IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST LITIGATION,	Case No.: 1:16-cv-08637
	The Honorable Thomas M. Durkin
This Document Relates To:	**PUBLIC REDACTED VERSION**
THE DIRECT PURCHASER PLAINTIFF ACTION	

DIRECT PURCHASER PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR FINAL APPROVAL OF THE SETTLEMENTS WITH THE HOUSE OF RAEFORD AND KOCH DEFENDANTS AND RESPONSE TO THE RESTAURANT DAPS' OBJECTION

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I. INTRODUCTION

The Direct Purchaser Plaintiffs ("DPPs") hereby seek final approval of the settlements with Defendants HRF[1] and Koch[2] (collectively referred to as the "Settling Defendants"). Under the settlements (collectively, "Settlements" or "Settlement Agreements"), HRF paid $27,500,000 and Koch paid $47,500,000, collectively providing an additional $75 million to the Certified Class[3] and bringing the total recovery to the DPP Class to $284,651,750. (*See* Declaration of Bobby Pouya in Support of Motion ("Pouya Decl."), at ¶ 5.) As the DPPs have settled with all other Defendants, these are the last remaining settlements in the DPPs' case.

In granting preliminary approval of these Settlements, the Court found they fell within the range of reasonableness and ordered notice to be provided to Class members. (*See* Preliminary Approval Order, Dec. 6, 2023, ECF No. 7070 ("Preliminary Approval Order").) Co-Lead Class Counsel[4] and A. B. Data Ltd., the Court-appointed claims administrator (ECF No. 7179 at 3), have executed the Notice Plan in accordance with the Court's orders. (*Id*. at 3-4; *see generally* Declaration of Eric Schachter ("Schachter Decl."); Pouya Decl. ¶ 10.)

The reaction of the Class has been overwhelmingly positive. As set forth below in Section IV, there has only been a single objection to the Settlements, based on the unique circumstances of a group of direct action plaintiffs ("Restaurant DAPs") that the Court previously found did not

[1] House of Raeford Farms, Inc. ("HRF").

[2] Koch Foods, Inc.; JCG Foods of Alabama, LLC; JCG Foods of Georgia, LLC; and Koch Meat Co., Inc. (collectively referred to as Koch).

[3] The term "Class" or "Certified Class" is consistent with Court's May 27, 2022 Order granting DPPs' motion for class certification: "All persons who purchased raw Broilers directly from any of the Defendants or their respective subsidiaries or affiliates either fresh or frozen, in the form of: whole birds (with or without giblets), whole cut-up birds, or parts (boneless or bone in) derived from the front half of the whole bird, for use or delivery in the United States from December 1, 2008 until July 31, 2019." (*See* ECF No. 5644.)

[4] Co-Lead Class Counsel are Lockridge Grindal Nauen P.L.L.P. and Pearson Warshaw, LLP. (ECF No. 5644.)

timely opt out of the Certified Class. (*See* ECF No. 6872.) Through this objection and other motion practice, the real relief the Restaurant DAPs seek is to salvage their individualized bid rigging allegations against the Settling Defendants. As the Court recognized in connection with the Simmons settlement, their self-serving objections are not supported by the law or the facts. (*See* ECF Nos. 7083, 7085.) The same is true for the Koch and HRF Settlements, which provide substantial benefits to the DPP Class and constitute an extraordinary result in a difficult case. Therefore, DPPs respectfully request that the Court finally approve the Settlements and enter final judgment as to each.

II. SUMMARY OF THE SETTLEMENT NEGOTIATIONS AND TERMS

The Settlements with HRF and Koch were reached through separate confidential, protracted, arm's length negotiations during mediations commencing in August 2023 with highly experienced mediator Hon. Daniel Weinstein (Ret.). (*See* Pouya Decl. ¶¶ 3-4.) The litigation had been pending for nearly seven years, so the parties could thoroughly assess DPPs' claims and HRF's and Koch's defenses, through investigation, discovery, research, and contested motion practice, and to balance the value of Certified Class members' claims against the substantial risks and expense of continuing litigation. The parties executed the Settlement Agreements on September 14, 2023 (HRF) and September 22, 2023 (Koch). (*See id.* ¶ 3; *see also* HRF Settlement Agreement, ECF No. 6928-1; Koch Settlement Agreement, ECF No. 6928-2.)

