TBD after final approval has been granted and any objections and/or appeals have been resolved
Claims Period Deadline	July 31, 2025

## V. CONCLUSION

For these reasons, EUCPs respectfully request that the Court preliminarily approve the settlement agreements with the Settling Defendants, certify the Settlement Class as to certain settlements described herein, and direct notice in the form and manner, and on the schedule, proposed here.

DATED: January 29, 2025

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ Shana E. Scarlett  
 SHANA E. SCARLETT  
 715 Hearst Avenue, Suite 300  
 Berkeley, California 94710  
 Telephone: (510) 725-3000  
 shanas@hbsslaw.com

Steve W. Berman (IL Bar No. 3126833)  
 Breanna Van Engelen (*pro hac vice*)  
 1301 Second Avenue, Suite 2000  
 Seattle, Washington 98101  
 Telephone: (206) 623-7292

steve@hbsslaw.com  
breannav@hbsslaw.com

DATED: January 29, 2025

COHEN MILSTEIN SELLERS & TOLL PLLC

By: /s/ Brent W. Johnson

BRENT W. JOHNSON

Benjamin D. Brown

Daniel H. Silverman

Alison Deich

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

*Co-Lead Counsel for End-User Consumer Plaintiff  
Class*