

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Susan E. Bindler
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

July 31, 2026

Kosta S. Stojilkovic
WILKINSON & STEKLOFF
10th Floor
2001 M Street N.W.
Washington, DC 20036

RE: 26-8011 Commercial and Inst. IPPs, et al v. Cargill, Inc., et al

Dear Counsel:

A petition for permission to appeal has been filed under the caption and miscellaneous case number shown above.

Counsel for the respondent is directed to file a response to this application within 10 days from service of the petition.

Upon receipt of the response, the matter will be submitted to the court for a ruling. All counsel will be advised of the court's decision. No briefing schedule will be established unless the court grants the petition.

The Clerk of the United States District Court is being notified of the filing of the petition. If the petition is granted, petitioner must pay the district court all required fees. Please refer to Federal Rule of Appellate Procedure 5 and the applicable statutory sections for further guidance and information.

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Susan E. Bindler
Clerk of Court

MMH

Enclosure(s)

cc:	Joan A. Akalaonu	Maira Penza
	Jeremy D. Andersen	Rio Pierce
	Steve Berman	Kyle Pozan
	Michael D. Bonanno	Shawn M. Raiter
	Patrick E. Brookhouser Jr.	Sami H. Rashid
	W. Joseph Bruckner	Evelyn Y. Riley
	Jacob Bylund	Joshua J. Rissman
	Elaine T. Byszewski	Shana E. Scarlett
	Elizabeth Tran Castillo	Nicholas Scheiner
	Brian D. Clark	Anthony J. Stauber
	Emily Clarke	Daryna Ternavska
	Benjamin L. Ellison	Bailey Twyman-Metzger
	Michelle Fischer	Breanna Van Engelen
	Michael J. Flannery	Arielle Wagner
	David Friedman	Beth Wilkinson
	Owen Gallogly	Davida S. Williams
	Robert Gallup	Abby R. Wolf
	Daniel E. Gustafson	Adam J. Zapala
	Jason S. Hartley	Xiaochuan Kevin Zhao
	Eddie Hasdoo	Clerk, U.S. District Court
	Daniel C. Hedlund	District of Minnesota
	Holley C.M. Horrell	
	Kevin A. Janus	
	Kurt Johnson	
	Megan E. Jones	
	Michelle J. Looby	
	Emily Muirhead McAdam	
	Cody D. McCracken	
	Julia E. McEvoy	
	Simeon Morbey	
	Sarah Neuman	
	Taofikat Ninalowo-Olaofe	

District Court/Agency Case Number(s): 0:22-md-03031-JRT

Caption For Case Number: 26-8011

In re: Cattle and Beef Antitrust Litigation

Commercial and Institutional Indirect Purchaser Plaintiffs; Consumer Indirect Purchaser Plaintiffs

Respondents

Direct Action Plaintiffs (DAPs); David Hyatt, doing business as Hyatt Farms; Expense Reduction Services; Terry Faul, doing business as Faul Land Improvements; Cattle Class Plaintiffs

Direct Purchaser Plaintiffs (DPPs)

Respondent

v.

Cargill, Inc.; Cargill Meat Solutions Corporation, also known as Cargill Protein, also known as Cargill Protein - North America; JBS SA; Swift Beef Company; JBS Packerland, Inc.; National Beef Packing Company, LLC

Petitioners

Tyson Foods, Inc.; Tyson Fresh Meats, Inc.

JBS USA Food Company

Petitioner

Addresses For Case Participants: 26-8011

Kosta S. Stojilkovic
WILKINSON & STEKLOFF
10th Floor
2001 M Street N.W.
Washington, DC 20036

Joan A. Akalaonu
FAEGRE & DRINKER
Suite 3300
320 S. Canal Street
Chicago, IL 60606-5707

Jeremy D. Andersen
QUINN & EMANUEL
Tenth Floor
865 S. Figueroa Street
Los Angeles, CA 90017

Steve Berman
HAGENS & BERMAN
Suite 2000
1301 Second Avenue
Seattle, WA 98101

Michael D. Bonanno
QUINN & EMANUEL
Suite 600
555 13th Street, N.W.
Washington, DC 20004

Patrick E. Brookhouser Jr.
MCGRATH & NORTH
Suite 3700, First National Tower
1601 Dodge Street
Omaha, NE 68102

W. Joseph Bruckner
LOCKRIDGE & GRINDAL
Suite 2200
100 Washington Avenue, S.
Minneapolis, MN 55401

Jacob Bylund
FAEGRE & DRINKER
33rd Floor
801 Grand Avenue
Des Moines, IA 50309-8011

Elaine T. Byszewski
HAGENS & BERMAN
Suite 920
301 N. Lake Avenue
Pasadena, CA 91101

Elizabeth Tran Castillo
COTCHETT & PITRE
Suite 200
840 Malcolm Road
Burlingame, CA 94010

Brian D. Clark
LOCKRIDGE & GRINDAL
Suite 2200
100 Washington Avenue, S.
Minneapolis, MN 55401

Emily Clarke
WILKINSON & STEKLOFF
Floor 24
130 W. 42nd Street
New York, NY 10036

Clerk, U.S. District Court, District of Minnesota
U.S. DISTRICT COURT
District of Minnesota
202 U.S. Courthouse
300 S. Fourth Street
Minneapolis, MN 55415

Benjamin L. Ellison
JONES & DAY
Suite 4950
90 S. Seventh Street
Minneapolis, MN 55402

Michelle Fischer
JONES & DAY
901 Lakeside Avenue
North Point
Cleveland, OH 44114

Michael J. Flannery
CUNEO & GILBERT
Second Floor
Two City Place Drive
Saint Louis, MO 63141

David Friedman
WILKINSON & STEKLOFF
10th Floor
2001 M Street N.W.
Washington, DC 20036

Owen Gallogly
WILKINSON & STEKLOFF
Floor 24
130 W. 42nd Street
New York, NY 10036

Robert Gallup
FAEGRE & DRINKER
33rd Floor
801 Grand Avenue
Des Moines, IA 50309-8011

Daniel E. Gustafson
GUSTAFSON & GLUEK
Suite 2600
120 S. Sixth Street
Minneapolis, MN 55402

Jason S. Hartley
HARTLEY LLP
Suite 820
101 W. Broadway
San Diego, CA 92101

Eddie Hasdoo
JONES & DAY
Suite 4800
110 N. Wacker Drive
Chicago, IL 60606

Daniel C. Hedlund
GUSTAFSON & GLUEK
Suite 2600
120 S. Sixth Street
Minneapolis, MN 55402

Holley C.M. Horrell
GREENE & ESPEL
Suite 2200
222 S. Ninth Street
Minneapolis, MN 55402

Kevin A. Janus
QUINN & EMANUEL
8th & 9th Floors
295 Fifth Avenue
New York, NY 10016

Kurt Johnson
JONES & DAY
Suite 2100
150 W. Jefferson Street
Detroit, MI 48226-4438

Megan E. Jones
HAUSFELD LLP
Suite 3200
600 Montgomery Street
San Francisco, CA 94111

Michelle J. Looby
GUSTAFSON & GLUEK
Suite 2600
120 S. Sixth Street
Minneapolis, MN 55402

Emily Muirhead McAdam
GREENE & ESPEL
Suite 2200
222 S. Ninth Street
Minneapolis, MN 55402

Cody D. McCracken
CUNEO & GILBERT
Suite 740
2445 M Street, N.W.
Washington, DC 20037

Julia E. McEvoy
JONES & DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113

Simeon Morbey
LOCKRIDGE & GRINDAL
Suite 2200
100 Washington Avenue, S.
Minneapolis, MN 55401

Sarah Neuman
WILKINSON & STEKLOFF
10th Floor
2001 M Street N.W.
Washington, DC 20036

Taofikat Ninalowo-Olaofe
GREENE & ESPEL
Suite 2200
222 S. Ninth Street
Minneapolis, MN 55402

Maira Penza
WILKINSON & STEKLOFF
Floor 24
130 W. 42nd Street
New York, NY 10036

Rio Pierce
HAGENS & BERMAN
Suite 202
715 Hearst Avenue
Berkeley, CA 94710

Kyle Pozan
LOCKRIDGE & GRINDAL
Suite 700
1165 North Clark Street
Chicago, IL 60610

Shawn M. Raiter
LARSON & KING
Suite 2800
30 E. Seventh Street
Saint Paul, MN 55101-1922

Sami H. Rashid
QUINN & EMANUEL
8th & 9th Floors
295 Fifth Avenue
New York, NY 10016

Evelyn Y. Riley
CUNEO & GILBERT
Suite 740
2445 M Street, N.W.
Washington, DC 20037

Joshua J. Rissman
GUSTAFSON & GLUEK
Suite 2600
120 S. Sixth Street
Minneapolis, MN 55402

Shana E. Scarlett
HAGENS & BERMAN
Suite 202
715 Hearst Avenue
Berkeley, CA 94710

Nicholas Scheiner
GREENE & ESPEL
Suite 2200
222 S. Ninth Street
Minneapolis, MN 55402

Anthony J. Stauber
GUSTAFSON & GLUEK
Suite 2600
120 S. Sixth Street
Minneapolis, MN 55402

Daryna Ternavska
FAEGRE & DRINKER
33rd Floor
801 Grand Avenue
Des Moines, IA 50309

Bailey Twyman-Metzger
GUSTAFSON & GLUEK
Suite 2600
120 S. Sixth Street
Minneapolis, MN 55402

Breanna Van Engelen
HAGENS & BERMAN
Suite 2000
1301 Second Avenue
Seattle, WA 98101

Arielle Wagner
LOCKRIDGE & GRINDAL
Suite 2200
100 Washington Avenue, S.
Minneapolis, MN 55401

Beth Wilkinson
WILKINSON & STEKLOFF
10th Floor
2001 M Street N.W.
Washington, DC 20036

Davida S. Williams
GREENE & ESPEL
Suite 2200
222 S. Ninth Street
Minneapolis, MN 55402

Abby R. Wolf
HAGENS & BERMAN
Suite 300
715 Hearst Avenue
Berkeley, CA 94710

Adam J. Zapala
COTCHETT & PITRE
Suite 200
840 Malcolm Road
Burlingame, CA 94010

Xiaochuan Kevin Zhao
GREENE & ESPEL
Suite 2200
222 S. Ninth Street
Minneapolis, MN 55402

No. **26-8011**

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

**IN RE CATTLE AND BEEF ANTITRUST LITIGATION:
DIRECT PURCHASER PLAINTIFFS, COMMERCIAL AND
INSTITUTIONAL INDIRECT PURCHASER PLAINTIFFS,
CONSUMER INDIRECT PURCHASER PLAINTIFFS ACTIONS**

United States District Court for the District of Minnesota
Case No. 22-md-3031
The Honorable John R. Tunheim

**PETITION FOR REVIEW OF DOWNSTREAM CLASS
CERTIFICATION ORDER PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 23(F)**

Kosta S. Stojilkovic
Beth A. Wilkinson
Sarah Neuman
David R. Friedman
WILKINSON STEKLOFF LLP
2001 M Street NW, 10th Floor
Washington, DC 20036
(202) 847-4000

(additional counsel below)

Moirra Penza
Owen Gallogly
Emily Clarke
WILKINSON STEKLOFF LLP
130 W 42nd Street, 24th Floor
New York, NY 10036
(212) 294-8910

*Counsel for Petitioners-
Defendants Cargill, Incorporated
and Cargill Meat Solutions
Corporation*

X. Kevin Zhao
Holley C. M. Horrell
Davida S. McGhee Williams
Emily M. McAdam
Nicholas Scheiner
Taofikat Ninalowo-Olaofe
GREENE ESPEL PLLP
222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
(612) 373-0830

Jacob D. Bylund
Robert C. Gallup
Dasha Ternavska
FAEGRE DRINKER BIDDLE &
REATH LLP
801 Grand Avenue, 33rd Floor
Des Moines, IA 50309
(515) 248-9000

Joan A. Akalaonu
FAEGRE DRINKER BIDDLE &
REATH LLP
320 South Canal Street, Suite 3300
Chicago, IL 60606-5707
(312) 569-1000

*Counsel for Petitioners-Defendants
Cargill, Incorporated
and Cargill Meat Solutions
Corporation*

Sami H. Rashid
Kevin A. Janus
QUINN EMANUEL URQUHART
& SULLIVAN LLP
295 Fifth Avenue
New York, NY 10016
(212) 849-7000

Michael D. Bonanno
QUINN EMANUEL URQUHART
& SULLIVAN LLP
555 13th Street NW
Suite 600
Washington, D.C. 20004
(202) 538-8000

Jeremy D. Andersen
QUINN EMANUEL URQUHART
& SULLIVAN LLP
865 S. Figueroa St., 10th Floor
Los Angeles, CA 90017
(213) 443-3685

Patrick E. Brookhouser, Jr.
MCGRATH NORTH MULLIN &
KRATZ, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, NE 68102
(402) 341-3070

*Counsel for Petitioners-Defendants
JBS USA Food Company, JBS
Packerland, Inc., Swift Beef
Company, and JBS S.A.*

Michelle Fischer
JONES DAY
901 Lakeside Avenue
North Point
Cleveland, OH 44114
(216) 586-3939

Kurt Johnson
JONES DAY
150 W Jefferson Ave Ste 2100
Detroit, MI 48226
(313) 733-3939

Eddie Hasdoo
JONES DAY
110 North Wacker, Suite 4800
Chicago, Illinois 60606
(312) 269-4214

Julia E. McEvoy
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3867

Benjamin L. Ellison
JONES DAY
90 South Seventh Street, Suite 4950
Minneapolis, MN 55402
(612) 217-8800

*Counsel for Petitioner-Defendant
National Beef Packing Company,
LLC*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), Petitioners-Defendants make the following disclosures:

Petitioners-Defendants Cargill, Incorporated and Cargill Meat Solutions Corporation certify as follows: Cargill Meat Solutions Corporation is a wholly owned subsidiary of Cargill, Incorporated, a private company. No publicly held corporation owns 10% or more of Cargill, Incorporated stock.

Petitioners-Defendants JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively, the “JBS Defendants”) certify as follows: The parent corporation of Petitioners-Defendants Swift Beef Company and JBS Packerland, Inc. is JBS USA Food Company Holdings. Until November 2025, the parent company of Petitioner-Defendant JBS USA Food Company was JBS USA Food Company Holdings. In November 2025, Petitioner-Defendant JBS USA Food Company was merged into JBS USA Food Company Holdings with the latter as the surviving entity. The parent company of Petitioner-Defendant JBS S.A. is JBS Participações Societárias S.A. The JBS Defendants are indirect, wholly owned subsidiaries of JBS N.V., a

publicly owned company. Aside from JBS N.V., no publicly owned corporation owns 10% or more of any of the JBS Defendants' stock.

Petitioner-Defendant National Beef Packing Company, LLC ("National Beef") certifies that National Beef is majority owned by NBM US Holdings, an indirect subsidiary of MBRF Global Foods S.A. ("MBRF"). MBRF is thus identified as the parent corporation of National Beef and the only publicly held corporation that owns 10% or more of National Beef stock.

Dated: July 30, 2026

/s/ Kosta S. Stojilkovic
*Counsel for Petitioners-Defendants
Cargill, Incorporated and Cargill
Meat Solutions Corporation*

/s/ Sami H. Rashid
*Counsel for Petitioners-Defendants
JBS USA Food Company, JBS
Packerland, Inc., Swift Beef
Company, and JBS S.A.*

/s/ Michelle Fischer
*Counsel for Petitioner-Defendant
National Beef Packing Company,
LLC*

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INTRODUCTION

This Rule 23(f) petition “raises issues on which circuits are split and that are likely to arise in other cases in this circuit”: how to deal with “the presence of uninjured class members.” *In re Asacol Antitrust Litig.*, 907 F.3d 42, 46-47 (1st Cir. 2018) (describing why 23(f) petition was granted). In this multi-district litigation regarding the beef and cattle industry, the three downstream classes, which purchased beef from Defendants and are the subject of this petition, each presented a different model that purported to calculate an average overcharge. Defendants opposed class certification because these models failed to establish common impact—that is, they failed to establish that all or substantially all class members were overcharged.

The district court reasoned that “[a] class cannot be certified if more than a *de minimis* portion of the class is uninjured.” ECF No. 1610 (“Order”) at 46. But the court did not resolve whether that condition was satisfied here, even though Defendants presented evidence that large portions of each class were uninjured. Instead, the court concluded that certification was appropriate because there was a “battle of the experts” about whether Plaintiffs’ models show common impact. *Id.* at 47.

That reasoning improperly substituted the *Daubert* standard of admissibility for the “rigorous analysis” required by Rule 23. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). If there was a “battle of the experts” regarding predominance, the district court was required to resolve it in ruling on class certification—not “end its analysis of the plaintiffs’ evidence after determining such evidence was merely admissible.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 982 (9th Cir. 2011); *see also Arandell Corp. v. Xcel Energy Inc.*, 149 F.4th 883, 893-94 (7th Cir. 2025) (same).

Moreover, the district court certified two of the three downstream classes without even resolving whether they could establish an *average* overcharge. Plaintiffs do not dispute that the price Defendants pay for fed cattle is the most important variable driving the price they charge for beef. Yet the experts for two of the three classes did not include the price for fed cattle as a variable in their models. And once this critical variable was included, the models for those two classes failed to show *any* statistically significant overcharge. The district court, however, improperly ended its analysis of this issue in finding Plaintiffs’ models admissible under *Daubert* and did not address it under Rule 23, thereby

once again relieving Plaintiffs from their burden to establish predominance.

As Justice Kavanaugh recently recognized, “[f]ederal courts may not certify a damages class under Rule 23 when, as here, the proposed class includes both injured and uninjured class members.” *Lab’y Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 332 (2025) (Kavanaugh, J., dissenting from dismissal of cert. as improvidently granted). The district court’s class certification order violates this fundamental rule, and the “consequences” of its improper approach to Rule 23 may be “widespread and significant.” *Id.* at 333. Accordingly, the Court should grant the petition for review, reverse the class certification order, and provide needed guidance on the important questions raised by this case.

QUESTION PRESENTED

Can a district court certify damages classes without resolving material disputes as to whether those classes contain large numbers of uninjured class members?

STATEMENT OF THE CASE

A. The Beef and Cattle Class Actions

This petition arises from multi-district litigation involving the cattle and beef industry. Order at 4-5. Defendants are beef packers who

purchase cattle from feedlots, slaughter and process those cattle, and then sell cuts of beef to various buyers, including retailers, restaurants, and consumers. *See id.* at 4. Plaintiffs are entities and individuals who are involved—either directly or indirectly—in selling cattle to Defendants or in purchasing beef from them. *Id.* at 3, 6-11. They claim that Defendants have conspired to both lower prices for upstream sellers of cattle and raise prices for downstream purchasers of beef. *See id.* at 49-50; ECF No. 1200, Omnibus Opp’n to Pls.’ Mots. for Class Certification, at 2-3.

This petition concerns only the downstream Plaintiffs.¹ They seek relief on behalf of three damages classes: (1) the Direct Purchaser Plaintiffs (“DPPs”), who bought beef directly from Defendants; (2) the Commercial and Institutional Indirect Purchaser Plaintiffs (“CIIPPs”), who indirectly purchased beef from Defendants for use in restaurants and other commercial settings; and (3) the Consumer Indirect Purchaser Plaintiffs (“Consumer IPPs”), who indirectly purchased beef from

¹ At Plaintiffs’ request, the district court addressed the upstream Plaintiffs in a separate class certification order. *See* Order at 3 n.5. That order is the subject of another, concurrently filed Rule 23(f) petition.

Defendants for their personal consumption. Order at 6-11. All three classes allege they were overcharged for beef. *See id.* at 49-52.²

While there have been previous class actions involving purchasers of proteins claiming overcharges—such as the chicken, pork, and turkey MDLs—this case is different. Past protein class actions have targeted vertically integrated industries. ECF No. 1200, Omnibus Opp’n to Pls.’ Mots. for Class Certification, at 11. And the alleged theory of harm in those cases was relatively simple: the defendants collectively reduced the supply of the relevant animal—which they control—to increase the price of the relevant protein—which they sell. *Cf. In re Pork Antitrust Litig.*, 781 F. Supp. 3d 758, 782 (D. Minn. 2025).

The beef and cattle industry, however, is not vertically integrated. The long supply chain for beef involves several levels of independent actors:

² For purposes of this downstream petition, Defendant National Beef is pursuing review of the certification of all three classes; Defendants Cargill, Incorporated and Cargill Meat Solutions Corporation are pursuing review of the certification of the DPP and the CIIPP classes; and Defendants JBS USA Food Company, JBS Packerland, Inc., Swift Beef Company, and JBS S.A. are pursuing review of the certification of the Consumer IPP class.

1. It begins with cow-calf operators who breed cattle and raise the resulting calves until they are weaned;
2. The weaned cattle then follow different paths to feedlots, where they remain until they reach harvest weight and become “fed cattle”;
3. The beef packers—including Defendants—then purchase the fed cattle, process them, and produce various cuts of beef; and
4. Finally, wholesalers and other large buyers purchase the beef, and in turn sell it to retailers and consumers.

ECF No. 1200, Omnibus Opp’n to Pls.’ Mots. for Class Certification, at 11-13. Unlike other proteins, multiple actors control the supply of cattle that eventually reaches the market.