Under the Settlements, HRF paid $27,500,000 and Koch paid $47,500,000 into separate interest-bearing escrow accounts. The Settlement Agreements do not contain any reduction or termination provisions. In addition to monetary relief, HRF and Koch agreed to provide declarations or affidavits relating to the authentication or foundation for admissibility of documents for DPPs' use at trial. (*See* Settlement Agreements § 10.)

In exchange, the DPPs and the Certified Class will separately release certain Released Claims (as defined in the Settlement Agreements) against the Released Parties (as defined in the Settlement Agreements). (*See id.* §§ 14, 15.) The releases in the Settlement Agreements are substantially identical to one another and to the releases in prior settlements in this case. (*Id*.)

III. THE SETTLEMENTS SATISFY THE STANDARD FOR FINAL APPROVAL

There is an overriding public interest in settling litigation, and this is particularly true in class actions. *See Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996) ("Federal courts naturally favor the settlement of class action litigation."). Of course, settlements of a class action are subject to court approval. Fed. R. Civ. P. 23(e). This procedure safeguards class members' due process rights and enables the Court to fulfill its role as the guardian of class interests. *See id*.

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

The Court-approved Notice Plan related to the Settlements has been successfully implemented and Class members have been notified of the Settlements. When a proposed class action settlement is presented for court approval, the Federal Rules require "the best notice that is practicable under the circumstances," and that certain specifically identified items in the notice be "clearly and concisely state[d] in plain, easily understood language." Fed. R. Civ. P. 23(c)(2)(B). A settlement notice is a summary, not a complete source of information. *See, e.g.*, *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987), *cert. denied*, 484 U.S. 1004 (1988).

The Notice Plan approved by this Court (ECF No. 7179 at 3-4)—which relies primarily on direct notice to Class members, but is supplemented by publication notice in order to maximize the likelihood of actual notice—is commonly used in class actions like this one.[5] *Amchem Prods.,*

[5] The notice plan is substantially similar to that previously disseminated in this case with prior settlements. (*See, e.g.*, ECF No. 6830 (Mountaire, O.K. Foods, Simmons Notice Plan).)

Inc. v. Windsor, 521 U.S. 591, 617 (1997) (quoting Fed. R. Civ. P. 23(c)(2)); *City of Greenville v. Syngenta Crop Prot., Inc.*, No. 3:10-CV-188, 2012 WL 1948153, at *4 (S.D. Ill. May 30, 2012) (same); Fed. R. Civ. P. 23(c)(2)(B). It constitutes valid, due, and sufficient notice to Class members, and in many instances their counsel, and is the best notice practicable under the circumstances. The content of the notice complies with the requirements of Rule 23(c)(2)(B). Both the summary and long-form notice explained in plain English the nature of the action and the terms of the Settlements, and provided a clear description of who is a member of the Class and the binding effects of Class membership. (*Id.*) They also explained how to object to the Settlements, and how to contact Co-Lead Class Counsel. (*Id.*) The notices also explained that they provided only a summary of the Settlements, and that the Settlement Agreements, as well as other important documents related to the litigation, are available on the case website. (*See id.*)

The Notice Plan was implemented by the Court-appointed settlement administrator, A. B. Data Ltd. (ECF No. 7179 at 3.) Specifically, using customer information obtained from Defendants, A. B. Data mailed 27,060 print notices and emailed 15,010 electronic notices to potential Class members. (Schachter Decl. ¶¶ 3-5.) A. B. Data also published notice on the industry websites (banner advertisements in digital media) in court approved industry websites. (*Id.* ¶ 6.) A. B. Data continues to maintain the case website, and a toll-free number. (*Id.* ¶¶ 8-9.)

As these Settlements were on behalf of the Certified Class, and all occurred after the last day to opt out of the Certified Class, no additional opportunity for Class members to opt out of the Settlements was provided. (*See* Preliminary Approval Order, at 3.) [6]

[6] The Settling Defendants have served notice of the Settlements upon the appropriate state officials and the appropriate federal official under the Class Action Fairness Act, 28 U.S.C. § 1715 ("CAFA").

B. The Settlements are Fair, Reasonable, and Adequate, and Should be Granted Final Approval

A court may finally approve a class action settlement if it is fair, reasonable, and adequate. *See* Fed. R. Civ. P. 23(e)(2); *Uhl v. Thoroughbred Tech. & Telecomms., Inc.*, 309 F.3d 978, 986 (7th Cir. 2002); *Isby*, 75 F.3d at 1198-99. In evaluating the fairness of a proposed class action settlement, courts typically consider: (1) the strength of plaintiffs' case compared to the amount of defendants' settlement offer; (2) an assessment of the likely complexity, length and expense of the litigation; an evaluation of the amount of opposition to settlement among affected parties; (3) the reaction of the class members; (4) the opinion of competent counsel; and (5) the stage of the proceedings and the amount of discovery completed at the time of settlement. *See Isby*, 75 F.3d at 1198-99. In addition, there is an initial presumption that a proposed class action settlement is fair, reasonable and adequate when the settlement was the result of arm's-length negotiations. *See* 4 Newberg on Class Actions, § 13:43 Presumptions Governing Approval Process—Generally (5th ed.); *Great Neck Cap. Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002).

The Court already found that a number of these factors were satisfied in granting preliminary approval to the Settlements (*see generally* Preliminary Approval Order), but at that time Class members had yet to weigh in. Now that Class members have received notice and had an opportunity to be heard, their reaction has been extremely favorable (*see* Section III.B.3 below). Thus, each of these factors supports granting final approval to the Settlements.

1. The Settlements Provide a Substantial Recovery and Eliminate Substantial Litigation Risk to the Class

"[T]he first factor, the relative strength of plaintiffs' case on the merits as compared to what the defendants offer by way of settlement, is the most important consideration." *See Isby*, 75 F.3d at 1198-99. In evaluating whether to give final approval to a proposed class-action settlement, the

court essentially "must determine whether the compromise, taken as a whole, is fair, reasonable and adequate." *Hisps. United of DuPage Cnty. v. Vill. of Addison, Ill.*, 988 F. Supp. 1130, 1149 (N.D. Ill. 1997) (citing *Isby*, 75 F.3d at 1196); *Patterson v. Stovall*, 528 F.2d 108, 114 (7th Cir. 1976), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998) ("'The Court will not substitute its business judgment for that of the parties; 'the only question . . . is whether the settlement, taken as a whole, is so unfair on its face as to preclude judicial approval.'"); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015) ("It is the settlement taken as a whole, rather than the individual component parts, that must be examined for overall fairness."). Furthermore, "evaluation of potential outcomes need not always be quantified, particularly where there are other reliable indications that the settlement reasonably reflects the relative merits of the case." *Kaufman v. Am. Express Travel Related Servs. Co.*, 877 F.3d 276, 285 (7th Cir. 2017) (citing *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 864 (7th Cir. 2014)).

The monetary recovery from these Settlements is significant—totaling $75 million—and provides considerable benefits to the Class. The Settlements eliminate significant risks the Class would face if the action were to proceed against the Settling Defendants. Absent the Settlements, the DPPs may have recovered less or nothing from these Defendants at trial. *See, e.g.*, *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("'Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.'") (quoting *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998)).

These risks are not theoretical in this case. Some Defendants prevailed at summary judgment and another, Sanderson Farms, prevailed at trial. (ECF No. 7015.) As this Court recognized in approving the Simmons settlement, "[t]he defense verdict at trial [for Defendant Sanderson] demonstrates that this is not an easy case for the Class. The Class's settlements with

all Defendants but the one that went to trial demonstrates that Class counsel recognizes the difficulties in this case. The settlement amount certainly accounts for this difficulty. The trial loss is a post hoc justification for the Class's decision to settle.…" (ECF No. 7083, at 9.) "Had any of the defendants prevailed at trial, none of the money that is the subject of the settlement agreement would have been awarded. The plaintiffs would have walked away empty-handed. And so for that reason, the settlements eliminated a significant amount of risk to members of the class." (Dec. 12, 2023 Simmons, Mountaire, and O.K. Foods Final Approval Hrg. Transcript, at 6-7.)

The risk DPPs faced is also illustrated by the Court's grant of summary judgment for six Defendants against whom the DPP Class had active claims. DPPs subsequently settled with those Defendants for a mutual waiver of costs. (*See* ECF No. 7311.) No DPP Class member, including the Restaurant DAPs, objected to these settlements and they have been granted final approval.[7] (*Id.*) These settlements further demonstrate the substantial risk faced by the DPP class and that the amount recovered from HRF and Koch was substantial compared to the strength of Plaintiffs' case on the merits. Viewed in light of these substantial risks of obtaining no recovery, the Settlements constitute an excellent result for the Class and should be granted final approval by the Court.