Plaintiffs thus allege a different type of conspiracy than past protein cases. Because Defendants do not control the supply of cattle available for slaughter, Plaintiffs allege that Defendants conspired to depress the market for fed cattle. *Id.* at 2-3 (collecting citations from briefs and complaints). That means the downstream classes must explain how they were injured even though the conspiracy also purportedly lowered the price of cattle, which is Defendants’ key input cost in the production of beef. *See id.*

B. Plaintiffs' Classwide Overcharge Models

Each of the three downstream classes hired a different expert to calculate the overcharge caused by the alleged conspiracy. Order at 16-18. Each expert used a regression to calculate a single *average* overcharge for the entire class. *Id.* at 42-44. And even though the three experts were trying to measure the impact of the same conspiracy on direct purchasers as the first step of their analyses, each expert calculated a different average overcharge for this common inquiry: the Consumer IPPs calculated an overcharge of 4.8%, the DPPs calculated an overcharge of 12.5%, and the CIIPPs calculated an overcharge of 12.6%. *See* Order at 27, 42; ECF No. 1200, Omnibus Opp'n to Pls.' Mots. for Class Certification, at 3-4 (chart of expert opinions). None of the experts calculated whether these average overcharges applied to all or substantially all class members.

But Defendants' expert, Dr. Lauren Stiroh, applied Plaintiffs' models to perform such calculations and found that large portions of all three classes were not injured. Dr. Stiroh tested whether the downstream classes included uninjured purchasers in two different ways. First, she ran separate regressions using the data for individual

purchasers to calculate an individual overcharge. *See* ECF No. 1115, Opp’n to DPP Mot. for Class Certification, at 20-21. Second, she added control variables to Plaintiffs’ models to produce individual overcharge results for particular purchasers. *See id.* at 19-20. This testing revealed that significant portions of each class were not injured. Indeed, her testing suggested that as many as 36.4 percent of the DPPs, 63.6 percent of the Consumer IPPs, and 79.2 percent of the CIIPPs “did not incur an overcharge.” Order at 47-48 (quoting Dr. Stiroh’s expert report); *see also* ECF No. 1115, Opp’n to DPP Mot. for Class Certification, at 20.

Dr. Stiroh also demonstrated that the models for two of the downstream classes, the DPPs and the CIIPPs, mask even more uninjured class members than these results suggest. *See* Order at 19-20 (describing argument). That is because these models failed to include a control variable for the cost of fed cattle, which is the largest input cost for Defendants. *See id.* Without that variable, the experts for the DPPs and the CIIPPs could not determine whether—with cattle prices being *higher* in the but-for world without Defendants’ alleged suppression of the fed cattle market—downstream purchasers would have actually paid less for beef. *See id.* at 20. By contrast, the expert for the Consumer

IPPs, who calculated the lowest average overcharge, agreed that a control for fed cattle prices was necessary and included it in his model. ECF No. 1115, Opp’n to DPP Mot. for Class Certification, at 33-34. And when Dr. Stiroh added that same control to the DPP and CIIPP models, those models failed to produce a statistically significant overcharge at all. Order at 19-20.

C. The Downstream Class Certification Order

On July 16, 2026, the district court issued an order certifying all three of the downstream damages classes. While Defendants emphasized the issues discussed above in their briefing and argument opposing class certification, the court improperly declined to resolve them in its Rule 23 analysis. Rather, the court concluded that class certification was appropriate simply because Plaintiffs had offered overcharge models that were admissible under *Daubert*. Indeed, according to the court, it was enough for class certification that “each expert report satisfies the less stringent *Daubert* standard employed at the class certification stage.” Order at 61.

The district court began its order by summarizing the law on Rule 23. The court acknowledged that “[i]t is the Court’s duty to conduct a

‘rigorous analysis’ before certifying a class,” *id.* at 30, which is distinct from the *Daubert* inquiry, *see id.* at 12-29, 29-60 (separating sections on *Daubert* and Rule 23). It also reasoned that the “demanding” requirement of predominance cannot be satisfied “if more than a *de minimis* portion of the class is uninjured.” *Id.* at 38, 46. Although “[t]he Eighth Circuit has not yet determined what constitutes *de minimis*,” “other courts have held between approximately five and ten percent would justify refusing to certify the class.” *Id.* at 46.

The district court, however, declined to apply this law to the case before it. The court recognized that Dr. Stiroh had opined that—for all three classes—Plaintiffs’ own models showed a high number of uninjured class members and Plaintiffs’ experts had responded to her criticisms. Order at 44-49. But the court did not resolve the dispute. For the Consumer IPPs and the CIIPPs, the court concluded only that it was faced with a “battle of the experts” and that the models presented “are not so flawed that they would be inadmissible.” Order at 47-48.

The district court’s analysis for the DPPs was equally incomplete. It again recognized that Defendants had presented evidence that the DPP model did not “demonstrate common impact because [the expert’s]

overcharge model assumes, rather than proves, common impact.” Order at 44. But this time, the court concluded that Rule 23 had been satisfied because the expert “did not use his model to prove common impact,” and “instead relied on his analysis of market structure—combined with economic theory.” *Id.* The court also opined that the expert “validated his common impact model with other tests including testing the overcharge across primal cuts, Defendants, and large customers, and price movement tests”—even though the court agreed with Defendants that these purported validations “alone likely would not **establish** common impact.” *Id.* at 45 n.21 (emphasis in original). Having gone this far, the court inexplicably stopped. It never decided whether the impact was in fact common or whether a significant percentage of proposed class members were uninjured.

This pattern of punting on predominance continued with the fed cattle variable for the DPPs and the CIIPPs. In the *Daubert* section of its order, the court remarked that “[a]n expert’s failure to account for each and every possible supply and demand variable is not grounds for excluding their testimony.” Order at 20. It then explained that the DPPs and the CIIPPs “accounted for numerous variables that impact the

market,” which it deemed “sufficient at the class certification stage.” *Id.* at 21. But the court never resolved Defendants’ argument that inclusion of this variable is critical to the Rule 23 inquiry—as even the Consumer IPPs’ expert had acknowledged. Nor did the court decide whether the omission of this variable by the DPPs and the CIIPPs covered up a lack of common impact. Ultimately, it was enough for the district court that “the omission of a particular variable” did “not render [the models] so irrelevant as to be inadmissible.” *Id.*

REASONS FOR GRANTING THE PETITION

This Court should grant Defendants’ petition for review under Rule 23(f) and reverse the class certification order. The record in this case presents serious questions about whether all three downstream damages classes contain a significant number of uninjured members. Instead of resolving those questions as Rule 23 requires, the district court concluded only that Plaintiffs’ overcharge models were admissible under a watered-down *Daubert* standard. Whether the district court was correct in

refusing to do more is an important, recurring question of class action law that this Court should resolve.³

I. The District Court Did Not Resolve Whether the Classes Include a Significant Number of Uninjured Purchasers

The district court first erred by failing to resolve whether the downstream classes contain a significant number of uninjured purchasers. Class certification “is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23 have been satisfied.” *Wal-Mart Stores, Inc v. Dukes*, 564 U.S. 338, 350-51 (2011) (cleaned up). And the party seeking class certification has the burden of establishing that Rule 23 has been satisfied through “evidentiary proof.” *Comcast Corp.*, 569 U.S. at 33. That means a district court cannot certify a damages class under Rule 23(b)(3) unless it has conducted a rigorous analysis of the evidence supporting predominance. “The predominance requirement is ‘demanding’; a court considering certification pursuant to Rule 23(b)(3) must take a ‘close look at whether common questions predominate over individual ones.” *Hudock v. LG*

³ This petition addresses just two of multiple significant errors committed by the district court in its order granting certification of the three downstream damages classes.

Elecs. U.S.A., Inc., 12 F.4th 773, 776 (8th Cir. 2021) (quoting *Comcast*, 569 U.S. at 34).

One problem that can defeat predominance is when a proposed class includes many class members who were not injured. “Uninjured class members cannot prevail on the merits, so their claims must be winnowed away as part of the liability determination.” *In re Rail Freight Fuel Surcharge Antitrust Litig. – MDL No. 1869*, 934 F.3d 619, 624 (D.C. Cir. 2019). Thus, if a class has a significant number of uninjured class members, “[t]he need to identify those individuals will predominate.” *Asacol Antitrust Litig.*, 907 F.3d at 53-54; *see also Blades v. Monsanto Co.*, 400 F.3d 562, 571 (8th Cir. 2005) (affirming denial of class certification because “not every member of the proposed classes can prove with common evidence that they suffered impact from the alleged conspiracy”).

Certifying a class with uninjured members also violates Article III because “a class cannot be certified if it contains members who lack standing.” *Halvorson v. Auto-Owners Ins.*, 718 F.3d 773, 779 (8th Cir. 2013) (quoting *Avritt v. Reliastar Life Ins.*, 615 F.3d 1023, 1034 (8th Cir. 2010)); *see also Johannesson v. Polaris Indus. Inc.*, 9 F.4th 981, 987 (8th

Cir. 2021) (same).⁴ Consequently, this is not an issue that can be “defer[red]” until after class certification. *Rail Freight Fuel Surcharge Antitrust Litig.*, 934 F.3d at 626. “To the contrary, confronting such questions is part-and-parcel of the ‘hard look’ required by *Wal-Mart* and *Comcast*.” *Id.*

The district court nonetheless declined to decide whether the downstream classes include a significant number of uninjured purchasers. For the Consumer IPPs and the CIIPPs, the court concluded that it could not decide the issue because there was a “battle of the experts.” Order at 47. Although Defendants presented evidence that Plaintiffs’ own models show substantial portions of both classes are uninjured, the district court did not decide whether this issue undermined Plaintiffs showing of predominance. Instead, the court reasoned that the Consumer IPPs and the CIIPPs have presented models that “are not so flawed that they would be inadmissible.” Order at 47-48.

⁴ These cases suggest that this Court has adopted an even stricter standard than the *de minimis* rule applied by the district court. *See also Lab’y Corp. of Am.*, 605 U.S. at 332 n.1 (Kavanaugh, J., dissenting) (highlighting that the Supreme Court has never endorsed a “*de minimis* exception”).

That analysis improperly substituted the *Daubert* standard—indeed, the “less stringent” one that the district court applied at class certification, *id.* at 61—for the “rigorous” requirements of Rule 23. To certify a class, the district court was required to determine if Plaintiffs demonstrated that common issues would predominate, not just that Plaintiffs *might* prove predominance at some later stage. *Comcast Corp.*, 569 U.S. at 33. But “[i]nstead of judging the persuasiveness of the evidence presented, the district court seemed to end its analysis of the plaintiffs’ evidence after determining such evidence was merely admissible.” *Ellis*, 657 F.3d at 982. The district court’s approach was error because—if there was a “battle of the experts” regarding the requirements of Rule 23—the court was required to resolve it. *Id.*; see also *Arandell*, 149 F.4th at 893 (“In the face of material disputes bearing on class certification, the trial court must . . . resolve the disputes or choose between competing perspectives.”).

The district court’s approach to the DPPs was similarly flawed. Again, the district court recognized that Defendants submitted evidence showing a substantial portion of this class is not injured, but the court did not resolve whether that evidence defeated predominance. Instead,

the court concluded Rule 23 was satisfied because the expert for the DPPs relied on “his analysis of market structure[,] combined with economic theory,” to prove classwide impact. Order at 44. For instance, the expert “reviewed documentary and testimonial evidence for behavior consistent with collusion.” *Id.* at 16. Yet this type of qualitative evidence—which can be offered in any antitrust case—did not answer the question of whether many members of the DPP class were uninjured. *Cf. In re Graphics Processing Units Antitrust Litig.*, 253 F.R.D. 478, 496 (N.D. Cal. 2008) (agreeing with ABA Section of Antitrust Law that experts should conduct “individual inquiries” to assess injury when a “generic model” is “used to show common impact”). Nor do the “other tests” the expert used to “validate” his model establish the number of uninjured class members. *Id.* at 45 n.21.⁵ The district itself recognized that these tests “alone likely would not **establish** common impact.” *Id.* (emphasis in original).

The upshot is that the district court committed a fundamental error by relieving all three downstream classes of the burden of establishing

⁵ The one test that perhaps shed some light on this issue was the DPP expert’s test on “large customers.” Order at 45 n.21. But Dr. Stiroh performed this same test—with a much bigger sample of customers—and it revealed a substantial portion of uninjured purchasers. *See* ECF No. 1115, Opp’n to DPP Mot. for Class Certification, at 19-20.

predominance under Rule 23, with the result that they will *never* have to carry this burden. After all, if the litigation proceeds to the merits, a jury will not decide whether the downstream classes were properly certified or whether the predominance requirement is met. *See In re Flint Water Cases*, 558 F. Supp. 3d 459, 524 (E.D. Mich. 2021) (“There is no jury reviewing Class Plaintiffs’ motion for class certification; the Court is the only audience for the parties’ class certification arguments and their factual underpinnings.”). Ultimately, “[a] district judge may not duck hard questions by observing that each side has some support, or that considerations relevant to class certification also may affect the decision on the merits.” *West v. Prudential Secs., Inc.*, 282 F.3d 935, 938 (7th Cir. 2002). That is precisely what happened here.

II. The District Court Did Not Resolve Whether Two of the Classes Can Show the Average Purchaser Was Injured

The district court made another variation of the same error with the DPP and the CIIPP classes. This time, it failed to resolve a dispute over whether the average overcharge calculations of Plaintiffs’ experts rested on an error that masked widespread lack of injury.

Plaintiffs concede the cost of fed cattle is the largest input that drives the price of beef. *See* ECF No. 1200, Omnibus Opp’n to Pls.’ Mots.

for Class Certification, at 5 & n.4 (collecting citations). They also do not dispute that this key input must be “account[ed] for” in evaluating the impact of the alleged conspiracy. *See* Order at 20. And for good reason: according to Plaintiffs, the challenged conduct decreased the price of cattle. That means Plaintiffs must prove that—even if the upstream cost of cattle were higher in the but-for world—the downstream cost of beef would still somehow be lower.

Nevertheless, the DPPs and the CIIPPs declined to include the cost of fed cattle as a control variable in their models. Order at 19. That is plainly something they *could* have done, because the expert for the Consumer IPPs included this variable in his model. And, notably, that expert calculated the lowest overcharge, by far. Indeed, Defendants proved through their expert that, when the cost of fed cattle is added to the DPP and the CIIPP models, neither of those classes show any statistically significant overcharge. Order at 20.

While the DPP and the CIIPP experts claimed that their choice not to include a fed cattle control variable was justified, *id.*, the district court again declined to resolve this dispute in certifying the classes. The only analysis of this critical issue is found in the *Daubert* section of the class

certification order. Order at 19-21. There, the court observed that “[a]n expert’s failure to account for each and every possible supply and demand variable is not grounds for excluding their testimony,” so it was “sufficient” that the DPPs and the CIIPPs “accounted for numerous variables that impact the market.” *Id.* at 20-21. That was it.

The district court’s reasoning repeats the same error discussed above: it addresses only whether Plaintiffs’ models are admissible under the “less stringent” *Daubert* standard applied by the court, Order at 61, not whether they show predominance under the “rigorous” analysis required by Rule 23, *id.* at 30. This Court has instructed that experts must “incorporate all aspects of the economic reality” into economic models. *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1057 (8th Cir. 2000). That does not mean that an expert must consider “every possible” variable, Order at 20, but it does mean that they must, at minimum, account for major or important variables. *See In re Wholesale Grocery Prods. Antitrust Litig.*, 946 F.3d 995, 1002-03 (8th Cir. 2019) (affirming exclusion of antitrust model because of, among other reasons, the expert’s “failure to control for non-conspiratorial factors” that were important).

The district court, however, engaged in no analysis of whether fed cattle costs was the type of important variable that must be considered to establish common impact. Instead, the court merely concluded that the failure to include this variable “does not render [the DPP and the CIIPP expert reports] so irrelevant as to be inadmissible,” Order at 21, and certified the classes without discussing this issue in its Rule 23 analysis. That improper approach “amounts to a delegation of judicial power to the plaintiffs, who [have] obtain[ed] class certification just by hiring a competent expert.” *West*, 282 F.3d at 938.

III. The Issues Presented Are Recurring, Important, and Require Guidance from this Court

Review is appropriate here both because the district court committed fundamental errors, and because these errors raise important issues requiring this Court’s guidance. Circuit courts agree there are two “core situations when interlocutory review” of an order granting class certification “is most appropriate”: (1) “cases in which an interlocutory appeal may facilitate the development of the law of class actions because such actions often settle or are resolved without clear resolution of procedural matters”; and (2) “cases where a grant of certification sounds the death knell of the litigation for the defendant because the grant can

put considerable pressure on the defendant to settle independent of the merits of the plaintiffs' claims." *Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 958 (9th Cir. 2005) (collecting cases). The advisory committee note to Rule 23(f) agrees that "[p]ermission is most likely to be granted when the certification decision turns on a novel or unsettled question of law, or when, as a practical matter, the decision on certification is likely dispositive of the litigation."

Both circumstances are present here. First, granting review will help facilitate the development of the law by providing critical guidance on how district courts must address the prospect of uninjured class members and competing expert evidence. As the district court itself noted, this Court has generally recognized that a class cannot be certified if it includes uninjured class members, but "[t]he Eighth Circuit has not yet determined what constitutes *de minimis*." Order at 46. Indeed, this Court has suggested that it may not even permit certification of classes with a *de minimis* number of uninjured class members, though judges have expressed uncertainty about this Court's approach. *Compare Johannessohn*, 9 F.4th at 989 (Kelly, J., concurring) (arguing that the

majority had required every class member “to submit *evidence* of their standing”), *with id.* at 988 n.3 (majority opinion) (disputing this point).

Moreover, even after invoking the *de minimis* standard, Order at 46-47, the district court relieved Plaintiffs from their burden of meeting that standard simply because there was a “battle of the experts” over whether predominance was established. Just last year, the Seventh Circuit granted a Rule 23(f) petition to correct a similar error and provide guidance for future cases. *See Arandell*, 149 F.4th at 891 (“We granted leave to appeal class certification under Federal Rule of Civil Procedure 23(f)” to address “whether the district court properly assessed the parties’ expert opinions when deciding the motion to certify”).

The issues surrounding uninjured class members are also important and frequently recurring in class actions. The questions of whether and when a putative class can be certified despite the presence of uninjured class members is the subject of a circuit split, which this Court has yet to squarely address. *Compare Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 669 (9th Cir. 2022) (en banc) (rejecting “argument that Rule 23 does not permit the certification of a class that potentially includes more than a *de minimis*

number of uninjured class members”), *with Rail Freight Fuel Surcharge Antitrust Litig.*, 934 F.3d at 624-25 (D.C. Circuit taking opposite position), *and Asacol Antitrust Litig.*, 907 F.3d at 53-54 (same for First Circuit). In fact, the First Circuit granted a Rule 23(f) petition in *Asacol* precisely because “[t]he district court’s order certifying the class raises issues on which circuits are split and that are likely to arise in other cases.” 907 F.3d at 47. And at least one member of the Supreme Court agrees these issues are “important.” *Lab’y Corp. of Am.*, 605 U.S. at 330 (Kavanaugh, J., dissenting).

Second, the district court’s errors may be the “death knell” of this massive multi-district litigation, as well as future large class actions. The fact that three classes have been certified despite “many uninjured class members,” “dramatically expands the potential exposure and artificially jacks up the stakes.” *Olean*, 31 F.4th at 691 (Lee, J., dissenting); *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (“Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims.”). That reality “will allow plaintiffs to weaponize Rule 23 to impose an in terrorem effect on defendants.” *Olean*, 31 F.4th at 691 (Lee, J., dissenting).

The in terrorem effect is bad, and not just for defendants facing large damages claims. As Justice Kavanaugh has explained, “coerced settlements substantially raise the costs of doing business,” and “companies in turn pass on those costs to consumers in the form of higher prices; to retirement account holders in the form of lower returns; and to workers in the form of lower salaries and lesser benefits.” *Lab’y Corp. of Am.*, 605 U.S. at 333 (Kavanaugh, J., dissenting). “Simply put, the consequences of overbroad and incorrectly certified damages class actions can be widespread and significant.” *Id.* The Court should grant review to avoid those consequences in this case and future class actions.

CONCLUSION

For the reasons above, this Court should grant the petition for review.