Furthermore, the HRF and Koch Settlements are two out of 13 settlements in this case which have resulted in a total recovery of $284,651,750 by the DPP Class. As this Circuit has recognized, "[i]n complex litigation with a plaintiff class, 'partial settlements often play a vital role in resolving class actions.'" *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247 (7th Cir. 1992) (quoting 1–Part A Manual for Complex Litigation Second, Moore's Federal Practice § 30.46

[7] The Restaurant DAPs incorrectly assert that the lack of a settlement release in these settlements demonstrate a deficiency with the HRF and Koch Settlements. However, there is a simple reason for this distinction: (1) these settlements did not require a separate release because they enforced verdicts and judgments in defendants' favor, and (2) unlike the HRF and Koch Settlements, these settlements did not provide for $75 million in additional consideration.

(1986)). This settlement strategy appropriately balanced the Class's interest in obtaining significant settlement recoveries, while continuing to pursue their claims through trial.

2. The Complexity Length and Expense of Further Litigation Supports Final Approval of the Settlements

The complexity, length and expense of further litigation, which the Settlements mitigate as to the Settling Defendants, also favor final approval. *See Larsen v. Trader Joe's Co.*, No. 11-cv-05188-WHO, 2014 WL 3404531, at *4 (N.D. Cal. July 11, 2014) ("Avoiding such unnecessary and unwarranted expenditure of resources and time would benefit all parties, as well as conserve judicial resources.") (cited authority omitted). The trial against Sanderson Farms was lengthy, complex and expensive, and would only have been more so if the trial had included HRF and Koch. Viewed in conjunction with the risks associated with continued litigation, this factor weighs in favor of approving the Settlements.

3. The Reaction of the Class to the Settlements was Overwhelmingly Positive, With Only One Objection to the Proposed Settlements

The overwhelmingly positive reaction of Class members to the Settlements supports final approval. As detailed in Section III.A above, in addition to publication notice, 27,060 mail notices and 15,010 email notices were sent directly to potential Class members. Only the Restaurant DAPs objected to the Settlements.[8] The support of the Class weighs in favor of finding that the Settlements are fair, reasonable, and adequate, especially since "much of the class consists of sophisticated business entities." *In re Cathode Ray Tube (CRT) Antitrust Litig.*, No. 14-CV-2058 JST, 2015 WL 9266493, at *7 (N.D. Cal. Dec. 17, 2015) (citing *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004)); *see also Bynum v. Dist. Of Columbia*, 412 F. Supp. 2d

[8] The Settlement Administrator received one additional potential objection to the Settlements. (Schachter Decl. ¶ 12.) However, the objection was invalid because the individual did not purchase Broilers directly from the Defendants. (Pouya Decl. ¶ 11.) After Class Counsel investigated the objection and spoke with the person who filed it, the individual agreed and withdrew the objection. (*Id.*)

73, 77 (D.D.C. 2006) ("The low number of opt-outs and objectors (or purported objectors) supports the conclusion that the terms of the settlement were viewed favorably by the overwhelming majority of class members."); *Pallas v. Pac. Bell*, No. C-89-2373 DLJ, 1999 WL 1209495, at *8 (N.D. Cal. July 13, 1999) ("The small percentage—less than 1%—of persons raising objections is a factor weighing in favor of approval of the settlement.").

4. Co-Lead Class Counsel Believe the Settlements are in the Best Interest of the Class

The Court in *Isby* noted that in assessing a proposed settlement the court should consider the opinion of competent counsel. *See Isby*, 75 F.3d at 1198-99; *see also Kleen Prod. LLC v. Int'l Paper Co.*, No. 1:10-CV-05711, 2017 WL 5247928, at *3 (N.D. Ill. Oct. 17, 2017) ("The Settlement was negotiated by highly skilled and experienced antitrust and class action lawyers, who have held leadership positions in some of the largest class actions around the country."). Here, Co-Lead Class Counsel have handled several major antitrust class actions and litigated this case through trial. They fully endorse these Settlements based on their extensive experience and deep familiarity with this case. (*See* Pouya Decl. ¶¶ 3, 6, 12.) This also supports final approval.