Dated: July 30, 2026

Respectfully submitted,

/s/ Kosta S. Stojilkovic
Kosta S. Stojilkovic
Beth A. Wilkinson
Sarah Neuman
David R. Friedman
WILKINSON STEKLOFF LLP
2001 M Street NW, 10th Floor
Washington, DC 20036
(202) 847-4000

Maira Penza
Owen Gallogly
Emily Clarke
WILKINSON STEKLOFF LLP
130 W 42nd Street, 24th Floor
New York, NY 10036
(212) 294-8910

*Counsel for Petitioners-
Defendants Cargill, Incorporated
and Cargill Meat Solutions
Corporation*

X. Kevin Zhao
Holley C. M. Horrell
Davida S. McGhee Williams
Emily M. McAdam
Nicholas Scheiner
Taofikat Ninalowo-Olaofe
GREENE ESPEL PLLP
222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
(612) 373-0830

Jacob D. Bylund
Robert C. Gallup
Dasha Ternavska
FAEGRE DRINKER BIDDLE &
REATH LLP
801 Grand Avenue, 33rd Floor
Des Moines, IA 50309
(515) 248-9000

Joan A. Akalaonu
FAEGRE DRINKER BIDDLE &
REATH LLP
320 South Canal Street, Suite 3300
Chicago, IL 60606-5707
(312) 569-1000

*Counsel for Petitioners-Defendants
Cargill, Incorporated
and Cargill Meat Solutions
Corporation*

Sami H. Rashid
Kevin A. Janus
QUINN EMANUEL URQUHART
& SULLIVAN LLP
295 Fifth Avenue
New York, NY 10016
(212) 849-7000

Michael D. Bonanno
QUINN EMANUEL URQUHART
& SULLIVAN LLP
555 13th Street NW
Suite 600
Washington, D.C. 20004
(202) 538-8000

Jeremy D. Andersen
QUINN EMANUEL URQUHART
& SULLIVAN LLP
865 S. Figueroa St., 10th Floor
Los Angeles, CA 90017
(213) 443-3685

Patrick E. Brookhouser, Jr.
MCGRATH NORTH MULLIN &
KRATZ, PC LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, NE 68102
(402) 341-3070

*Counsel for Defendants JBS USA
Food Company, JBS Packerland,
Inc., Swift Beef Company, and
JBS S.A.*

Michelle Fischer
JONES DAY
901 Lakeside Avenue
North Point
Cleveland, OH 44114
(216) 586-3939

Kurt Johnson
JONES DAY
150 W Jefferson Ave Ste 2100
Detroit, MI 48226
(313) 733-3939

Eddie Hasdoo
JONES DAY
110 North Wacker, Suite 4800
Chicago, Illinois 60606
(312) 269-4214

Julia E. McEvoy
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3867

Benjamin L. Ellison
JONES DAY
90 South Seventh Street, Suite 4950
Minneapolis, MN 55402
(612) 217-8800

*Counsel for Petitioner-Defendant
National Beef Packing Company,
LLC*

CERTIFICATE OF COMPLIANCE AND VIRUS SCANNING

This petition complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 4,960 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365, in 14-point Century Schoolbook.

Pursuant to Local Rule 28A(h)(2), I certify that the petition has been scanned for viruses and is virus-free.

/s/ Kosta S. Stojilkovic
Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that, on July 30, 2026, a true and correct copy of the Petition for Review of Downstream Class Certification Order Pursuant to Federal Rule of Civil Procedure 23(f) was electronically filed the foregoing with the Clerk of Court for the U.S. Court of Appeals for the Eighth Circuit by using the CM/ECF system. I further certify that I served the foregoing on July 30, 2026, by email to the following counsel for Respondents-Plaintiffs:

Daniel E. Gustafson
Daniel C. Hedlund
Michelle J. Looby
Joshua J. Rissman
Anthony J. Stauber
Bailey Twyman-Metzger
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza
120 Sixth Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 333-8844
dgustafson@gustafsongluek.com
dhedlund@gustafsongluek.com
mlooby@gustafsongluek.com
jrissman@gustafsongluek.com
tstauber@gustafsongluek.com
btwymanmetzger@gustafsongluek.com

Jason S. Hartley
HARTLEY LLP
101 W. Broadway, Suite 820
San Diego, CA 92101
Tel: (619) 400-5822
hartley@hartleyllp.com

Megan E. Jones
HAUSFELD LLP
600 Montgomery Street, Suite 3200
San Francisco, CA 94111
Tel: (415) 633-1908
mjones@hausfeld.com

Adam J. Zapala
Elizabeth T. Castillo
COTCHETT, PITRE &
MCCARTHY, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010
Telephone: (650) 697-6000
azapala@cpmlegal.com
ecastillo@cpmlegal.com

*Co-Lead Counsel for the Direct
Purchaser Plaintiffs*

Michael J. Flannery
CUNEO GILBERT & LADUCA,
LLP
Two CityPlace Drive
Second Floor
St. Louis, MO 63141
Telephone: (314) 226-1015
mflannery@cuneolaw.com

Evelyn Riley
Cody McCracken
CUNEO GILBERT & LADUCA,
LLP
4725 Wisconsin Ave., NW
Suite 200
Washington, DC 20016
Telephone: (202) 789-3960
evelyn@cuneolaw.com
cmccracken@cuneolaw.com

Shawn Raiter (MN#240424)
LARSON · KING LLP
30 East Seventh Street Suite
2800 St. Paul, MN 55101
Telephone: (651) 312-6518
sraiter@larsonking.com

*Co-Lead Counsel for the
Commercial and Institutional
Indirect Purchaser Plaintiffs*

Shana E. Scarlett
Rio S. Pierce
Abby R. Wolf
Hagens Berman Sobol Shapiro
LLP
715 Hearst Avenue, Suite 300
Berkeley, California 94710
T: (510) 725-3000
shanas@hbsslaw.com
riop@hbsslaw.com
abbyw@hbsslaw.com

Steve W. Berman
Breanna Van Engelen
Hagens Berman Sobol Shapiro
LLP
1301 Second Avenue, Suite 2000
Seattle, Washington 98101
T: (206) 623-7292
steve@hbsslaw.com
breannav@hbsslaw.com

Elaine T. Byszewski
Hagens Berman Sobol Shapiro
LLP
301 North Lake Avenue, Suite 920
Pasadena, California 91101
T: (213) 330-7150
elaine@hbsslaw.com

Kyle Pozan
Lockridge Grindal Nauen P.L.L.P.
1165 North Clark Street, Suite
700
Chicago, Illinois 60610
T: (312) 470-4333
kjpozan@locklaw.com

Brian D. Clark
W. Joseph Bruckner
Arielle S. Wagner
Simeon A. Morbey
Lockridge Grindal Nauen P.L.L.P.
100 Washington Avenue South,
Suite 2200
Minneapolis, Minnesota 55401
T: (612) 339-6900
bdclark@locklaw.com
wjbruckner@locklaw.com
aswagner@locklaw.com
samorbey@locklaw.com

*Co-Lead Counsel for the Consumer
Indirect Purchaser Plaintiffs*

/s/ Kosta S. Stojilkovic
Counsel for Petitioners

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: CATTLE AND BEEF ANTITRUST
LITIGATION

MDL No. 22-3031 (JRT/JFD)

This Document Relates To:

DIRECT PURCHASER PLAINTIFFS,
COMMERICAL AND INSTITUTIONAL
INDIRECT PURCHASER PLAINTIFFS,
CONSUMER INDIRECT PURCHASER
PLAINTIFFS ACTIONS

**MEMORANDUM OPINION AND ORDER
GRANTING IN PART DIRECT PURCHASER
PLAINTIFFS', CONSUMER INDIRECT
PURCHASER PLAINTIFFS', AND
COMMERCIAL AND INSTITUTIONAL
INDIRECT PURCHASER PLAINTIFFS'
MOTIONS FOR CLASS CERTIFICATION AND
DENYING DEFENDANTS' MOTIONS TO
EXCLUDE EXPERT TESTIMONY**

In this multidistrict litigation alleging price-fixing in the cattle and beef industry, five groups of plaintiffs seek class certification. This Order addresses the motions of three of the five groups—namely, the plaintiffs who directly or indirectly buy beef from Defendants: (1) the Direct Purchaser Plaintiffs (DPPs),¹ (2) the Commercial and Institutional Indirect Purchaser Plaintiffs (CIIPPs),² and (3) the Consumer Indirect

¹ As further discussed herein, the DPPs are generally people or entities that purchased beef directly from Defendants.

² As further discussed herein, CIIPPs are generally restaurants, caterers, and other institutional food preparers that indirectly purchased beef from Defendants for their use in commercial food preparation.

Purchaser Plaintiffs (Consumer IPPs)³ (collectively, “Downstream Plaintiffs”). Each Downstream Plaintiff seeks certification of a damages class. The CIPPs also seek certification of an injunctive relief class. Each Downstream Plaintiff submitted expert testimony in support of their motions for class certification. Defendants oppose the motions for class certification and request that the Court exclude portions of the experts’ testimony.

Because the Court finds that the less stringent *Daubert* standard employed at the class certification stage is satisfied, it will deny Defendants’ motions to exclude the experts’ testimony. The Court will grant each Downstream Plaintiff’s motion for class certification with respect to the proposed damages classes because the Court finds that, after rigorous analysis, the Downstream Plaintiffs have met their burden for these proposed classes under Federal Rule of Civil Procedure 23(b)(3). The Court will decline to certify the CIPPs’ injunctive relief class at this time, but it will allow the CIPPs to renew their motion for certification of a Rule 23(b)(2) class at a later date, should they choose to do so.

³ As further discussed herein, the Consumer IPPs are persons who indirectly purchased beef from Defendants for their personal consumption.

BACKGROUND

I. FACTS

Beginning in 2019, a series of class actions and individual actions were filed against the leading American beef packers alleging a conspiracy to generate elevated beef profit margins in violation of federal and state antitrust laws, the Packers & Stockyards Act, 7 U.S.C. §§ 181–229, and the Commodity Exchange Act, 7 U.S.C. § 1 *et seq.* Those actions have been consolidated into this multidistrict litigation under 28 U.S.C. § 1407.⁴

Plaintiffs include both Upstream Plaintiffs,⁵ who directly or indirectly sell cattle either to Defendants, and Downstream Plaintiffs, who directly or indirectly purchase beef from Defendants.⁶

⁴ *In re Cattle Antitrust Litig.*, Civ. No. 19-1222; *In re Cattle and Beef Antitrust Litig.*, Civ. No. 20-1319; (see also Certified Copy of Transfer Order, MDL No. 22-3031, June 3, 2022, Docket No. 1.).

⁵ Upstream Plaintiffs include (1) the Indirect Seller Plaintiffs (who also refer to themselves as the Feeder Plaintiffs) and (2) the Cattle Plaintiffs. The motions of the Upstream Plaintiffs and Defendants' motions to exclude Upstream Plaintiffs' experts are addressed in a concurrent order.

⁶ For ease, all record citations in this Order are presented in a short form. Full record citations for all documents cited in this Order (and in the concurrent order addressing Upstream Plaintiffs) are included in Appendix 1.

Defendants⁷ are beef packers who purchase cattle from feedlots (“fed cattle”), slaughter the cattle, and then process the resulting carcasses into beef to be sold. Defendants’ profits are driven by both the cost they pay for the fed cattle and the price they charge for the sale of beef. Collectively, Defendants account for over 80 percent of the fed cattle bought, slaughtered, and sold as beef in the United States. (See Defs.’ Omnibus Br. at 18, Docket No. 1200 (noting that the combined market share of the four largest beef packers has not significantly changed since the early 1990s).)

II. PROCEDURAL HISTORY

In September 2021, the Court began consolidating the direct purchaser plaintiff cases filed in the District of Minnesota for pretrial proceedings. (See, e.g., Civil No. 19-1222, Order, Sept. 1, 2021, Docket No. 408.) The Cattle Class Plaintiffs, Consumer IPPs, CIIPPs, and some direct action plaintiffs requested that all cases be coordinated for pretrial purposes to simplify the proceedings. (Civil No. 20-1319, Stipulation, Oct. 8, 2021, Docket No. 246.) The Court agreed coordination would be efficient and coordinated the cases for pretrial proceedings under Civil No. 20-1319, which it renamed to *In re Cattle*

⁷ “Defendants” refer to Cargill, Inc. and Cargill Meat Solutions Corporation (collectively, “Cargill”); JBS S.A., JBS USA Food Company, Swift Beef Company, and JBS Packerland, Inc. (collectively, “JBS”); National Beef Packing Company, LLC (“National Beef”); and Tyson Foods, Inc. and Tyson Fresh Meats, Inc. (collectively, “Tyson”). (See, e.g., DPPs’ Third Consol. Am. Class Action Compl. at 1; CIIPPs’ Third Am. Class Action Compl. at 1; CIPPs’ Sixth Am. Class Action Compl. ¶¶ 59–76.)

and Beef Antitrust Litigation. (Civil No. 20-1319, Order on Stipulation, Oct. 13, 2021, Docket No. 252.)

In 2022, additional cases brought by individual plaintiffs were filed in other federal district courts involving the same issues. (MDL No. 22-3031, Certified Copy of Transfer Order at 1, June 3, 2022, Docket No. 1.) Pursuant to 28 U.S.C. § 1407(a), the United States Judicial Panel on Multidistrict Litigation formed MDL No. 3031 and transferred three cases to this Court on June 3, 2022, finding that the cases involved common questions of fact and centralization in this Court would “serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.” (*Id.* at 1.)

The Court then consolidated the MDL Cases for pretrial proceedings under a master docket case entitled “*In re: Cattle and Beef Antitrust Litigation*.” (See MDL No. 22-3031, Pretrial Order No. 1, Docket No. 21, Oct. 4, 2022.) In Pretrial Order No. 2, the Court appointed liaison counsel for the Direct Action Plaintiffs (DAPs), Indirect Seller Plaintiffs, Cattle Plaintiffs, DPPs, Consumer IPPs, and CIPPs. (MDL No. 22-3031, Dec. 1, 2022, Docket No. 91.) In Pretrial Order No. 3, the Court outlined the process by which future direct action plaintiffs could join the MDL. (MDL No. 22-3031, Feb. 3, 2023, Docket No. 139.) Numerous additional DAPs have since joined the litigation.⁸

⁸ Since the DAPs are not relevant to the present motions for class certification and motions to exclude expert testimony, they will not be discussed in detail.

III. PROPOSED CLASSES

All Plaintiffs filed motions for class certification on September 25, 2024. Defendants oppose Plaintiffs' class certification motions. In this section, the Court will summarize the classes proposed by the Downstream Plaintiffs.

A. Direct Purchaser Plaintiffs

Direct Purchaser Plaintiffs (DPPs) are, generally, people or entities that bought beef directly from Defendants. (See DPPs' Third Consol. Class Action Compl. ¶¶ 32–34.) The DPPs seek relief under the Sherman and Clayton Acts and ask the Court to certify the following class under Rule 23(b)(3):

All persons and entities who directly purchased Beef for use or delivery in the United States, whether fresh or frozen, made from one of the following primals: chuck, loin, rib or round from Defendants, or their respective subsidiaries or affiliates, from January 1, 2015, to February 29, 2020. For this lawsuit, beef excludes any product that is marketed as organic, grassfed, kosher, halal, certified humane, Wagyu, "American-Style Kobe Beef", and any product that is cooked, ground, marinated, seasoned, flavored, or breaded.⁹

(DPPs' Mot. at 1.)

⁹ Excluded from the class are Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; any affiliate, legal representative, heir or assign of any Defendant; any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action. (DPPs' Mot. at 1–2.)

DPPs propose naming the following named plaintiffs as Class Representatives: Gregg Szilagyi,¹⁰ solely in his capacity as Chapter 7 trustee for the bankruptcy estate of Central Grocers, Inc.; R & D Marketing, LLC; and Redner's Markets, Inc. (*Id.* at 1.)

DPPs ask the Court to appoint their interim co-lead counsel, Gustafson Gluek, PLLC; Hartley LLP; Hausfeld LLP; and Cotchett Pitre & McCarthy, LLP, as Class Counsel. (*Id.* at 2.)

B. Commercial and Institutional Indirect Purchaser Plaintiffs

Commercial and Institutional Indirect Purchaser Plaintiffs (CIIPPs) are, generally, restaurants, caterers, and other institutional food preparers that indirectly purchased beef from Defendants for their use in commercial food preparation. (See CIIPPs' Third Am. Class Action Compl. ¶¶ 31–46.) The CIIPPs move to certify two classes: a CIIPP Injunctive Relief Class, pursuant to Rule 23(b)(2), and a CIIPP Monetary Damages Class, pursuant to Rule 23(b)(3).

1. CIIPP Injunctive Relief Class

For the Injunctive Relief Class, CIIPPs seek relief under the Sherman Act and ask the Court to certify the following class under Rule 23(b)(2):

All entities in the United States that indirectly purchased one or more of the following types of raw beef, fresh or frozen: brisket, chuck, loin, rib, or round, sold by Defendants in the United States from January 1, 2015, to February 29, 2020, for their own use in commercial food preparation. For this lawsuit, beef products exclude[]: non-fed beef, ground beef, trim beef, beef identified as cooked, beef products with non-

¹⁰ Gregg Szilagyi has been substituted for Howard Samuels as Chapter 7 Trustee of the Estate of Central Grocers, Inc. (Order, May 5, 2026, Docket No. 1589).

beef ingredients other than seasonings, or any product that is marketed as USDA Prime.¹¹

(CIIPPs' Mot. at 2.)

2. Damages Class

For the Damages Class (also referred to as the "CIIPP Monetary Damages Class"), CIIPPs seek relief under the applicable state antitrust and consumer protection statutes and state common law claims for unjust enrichment and ask the Court to certify the following class under Rule 23(b)(3):

All entities in the Indirect Purchaser States¹² that indirectly purchased one or more of the following types of raw beef, fresh or frozen: brisket, chuck, loin, rib, or round, sold by Defendants in the Indirect Purchaser States from January 1, 2015, to February 29, 2020, for their own use in commercial food preparation. For this lawsuit, beef products exclude[]: non-fed beef, ground beef, trim beef, beef identified as

¹¹ Excluded from this Class are: natural persons who purchased beef for their personal use and not for commercial food preparation; purchases of beef for resale in unaltered form; purchases of beef from an intermediary who has further processed the beef; the Defendants and their Co-Conspirators; the officers, directors or employees of any Defendant or Co-Conspirator; any entity in which any Defendant or their Co-Conspirator has a controlling interest; any entity with an interest, controlling or non-controlling, in a Defendant or their Co-Conspirator; any (in whole or in part), affiliate, legal representative, heir or assign of any Defendant or their Co-Conspirator; any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, any juror assigned to this action, and any Co-Conspirator identified in this action. (CIIPPs' Mot. at 2.)

¹² The Indirect Purchaser States consist of Arizona, Arkansas, California, the District of Columbia, Hawaii, Florida, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, Nevada, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin. (*Id.* at 2 n.1.)

cooked, beef products with non-beef ingredients other than seasonings, or any product that is marketed as USDA Prime.¹³

(*Id.* at 2–3.)

In the alternative, CIPPs request the certification of subclasses by claim type or certification of subclasses for each state in which a CIIPP class representative is located.

(*See id.* at 2 n.1.)

3. Class Representatives & Class Counsel

For both proposed classes, CIPPs request that the Court appoint the following named plaintiffs as Class Representatives: The Grady Corporation II formerly d/b/a Whole hog Café; Steve Sizemore formerly d/b/a Longhorn’s Steakhouse; Pearlz Oyster Bar; Park Tavern; Union Public House; Sandee’s Bakery d/b/a Sandee’s Catering Bakery & Deli; Grub Stake; Max and Bella’s Smokehouse, LLC; Yoland Shegian d/b/a LA Shawarma; BW-SS, Inc.; Maquoketa Care Center; Fernando’s Street Kitchen; Jim’s Place Grille; and Farah’s Courtyard Deli, Inc. (*Id.* at 1.)

¹³ Excluded from this Class are: natural persons who purchased beef for their personal use and not for commercial food preparation; purchases of beef for resale in unaltered form; purchases of beef from an intermediary who has further processed the beef; the Defendants and their Co-Conspirators; the officers, directors or employees of any Defendant or Co-Conspirator; any entity in which any Defendant or their Co-Conspirator has a controlling interest; any entity with an interest, controlling or non-controlling, in a Defendant or their Co-Conspirator; any (in whole or in part), affiliate, legal representative, heir or assign of any Defendant or their Co-Conspirator; any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, any juror assigned to this action, and any Co-Conspirator identified in this action. (*Id.* at 2.)

CIIPPs ask the Court to appoint their interim co-lead counsel, Sterling Aldridge of Barrett Law Group, P.A.; Michael Flannery of Cuneo Gilbert & LaDuca, LLP; and Shawn M. Raiter of Larson King, LLP, as Class Counsel. (See CIIPPs' Mem. at 27.)

C. Consumer Indirect Purchaser Plaintiffs

Consumer Indirect Purchaser Plaintiffs (Consumer IPPs) are, generally, people who purchased beef from Defendants for their personal consumption. (See CIIPPs' Sixth Am. Class Action Compl. ¶¶ 31–58.) The Consumer IPPs seek relief under the Sherman and Clayton Acts and ask the Court to certify the following class under Rule 23(b)(3):

All persons and entities who indirectly purchased for personal consumption one or more of the following beef products in the Repealer Jurisdictions between August 1, 2014 to December 31, 2019: beef from Defendants (whether fresh or frozen) made from chuck, loin, rib or round primal cuts. For this lawsuit, beef excludes any product that is marketed as USDA Prime, organic, No Antibiotics Ever (“NAE”), antibiotic free, 100% grass-fed, kosher, halal, certified humane, Wagyu, “American-Style Kobe Beef,” as well as any products that are ground, marinated, seasoned, flavored, breaded, or cooked.¹⁴

¹⁴ Excluded from the class are Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; any affiliate, legal representative, heir or assign of any Defendant; any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, any juror assigned to this action. Further excluded are purchases of products that contain ingredients other than beef (except for salt or water). (CIIPPs' Mot. at 2 n.2.)

(CIPPs' Mot. at 1–2.) The Repealer Jurisdictions are those states that have legislatively repealed the Supreme Court's holding in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), and conferred standing to indirect purchasers.¹⁵ (*Id.* at 1 n.1.)