5. The Stage of the Proceedings Support Final Approval

The procedural posture and status of the case strongly supports granting final approval to the Settlements. Namely, the Settlements were reached on the eve of trial after the completion of fact and expert discovery, class certification proceedings, and summary judgment (ECF No. 6641). (Pouya Decl. ¶ 4.) This extensive base of information ensured that Co-Lead Class Counsel made informed decisions to approve and recommend the Settlements to the Class and the Court.

C. The Settlements Resulted from Arm's Length Negotiations

In addition to the factors noted in *Isby*, 75 F.3d at 1198-99, a proposed class action settlement is presumed to be fair, reasonable and adequate if it resulted from arm's-length

negotiations. *See* 4 Newberg on Class Actions, § 13:43 Presumptions Governing Approval Process—Generally (5th ed.); *Great Neck*, 212 F.R.D. at 410; *Goldsmith v. Tech. Sols. Co.*, No. 92-CV-4374, 1995 WL 17009594, at *3 n.2 (N.D. Ill. Oct. 10, 1995) ("[I]t may be presumed that the agreement is fair and adequate where, as here, a proposed settlement is the product of arm's length negotiations."). Settlements proposed by experienced counsel and resulting from arm's length negotiations are entitled to the court's deference. *See, e.g.*, *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) ("A presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.") (quoting *Hanrahan v. Britt*, 174 F.R.D. 356, 366 (E.D. Pa. 1997)). This initial presumption reflects courts' understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness concerns of Rule 23(e).

As detailed in this Motion and supporting declarations, the Settlements resulted from arm's length negotiations by experienced and knowledgeable counsel and mediated by retired Judge Weinstein. (*See* Section II above; *see also* Pouya Decl. ¶¶ 3, 6.) This fact supports approval of the Settlements by demonstrating they are free from collusion.

IV. THE RESTAURANT DAPS' OBJECTION TO THE HRF AND KOCH SETTLEMENT AGREEMENTS SHOULD BE OVERRULED

The Restaurant DAPs decided to object to the HRF and Koch Settlements before they ever saw them. On September 26, 2023—before the Class filed its preliminary approval motion on October 6, 2023, ECF No. 6926—the Restaurant DAPs said they would argue that "the settlements fail under the Seventh Circuit's fairness, reasonableness, and conflict standards for class settlements" unless their bid rigging claims were exempted. (*See* Pouya Decl. ¶ 13, Ex. A.) The implication of this statement was clear; there is no settlement amount from HRF and Koch that the Restaurant DAPs would consider sufficient. As this Court explained in rejecting the Restaurant

DAPs' same objection to the Simmons settlement, their "concern here is not the value of the settlement. It is that they are bound by the settlement at all. But Certain Restaurant DAPs had an easy and well-established mechanism for avoiding this predicament in the Rule 23 opt-out procedures. They missed the deadline. That is not a reason to find the settlement does not provide substantial value to the Class." (ECF No. 7083 at 9.)

The same is true for the HRF and Koch Settlements. Having failed to preserve their individual bid rigging antitrust claims by simply opting out, the Restaurant DAPs have repeatedly contorted the law and the facts in an effort to exempt their related bid rigging claims from the HRF and Koch Settlements or undermine the Settlements altogether. They now assert that their bid rigging claims are wholly distinct even though they repeatedly admitted in their prior court filings that these claims are related and allege a "price-fixing conspiracy, [in which] Defendants' ultimate goal was the same—to artificially and illegally inflate market-wide prices of Broiler chicken." (*See, e.g.*, ECF No. 3732 at 1.) They object to the value of the $75 million recovered from HRF and Koch, despite conceding that the case presented significant litigation risks which could have resulted in no recovery (as it did with several Defendants). They assert that all released claims in a class action settlement must be certified, despite directly applicable authority holding otherwise. They attack the sufficiency of the class notice, despite admitting that they were represented by experienced counsel who were fully aware of the relevant filings and scope of the case. They hurl mud at Class Counsel for performing their duties and representing the best interest of the Class, to deflect from their own choices which resulted in their unwilling participation in the Class. These *post facto* arguments are completely devoid of merit and threaten to deprive all other members of the Class of the substantial benefits of the HRF and Koch Settlements. The Court should reject these arguments as it already did with the Simmons settlement. (ECF No. 7083.)

A. Relevant Background to the Objection

On May 27, 2022, the Court granted DPPs' motion for class certification and certified the Class. (*See* ECF No. 5644.) On January 4, 2023, the Court approved the Class notice plan under Rule 23 and directed notice to all potential members of the Class. (ECF No. 6195 ("Class Notice").) The Court's notice order said that there would be no additional right for Class members to opt out of future settlements. (*Id.* at ¶ 8.) The Class Notice also said:

> **Unless you exclude yourself … you will remain in the Certified Class**, which means that you cannot sue, **continue to sue**, or be part of any other lawsuit against the Non-Settling Defendants and their affiliates that pertains to the claims in this case.
>
> [I]f you wish to pursue your own separate lawsuit against the Non-Settling Defendants, **you must exclude yourself by submitting a written request to the Notice Administrator** stating your intent to exclude yourself from the Certified Class….
>
> Unless you exclude yourself, you give up the right to sue the Non-Settling Defendants for the claims set forth in the litigation. **If you have a pending lawsuit against one or more of the Defendants, speak to your lawyer in that lawsuit immediately to determine whether you must exclude yourself from this Class to continue your own lawsuit against the Non-Settling Defendants**.

(ECF No. 6195 at 8-9 (emphasis added).)

The deadline to opt out of the Class was April 4, 2023. Almost every single Plaintiff who had previously opted out of settlement classes, including Track 2 plaintiffs, followed these instructions and filed timely and valid requests to opt out in response to the notice. Two groups of Track 2 plaintiffs, SGA and L. Hart, neglected to do so by the deadline, but three months later sought the Court's leave to opt out late. They conceded that their failure to timely do so was inadvertent, and that they should be bound by the Simmons settlement as a result. The Court agreed and granted this relief. (*See* ECF No. 6729.)

Having observed the SGA and L. Hart proceedings, the Restaurant DAPs still took no action to preserve their individual claims for nearly five months after the opt-out deadline. On

September 7, 2023—five days before the Class trial commenced—the Restaurant DAPs filed a motion to "confirm their opt-out status." (ECF No. 6841.) The Restaurant DAPs claimed that they did not need to follow the opt-out procedure in the Class Notice because their separate Track 2 case was sufficient to demonstrate their intent to opt out. (*Id.*) The Court rejected this argument because it conflicted with the plain requirements of the Class Notice and Rule 23. (ECF No. 6872.)

Having barred themselves from pursuing their related claims as individual plaintiffs, the Restaurant DAPs moved for "clarification" of the Court's order, and argued that the releases in the Simmons, HRF, and Koch settlements should not bar their individual bid-rigging claims against those defendants. (ECF No. 6930.) The Restaurant DAPs then objected to the Simmons settlement on these same grounds. (ECF No. 7040.)

In a detailed order on December 11, 2023, the Court fully addressed and denied the Restaurant DAPs' objection to the Simmons settlement and their motion for "clarification." (ECF No. 7083.) The Restaurant DAPs filed a notice of appeal of the Simmons final approval order on January 8, 2024. (ECF No. 7121.) The Restaurant DAPs' appeal of the Simmons settlement is pending before the Seventh Circuit. They have now objected to the HRF and Koch Settlements asserting nearly identical arguments as with the Simmons settlement.

B. The Restaurant DAPs' Attacks on the HRF and Koch Releases are Without Merit and Contrary to Controlling Precedent

Several of the Restaurant DAPs' attacks on the HRF and Koch Settlements are predicated on the false premise that their related bid rigging claims could not be released as part of the Class Settlements with HRF and Koch. These arguments fail for several reasons. First, the claim that class action releases can only apply to certified claims is contrary to controlling precedent which recognizes that a class action settlement can release claims other than those that were certified for class certification purposes. Second, the Restaurant DAPs are wrong that their bid rigging antitrust

claims could not be released under the factual predicate doctrine, because these are related claims pending in the same case that arise from the same transactions or occurrence. Third, the Restaurant DAPs' argument that the bid rigging claims could not be released because they are not available to the Class is inconsistent with the law and the procedural history of the case.