Consumer IPPs propose naming the following named plaintiffs as Class Representatives: Andrew Cohen (Arizona); Marcelo Lopez (California); Stacey Troupe (California); William Gee (District of Columbia); Lisa Melegari (Florida); Eric Gauchat (Illinois); Sharon Killmon (Iowa); Harold M. Nyanjom (Kansas); Mark Sperry (Maine); Karen Carter (Massachusetts); John Shupe (Michigan); Charlie Morgan (Minnesota); Sharon Dawson-Green (Missouri); Brent Rasmussen (Montana); David Renz (Nebraska); Kenneth Peterson (Nevada); Martin Jarmulowicz (New Hampshire); Kent Winchester (New Mexico); Brenda King (New York); Robert Trepper (North Carolina); Michelle Oversen (North Dakota); Dan Campbell (Oregon); Lindsey Lemoi (Rhode Island); Craig Margulies (South Dakota); Jacquelyn Watson (Tennessee); Cindy Abernathy (Utah); Leigh Tiller (West Virginia); and Jason Falbo (Wisconsin). (*Id.* at 2.)

Consumer IPPs ask the Court to appoint their interim co-lead counsel, Hagens Berman Sobol Shapiro LLP and Lockridge Grindal Nauen P.L.L.P., as Class Counsel. (*Id.*)

¹⁵ For the purposes of their class certification motion, Consumer IPPs defined the Repealer Jurisdictions as Arizona, California, District of Columbia, Florida, Illinois, Iowa, Kansas, Massachusetts, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Tennessee, Utah, West Virginia, and Wisconsin. (*Id.* at 1 n.1.)

IV. MOTIONS TO EXCLUDE EXPERT TESTIMONY

The Downstream Plaintiffs each submitted expert testimony, including an expert's report to support their motions for class certification. The DPPs offer Dr. David L. Sunding's testimony, the CIPPs offer Dr. Michael A. Williams' testimony, and the Consumer IPPs offer Dr. Russell Mangum's testimony. (*See generally* Sunding Expert Report, Williams Expert Report, Mangum Expert Report.)

Defendants ask the Court to exclude portions of each expert's report and testimony. (Defs.' Mot. Exclude Sunding, Defs.' Mot. Exclude Williams, Defs.' Mot. Exclude Mangum.) Defendants also offer the testimony of their own expert: Dr. Lauren J. Stiroh. (*See* Stiroh Expert Report.) Downstream Plaintiffs do not move to exclude the testimony of Defendants' experts.

MOTIONS TO EXCLUDE EXPERT TESTIMONY

The expert testimony is a necessary component of each of the Downstream Plaintiffs' class certification motions. Therefore, the Court will first consider Defendants' motions to exclude before turning to the Downstream Plaintiffs' class certification motions.

I. STANDARD OF REVIEW

Federal Rule of Evidence 702 governs the admissibility of expert testimony. An expert's opinion testimony is admissible if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702. In essence, there are three prerequisites to admitting expert testimony:

(1) the evidence is relevant and helpful for the finder of fact, (2) the proposed witness is qualified to assist the finder of fact, and (3) the proposed evidence must be reliable.

Lauzon v. Senco Prods., Inc., 270 F.3d 681, 686 (8th Cir. 2001). For evidence to be reliable, it must be based upon sufficient facts or data, be a product of reliable principles and methods, and the witness must have applied the principles and methods reliably to the facts of the case. *Id.*

The district court acts as a gatekeeper to the consideration of expert testimony by engaging in a *Daubert* analysis to ensure “that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 597 (1993); *Lauzon*, 270 F.3d at 686. *Daubert* and its progeny have generated several nonexclusive factors for courts to consider in this analysis. *Lauzon*, 270 F.3d at 686–87. And “the inquiry envisioned by Rule 702 is . . . a flexible one.” *Daubert*, 509 U.S. at 594.

At the class certification stage, the Court conducts a “focused” *Daubert* inquiry to assess whether the opinions of the proposed experts, based on their areas of expertise and the reliability of their analyses of the available evidence, should be considered in

deciding the issues relating to class certification. *In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 610 (8th Cir. 2011); *see also Smith v. ConocoPhillips Pipe Line Co.*, 801 F.3d 921, 925 n.2 (8th Cir. 2015). The main purpose of the full *Daubert* analysis is for the district court to act as a gatekeeper to protect “juries from being swayed by dubious scientific testimony.” *In re Zurn Pex*, 644 F.3d at 613. Because there is less need for the Court to protect only itself, the Court may conduct a less stringent application of Rule 702 and *Daubert* at the class certification stage. *See id.*

As a result, when deciding whether to exclude testimony at this preliminary stage, where evidence is still evolving and uncertain, the Court considers “the expert testimony in light of the criteria for class certification and the current state of the evidence.” *Id.* at 614. The Court need not decide conclusively if the evidence it considers at this stage “will ultimately be admissible at trial.” *Id.* at 611. “Courts should resolve doubts regarding the usefulness of an expert’s testimony in favor of admissibility.” *Marmo v. Tyson Fresh Meats, Inc.*, 457 F.3d 748, 758 (8th Cir. 2006). And the Eighth Circuit has generally stated that “district courts are admonished not to weigh or assess the correctness of competing expert opinions.” *Johnson v. Mead Johnson & Co., LLC*, 754 F.3d 557, 562 (8th Cir. 2014).

Because many of the Defendants’ arguments overlap between the Downstream Plaintiffs’ experts, the Court will consider them together.

II. ECONOMETRIC MODELS

Before turning to its analysis, the Court will briefly introduce the regression models that occupy much of the parties' briefing. Each of the experts for Downstream Plaintiffs uses a regression model, a type of econometric model that:

uses a mathematical equation or equations to describe the economic relationship between a variable of interest (e.g., price of the product or service that is the subject of an antitrust claim) and one or more explanatory variables (e.g., various production costs, the structure of the relevant market, and the contested or alleged conduct).

Econometrics: Legal, Prac and Tech. Issues § 5.A (A.B.A. 2014). "In an econometric equation, each explanatory variable is associated with a 'coefficient,' which characterizes how the variation in the explanatory variable is statistically related to the variation in the dependent variable," which is the variable of interest. *Id.* For example, a regression model might include an equation like the following:

$$\begin{aligned} \text{Price} = & [\text{coefficient a}][\text{explanatory variable 1}] + \\ & [\text{coefficient b}][\text{explanatory variable 2}] + \\ & [\text{coefficient c}][\text{explanatory variable 3}] + \dots \end{aligned}$$

See id. A much more detailed explanation of these models may be found in Econometrics or similar texts, but for the purposes of this order, it is sufficient to understand that the parties dispute the selection of the models, the selection of the explanatory variables used in the models, the way the models are applied to the data, the data selected for input into the models, and the ways the model results are verified.

III. EXPERT REPORTS

A. Dr. Sunding

The DPPs submit Dr. Sunding's expert report in support of their motion for class certification. Dr. Sunding's expert report uses econometric, economic, and statistical methods to test whether beef production was restrained and beef prices were elevated during the class period. (*See generally* Sunding Expert Report.) Dr. Sunding purports to have used economic theory and documentary evidence to determine if conduct challenged by the DPPs would have had market-wide effects. (*Id.* ¶¶ 9(d), 47–80.) He reviewed documentary and testimonial evidence for behavior consistent with collusion. (*Id.* ¶¶ 81–115.) To determine if members of the proposed DPP class were overcharged during the class period and to calculate damages, Dr. Sunding created a multiple regression model, which he refers to as his “overcharge regression model.” (*Id.* ¶¶ 9(c), 122–24.) To determine if beef production was lower during the proposed class period compared to a benchmark period, Dr. Sunding also created and used a regression analysis, which he refers to as his “production model.” (*Id.* ¶¶ 9(c), 152–54.) From an estimated overcharge—which was calculated using his overcharge regression model—and an estimated total volume of commerce, he further estimated damages incurred by the putative DPP class. (*Id.* ¶¶ 9(e), 195.)

B. Dr. Williams

The CIIPPs submit Dr. Williams' expert report in support of their motion for class certification. Like Dr. Sunding, Dr. Williams' expert report uses econometric, economic,

and statistical methods to test whether beef production was restrained and beef prices were elevated during the class period. (*See generally* Williams Expert Report.) Dr. Williams used a two-step method to evaluate the impact of the alleged conspiracy on the putative CIIPP class. First, he examined whether all or virtually all **direct purchasers** incurred an overcharge; then he examined whether the direct purchasers passed on some or all of the overcharge to **end customers** like CIIPPs. (*See id.* ¶¶ 20–23.) With respect to the first step, Dr. Williams used economic evidence to determine if the structure of the beef packing and processing industry was conducive to collusion. (*E.g., id.* ¶¶ 10, 47.) He used econometric analyses and evidence to determine whether Defendants’ alleged anticompetitive conduct would have caused widespread effects. (*Id.* ¶¶ 13, 145–46.) Then he created an overcharge regression model to calculate the impact of Defendants’ conduct on beef product prices. (*Id.* ¶¶ 15, 150–54.) With respect to the second step of his analysis, Dr. Williams used a multivariate regression analysis to estimate a pass-through rate—that is, the amount a direct purchaser is overcharged that is passed through to an indirect purchaser like the CIIPPs. (*Id.* ¶¶ 16, 176–207.) He further created “common impact” models to assess whether customers (at both the DPP and CIIPP levels) would have been able to avoid price effects caused by the alleged conspiracy. (*Id.* ¶¶ 17–20, 209–23.) Finally, Dr. Williams used the overcharge and pass-through models to estimate damages to proposed CIIPP class members. (*Id.* ¶¶ 24, 251.)

C. Dr. Mangum

The Consumer IPPs submit Dr. Mangum’s expert report in support of their motion for class certification. Like Dr. Sunding and Dr. Williams, Dr. Mangum’s expert report uses econometric, economic, and statistical methods to test whether beef production was restrained and beef prices were elevated during the class period. (*See generally* Mangum Expert Report.) Dr. Mangum, like Dr. Williams, used a two-step method to determine the impact on the proposed Consumer IPP class. First, he examined whether all or virtually all **direct purchasers** incurred an overcharge; then he examined whether the direct purchasers passed on some or all of the overcharge to **end customers** like Consumer IPPs. (*E.g., id.* ¶ 21.) With respect to the first step, Dr. Mangum analyzed whether the structure of the beef packing and processing industry was conducive to collusion. (*E.g., id.* ¶¶ 24, 90.) He analyzed whether all or nearly all direct purchasers would have been affected. (*Id.* ¶¶ 24, 387–88.) He then used a multiple regression model (also referred to as a “direct overcharge model”) to estimate overcharges on direct purchases of beef. (*Id.* ¶¶ 24, 407–437.) With respect to the second step of his analysis, Dr. Mangum used a regression analysis or “pass-through model” to estimate a pass-through rate—that is, the amount a direct purchaser is overcharged that is passed through to an indirect purchaser like the putative Consumer IPP class members. (*Id.* ¶¶ 24, 438–39, 487.) Finally, using the overcharge and pass-through estimates, Dr. Mangum calculated the damages suffered by putative Consumer IPP class members. (*Id.* ¶¶ 24, 492.)

IV. RELEVANCE

The Court will first consider if each expert's testimony is relevant. Opinion testimony is admissible only if it is "relevant to the task at hand." *Daubert*, 509 U.S. at 597. This means that the Court should consider whether the "opinion offered by the expert is sufficiently related to the facts of the case such that it will aid the jury in resolving the factual dispute." *Lauzon*, 270 F.3d at 694.

As an initial matter, each expert's analysis is relevant to the corresponding class certification motion because the Court must consider if there are questions of law or fact common to class members that predominate over individual questions. Fed. R. Civ. P. 23(b)(3). This inquiry requires the Court to consider if there is classwide impact, and if it is possible to calculate classwide damages. Each expert's report addresses these issues.

Defendants do not dispute that Dr. Mangum's expert testimony is relevant to the Consumer IPPs' class certification motion. Defendants argue, however, that Dr. Sunding's and Dr. Williams' regression overcharge models are irrelevant and unreliable because they omit an explanatory variable that Defendants allege should be included—namely, fed cattle prices.¹⁶ Specifically, Defendants argue that fed cattle prices are the largest variable cost in the production of beef, yet neither Dr. Sunding nor Dr. Williams used fed cattle prices as an explanatory variable in their regression models. (*See, e.g.*, Stiroh Expert

¹⁶ To the extent that Defendants argue that Dr. Williams' opinions are irrelevant and unreliable because he did not conduct a but-for beef production analysis, these arguments will be addressed below in the Reliability section.

Report ¶¶ 82–83.) Had this variable been included, Defendants contend, the models would not have demonstrated any statistically significant overcharge. (*See, e.g., id.* ¶ 61.)

In his rebuttal expert report, Dr. Williams notes that he uses other variables in his model to “account for the costs incurred by beef producers,” and these variables are an adequate substitute for a fed cattle price variable. (Williams Rebuttal Report ¶ 120.) Similarly, in his rebuttal expert report, Dr. Sunding also explains that he has used alternate variables in his model. (Sunding Rebuttal Report ¶ 9.) In short, the experts disagree on which explanatory variables should be included in an overcharge regression model. (Sunding Rebuttal Report ¶¶ 16–22; Williams Rebuttal Report ¶¶ 126–36.)

An expert’s failure to account for each and every possible supply and demand variable is not grounds for excluding their testimony. It is impossible to perfectly consider every factor that might impact the market. “[A] regression analysis does not become inadmissible as evidence simply because it does not include every variable that is quantifiable and may be relevant to the question presented.” *Maitland v. Univ. of Minn.*, 155 F.3d 1013, 1017 (8th Cir. 1998). The Eighth Circuit has instructed district courts to consider an expert’s ability to rule out other possibilities when contemplating admissibility of an expert’s testimony, but it has further cautioned that “this requirement cannot be carried to a quixotic extreme.” *Lauzon*, 270 F.3d at 693. An expert’s conclusion should not be excluded “because he or she has failed to rule out every possible alternative cause.” *Id.* (citation omitted). Rather, existence of causes not eliminated pertains to

weight—not admissibility. *Id.* Ultimately, both Dr. Sunding and Dr. Williams accounted for numerous variables that impact the market (*see, e.g.*, Sunding Expert Report ¶¶ 126–31; Williams Expert Report ¶¶ 164–72), and that is sufficient at the class certification stage. *E.g., Kleen Prods. LLC v. Int'l Paper*, 306 F.R.D. 585, 605 (N.D. Ill. 2015) (finding that defendants’ criticism of an expert’s selection of variables for multiple regression analysis “is a merits question that the Court does not need to resolve in order to decide whether to certify the class”).

The Court concludes that the content of each of the experts’ reports is relevant and that the omission of a particular variable from Dr. Sunding’s and Dr. Williams’ reports does not render them so irrelevant as to be inadmissible.

V. QUALIFICATIONS

The parties do not dispute the experts’ qualifications, and the Court, having reviewed their experience and their reports, concludes that each of the experts is sufficiently qualified to testify on the matters presented to them by the Downstream Plaintiffs. (*See, e.g.*, Sunding Expert Report ¶¶ 2–7 & App. A; Williams Expert Report ¶¶ 1–5 & App. I; Mangum Expert Report ¶¶ 2–6 & Ex. A.)

VI. RELIABILITY

Having concluded that the proposed evidence is relevant and the expert witnesses are qualified, the Court will consider if the experts’ testimony is reliable. For evidence to be admissible, it must be “reliable or trustworthy in an evidentiary sense, so that, if the finder of fact accepts it as true, it provides the assistance the finder of fact requires[.]”

Lauzon, 270 F.3d at 686 (quoting 4 Jack B. Weinstein & Margaret A. Berger, Weinstein's Federal Evidence § 702.02[3] (2001)). Evidence is reliable if (1) it is based upon sufficient facts or data, (2) it is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts. *Id.*; Fed. R. Evid. 702.

The second and third prongs are at issue here. The parties do not dispute that each of the expert reports is based on sufficient facts and data. But Defendants argue that the regression models used by each expert are not the product of reliable principles and methods or that the expert has not applied the principles and methods reliably to the facts. Specifically, Defendants argue that the overcharge regression models used by each expert are unreliable, that the experts should have used a but-for production model and did not (or, in the case of Dr. Sunding, did but did not use the right data). Defendants also dispute the reliability of Dr. Williams' common impact models. The Court will address the models in turn.

A. Overcharge Models

With respect to the overcharge regression models, Defendants argue that the regression models used by each expert are unreliable because the models used do not adequately exclude or control for uninjured class members.¹⁷ And with respect to Dr.

¹⁷ With respect to Dr. Sunding and Dr. Williams, the Defendants further challenge the reliability of the overcharge models because of a failure to include fed cattle prices as a variable and because the experts failed to adequately test the accuracy of the model used. The Court has already addressed exclusion of fed cattle prices as a variable in the Relevance section, above, and concluded that because both Dr. Sunding and Dr. Williams accounted for numerous other

Mangum’s model, Defendants argue that his overcharge model misattributes impact from market factors unrelated to the alleged conspiracy.

1. Uninjured Class Members

Defendants and their expert, Dr. Stiroh, argue that each of the Downstream Plaintiffs’ experts’ overcharge regression models are flawed because each model uses “only one overcharge coefficient and forc[es] it to be the same for all class members.” (Stiroh Expert Report ¶ 33.) Dr. Stiroh argues that:

[r]emoving the unnecessary and unwarranted restriction that impact must be the same across all customers from Plaintiffs’ experts’ regression models, and instead allowing the overcharge to be separately estimated for individual customers, reveals that numerous proposed Class Members were not subject to *any* overcharge at all

(*Id.*) Defendants argue that because the Downstream Plaintiffs’ experts’ models mask uninjured class members at the direct purchaser level, the methods are unreliable not just for the DPPs but also for the indirect purchasers (the CIIPs and Consumer IPPs). (*See id.* ¶ 34.)

Downstream Plaintiffs’ experts dispute Dr. Stiroh’s conclusions. Dr. Sunding argues that Dr. Stiroh’s model for estimating uninjured direct purchasers is unreliable because “there are insufficient data to reliably identify specific overcharges for all such

variables that impact the market, the omission of the fed cattle variable goes to the weight, not the admissibility of the evidence. The Court will address whether the experts adequately validated the models used below.

customers.” (Sunding Rebuttal Report ¶ 55.) Dr. Sunding concludes that even under Dr. Stiroh’s approach, “96.2% of customers are estimated to have incurred a statistically significant overcharge at the 5% significance level or better.” (*Id.* ¶ 62.) Dr. Stiroh and Dr. Sunding also disagree on the correct way to implement the statistical tests used to measure significance. (*See, e.g., id.* ¶¶ 63–64.) Similarly, Dr. Williams and Dr. Mangum also argue that Dr. Stiroh’s model for estimating uninjured direct purchasers is unreliable. (*E.g., Williams Rebuttal Report* ¶ 209; *Mangum Rebuttal Report* ¶¶ 28, 133–39, 155.)

The Court concludes that the disputed models do not provide grounds for excluding the analysis of Downstream Plaintiffs’ experts. Because each expert employed widely-accepted regression methodology, the Court concludes that Defendants’ objections speak only to weight—not admissibility. As is the case here, whether or not the methodologies used are “capable of showing common impact is a matter best left for the Rule 23 analysis.” *See In re Pork Antitrust Litig.*, Civ. No. 18-1776, 2024 WL 2060386, at *11 (D. Minn. May 8, 2024) (discussing the use of averaging methodologies).

2. Market Factors

Defendants also argue that Dr. Mangum’s overcharge model is unreliable because it misattributes impact from market factors unrelated to the alleged conspiracy. In particular, Defendants argue that Dr. Mangum did not “parse out . . . a series of plant closures or idling occurring before the alleged conspiracy began.” (Defs.’ Mem. Exclude Mangum at 15.) Dr. Mangum counters that his model includes the “plant closings were not exogenous events – they were business decisions based on market conditions, and as

such they are appropriately and explicitly controlled for through relevant controls (*i.e.*, demand and supply variables) in my direct purchaser overcharge model.” (Mangum Rebuttal Report ¶ 174.) He further argues that because his “assessment of damages . . . is coincident with the alleged conspiracy, and only reflects incremental price effects during the Class Period,” his “model does not ‘misattribute’ price impact from the plant closures that occurred prior to the start of the conspiracy.” (*Id.*)

Here, again, the Court concludes that the disputed factors do not render Dr. Mangum’s model so unreliable that the entire analysis should be excluded. To the extent that Defendants’ objections undermine Dr. Mangum’s conclusions, they go to the weight—not the admissibility of his opinion. *See, e.g., In re Processed Egg Prod. Antitrust Litig.*, 81 F. Supp. 3d 412, 431–32 (E.D. Pa. 2015) (discussing that the omission of certain factors may make an expert’s opinion less persuasive, but their absence does not make the opinion inadmissible when the factors were not “crucial to creating a reliable regression”).

B. But-For Production Models

Defendants further argue that the experts should have validated their overcharge models with a “but-for beef production regression to determine whether the alleged conspiracy reduced production and, if so, by how much.” (Defs.’ Mem. Exclude Williams at 14; *see also* Defs.’ Mem. Exclude Mangum at 17.) With respect to Dr. Sunding, Defendants argue that his analysis is unreliable because he used an “inferior data set” for his production model. (Defs.’ Mem. Exclude Sunding at 20.) With respect to Dr. Williams

and Dr. Mangum, Defendants argue that their overcharge models are unreliable because neither expert conducted a but-for beef production model.

Defendants argue that Dr. Sunding should have used data provided by Defendants, not the USDA's monthly estimates of industry-wide cattle slaughter when estimating the restriction on beef supply using his production model. Using this data, Dr. Stiroh opines that Dr. Sunding would have seen "no statistically significant decline in Defendants' slaughter during the Class Period." (Stiroh Expert Report ¶ 122.) Dr. Sunding counters that the USDA beef production data is "high-quality" and was selected and used because he could be "assured the data [is] complete." (Sunding Rebuttal Report ¶¶ 111–12.) He further notes that his intent was to "show a reduction in *market* supply as opposed to Defendant supply." (*Id.* ¶ 113.)

Defendants argue that Dr. Williams and Dr. Mangum's opinions that high prices are caused by the Defendants' conduct are unreliable because neither expert separately analyzed a "model of production to assess what Defendants' slaughter levels would have been but-for the alleged conspiracy." (Stiroh Expert Report ¶ 120.) But both Plaintiffs' experts explain that they did present analyses to address this point, even if they did not create a separate model. (*E.g.*, Williams Rebuttal Report ¶ 311 (explaining his use of a "dummy variable regression methodology to estimate the price effects of the alleged conspiracy" which, he states "does not require separate variables for specific alleged actions taken by the Defendants (e.g., constraining beef supplies) in formulating and

carrying out the challenged conduct in order to reliably estimate the total effect of the challenged conduct”); Mangum Rebuttal Report ¶ 47 (explaining that “modelling the level of but-for supply is not a necessary modelling step in order to establish the price effects of an alleged conspiracy” and that his “overcharge model directly answers” “whether Class members sustained impact and injury from the alleged conspiracy”).

In each case, the Court concludes that the dispute regarding the type of model needed (or the data that should be input in the model) does not render Downstream Plaintiffs’ regression models so unreliable that the experts’ analyses should be excluded. Again, Defendants’ objections go to the weight, not the admissibility of the opinions.

C. Common Impact Model

To show common impact on the proposed class, CIPPs relied on a two-step method used by their expert, Dr. Williams. Defendants argue that Dr. Williams’ analysis is unreliable in both steps. In the first step, Dr. Williams concluded that direct purchasers were subjected to a 12.6 percent overcharge. (Williams Expert Report ¶ 15.) Defendants argue that Dr. Williams inappropriately applied this 12.6 percent overcharge “to every beef purchase by every direct purchaser, even those that were uninjured.” (Defs.’ Mem. Exclude Williams at 16.) In the second step of his analysis, Dr. Williams examined whether the direct purchasers passed on the overcharge to the CIPPs. Defendants argue this step is also unreliable because Dr. Williams “conflated impact from the alleged conspiracy with the random error of his regression.” (*Id.*)

Dr. Williams determined that “the mean or average prices for each customer-product combination in the Class Period is 12.6% higher than the corresponding combination in the benchmark period.” (Williams Rebuttal Report ¶ 210 n.174.) He admits that setting the overcharge to 12.6 percent for all direct purchasers was done “to simplify the exercise” and “for ease of comparison.” (*Id.* ¶ 210 & n.174.) As the Court has previously stated, “averaging methodologies are not inherently unreliable and are permissible in some circumstances.” *In re Pork*, 2024 WL 2060386, at *11. While Dr. William’s averaging methodology certainly conceals variations among direct purchasers, the Court concludes that using it as a first step in an analysis to determine whether direct purchasers passed on an overcharge to the CIPPs is acceptable.¹⁸ Its use is also accepted by the Court in this instance because Dr. Williams has also “laid a sufficient foundation for the inferential finding that the impact reflected in a single average overcharge was shared by virtually every class member.” *Id.* (quoting *In re Processed Egg Prods. Antitrust Litig.*, 312 F.R.D. 171, 199 (E.D. Pa. 2015)). For example, Dr. Williams cited to extensive evidence in the record (Williams Expert Report ¶ 149) and to basic economic theory (*id.* ¶ 148) to support his conclusion that virtually every class member would have been injured by the alleged conspiracy.

¹⁸ Further, while the experts disagree on the interpretation of the application of the experts’ models, Dr. Williams argues that even using Defendants’ expert’s models, he can demonstrate all customers were overcharged. (See, e.g., Williams Rebuttal Report ¶¶ 20–24, 176 (discussing the Stiroh method and criticisms).)

With respect to the second step of his analysis, Dr. Stiroh, Defendants' expert, concluded that "Dr. Williams' common impact regression analysis conflates the random residual of his regression model with impact." (Stiroh Expert Report ¶ 102.) Dr. Williams disagrees. (Williams Rebuttal Report ¶¶ 263–71.) The Court is not convinced that Dr. Williams has misinterpreted his regression analyses. *Cf. In re Turkey Antitrust Litig.*, No. 19-8318, 2025 WL 264021, at *10 (N.D. Ill. Jan. 22, 2025) ("The Court also credits Williams' explanation that Defendants mistakenly use error term and residual interchangeably and therefore, their arguments in this regard do not undermine the reliability of his in-sample prediction method.").

The Court concludes that Dr. Williams' common impact analysis is not so unreliable that his analysis should be excluded.

* * *

Having considered the relevance, qualifications, and reliability requirements, the Court concludes that all three of the Downstream Plaintiffs' experts satisfy the less stringent *Daubert* standard employed at the class certification stage. The Court will therefore deny Defendants' motions to exclude the testimony of Dr. Sunding, Dr. Williams, and Dr. Mangum.

MOTIONS FOR CLASS CERTIFICATION

Having determined the admissibility of the experts' testimony, the Court turns to the class certification motions.

I. STANDARD OF REVIEW

To certify a class, the Downstream Plaintiffs must demonstrate compliance with Federal Rule of Civil Procedure 23. Rule 23 sets forth more than “a mere pleading standard.” *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). Rather, Downstream Plaintiffs must provide evidentiary proof of each of Rule 23’s elements. *Id.* It is the Court’s duty to conduct a “rigorous analysis” before certifying a class, which necessarily requires that the Court consider some issues that bear on the merits of a claim. *Id.* at 33–35. But courts considering class certification are not expected to resolve questions regarding the merits at this stage. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459–60 (2013).

To certify a class, Downstream Plaintiffs must first show they meet the requirements of Rule 23(a). *See generally* Fed. R. Civ. P. 23; *In re St. Jude Med., Inc.*, 425 F.3d 1116, 1119 (8th Cir. 2005). These requirements are:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

If the Downstream Plaintiffs meet Rule 23(a)'s requirements, then the Downstream Plaintiffs must satisfy one of the three 23(b) categories to be certified. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997).

II. RULE 23(a) ANALYSIS

The Court will first consider if the requirements of Rule 23(a) are met. *In re St. Jude*, 425 F.3d at 1119. These requirements are numerosity, commonality, typicality, and adequacy of representation. Fed. R. Civ. P. 23(a). Each of these elements will be analyzed in turn.

A. Numerosity

There is no clear-cut rule for numerosity. Rule 23(a)(1) requires that a class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a). Though there are no arbitrary rules regarding the necessary size of classes, courts typically consider the number of persons involved in the class, the nature of the action, the value of each individual claim, and the inconvenience of trying individual suits. *Belles v. Schweiker*, 720 F.2d 509, 515 (8th Cir. 1983); *Paxton v. Union Nat’l Bank*, 688 F.2d 552, 559–60 (8th Cir. 1982).

Here, the parties do not dispute that each of the three proposed classes satisfies the numerosity requirement. DPPs are composed of thousands of entities that purchased beef directly from Defendants. (Sunding Expert Report ¶ 1 n.1.) There are estimated to be millions of individuals within the Consumer IPP class (Mangum Expert Report ¶ 498), and counsel represents that the CIPPs also have thousands of members (CIPPs’ Mem. at

25). The Rule 23(a) numerosity requirement is plainly satisfied.

B. Commonality

To establish commonality under Rule 23(a)(2), class claims “must depend upon a common contention” that 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.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). In other words, the Court considers whether proceeding as a class will “generate common *answers* apt to drive resolution of the litigation.” *Id.* (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)). For Rule 23(a)(2) commonality, dissimilarities between class members may be relevant if they preclude a finding that there is “even a single common question.” *Id.* at 359 (cleaned up).

The parties do not dispute that each of Downstream Plaintiffs’ proposed classes brings claims that satisfy the commonality requirement. “Proof of and defenses to the Defendants’ alleged conspiracy will be common to all class members, as is typical of all nationwide horizontal price-fixing conspiracy class actions.” *In re Pork*, 2024 WL 2060386, at *14 (citing *In re Wirebound Boxes Antitrust Litig.*, 128 F.R.D. 268, 271 (D. Minn. 1989)). The Downstream Plaintiffs satisfy the commonality requirement.

C. Typicality

To establish typicality under Rule 23(a)(3), the Court must determine “whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the

class members will be fairly and adequately protected in their absence.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). “The burden of demonstrating typicality is fairly easily met so long as other class members have claims similar to the named plaintiff[s].” *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995).

Variations between class members will not preclude finding typicality “if the claim arises from the same event or course of conduct as the class claims, and gives rise to the same legal or remedial theory.” *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996). “An antitrust price fixing case generally will involve claims sufficiently similar to satisfy Rule 23(a)(3).” *In re Workers’ Comp.*, 130 F.R.D. 99, 106 (D. Minn. 1990); *see also In re Linerboard Antitrust Litig.*, 203 F.R.D. 197, 207 (E.D. Pa 2001) (explaining that where “it is alleged that the defendants engaged in a common scheme relative to all members of the class, there is a strong assumption that the claims of the representative parties will be typical”) (citation omitted).

The parties do not dispute that the Downstream Plaintiffs satisfy the typicality requirement. The named representatives in each putative class purchased beef during the class period, represent others in the same position, and the Defendants’ alleged conspiracy impacted the prices those representatives paid. Though there may be some factual variation among class members, those differences will not preclude class certification because their claims arise under the same legal or remedial theory. *See Khoday v. Symantec Corp.*, Civ. No. 11-180, 2014 WL 1281600, at *16 (D. Minn. Mar. 13,

2014). The Downstream Plaintiffs satisfy the typicality requirement.

D. Adequacy of Representation

Finally, the Court must decide whether the “representative parties will fairly and adequately protect the interests of the Class.” Fed. R. Civ. P. 23(a)(4). “To demonstrate adequacy of representation, a plaintiff must show that ‘(1) the representative and its attorneys are able and willing to prosecute the action competently and vigorously; and (2) the representative’s interests are sufficiently similar to those of the class that it is unlikely that their goals and viewpoints will diverge.’” *In re Pork*, 2024 WL 2060386, at *17 (quoting *City of Farmington Hills Emps. Ret. Sys. v. Wells Fargo Bank, N.A.*, 281 F.R.D. 347, 353 (D. Minn. 2012)).

Defendants do not dispute that the DPPs’ proposed class representatives are adequate. They do, however, challenge the adequacy of the Consumer IPPs’ and the CIPPs’ representatives.

With respect to the Consumer IPPs, Defendants argue that “some named Plaintiffs almost exclusively purchased beef products that are *excluded* from the proposed class definition.” (Defs.’ Opp. CIPPs’ Mot. at 9.) Defendants further argue that no named plaintiff “has submitted proof that any of the beef they purchased was processed by any of the Defendants, or was even a product included within the claim.” (*Id.* at 10.) But to prove harm, a named plaintiff need not show they only bought products that fall within the class definition. Most Consumer IPP class representatives purchased multiple beef products routinely. (See *generally* CIPPs’ Mem., Appendix C (highlighting portions of

representatives' testimony that illustrate repeated purchase of proposed class products).) And class representatives may self-identify using affidavits. *See In re Pork*, 2024 WL 2060386, at *29; *In re Dollar Gen. Corp. Motor Oil Mktg. & Sales Practices Litig.*, MDL No. 16-2709, 2019 WL 1418292, at *16 (W.D. Mo. Mar. 21, 2019). Because the proposed class representatives purchased beef products like the absent class members and they face no material conflicts of interest with such class members, the Court is satisfied the Consumer IPPs' proposed class representatives are adequate.

With respect to CIPPs, Defendants argue the proposed class representatives are inadequate because CIPPs have legal flaws in the allegations under state laws in Mississippi, Kansas, and Vermont. With respect to Mississippi¹⁹ and Kansas,²⁰ it is possible that these specific claims may be precluded; nevertheless, the Court finds that the class representatives are adequate. With respect to Vermont, while it is true that only consumers may bring claims under the Vermont Consumer Protection Act (VCTA), *In re Cattle & Beef Antitrust Litig.*, 687 F. Supp. 3d 828, 846 (D. Minn. 2023) (citing Vt. Stat. Ann.

¹⁹ Defendants point out that the Court "a claim made pursuant to [] Mississippi's antitrust law must involve, in part, transactions occurring wholly within the state." (Defs.' Opp. CIPPs' Mot. at 44 (alteration in original) (quoting *In re Cattle Antitrust Litig.*, Civ. No. 19-1222, 2021 WL 7757881, at *12 (D. Minn. Sept. 14, 2021)). Defendants' argument has no bearing on the adequacy of the named plaintiffs; it goes only to the merits of the CIPPs' Mississippi antitrust claim, which the Court declines to address at this time.

²⁰ Defendants argue that an exemption to the Kansas Restraint of Trade Act (KRTA) would preclude CIPPs' Kansas antitrust claim. If the exemption applies—which the Court declines to address at this time—it would simply preclude CIPPs' Kansas antitrust claim; the named plaintiffs would still be adequate representatives.

tit. 9, § 2461(b)), the Court declines to decide at this stage if the CIPPs are “consumers” within the meaning of the VCTA. *See* Vt. Stat. Ann. tit. 9, § 2451a(a). But even if the CIPPs are not consumers for the purposes of the VCTA, the named plaintiffs would still be adequate representatives.

Defendants also argue there must be a class representative for every state encompassed in the proposed damages claim or that CIPPs would lack standing to sue under the laws of those states. The Court previously addressed this issue in *In re Pork* and concluded that “Defendants’ position conflates the requirements of Article III with those of Rule 23.” 2024 WL 2060386, at *18 (citing *Langan v. Johnson & Johnson Consumer Co.*, 897 F.3d 88, 93 (2d Cir. 2018)). Here, as in *Pork*, there is no issue of standing because the named plaintiffs have each alleged that they suffered an injury in fact sufficient to confer standing and “[r]equiring that the claims of the class representative be in all respects identical to those in each class member in order to establish standing would confuse the requirements of Article III and Rule 23.” *Id.* (quoting *In re Asacol Antitrust Litig.*, 907 F.3d 42, 49 (1st Cir. 2018)) (cleaned up). What matters at this stage is that the claims of the named plaintiffs “parallel those of the putative class members” so that “success on the claim[s] under one state’s law will more or less dictate success under another state’s law.” *In re Asacol*, 907 F.3d at 49. Therefore, the Court concludes the CIPPs’ class representatives are adequate even though they do not reside in all states in which the CIPPs seek class certification.

* * *

Having found the Downstream Plaintiffs' representatives adequate, the Court concludes that they meet Rule 23(a)'s preliminary class certification requirements. The Court will next consider if the Downstream Plaintiffs' proposed classes qualify under one of the Rule 23(b) categories.

III. RULE 23(b) ANALYSIS

If a class meets the Rule 23(a) requirements, it must also qualify as one of three Rule 23(b) class action types to be certified. *Amchem Prods.*, 521 U.S. at 614. As previously noted, Rule 23(b)(1) covers cases in which separate actions by class members would "risk establishing incompatible standards of conduct for the party opposing the class." *Id.* (internal quotation omitted). Rule 23(b)(2) specifically allows declaratory or injunctive relief when "the party opposing the class has acted or refused to act on grounds generally applicable to the class." *Id.* (quoting Fed. R. Civ. P. 23(b)(2)). And Rule 23(b)(3) actions secure judgments that bind all class members—except for those class members who affirmatively elect to be excluded from the class. *Id.* at 614–15. Rule 23(b)(3) actions are appropriate when common questions predominate over individual ones, and the class action is superior to other methods for adjudicating the action. *Id.* at 615 (citing Fed. R. Civ. P. 23(b)(3)). All Downstream Plaintiffs claim that their proposed Damages Classes satisfy the requirements of Rule 23(b)(3), and the CIPPs also seek an Injunctive Relief Class pursuant to Rule 23(b)(2). The Court will first analyze the requirements of Rule 23(b)(3) and will separately address Defendants' assertion that the indirect purchaser

classes cannot satisfy Rule 23(b)(3) due to material variations in state laws. The Court will then consider if the CIPPs satisfy Rule 23(b)(2).

A. Rule 23(b)(3)

Rule 23(b)(3) requires “that the questions of law or fact common to class members **predominate** over any questions affecting only individual members, and that a class action is **superior** to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3) (emphasis added). Thus, there are two main requirements: (1) predominance and (2) superiority. In analyzing these two requirements, courts must consider:

- (A) The class members’ interests in individually controlling the prosecution or defense of separate actions;
- (B) The extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) The likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). Defendants challenge predominance for each of the Downstream Plaintiffs.

1. Predominance

“The predominance requirement is ‘demanding’; a court considering certification pursuant to Rule 23(b)(3) must take a ‘close look at whether common questions predominate over individual ones.’” *Hudock v. LG Electronics U.S.A., Inc.*, 12 F.4th 773, 776 (8th Cir. 2021) (quoting *Comcast*, 569 U.S. at 34). However, “there are no bright lines

for determining whether common questions predominate.” *In re Potash Antitrust Litig.*, 159 F.R.D. 682, 693 (D. Minn. 1995). A claim will meet the predominance requirement “when there exists generalized evidence which proves or disproves an element on a simultaneous, class-wide basis, since such proof obviates the need to examine each class member’s individual position.” *Id.*

Analysis of predominance may overlap with the merits of the case, but a court “should not resolve the merits of the case at class certification.” *In re Zurn Pex*, 644 F.3d at 617. Rather, “Rule 23(b)(3) requires a showing that *questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class.” *Amgen Inc.*, 568 U.S. at 459. While rigorous, the inquiry at this stage is limited to determining whether common evidence **could** suffice to make out a prima facie showing of liability on the plaintiffs’ theory. *In re Zurn Pex*, 644 F.3d at 618.

The Eighth Circuit has advised that the “closer any dispute at the class certification stage comes to the heart of the claim, the more cautious the court should be in ensuring that it must be resolved in order to determine the nature of the evidence the plaintiff would require.” *Blades v. Monsanto Co.*, 400 F.3d 562, 567 (8th Cir. 2005). Factual and merits disputes “may be resolved only insofar as resolution is necessary to determine the nature of the evidence that would be sufficient, if the plaintiff’s general allegations were true, to make out a prima facie case for the class.” *Id.* Plaintiffs may use any admissible evidence at this stage in the litigation. *In re Zurn Pex*, 644 F.3d at 612–14.

Predominance is “readily met in certain cases alleging . . . violations of the antitrust laws.” *Amchem Prods.*, 521 U.S. at 625; *see also In re Wirebound Boxes Antitrust Litig.*, 128 F.R.D. 268, 271 (D. Minn. 1989) (“Plaintiffs have alleged a nationwide horizontal price-fixing conspiracy . . . [p]roof of such an antitrust violation involves primarily common issues of fact and law.”). But predominance is also often the determining factor in declining to certify a class in an antitrust action. *E.g., Blades*, 400 F.3d at 572 (refusing to certify a class because the plaintiffs could not prove classwide injury with common evidence, as required for predominance).

To be successful in this litigation, Downstream Plaintiffs must prove (1) that Defendants conspired to violate federal antitrust laws, (2) that class members suffered injury because of the violation (“impact”), and (3) that plaintiffs can measure the damages. *Blades*, 400 F.3d at 566. Common evidence must be used to satisfy all three of these elements to meet Rule 23(b)(3)’s predominance requirement.

a. Antitrust Conspiracy

Downstream Plaintiffs must show that common evidence can be used to prove the existence of the alleged antitrust conspiracy. Defendants do not dispute that common evidence can be used here. The Eighth Circuit and Minnesota courts have acknowledged that evidence of a conspiracy relates solely to the defendant’s conduct, so proof would not vary among class members. *Blades*, 400 F.3d at 572 (“Evidence that appellees entered into a conspiracy that would affect all class members would perforce be evidence

common to all class members for proving the conspiracy.”); *In re Potash*, 159 F.R.D. at 694. Accordingly, this element is satisfied as to all Downstream Plaintiffs.

b. Impact

Next, the Court must consider whether common evidence can show classwide impact of the Defendants’ conspiracy. “Impact” generally refers to the injury caused by an antitrust violation. *See Blades*, 400 F.3d at 569. The Supreme Court has noted that an increase in price resulting from “a dampening of competitive market forces is assuredly one type” of common injury. *Blue Shield of Va. v. McCready*, 457 U.S. 465, 482 (1982). The Eighth Circuit has repeatedly held that plaintiffs can prove injury in a price-fixing case by showing that the plaintiff, as a result of the conspiracy, “had to pay supracompetitive prices.” *Blades*, 400 F.3d at 569. And to establish such impact, plaintiffs typically provide experts who “construct a hypothetical market, a ‘but-for’ market, free of the restraints and conduct alleged to be anticompetitive.” *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1055 (8th Cir. 2000) (citation omitted). Regression analysis is one way to accomplish this. *See Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 663, 676 (9th Cir. 2022); *In re Broiler Chicken Antitrust Litig.*, Civ. No. 16-8637, 2022 WL 1720468, at *12 (N.D. Ill. May 27, 2022).