1. The Restaurant DAPs' Claim that a Class Action Settlement Cannot Release Uncertified Claims is Contradicted by Controlling Precedent

The Restaurant DAPs argue that their bid rigging claims could not be released because they have not been certified. As this Court held with respect to the Simmons settlement (ECF No. 7083), and other courts have repeatedly recognized, the scope of a class action settlement and release is not limited to or contingent upon the claims that have been certified. *See, e.g.*, *Oswald v. McGarr*, 620 F.2d 1190, 1198 (7th Cir. 1980) ("A settlement offer is a compromise and may include release of claims not before the Court"); *Richards Lumber and Supply Co. v. United States Gypsum*, 545 F.2d 18, 20-21 (7th Cir. 1976) (rejecting the contention that class settlement release cannot constitutionally release claims beyond those that would be barred by res judicata, and recognizing that "[a] general release, or a broad covenant not to sue, is not ordinarily contrary to public policy simply because it involves antitrust claims."); *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010) ("[a] settlement agreement may preclude a party from bringing a related claim in the future even though the claim was not presented and might not have been presentable in the class action."); *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 221 (5th Cir. 1981)) ("[A] court may release not only those claims alleged in the complaint and before the court, but also claims which 'could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the complaint.") (citing *Patterson*, 528 F.2d 108, 110 n.2); *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 F. App'x 752, 765 (10th Cir. 2020) ("[A] court may release not only those claims alleged in the complaint and before the court, but also claims which 'could have been

alleged by reason of or in connection with any matter or fact set forth or referred to in' the complaint."); *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d 242, 248 (2d Cir. 2011) ("Parties often reach broad settlement agreements encompassing claims not presented in the complaint in order to achieve comprehensive settlement of class actions, particularly when a defendant's ability to limit his future liability is an important factor in his willingness to settle.").

To hold otherwise would mean that any time a class member possesses related individualized claims that were not the focus of certification, those claims would have to be carved out of the class settlement. This would allow class members to pursue related individual claims while simultaneously participating in and receiving the benefits of the class action. Such a result directly contradicts the principle and purpose underlying Rule 23 to ensure the efficient adjudication of claims, as well as those underlying the purpose of settlements to ensure settling defendants are not exposed to serial litigation. (*See* ECF No. 7083, at 2-3 ("No rational defendant would settle without language broad enough to have covered all claims, including bid-rigging claims.").)

The Settlements directly comport with precedent by releasing "claims that have been asserted, or could have been asserted, in the Action" including all antitrust claims arising out of or relating to the direct purchase of Broilers. (*See* Settlement Agreements, §§ 14, 15.) Notably, these releases do not mention or include a provision that specifically mentions bid rigging. Accordingly, applying the release to the Restaurant DAPs' individual bid-rigging claims is not based on overbreadth of the release, but rather the release of all antitrust and related claims (whether production reduction, bid rigging or otherwise) arising from or relating to the same set of Broiler purchase transactions during the release period. (*See* ECF No. 7083, at 4); *see also McAdams v. Robinson*, 26 F.4th 149, 160 (4th Cir. 2022) (approving the scope of a release where "nothing on the face of the release purports to apply to cases with a different factual predicate. Rather, the

release is tied to cases arising out of a set action and time frame. Our inquiry ends there.").

2. The Restaurant DAPs' Arguments Regarding the "Factual Predicate" of Their Bid-Rigging Claims Do Not Undermine the Appropriateness of the Releases and Misrepresent the Restaurant DAPs' Claims

The Restaurant DAPs' argument that class action releases are limited to identical facts fails because it "takes an overly narrow view of the factual predicate" doctrine. *Elna Sefcovic, LLC*, 807 F. App'x at 766 (quoting *In re Literary Works in Elec. Databases Copyright Litig.*, 654 F.3d at 248). As set forth above, the permissible scope of a class action release does not focus on specific factual allegations, but rather the nature of the claims and transactions at issue that could have been alleged in the action. *See, e.g.*, Section IV.B.1 above; *see also Elna Sefcovic, LLC*, 807 F. App'x at 764 (finding a class action release appropriately barred claims arising from the various methods of miscalculating royalties regarding natural gas leases, rather than those specifically alleged in the class action complaint); *McAdams*, 26 F.4th at 160 (holding that "a broad release…[that] encompasses a large swath of claims that might have been brought" complies with the factual predicate doctrine."); *Smith v. Sprint Commc'ns Co. L.P.*, No. 99 C 3844, 2003 WL 103010, at *1 (N.D. Ill. Jan. 10, 2003) ("Intervenors claim that class settlements can never provide relief outside the pleadings. We reject this notion because a class settlement can provide for the broad release of claims, including claims not stated in the complaint.") (citing *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 375 (1996)).