While direct purchasers must show common evidence of classwide impact, indirect purchasers must take their analysis one step further. Consumer IPPs and CIPPs “must first demonstrate a common impact—in the form of an overcharge—incurred by all or nearly all” direct purchasers. *In re Pre-Filled Propane Tank Antitrust Litig.*, MDL No. 14-

2567, 2021 WL 5632089, at *6–7 (W.D. Mo. Nov. 9, 2021). They “must then demonstrate that this impact—those overcharges—were passed on by the [direct purchasers] to all or nearly all of the end customers [in this case, the Consumer IPPs or the CIIPPs].” *Id*; see also *In re Fla. Cement & Concrete Antitrust Litig.*, 278 F.R.D. 674, 682 (S.D. Fla. 2012) (noting that indirect purchasers “have a ‘double burden’ . . . [of] first prov[ing] common impact on direct purchasers who bought . . . from the Defendants, and then show[ing] that impact was passed through to the indirect purchaser class”).

The Court will first briefly summarize the reports used by each proposed class as evidence of common impact before addressing the Defendants’ arguments as to why the analyses fail to demonstrate common impact.

i. Direct Purchaser Plaintiffs

The DPPs use Dr. Sunding’s report to demonstrate evidence of common impact. Dr. Sunding analyzed the characteristics of the U.S. beef market and concluded that those characteristics made the market “susceptible to successful collusion.” (Sunding Expert Report ¶ 9(b).) Dr. Sunding also created an overcharge regression model that he used to calculate how much the “challenged conduct by Defendants . . . elevated prices for class products” and concluded “that wholesale beef prices were elevated by an average 12.5% during the class period.” (*Id.* ¶ 9(c).) He found that the evidence and his economic models were “consistent with [DPPs’] allegations of Defendants’ conspiracy to collude over cattle slaughter.” (*Id.* ¶ 162.) Dr. Sunding concluded that “substantially all class products sold by Defendants to substantially all direct purchasers across the class period” would have

been affected. (*Id.* ¶ 168.) Dr. Sunding next estimated the total volume of purchases that would have been made by putative DPP class members during the class period (i.e., the volume of commerce). (*Id.* ¶ 194.) Finally, by using his estimates of the volume of commerce and the amount of overcharge, he calculated an estimated total damage to putative DPP class members to be \$13.79 billion. (*Id.* ¶ 195.)

ii. Commercial and Institutional Indirect Purchaser Plaintiffs

The CIIPPs rely on Dr. Williams’ report to demonstrate evidence of common impact. Dr. Williams, like Dr. Sunding, first considered the structure of the beef and cattle industry and determined that characteristics of that industry make it “conducive to cartel behavior.” (Williams Expert Report ¶ 10; *see also id.* ¶ 128 (“[A] cartel elevates price and reduces quantity relative to what would be accomplished if the sellers simply act as oligopolists in a repeated game without explicit collusion.”) (citation omitted).) He considered economic and other evidence supporting a conclusion of common impact. (*Id.* ¶¶ 10–12.) Dr. Williams used a regression model to calculate the average overcharge to **direct** purchasers. (*Id.* ¶¶ 13–15.) He then used a pass-through analysis to determine whether and to what extent these overcharges were passed on from the direct purchasers to the proposed **CIIPP** class members. (*Id.* ¶¶ 16–23). Finally, he estimated the damages to the proposed CIIPP class members to be \$1.89 billion. (*Id.* ¶ 24.)

iii. Consumer Indirect Purchaser Plaintiffs

The Consumer IPPs rely on Dr. Mangum's report to demonstrate evidence of common impact. Like Dr. Williams and Dr. Sunding, Dr. Mangum first considered the structure of the beef and cattle industry and determined that the "industry was conducive to the formation and success of the alleged conspiracy." (Mangum Expert Report ¶¶ 24, 385.) He also considered economic and other evidence supporting a conclusion of common impact. (*Id.* ¶¶ 24, 388, 407.) Like Dr. Williams and Dr. Sunding, Dr. Mangum also used a regression model to calculate the average overcharge to **direct** purchasers. (*Id.* ¶¶ 24, 408.) He then used a pass-through analysis to determine whether and to what extent these overcharges were passed on from the direct purchasers to the proposed **Consumer IPP** class members. (*Id.* ¶¶ 24, 438–40.) Finally, he estimated the damages to the proposed Consumer IPP class members to be \$1.94 billion. (*Id.* ¶¶ 24, 492–99.)

iv. Overcharge Model as Proof of Common Impact

Defendants argue that Dr. Sunding did not demonstrate common impact because his overcharge model assumes, rather than proves, common impact. (*See, e.g.*, Stiroh Expert Report ¶ 35 & n. 96.) But Dr. Sunding did not use his model to prove common impact. (*See, e.g.*, Sunding Expert Report ¶ 168 ("I first explain that economic theory and the characteristics of the beef industry which dictate there would be a common impact of the challenged conduct.")) He instead relied on his analysis of market structure—combined with economic theory. (*See, e.g.*, Sunding Expert Report ¶¶ 12, 47, 169–77.)

Only then did Dr. Sunding estimate the overcharge imposed by Defendants' conduct during the class period. (*Id.* ¶ 178.)

While it is true that Dr. Sunding's model masks variations—as all averages typically do—this type of market-wide economic analysis has been accepted by many courts to show predominance as to antitrust impact. *See e.g., In re Pork*, 2024 WL 2060386, at *23; *Olean*, 31 F.4th at 677; *In re Blood Reagents Antitrust Litig.*, MDL No. 09-2081, 2015 WL 6123211, at *18–19 (E.D. Pa. 2015) (collecting cases). Because Dr. Sunding presented other evidence that supports common impact and does not rely merely on his model,²¹ the Court concludes that his expert report is sufficient to support predominance. “Moreover, though each DPP must show injury to ultimately recover, courts ‘have not insisted on this level of proof at the class certification stage.’” *In re Pork*, 2024 WL 2060386, at *21 (quoting *Kleen Prods.*, 831 F.3d at 927). Dr. Sunding's report satisfies the impact predominance requirement.²²

²¹ Dr. Sunding also further validated his common impact model with other tests including testing the overcharge across primal cuts, Defendants, and large customers (see Sunding Expert Report ¶ 178) and price movement tests (*id.* ¶ 182). While the Court agrees with Defendants that any one of these tests alone likely would not **establish** common impact, they do provide further evidence of common impact and validation of Dr. Sunding's model.

²² Defendants also argue that Dr. Sunding's production model does not support his analysis. The Court concludes that Defendants' arguments with respect to the production model do not significantly undermine the Court's conclusion that Dr. Sunding's report supports a finding of common impact. To the extent Defendants' arguments are based on Dr. Sunding's selection of a USDA data set, Dr. Sunding has presented reasonable arguments for his selection of the data set used. To the extent Defendants argue that Dr. Sunding did not determine whether Defendants could have actually produced 6.3% more beef during the class period (*cf.* Sunding

v. Common Impact to Direct Purchasers

Defendants argue that Dr. Williams’ and Dr. Mangum’s expert reports do not adequately show that all or nearly all direct purchasers were injured (and, without a classwide overcharge to direct purchasers, there is no overcharge to be passed on to downstream CIPPs or Consumer IPPs).

Many circuits have instructed district courts to “ensure that the class is not defined so broadly as to include a great number of members who for some reason could not have been harmed by the defendant’s allegedly unlawful conduct.” *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1138 (9th Cir. 2016) (internal quotation marks omitted). *See also Blades*, 400 F.3d at 571 (refusing to certify classes where “not every member of the proposed classes can prove with common evidence that they suffered impact from the alleged conspiracy”).

A class cannot be certified if more than a *de minimis* portion of the class is uninjured. The Eighth Circuit has not yet determined what constitutes *de minimis*, but other courts have held between approximately five and ten percent would justify refusing to certify the class. *See e.g., In re Asacol*, 907 F.3d at 58 (reversing certification after concluding that ten percent of class members were uninjured); *Vista Healthplan, Inc. v. Cephalon, Inc.*, Civ. No. 2:06-1833, 2015 WL 3623005, at *20 (E.D. Pa. June 10, 2015)

Expert Report ¶ 154 (concluding that “beef production was approximately 6.3% lower during the class period”)), the Court is not convinced that Dr. Sunding or the DPPs must make necessarily make that showing, at least at this stage.

(finding that five percent combined with a “substantial” likelihood that other categories mentioned of uninjured class members would be within the proposed class to be more than *de minimis*).

Defendants argue that both Dr. Williams’ and Dr. Mangum’s single-overcharge regression models for direct purchasers are flawed and fail to establish that all direct purchasers paid an overcharge. (*E.g.*, Stiroh Expert Report ¶ 51.) Defendants argue that more complex models that do not assume impact on all members of the class should be used to verify these models and test for classwide impact. And Defendants argue that when their expert ran these models, a large number of direct purchaser plaintiffs did not incur an overcharge. (*See, e.g., id.* ¶ 41 (concluding that “between 33.4 percent and 63.6 percent of tested customers did not incur an overcharge”).)

Downstream Plaintiffs argue that Defendants’ expert used overly restricted data sets and measured the wrong thing (e.g., testing the percentage of direct purchasers injured instead of specific products purchased). By modifying the models used by Defendants’ expert, Dr. Williams and Dr. Mangum calculated that at least 95% and up to “99% of Defendants’ sales to direct purchasers have positive and statistically significant overcharges.” (Williams Rebuttal Report ¶¶ 234–36; *see also* Mangum Rebuttal Report ¶¶ 198.)

In short, this issue “presents the familiar ‘battle of the experts.’” *In re Potash*, 159 F.R.D. at 697. But “[t]he certification stage . . . is not, however, the proper forum in which

to resolve this battle.” *Id.* The Court concludes that Dr. Williams’ and Dr. Mangum’s single-overcharge regression models are not so flawed that they would be inadmissible. *E.g. id.* (“[I]n assessing whether to certify a class, the Court’s inquiry is limited to whether or not the proposed methods are so insubstantial as to amount to no method at all.”) *See also In re Turkey*, 2025 WL 264021, at *17 (“Williams’ argument that Stiroh’s application of his overcharge regression model is a flawed methodology that creates artificially small sample sizes is a classic battle of the experts about the proper approach to the regression analysis that must be left for the factfinder to resolve. It is not a reason to reject Williams’ overcharge regression model at the class certification stage.”).

The Court concludes that CIPPs and Consumer IPPs have established, through Dr. Williams’ and Dr. Mangum’s reports, that it is possible to show that all DPPs suffered a common injury with common evidence.

vi. Common Impact to Downstream Purchasers

Defendants also argue that the methods used by Dr. Williams to estimate the overcharges to the CIPPs were flawed. Again, the experts apply different versions of the same model to reach wildly different results. (*E.g.*, Stiroh Expert Report ¶ 115 (concluding that the share of the top 1,000 indirect purchasers that did not incur an overcharge varies from 24.8 percent to 79.2 percent); Williams Rebuttal Report ¶¶ 223–29 (arguing that Dr. Stiroh’s model includes estimates that are not statistically significant but her model, if modified, would show 99% of CIIPP class members were injured).)

Here again, the Court declines to find that Dr. Williams' model is so flawed that it would be inadmissible. Defendants' critiques are inadequate bases for the Court to conclude that Dr. Williams' approach is insufficient evidence to demonstrate classwide impact. As the court in *In re Broiler Chicken* explained it, "from Plaintiffs' perspective, [Defendants' expert's] calculations miss the forest for the trees, whereas Defendants argue that the forest can only be properly understood by examining the trees." 2022 WL 1720468, at *16. The Court concludes here, as there, that "such a dispute is factual and is resolved at summary judgment or trial. It is not a reason to exclude either perspective or deny class certification." *Id.*

* * *

In conclusion, the Court concludes that the evidence put forward by the Downstream Plaintiffs, including the experts' market structure analyses and overcharge regression and other models, is sufficient to show common questions predominate as to common impact.

c. Damages

As to the final predominance component, the Court must consider if the Downstream Plaintiffs can use common evidence to show damages. Plaintiffs must show that "damages are susceptible of measurement across the entire class for purposes of Rule 23(b)(3)." *Comcast*, 569 U.S. at 35. "Calculations need not be exact, but at the class-certification stage . . . any model supporting a plaintiff's damages case must be consistent with its liability case." *Id.* (citation modified). Here, the Downstream Plaintiffs' theory of

liability is that Defendants artificially raised beef prices by means including (but not limited to) restricting supply. Therefore, a successful damages model must align with that price-raising theory.

Defendants argue that the Downstream Plaintiffs have failed to establish common proof of classwide damages for any of the proposed classes. The Court will address each proposed class in turn.

On behalf of the DPPs, Dr. Sunding calculated the total value of purchases by DPPs of products included in the class, for the class period. (Sunding Expert Report ¶ 193.) He then used this value and the applicable overcharge calculated from his overcharge regression to calculate estimated damages, which he found to be \$13.79 billion. (*Id.* ¶¶ 193–95.) Defendants argue that Dr. Sunding’s estimate inappropriately relied on averages for an industry that lacks uniformity and so relying on Dr. Sunding’s analysis would result in DPPs receiving damages for transactions where they did not pay overcharges.

But, as the court explained in *In re Broiler Chicken*, “as long as ‘the aggregate classwide damages is something that can be handled most efficiently as a class action,’ then ‘the allocation of that total sum among the class members can be managed individually’ without undermining predominance or superiority.” 2022 WL 1720468, at *19 (quoting *Kleen Prods.*, 831 F.3d at 929). The Court is convinced that Dr. Sunding has provided an adequately reliable measure of classwide damages. *See, e.g., In re Turkey*,

2025 WL 264021, at *25 (discussing the use of averages for determining aggregate damages). Moreover, having considered Defendants’ objections to predominance as to DPPs’ damages, the Court is satisfied that any individualized damages issues will not overwhelm the questions of law and fact that are common to the class.

With respect to the CIPPs, Dr. Williams calculated classwide damages based on the percentage overcharges to direct purchasers, pass-through rates, and the share of Defendants’ sales of class products to direct purchasers ultimately purchased by class members. (Williams Expert Report ¶ 251.) Defendants argue that Dr. Williams’ damages calculations are flawed because he failed to show common impact to all class members and failed to use a fed cattle price variable. The Court has already addressed these criticisms above. Additionally, Defendants argue that “Dr. Williams’s distributor-specific overcharge estimates also demonstrate that individualized determinations of damages would be required.” (Defs.’ Opp. CIPPs’ Mot. at 30.) But “the fact that the damages calculation may involve individualized analysis is not by itself sufficient to preclude certification when liability can be determined on a class-wide basis.” *In re Potash*, 159 F.R.D. at 697. At the class certification stage, the Downstream Plaintiffs need only demonstrate that they have a reasonable method for calculating damages. The Court concludes that CIPPs have done so.

Finally, with respect to the Consumer IPPs, Dr. Mangum—similar to Dr. Williams—calculated classwide damages by first calculating overcharges to direct purchasers, then

determining pass-through rates, and finally estimating the share of Defendants’ sales of class products to direct purchasers ultimately purchased by class members. (Mangum Rep. ¶¶ 24, 492–99.) Defendants argue that Dr. Mangum’s approach to calculating pass-through disguises significant variation and therefore makes calculating an individual consumer plaintiff’s purported damages virtually impossible. Here again, “the fact that the damages calculation may involve individualized analysis is not by itself sufficient to preclude certification when liability can be determined on a class-wide basis.” *In re Potash*, 159 F.R.D. at 697. At the class certification stage, the Downstream Plaintiffs need only demonstrate that they have a valid method for calculating damages. The Court concludes that the Consumer IPPs, like the CIIPPs and the DPPs, have done so.

d. Superiority

To certify a class under Rule 23(b)(3), the Court must also consider if a class action is the superior method of adjudicating this controversy. “There is no bedrock standard upon which a Court determines that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” *In re Pork*, 2024 WL 2060386, at *26 (quoting *Sonmore v. CheckRite Recovery Servs., Inc.*, 206 F.R.D. 257, 265 (D. Minn. 2001)). Rather, courts generally look to the following non-exhaustive list of relevant factors: (1) the interest of class members in individually controlling their claims, (2) the extent to which litigation has already begun, (3) the desirability of concentrating the litigation in a particular forum, and (4) the likely difficulties of managing a class action. Fed. R. Civ. P. 23(b)(3)(A)–(D). Class actions are also superior if the alleged damages of

each plaintiff are small and, absent a class action, most plaintiffs would not realistically have a day in court. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985).

Defendants do not dispute that a class action is the superior method for the Downstream Plaintiffs to bring their claims. Given the large number of potential class members in this action, the significant difficulty those members would face in bringing individual claims, the Court's more than four years of oversight of this litigation, and the fact that managing a class action—though challenging—is certainly more efficient than juggling a multitude of individual actions, the superiority requirement is readily satisfied.

B. State Law Claims

Defendants contend that the Consumer IPPs and CIIPs failed to show predominance and superiority because they bring state law claims under the theories of antitrust, unjust enrichment, and consumer protection. Defendants believe that material variations in state law prohibit class certification under Rule 23(b)(3).

The Eighth Circuit has acknowledged that “[v]ariations in state law **may** swamp any common issues and defeat class certification under Rule 23(b)(3).” *Hale v. Emerson Elec. Co.*, 942 F.3d 401, 403 (8th Cir. 2019) (emphasis added) (internal quotation omitted); *see also Johannessohn v. Polaris Indus. Inc.*, 9 F.4th 981, 985–86 (8th Cir. 2021) (affirming denial of class certification of a case involving material misrepresentations under six states’ laws because they would require individual investigations and would create challenges for trial management); *Webb v. Exxon Mobil Corp.*, 856 F.3d 1150, 1157 (8th Cir. 2017) (affirming denial of class certification because the class would join claims arising

under four states’ contract, property, and tort law due to potential conflicts between state laws).

Here, as in *Pork*, the Court concludes that the variations in states’ antitrust, consumer protection, and unjust enrichment laws Defendants identified are not material. *In re Pork*, 2024 WL 2060386, at *27. Rather, the slight differences between state laws do not “swamp any common issues.” *Hale*, 942 F.3d at 403. For instance, any differences in antitrust duplicative liability provisions are not material because most states have such provisions, and the states’ antitrust laws are harmonious with the Sherman Act. (See CIPPs’ Mem., Appendix A (identifying the relevant state antitrust statutes and harmonization with federal law); CIIPPs’ Mem., Appendix A (same); CIPPs’ Mem., Appendix B (identifying the relevant state consumer protection statutes and harmonization with federal law); CIIPPs’ Mem., Appendix B (same).)

It is true that state consumer protection laws ordinarily differ greatly. *See In re St. Jude*, 425 F.3d at 1120 (identifying those differences as “material variances”). But those differences are irrelevant within the antitrust context because states provide a remedy under consumer protection laws for antitrust violations. *See In re Broiler Chicken*, 2022 WL 1720468, at *20 (“[T]he differences in consumer protection laws concerning reliance and intent are simply not relevant to a price-fixing claim.”).

Similarly, state unjust enrichment laws typically vary greatly because they have different approaches and elements, making them often ill-suited for class actions. *In re*

Processed Egg Prods. Antitrust Litig., 312 F.R.D. 124, 164 (E.D. Pa. 2015) (collecting cases). Accordingly, numerous courts have found that the variation in state unjust enrichment laws “prevents common issues of law from predominating over a proposed class.” *In re Dollar Gen.*, 2019 WL 1418292, at *17. To overcome state law variances and show predominance, Plaintiffs may undertake an “extensive analysis” of the variances. *Id.*

Here, the Court concludes, as it did in *Pork*, that the differences that may defeat class certification in other cases are not material in this matter because unjust enrichment claims are nearly identical in the antitrust context. *See In re Pork*, 2024 WL 2060386, at *27; *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 697 n.40 (S.D. Fla. 2004) (certifying a class for unjust enrichment claims in the antitrust context because “[t]he standards for evaluating each of the various states classes’ unjust enrichment claims are virtually identical”).²³ Consumer IPPs and CIPPs also conducted the necessary extensive analysis of the state law variations. (See *e.g.*, CIPPs’ Mem., Appendix A–Appendix B; CIPPs’ Mem., Appendix A–Appendix C.)

Moreover, many of the variations Defendants identified relate only to damages—not liability. The Court is confident that such differences will not confuse a jury. Further,

²³ See also *In re McCormick & Company, Inc.*, 217 F. Supp. 3d 124, 145 (D.D.C. 2018) (noting that in some cases, “special situations [have] allowed the plaintiffs to demonstrate injustice without addressing individual circumstances”); *In re Broiler Chicken*, 2022 WL 1720468, at *20 (finding variations in unjust enrichment laws to not be material because “any state where the unjust enrichment claim is the primary basis for recovery will be satisfied by proof of a Sherman Act violation”).

the Court may subdivide the classes in the future if necessary. *See In re Dollar Gen.*, 2019 WL 1418292, at *17 (“Variances of state law may also be overcome through the use of subclasses to allow common issues of fact or law to predominate over individual issues of state law.”).

C. Ascertainability

Defendants challenge the ascertainability of the putative Consumer IPP class. Though not an explicit requirement under Rule 23, most courts acknowledge that ascertainability is inherently required for class certification. The Eighth Circuit has explained that “[i]t is elementary that in order to maintain a class action, the class sought to be represented must be adequately defined and clearly ascertainable.” *Ihrke v. N. States Power Co.*, 459 F.2d 566, 573 n.3 (8th Cir. 1972), *vacated due to mootness*, 409 U.S. 815 (1972). The Eighth Circuit does not view ascertainability as a separate, preliminary requirement, but rather requires district courts to conduct “a rigorous analysis of the Rule 23 requirements, which includes that a class ‘must be adequately defined and clearly ascertainable.’” *Sandusky Wellness Ctr., LLC v. Medtox Sci., Inc.*, 821 F.3d 992, 996 (8th Cir. 2016); *see also Brown v. Wells Fargo & Co.*, 284 F.R.D. 432, 444 (D. Minn. 2012).

Defendants argue that no objective **classwide** criteria exists with which to identify class members. Defendants’ argument fails because *Sandusky* merely requires that objective criteria be used to identify the entire class; it does not require classwide criteria. *See Sandusky*, 821 F.3d at 996. And Consumer IPPs have clearly defined the proposed

class members as “persons and entities who indirectly purchased for personal consumption one or more of” the specifically listed beef products. (CIPPs’ Mot. at 1–2.)

Moreover, at least some records of who purchased products are available from retailers (e.g., Walmart/Sam’s Club, Costco, Amazon) which would allow for direct notice to those class members of their claims. (See CIPPs’ Reply at 26–27.) For consumers without records, individual consumers are capable of self-identifying using affidavits, which is a permissible means of ascertaining class membership. See, e.g., *In re Dollar General Corp.*, 2019 WL 1418292, at *16.

Defendants argue that affidavits would be improper for this case because Consumer IPPs provided no details on the use of a claim forms process or affidavits. Defendants argue that the potential class here is akin to the one in *St. Louis Heart Center, Inc. v. Vein Centers for Excellence, Inc.*, where the court concluded that reliance on claims forms or affidavits was “especially troublesome because of the nature of the proof required.” Civ. No. 12-174, 2017 WL 2861878, at *4 (E.D. Mo. July 5, 2017). The Court disagrees. Unlike in *St. Louis Heart Center*, where the question was whether a plaintiff received “a specific junk fax sent many years earlier[,]” *id.*, here, the consumers typically purchase beef repeatedly and regularly and can rely on their own patterns of behavior (see, e.g., CIPPs’ Mem., Appendix C). See also *In re Broiler Chicken*, 2022 WL 1720468, at *20–21 (concluding that end-users of meat products are an ascertainable class); *In re Pork*, 2024 WL 2060386, at *27 (concluding “individual consumers are capable of self-

identifying using affidavits”). The Court concludes that the Consumer IPPs are an ascertainable class.

* * *

All three damages classes proposed by the Downstream Plaintiffs have satisfied the rigorous requirements of Rule 23(b)(3). The Court will, therefore, certify all three damages classes proposed by the Downstream Plaintiffs.

IV. RULE 23(B)(2) ANALYSIS

In addition to their Rule 23(b)(3) damages class, CIIPPs ask the Court to certify an injunctive relief class pursuant to Rule 23(b)(2). Rule 23(b)(2) provides that a class action may be appropriate if:

the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole

Fed. R. Civ. P. 23(b)(2).

The Court will decline to certify the CIIPPs’ Injunctive Relief Class at this time, but it will allow the CIIPPs to renew their motion for certification of a Rule 23(b)(2) class at a later date, should they choose to do so. The Court reaches this conclusion for two reasons.

First, “[c]lass certification under Rule 23(b)(2) is proper only when the primary relief sought is declaratory or injunctive.” *In re St. Jude*, 425 F.3d at 1121. At this time, the CIIPPs are primarily seeking monetary damages, which precludes certification under

Rule 23(b)(2).²⁴ *See Dukes*, 564 U.S. at 360 (holding that certification under Rule 23(b)(2) is not appropriate if the monetary relief sought by the class “is not incidental to the injunctive or declaratory relief”).

Second, the CIPPs have not been specific about what injunctive relief they seek and how that relief would provide appropriate relief to the class as a whole. Rule 23(c)(1)(B) requires that “[a]n order that certifies a class action must define the class and the class claims, issues, or defenses” Federal Rule of Civil Procedure 65(d) provides that “[e]very order granting an injunction . . . must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail . . . the act or acts restrained or required.” Although CIPPs indicate that the requested injunctive relief would “protect[] them from future anticompetitive conduct, particularly unlawful communications coordinating the supply of beef products” (CIPPs’ Mem. at 28), CIPPs do not provide sufficient detail about the proposed relief to allow the Court to determine whether it would provide relief for the class as a whole or for the Court to properly scope its order certifying their proposed Injunctive Relief Class.

²⁴ The court in *In re Processed Egg Prod. Antitrust Litig.*, 312 F.R.D. 124, 166 (E.D. Pa. 2015) noted that courts are divided over the propriety of certifying a Rule 23(b)(2) class where monetary damages predominate but the claims for damages and injunctive relief arise under different statutes. Because the Court finds that, in any event, the proposed injunctive relief is not yet clearly enough defined to certify the class, the Court will address this issue only if the CIPPs choose to renew their motion at a later date.

The Court will, therefore, decline to certify the injunctive relief class at this time. As noted above, however, the Court will allow CIIPPs, should they choose to do so, to renew their motion for certification under Rule 23(b)(2) at a later date—provided they address why injunctive relief is proper and provide additional detail on the relief being sought.

V. CLASS COUNSEL

Lastly, when certifying a class, the Court must also appoint class counsel. Fed. R. Civ. P. 23(g)(1). When considering whether to appoint class counsel, courts

(A) must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class; [and]

(B) may consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class

Id. Additionally, “[c]lass counsel must fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(4). Only if class counsel is adequate under all of these considerations may a court appoint the applicant as class counsel. Fed. R. Civ. P. 23(g)(2).

Because the firms that currently serve as interim co-lead counsel for the Downstream Plaintiffs have vigorously represented each class thus far in the litigation and

are all well-versed in antitrust law, the Court will appoint them as class counsel:

1. Gustafson Gluek, PLLC; Hartley LLP; Hausfeld LLP; and Cotchett Pitre & McCarthy, LLP, for the DPPs.
2. Barrett Law Group, P.A.; Cuneo Gilbert & LaDuca, LLP; and Larson King, LLP, for the CIPPs.
3. Hagens Berman Sobol Shapiro LLP and Lockridge Grindal Nauen P.L.L.P., for the Consumer IPPs.

CONCLUSION

In this multidistrict litigation alleging price-fixing in the cattle and beef industry, five groups of plaintiffs seek class certification, including the DPPs, CIPPs, and Consumer IPPs.

Each Downstream Plaintiff submitted expert testimony in support of its motion. Because each expert report satisfies the less stringent *Daubert* standard employed at the class certification stage, the Court will deny Defendants' motions to exclude the experts' testimony. After conducting the rigorous analysis required under Federal Rule of Civil Procedure 23, the Court finds that all three proposed classes satisfy the requirements of Rule 23(b)(3). The Court will therefore certify their damages classes accordingly. The Court will decline to certify the CIPPs' proposed injunctive relief class at this time, but the CIPPs' may, should they choose to do so, renew their motion for certification of a Rule 23(b)(2) class at a later date.

ORDER

Based on the foregoing, and all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Direct Purchaser Plaintiffs' Motion for Class Certification (Docket No. [852]) is **GRANTED**;
2. Commercial and Institutional Indirect Purchaser Plaintiffs' Motion for Class Certification (Docket No. [862]) is **GRANTED in part** and **DENIED in part**, as follows:

a. **GRANTED** with respect to the Damages Class:

- i. The following class is hereby certified under Federal Rule of Civil Procedure 23(b)(3):

All entities in the Indirect Purchaser States that indirectly purchased one or more of the following types of raw beef, fresh or frozen: brisket, chuck, loin, rib, or round, sold by Defendants in the Indirect Purchaser States from January 1, 2015, to February 29, 2020, for their own use in commercial food preparation. For this lawsuit, beef products exclude: non-fed beef, ground beef, trim beef, beef identified as cooked, beef products with non-beef ingredients other than seasonings, or any product that is marketed as USDA Prime.

The Indirect Purchaser States consist of Arizona, Arkansas, California, the District of Columbia, Hawaii, Florida, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, Nevada, New York, North Carolina, North Dakota, Oregon, Rhode Island,

South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

Excluded from this Class are: natural persons who purchased beef for their personal use and not for commercial food preparation; purchases of beef for resale in unaltered form; purchases of beef from an intermediary who has further processed the beef; the Defendants and their Co-Conspirators; the officers, directors or employees of any Defendant or Co-Conspirator; any entity in which any Defendant or their Co-Conspirator has a controlling interest; any entity with an interest, controlling or non-controlling, in a Defendant or their Co-Conspirator; any (in whole or in part), affiliate, legal representative, heir or assign of any Defendant or their Co-Conspirator; any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, any juror assigned to this action, and any Co-Conspirator identified in this action.

- ii. The Grady Corporation II formerly d/b/a Whole hog Café; Steve Sizemore formerly d/b/a Longhorn's Steakhouse; Pearlz Oyster Bar; Park Tavern; Union Public House; Sandee's Bakery d/b/a Sandee's Catering Bakery & Deli; Grub Stake; Max and Bella's Smokehouse, LLC; Yoland Shegian d/b/a LA Shawarma; BW-SS, Inc.; Maquoketa Care Center; Fernando's Street Kitchen; Jim's Place Grille; Farah's Courtyard Deli, Inc. are appointed as class representatives.

b. **DENIED without prejudice** with respect to the Injunctive Relief Class.

3. Consumer Indirect Purchaser Plaintiffs' Motion for Class Certification (Docket

No. [867]) is **GRANTED**;

4. The following firms are appointed as class counsel:
 - a. Gustafson Gluek, PLLC; Hartley LLP; Hausfeld LLP; and Cotchett Pitre & McCarthy, LLP, for the DPPs.
 - b. Barrett Law Group, P.A.; Cuneo Gilbert & LaDuca, LLP; and Larson King, LLP, for the CIIPPs.
 - c. Hagens Berman Sobol Shapiro LLP and Lockridge Grindal Nauen P.L.L.P., for the Consumer IPPs.
5. Defendants' Motion to Exclude Expert Testimony of Dr. David L. Sunding (Docket No. [1119]) is **DENIED**;
6. Defendants' Motion to Exclude Expert Testimony of Dr. Michael A. Williams (Docket No. [1124]) is **DENIED**; and
7. Defendants' Motion to Exclude Expert Testimony of Dr. Russell W. Mangum (Docket No. [1146]) is **DENIED**.

DATED: July 16, 2026
at Minneapolis, Minnesota.

/s/ John R. Tunheim
JOHN R. TUNHEIM
United States District Judge

Appendix 1

Complaints

Plaintiff	Complaint	Short Citation
Indirect Seller Plaintiffs	Second Amended Class Action Complaint, Oct. 1, 2024, Docket No. 916 [22-md-3031]	Indirect Seller Pls.' Second Amended Class Action Compl.
Cattle Plaintiffs	Third Consolidated Amended Class Action Complaint, Dec. 28, 2020, Docket No. 312 [19-cv-1222]	Cattle Pls.' Third Consolidated Class Action Compl.
Direct Purchaser Plaintiffs (DPPs)	Third Consolidated Class Action Complaint, Jan. 18, 2022, Docket No. 303 [20-cv-1319]	DPPs' Third Consolidated Class Action Compl.
Commercial and Institutional Indirect Purchaser Plaintiffs (CIIPPs)	Third Amended Class Action Complaint, Nov. 20, 2023, Docket No. 445 [22-md-3031]	CIIPPs' Third Amended Class Action Compl.
Consumer Indirect Purchaser Plaintiffs (Consumers or Consumer IPPs or CIPPs)	Sixth Amended Class Action Complaint, July 29, 2024, Docket No. 757 [22-md-3031]	CIPPs' Sixth Amended Class Action Compl.

Pretrial Orders

Docket No. [22-md-3031]	Full Citation	Short Citation
21	Pretrial Order No. 1, Order for Consolidation, Oct. 4, 2022, Docket No. 21	Pretrial Order No. 1
91	Pretrial Order No. 2, Appointment of Liaison Counsel and Master Complaint MDL Pretrial Order, Dec. 1, 2022, Docket No. 91	Pretrial Order No. 2
139	Pretrial Order No. 3, Amended MDL Pretrial Order, Feb. 3, 2023, Docket No. 139	Pretrial Order No. 3

Indirect Seller Plaintiffs or Feeder Cattle Plaintiffs

Docket No. [22-md-3031]	Full Citation	Short Citation
882	Indirect Seller Pls.' Mot. Class Certification, Sept. 25, 2024, Docket No. 882	Indirect Seller Pls.' Mot.
887	Indirect Seller Pls.' Mem. Supp. Mot. Class Certification, Sept. 25, 2024, Docket No. 887	Indirect Seller Pls.' Mem.
1160	Defs.' Mem Opp. Indirect Seller Pls.' Mot Class Certification, Jan. 24, 2025, Docket No. 1160	Defs.' Opp. Indirect Seller Pls.' Mot.
1240	Feeder Cattle Pls.' Reply Mem. Supp. Mot. Class Certification, Apr. 4, 2025, Docket No. 1240	Indirect Seller Pls.' Reply
1373	Defs.' Sur-Reply Mem. Opp. Indirect Seller Pls.' Mot. Class Certification, June 6, 2025, Docket No. 1373	Defs.' Sur-Reply
1404	Feeder Cattle Pls.' Sur-Resp. Supp. Class Certification, June 20, 2025, Docket No. 1404	Indirect Seller Pls.' Sur-Resp.

Cattle Plaintiffs

Docket No. [22-md-3031]	Full Citation	Short Citation
875	Cattle Pls.' Mot. Class Certification, Sept. 25, 2024, Docket No. 875	Cattle Pls.' Mot.
880	Cattle Pls.' Mem. Supp. Mot. Class Certification, Sept. 25, 2024, Docket No. 880	Cattle Pls.' Mem.
1097	Defs.' Mem. Opp. Cattle Pls.' Mot. Class Certification, Jan. 24, 2025, Docket No. 1097	Defs.' Opp. Cattle Pls.' Mot.
1256	Cattle Pls.' Reply Mem. Supp. Mot. Class Certification, Apr. 4., 2025, Docket No. 1256	Cattle Pls.' Reply

Direct Purchaser Plaintiffs (DPPs)

Docket No. [22-md-3031]	Full Citation	Short Citation
852	DPPs' Mot. Class Certification, Sept. 25, 2024, Docket No. 852	DPPs' Mot.
854	DPPs' Mem. Supp. Mot. Class Certification, Sept. 25, 2024, Docket No. 854	DPPs' Mem.
1115	Defs.' Mem. Opp. DPPs' Mot. Class Certification, Jan. 24, 2025, Docket No. 1115	Defs.' Opp. DPPs' Mot.
1248	DPPs' Reply Mem. Supp. Mot. Class Certification, Apr. 4, 2025, Docket No. 1248	DPPs' Reply

Commercial and Institutional Indirect Purchaser Plaintiffs (CIIPPs)

Docket No. [22-md-3031]	Full Citation	Short Citation
862	CIIPPs' Mot. Class Certification, Sept. 25, 2024, Docket No. 862	CIIPPs' Mot.
865	CIIPPs' Mem. Supp. Mot. Class Certification, Sept. 25, 2024, Docket No. 865	CIIPPs' Mem.
865-2	CIIPPs' Mem. Supp. Mot. Class Certification, Appendix A (State Antitrust Claims and Harmonization Provisions), Sept. 25, 2024, Docket No. 865-2	CIIPPs' Mem., Appendix A
865-3	CIIPPs' Mem. Supp. Mot. Class Certification, Appendix B (State Consumer Protection Statutes), Sept. 25, 2024, Docket No. 865-3	CIIPPs' Mem., Appendix B
865-4	CIIPPs' Mem. Supp. Mot. Class Certification, Appendix C (Unjust Enrichment Claims), Sept. 25, 2024, Docket No. 865-4	CIIPPs' Mem., Appendix C
1132	Defs.' Mem. Opp. CIIPPs' Mot. Class Certification, Jan. 24, 2025, Docket No. 1132	Defs.' Opp. CIIPPs' Mot.
1269	CIIPPs' Reply Mem. Supp. Mot. Class Certification, Apr. 4, 2025, Docket No. 1269	CIIPPs' Reply

Consumer Indirect Purchaser Plaintiffs (CIPPs)

Docket No. [22-md-3031]	Full Citation	Short Citation
867	CIPPs' Mot. Class Certification, Sept. 25, 2024, Docket No. 867	CIPPs' Mot.
868	CIPPs' Mem. Supp. Mot. Class Certification, Sept. 25, 2024, Docket No. 868	CIPPs' Mem.
868-2	CIPPs' Mem. Supp. Mot. Class Certification, Appendix A (Antitrust Statutes), Sept. 25, 2024, Docket No. 868-2	CIPPs' Mem., Appendix A
868-3	CIPPs' Mem. Supp. Mot. Class Certification, Appendix B (Consumer Protection Statutes), Sept. 25, 2024, Docket No. 868-3	CIPPs' Mem., Appendix B
868-4	CIPPs' Mem. Supp. Mot. Class Certification, Appendix C (Summary of Plaintiffs Beef Purchases), Sept. 25, 2024, Docket No. 868-4	CIPPs' Mem., Appendix C
1139	Defs.' Mem. Opp. CIPPs' Mot. Class Certification, Jan. 24, 2025, Docket No. 1139	Defs.' Opp. CIPPs' Mot.
1261	CIPPs' Reply Supp. Mot. Class Certification, Apr. 4, 2025, Docket No. 1261	CIPPs' Reply

Expert Reports

Docket No. [22-md-3031]	Expert	Full Citation	Short Citation
905	Macartney	Expert Report of Gareth Macartney, Sept. 26, 2024, Docket No. 905	Macartney Expert Report
1246-2	Macartney	Feeder Cattle Pls.' Mem. Opp. Mot. Exclude Expert Testimony of Ms. Anna King, Ex. 2, Apr. 4, 2025, Docket No. 1246-2.	Macartney Rebuttal Report
904	King	Decl. of Anna King, Sept. 26, 2024, Docket No. 904	King Expert Report
1242-7	King	Decl. of Richard M. Paul III, Ex. 105, Apr. 4, 2025, Docket No. 1242-7	King Rebuttal Report
883-1	Lamb	Decl. of Patrick J. McGahan and Daniel Herrera, Ex. 1, Sept. 25, 2024, Docket No. 883-1	Lamb Expert Report

1257-1	Lamb	Decl. of Patrick J. McGahan and Daniel Herrera, Ex. 224, Apr. 4, 2025, Docket No. 1257-1	Lamb Rebuttal Report
883-2	Rosevear	Decl. of Patrick J. McGahan and Daniel Herrera, Ex. 2, Sept. 25, 2024, Docket No. 883-2	Rosevear Expert Report
1257-2	Rosevear	Decl. of Patrick J. McGahan and Daniel Herrera, Ex. 225, Apr. 4, 2025, Docket No. 1257-2	Rosevear Rebuttal Report
857-2	Sunding	Decl. of Michelle J. Looby, Ex. 3, Sept. 25, 2024, Docket No. 857-2	Sunding Expert Report
1252-1	Sunding	Decl. of Michelle J. Looby, Ex. 76, Apr. 4, 2025, Docket No. 1252-1.	Sunding Rebuttal Report
1275	Williams	Decl. of Michael J. Flannery, Ex. 1, Apr. 4, 2025, Docket No. 1275	Williams Expert Report
1275-1	Williams	Decl. of Michael J. Flannery, Ex. 2, Apr. 4, 2025, Docket No. 1275-1	Williams Rebuttal Report
1266	Mangum	Corrected Expert Report of Russell W. Mangum III, Ph.D., Apr. 4, 2025, Docket No. 1266	Mangum Expert Report
1267	Mangum	Expert Reply Report of Russell W. Mangum III, Ph.D., Apr. 4, 2025, Docket No. 1267	Mangum Rebuttal Report
1162	McCrary	Decl. of Sami H. Rashid, Ex. 1, Jan. 25, 2025, Docket No. 1162	McCrary Expert Report
1099-1	Overdahl	Decl. of Michelle K. Fischer, Ex. 2, Jan. 24, 2025, Docket No. 1099-1	Overdahl Expert Report
1117	Stiroh	Decl. of Kosta S. Stojilkovic, Ex. 1, Jan. 24, 2025, Docket No. 1117	Stiroh Expert Report

Motions to Exclude

Docket No. [22-md-3031]	Expert	Full Citation	Short Citation
1134	Macartney	Defs.' Mot. Exclude Expert Testimony of Dr. Gareth Macartney, Jan. 24, 2025, Docket No. 1134	Defs.' Mot. Exclude Macartney

1138	Macartney	Defs.' Mem. Supp. Mot. Exclude Expert Testimony of Dr. Gareth Macartney, Jan. 24, 2025, Docket No. 1138	Defs.' Mem. Exclude Macartney
1244	Macartney	Feeder Cattle Pls.' Mem. Opp. Mot. Exclude Expert Testimony of Dr. Gareth Macartney, Apr. 4, 2025, Docket No. 1244	Pls.' Opp. Exclude Macartney
1379	Macartney	Defs.' Reply Mem. Supp. Mot. Exclude Expert Testimony of Dr. Gareth Macartney, June 6, 2025, Docket No. 1379	Defs.' Reply Exclude Macartney
1148	King	Defs.' Mot. Exclude Expert Testimony of Ms. Anna King, Jan. 24, 2025, Docket No. 1148	Defs.' Mot. Exclude King
1152	King	Defs.' Mem. Supp. Exclude Expert Testimony of Ms. Anna King, Jan. 24, 2025, Docket No. 1152	Defs.' Mem. Exclude King
1246	King	Feeder Cattle Pls.' Mem. Opp. Mot. Exclude Expert Testimony of Ms. Anna King, Apr. 4, 2025, Docket No. 1246	Pls.' Opp. Exclude King
1377	King	Defs.' Reply Mem. Supp. Mot. Exclude Expert Testimony of Ms. Anna King, June 6, 2025, Docket No. 1377	Defs.' Reply Exclude King
1101	Lamb	Defs.' Mot. Exclude Expert Testimony of Dr. Russell Lamb, Jan. 24, 2025, Docket No. 1101	Defs.' Mot. Exclude Lamb
1175	Lamb	Defs.' Mem. Supp. Mot. Exclude Expert Testimony of Dr. Russell Lamb, Feb. 3, 2025, Docket No. 1175	Defs.' Mem. Exclude Lamb
1259	Lamb	Cattle Pls.' Mem. Opp. Defs.' Mot. Exclude Expert Testimony of Dr. Russell Lamb, Apr. 4, 2025, Docket No. 1259	Pls.' Opp. Exclude Lamb
1363	Lamb	Defs.' Reply Mem. Supp. Mot. Exclude Expert Testimony of Dr. Russell Lamb, June 6, 2025, Docket No. 1363	Defs.' Reply Exclude Lamb
1107	Rosevear	Defs.' Mot. Exclude Expert Testimony of Ms. Candice L. Rosevear, Jan. 24, 2025, Docket No. 1107	Defs.' Mot. Exclude Rosevear
1109	Rosevear	Defs.' Mem. Supp. Mot. Exclude Expert Testimony of Ms. Candice L. Rosevear, Jan. 24, 2025, Docket No. 1109	Defs.' Mem. Exclude Rosevear
1260	Rosevear	Cattle Pls.' Mem. Opp. Defs.' Mot. Exclude Expert Testimony of Ms. Candice L. Rosevear, Apr. 4, 2025, Docket No. 1260	Pls.' Opp. Exclude Rosevear

1417	Rosevear	Defs.' Reply Mem. Supp. Mot. Exclude Expert Testimony of Ms. Candice L. Rosevear, July 14, 2025, Docket No. 1417	Defs.' Reply Exclude Rosevear
1119	Sunding	Defs.' Mot. Exclude Expert Testimony of Dr. David L. Sunding, Jan. 24, 2025, Docket No. 1119	Defs.' Mot. Exclude Sunding
1121	Sunding	Defs.' Mem. Supp. Mot. Exclude Expert Testimony of Dr. David L. Sunding, Jan. 24, 2025, Docket No. 1121	Defs.' Mem. Exclude Sunding
1254	Sunding	DPPs' Mem. Opp. Defs.' Mot. Exclude Expert Testimony Dr. David L. Sunding, Apr. 4, 2025, Docket No. 1254	Pls.' Opp. Exclude Sunding
1355	Sunding	Defs.' Reply Mem. Supp. Mot. Exclude Expert Testimony of Dr. David L. Sunding, June 6, 2025, Docket No. 1355.	Defs.' Reply Exclude Sunding
1124	Williams	Defs.' Mot. Exclude Expert Testimony of Dr. Michael A. Williams, Jan. 24, 2025, Docket No. 1124	Defs.' Mot. Exclude Williams
1126	Williams	Defs.' Mem. Supp. Mot. Exclude Expert Testimony of Dr. Michael A. Williams, Jan. 24, 2025, Docket No. 1126	Defs.' Mem. Exclude Williams
1277	Williams	CIPPs' Mem. Opp. Mot. Exclude Expert Testimony of Dr. Michael A. Williams, Apr. 4, 2025, Docket No. 1277	Pls.' Opp. Exclude Williams
1367	Williams	Defs.' Reply Mem. Supp. Mot. Exclude Expert Testimony of Dr. Michael A. Williams, June 6, 2025, Docket No. 1367	Defs.' Reply Exclude Williams
1146	Mangum	Defs.' Mot. Exclude Expert Testimony of Dr. Russell W. Mangum, Jan. 24, 2024, Docket No. 1146	Defs.' Mot. Exclude Mangum
1150	Mangum	Defs.' Mem. Supp. Mot. Exclude Expert Testimony of Dr. Russell W. Mangum, Jan. 24, 2025, Docket No. 1150	Defs.' Mem. Exclude Mangum
1263	Mangum	CIPPs' Mem. Opp. Mot. Exclude Expert Testimony of Dr. Russell W. Mangum, Apr. 4, 2025, Docket No. 1263	Pls.' Opp. Exclude Mangum
1381	Mangum	Defs.' Reply Mem. Supp. Mot. Exclude Expert Testimony of Dr. Russell W. Mangum, June 6, 2025, Docket No. 1381	Defs.' Reply Exclude Mangum

Miscellaneous

Docket No. [22-md-3031]	Full Citation	Short Citation
1200	Defs.' Mem. Opp. Mots. to Certify Class, Mar. 13, 2025, Docket No. 1200	Defs.' Omnibus Brief, Docket No. 1200
1099-40	Decl. of Michelle Fisher in Opp. to Mot. to Certify Class, Ex. 53, Jan. 24, 2025, Docket Nos. 1098–99	Weinreis Dep.
1257-8	Joint Decl. of Patrick McGahan & Daniel Herrera, Ex. 233, Apr. 4, 2025, Docket Nos. 1257–57	Chambers Dep.
1258-2	Joint Decl. of Patrick McGahan & Daniel Herrera, Ex. 227, Apr. 4, 2025, Docket Nos. 1257–57	Weinreis Decl.

Addresses for Case Participants:

David B. Adler
Quinn Emanuel
Urquhart & Sullivan
LLP
295 Fifth Avenue
New York, NY 10016

Joan A. Akalaonu
Faegre Drinker
Biddle and Reath
LLP
320 South Canal
Street
Suite 3300
Chicago, IL 60606

Jeremy D. Andersen
Quinn Emanuel
Urquhart & Sullivan
LLP
865 S. Figueroa St.
Ste 10th Floor
Los Angeles, CA
90017

Calanthe Arat
Wilkinson Stekloff
LLP
2001 M Street NW
Ste 10th Floor
Washington, DC
20036

Kyle G. Bates
Hausfeld LLP
33 Whitehall Street
Ste 14th Floor
New York, NY 10004

Steve W. Berman
Hagens Berman
1301 2nd Ave., Suite
2000
Seattle, WA 98101

Brandon McCaull
Bohlman
Lederer Weston
Craig, PLC
4401 Westown Pkwy
Suite 212
West Des Moines, IA
50266

Matthew Bratvold
Bolt
Larson King, LLP
2800 Wells Fargo
Place
30 Seventh Street
East
Saint Paul, MN
55101

Michael D. Bonanno
Quinn Emanuel
Urquhart & Sullivan,
LLP
555 13th Street NW
Suite 600
Washington, DC
20004

Marcus N. Bozeman
Bozeman Law Firm,
P.A.
Little Rock Regions
Center
400 West Capitol
Avenue
Ste 1700
Little Rock, AR
72201

Patrick E.
Brookhouser, Jr.
McGrath North
Mullin & Kratz, PC
LLO
First National Tower
1601 Dodge Street
Suite 3700
Omaha, NE 68102

W. Joseph Bruckner
Lockridge Grindal
Nauen PLLP
100 Washington Ave
S Ste 2200
Minneapolis, MN
55401-2179

Michele Burkholder
NastLaw LLC
1101 Market Street
Suite 2801
Philadelphia, PA
19107

Jacob Bylund
Faegre Baker
Daniels
801 Grand Avenue
33rd Floor
Des Moines, IA
50309

Emily Clarke
Wilkinson Stekloff
LLP
130 West 42nd
Street
10th Floor
New York, NY 10036

Benjamin L. Ellison
Jones Day
90 South Seventh
Street
Suite 4950
Minneapolis, MN
55402

Elaine T. Byszewski
Hagens Berman
Sobol Shapiro LLP
301 North Lake
Avenue
Ste 920
Pasadena, CA 91101

Daniel M. Cohen
Cuneo Gilbert &
LaDuca, LLP
2445 M St. NW
Suite 740
Washington, DC
20037

Michelle Fischer
Jones Day
901 Lakeside Avenue
North Point
Cleveland, OH 44114

Michael B. Carlinsky
Quinn Emanuel
Urquhart & Sullivan
LLP
295 5th Avenue
New York, NY 10016

Caroline Corbitt
Pritzker Levine LLP
1900 Powell Street
Suite 450
Emeryville, CA
94608

Michael J. Flannery
Cuneo Gilbert &
LaDuca, LLP
Two CityPlace Drive
Ste Second Floor
Saint Louis, MO
63141

Elizabeth T. Castillo
Cotchett Pitre &
McCarthy LLP
840 Malcolm Road
Suite 200
Burlingame, CA
94010

Isabella De Lisi
Scott & Scott
Attorneys at Law
LLP
600 W Broadway
Ste 3300
San Diego, CA 92101

Maureen A. Foster
Spencer Fane LLP
100 South 5th Street,
Suite 2500
Minneapolis, MN
55402

Brian D. Clark
Lockridge Grindal
Nauen PLLP
100 Washington Ave
S Ste 2200
Minneapolis, MN
55401-2179

Sarah Dupree
Hagens Berman
Sobol Shapiro LLP
715 Hearst Ave
Suite 300
Berkeley, CA 94710

David R. Friedman
Wilkinson Stekloff
LLP
2001 M Street NW
Ste 10th Floor
Washington, DC
20036

Madison Gaffney
Lockridge Grindal
Nauen PLLP
100 Washington Ave.
S.
Suite 2200
Minneapolis, MN
55401

Owen Gallogly
Wilkinson Stekloff
LLP
130 West 42nd
Street
Ste 24th Floor
New York, NY 10036

Daniel N. Gallucci
NastLaw LLC
1101 Market Street
Suite 2801
Philadelphia, PA
19107

Robert Gallup
Faegre Drinker
Biddle & Reath LLP
801 Grand Ave
33rd Floor
Des Moines, IA
50309

Daniel E. Gustafson
Gustafson Gluek
PLLC
120 South 6th Street
Suite 2600
Minneapolis, MN
55402

Robert David Hahn
Lockridge Grindal
Nauen PLLP
100 Washington
Avenue S
Suite 2200
Minneapolis, MN
55401

Jason Scott Hartley
Hartley LLP
California
101 West Broadway
Ste 820
San Diego, CA 92101

Eddie Hasdoo
Jones Day
110 North Wacker
Drive
Suite 4800
Chicago, IL 60606

Daniel C. Hedlund
Gustafson Gluek
PLLC
120 South 6th Street
Suite 2600
Minneapolis, MN
55402

Holley C. M. Horrell
Greene Espel PLLP
222 S 9th St.
Ste 2200
Minneapolis, MN
55402

Johanna R. Hyman
Spencer Fane LLP
100 South 5th Street
Suite 2500
Minneapolis, MN
55402

Kelly Iverson
Lynch Carpenter,
LLP
1133 Penn Avenue,
5th Floor
Pittsburgh, PA
15222

Suneel Jain
Schneider Wallace
Cottrell Kim LLP
2000 Powell Street
Suite 1400
Emeryville, CA
94608

Kevin A. Janus
Quinn Emanuel
Urquhart & Sullivan,
LLP
295 Fifth Avenue
New York, NY 10016

Christopher F. Jeu
Cotchett Pitre &
McCarthy LLP
840 Malcolm Road
Burlingame, CA
94010

Kurt Johnson
Jones Day
150 W Jefferson Ave
Ste 2100
Detroit, MI 48226

Megan Jones
Hausfeld LLP
580 California Street
Ste 12th Floor
San Francisco, CA
94111

Steven A. Kanner
Freed Kanner
London & Millen
LLC
100 Tri-State
International
Ste 128
Lincolnshire, IL
60069

Daniel R. Karon
Karon LLC
631 West St. Clair
Avenue
Cleveland, OH 44113

Tim Kearns
Hausfeld LLP
1200 17th Street,
NW
Suite 600
Washington, DC
20036

Jeannine M Kenney
Hausfeld LLP
325 Chestnut Street
Ste 900
Philadelphia, PA
19106

Jay Koehn
McGrath North
Mullin & Kratz, PC
LLO
1601 Dodge Street
Suite 3700
Omaha, NE 68102

Kellie Lerner
Shinder Cantor
Lerner LLP
14 Penn Plaza
Ste 19th Floor
New York, NY 10122

Olivia Tal Levinson
Lockridge Grindal
Nauen PLLP
100 Washington Ave
S
Suite 2200
Minneapolis, MN
55401

Jason Lindner
Hartley LLP
101 W. Broadway
Ste 820
San Diego, CA 92101

Tiffany Lipscomb-
Jackson
Jones Day
325 John H.
McConnell Blvd.
Ste 600
Columbus, OH 43215

Michelle J. Looby
Gustafson Gluek
PLLC
120 South 6th Street,
Suite 2600
Minneapolis, MN
55402

Kartik Madiraju
Hausfeld LLP
33 Whitehall Street
Ste 14th Floor
New York, NY 10004

John M. Majoras
Jones Day
51 Louisiana Ave.,
NW
Washington, DC
20001

Joanne E. Matusko
NastLaw LLC
1101 Market Street
Suite 2801
Philadelphia, PA
19107

Melissa H. Maxman
Cohen & Gresser
LLP
2001 Pennsylvania
Ave., NW
Ste 300
Washington, DC
20006

Emily Muirhead
McAdam
Greene Espel PLLP
222 South Ninth
Street
Suite 2200
Minneapolis, MN
55402

Neil McCarthy
McGrath North
Mullin & Kratz, PC
LLO
First National Tower
Suite 3700
1601 Dodge Street
Omaha, NE 68102

Cody Douglas
McCracken
Cuneo Gilbert
Flannery & LaDuca
LLP
2445 M St NW
Suite 740
Washington, DC
20037

Julie E. McEvoy
Jones Day
51 Louisiana Avenue
NW
Washington, DC
20001

Patrick J. McGahan
Scott & Scott
Attorneys at Law
LLP
156 South Main
Street
P.O. Box 192
Colchester, CT 06415

Andrew McGuinness
Andrew J.
McGuinness, ESQ.
111 S Main St, 3rd
Flr
P O Box 7711
Ann Arbor, MI
48107-7711

Douglas A. Millen
Justice Jagher
London & Millen
LLC
100 Tri-State
International
Ste 128
Lincolnshire, IL
60069

Melinda Jeanne
Morales
Wexler Boley &
Elgersma LLP
311 S. Wacker Drive
Suite 5450
Chicago, IL 60606

Simeon Morbey
Lockridge Grindal
Nauen PLLP
100 Washington Ave.
S
Ste 2200
Minneapolis, MN
55401

Brian Morrison
Tadler Law LLP
One Pennsylvania
Plaza, 36th Fl.
New York, NY 10119

Christopher R.
Morris
Bassford Remele
100 South 5th Street
Suite 1500
Minneapolis, MN
55402

Matthew Munro
McGrath North
Mullin & Kratz, PC
LLO
1601 Dodge Street
Suite 3700
Omaha, NE 68102

Dianne M. Nast
NastLaw LLC
1101 Market Street
Suite 2801
Philadelphia, PA
19107

Sarah E. Neuman
Wilkinson Stekloff
LLP
2001 M Street NW
Ste 10th Floor
Washington, DC
20036

Taofikat Ninalowo-
Olaofe
Greene Espel PLLP
222 S. Ninth Street
Suite 2200
Minneapolis, MN
55402

Brittany Lee
Nyovanie
Hausfeld LLP
888 16th Street, NW
Suite 300
Washington, DC
20006

Moiria K. Penza
Wilkinson Stekloff
LLP
130 West 42nd
Street
24th Floor
New York, NY 10036

Rio Pierce
Hagens Berman
Sobol Shapiro LLP
715 Hearst Avenue
Suite 202
Berkeley, CA 94710

Kyle Pozan
Lockridge Grindal
Nauen PLLP
100 Washington
Avenue S
1165 N Clark Street
Suite 700
Chicago, IL 60610

Elizabeth C. Pritzker
Pritzker Levine LLP
1900 Powell Street
Suite 450
Emeryville, CA
94608

Stacey C. Quan
Kronenberg Law PC
1 Kaiser Plaza Suite
1675
Oakland, CA 94612

Rachel Frank
Quinton
Quinn Emanuel
Urquhart & Sullivan,
LLP
555 13th Street NW
Suite 600
Washington, DC
20004

Shawn M. Raiter
Larson King, LLP
30 E 7th St Ste 2800
St Paul, MN 55101-
4922

Sami H. Rashid
Quinn Emanuel
Urquhart & Sullivan
LLP
295 Fifth Avenue
New York, NY 10016

Bennett Rawicki
Hilgers PLLC
8750 N. Central
Expy.
Suite 335
Dallas, TX 75231

Lewis A. Remele, Jr
Bassford Remele
100 South 5th Street
Ste 1500
Minneapolis, MN
55402

Evelyn Yifei Riley
Cuneo Gilbert &
LaDuca, LLP
2445 M St. NW
Suite 740
Washington, DC
20037

Donald Ray Rison, Jr
McGrath North
Mullin & Kratz, PC
LLO
1601 Dodge St
Suite 3700
Omaha, NE 68102

Joshua J. Rissman
Gustafson Gluek
PLLC
Canadian Pacific
Plaza
120 South 6th Street,
Suite 2600
Minneapolis, MN
55402

Christian S. Ruano
Cotchett Pitre &
McCarthy LLP
840 Malcolm Road
Suite 200
Burlingame, CA
94010

John G. Rudd, Jr
Zimmerman Reed
LLP
1100 IDS Center
80 South 8th St
Minneapolis, MN
55402

George Sampson
Gibbs Law Group
505 14th Street
Suite 1110
Oakland, CA 94612

Shana Scarlett
Hagens Berman
Sobol Shapiro LLP
715 Hearst Ave.,
Suite 202
Berkeley, CA 94710

Nicholas Scheiner
Greene Espel PLLP
222 S. Ninth Street
Suite 2200
Minneapolis, MN
55402

Michael Schrag
Gibbs Law Group
LLP
1111 Broadway
Suite 2100
Oakland, CA 94607

Alexander Shaner
McGrath North
Mullin & Kratz, PC
LLO
1601 Dodge Street
Suite 3700
Omaha, NE 68102

Adam Smith
McGrath North
Mullin & Kratz, PC
LLO
1601 Dodge St,
Omaha, NE 68102
Suite 3700
Omaha, NE 68102

Jennifer W. Sprengel
Cafferty Clobes
Meriwether &
Sprengel LLP
135 South LaSalle
Street
Suite 3210
Chicago, IL 60603

Anthony Stauber
Gustafson Gluek
PLLC
120 South 6th Street
Suite 2600
Minneapolis, MN
55402

Dasha Ternavska
Faegre Drinker
Biddle Reath LLP
801 Grand Avenue,
33rd Floor
Des Moines, IA
50309

Daniel J. Walker
Hausfeld LLP
1200 17th Street,
NW
Suite 600
Washington, DC
20036

Allan Steyer
Steyer Lowenthal
Boodrookas Alvarez
& Smith LLP
235 Pine Street
15th Floor
San Francisco, CA
94104

Bailey Twyman-
Metzger
Gustafson Gluek
PLLC
120 S. 6th Street
Suite 2600
Minneapolis, MN
55402

Adam Wasinger
Hausfeld LLP
1200 17th Street,
NW
Suite 600
Washington, DC
20036

Kosta S. Stojilkovic
Wilkinson Stekloff
LLP
2001 M Street NW
10th Floor
Washington, DC
20036

Breanna Van
Engelen
Hagens Berman
Sobol Shapiro LLP
1301 Second Avenue,
Suite 2000
Seattle, WA 98101

Daniel Weick
Hausfeld LLP
33 Whitehall Street
Ste 14th Floor
New York, NY 10004

Ariana J. Tadler
Kaplan Fox &
Kilsheimer LLP
800 Third Avenue
Ste 38th Floor
New York, NY 10022

Arielle Wagner
Lockridge Grindal
Nauen PLLP
100 Washington
Avenue S
Suite 2200
Minneapolis, MN
55401

Kenneth A. Wexler
Wexler Boley &
Elgersma LLP
311 S. Wacker Drive
Suite 5450
Chicago, IL 60606

Michael Tarringer
NastLaw LLC
1101 Market Street
Ste 2801
Philadelphia, PA
19107

Beth A. Wilkinson
Wilkinson Stekloff
LLP
2001 M Street NW
10th Floor
Washington, DC
20036

Davida S. McGhee
Williams
Greene Espel PLLP
222 S Ninth St.
Suite 2200
Minneapolis, MN
55402

Randi J. Winter
Spencer Fane
100 South Fifth St
Suite 2500
Minneapolis, MN
55402

Luke J. Wolf
Spencer Fane LLP
100 South 5th Street,
Suite 2500
Minneapolis, MN
55402

Abby R. Wolf
Hagens Berman
Sobol Shapiro LLP
1301 2nd Avenue
Suite 2000
Seattle, WA 98101

Adam J. Zapala
Cotchett, Pitre &
McCarthy, LLP
840 Malcolm Road
Ste 200
Burlingame, CA
94010

X. Kevin Zhao
Greene Espel PLLP
222 S Ninth Street
Suite 2200
Minneapolis, MN
55402