In *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741 (9th Cir. 2006) ("*Reyn's*"), the Ninth Circuit rejected a similar attempt by class members to avoid the preclusive effect of a settlement under the factual predicate doctrine by asserting a different theory of antitrust liability arising from the same transaction or occurrence. *Reyn's* involved interpretation of the preclusive effect of a nationwide antitrust class action settlement, *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503 (E.D.N.Y. 2003) ("*Wal-Mart*"), which arose from claims that Visa and

MasterCard "obtained excessive discount fees … by tying their debit cards to their credit cards and conspiring to monopolize the debit-card market in violation of the Sherman Act." The plaintiffs in *Reyn's* argued that the *Wal-Mart* settlement did not apply to their claims under the factual predicate doctrine, because they asserted a distinct price fixing conspiracy between Visa, MasterCard, and certain banks to fix credit and debit card interchange rates. The Ninth Circuit in *Reyn's* rejected this argument, holding that "[w]hile Plaintiffs seek to hold Defendants liable by positing a different theory of anti-competitive conduct, the price-fixing predicate (price-fixing interchange rates) and the underlying injury are identical. Therefore, Plaintiffs' claims were extinguished by the *Wal-Mart* settlement." *Reyn's*, 442 F.3d at 749; *see also Wal-Mart Stores, Inc.*, 396 F.3d at 107-08 (holding that the settlement in the *Wal-Mart* settlement arising from a tying claim appropriately released separate antitrust cases alleging different theories of antitrust liability arising from group boycott and the treatment of banks.).

The application of the release to the Restaurant DAPs' bid rigging claims, and its comportment with the factual predicate doctrine, is even more clear than in *Reyn's* and other actions which have extended releases to claims asserted in separate and distinct class actions. As the Court correctly recognized in rejecting this argument regarding the Simmons settlement, "At bottom, the DAPs cannot avoid the fact that they themselves brought bid rigging claims and supply reduction claims in the same complaint, and that they continue to argue that the two claims, along with the Georgia Dock claims, are part of a three-legged 'overarching' conspiracy. Thus, the claims are related, and the release is not overbroad." (ECF No. 7083 at 5.)

The denial of Restaurant DAPs' objection to the Simmons settlement was consistent with the Court's rulings throughout the case, including, *inter alia*: (1) ruling the Restaurant DAPs' bid

rigging claims should be related and consolidated in the *Broiler* action;[9] (2) denying Defendants' motions to strike or sever the bid-rigging allegations from the *Broiler* action;[10] (3) ruling that the bid-rigging claims could not be bifurcated from the other *Broiler* antitrust claims;[11] and (4) permitting Plaintiffs, including the Restaurant DAPs, to assert their bid-rigging, supply restriction, and Georgia Dock price fixing claims in a single complaint.[12]

The Restaurant DAPs themselves repeatedly recognized and asserted in Court filings that their bid-rigging claims were related and did not change the scope of the case, including:

> Restaurant DAPs' Motion for Reassignment Based on Relatedness (ECF No. 3654 at 2)
>
> "The present case and the related litigations allege claims based on the same transaction or occurrence—a conspiracy among Defendants to artificially reduce or suppress Broiler Chicken supply, fix Broiler Chicken prices, and rig bids for purchases of Broiler Chickens."
>
> Restaurant DAPs' Opposition to Defendants' Motion to Sever (ECF No. 3732 at 1)
>
> "This case is about Defendants' conspiracy for over a decade to inflate the prices of Broiler chicken sold in the United States. This was the subject of the case before the New DAPs [*i.e.*, Restaurant DAPs] filed their complaints, and remains the subject of the case now.
>
> The factual and legal issues presented in the New DAPs' complaints track the allegations set forth in prior plaintiff complaints. Indeed, as Defendants acknowledge, the New DAPs' complaints incorporate the common supply restriction and Georgia Dock allegations that are in all of the Class and DAP complaints. And while the New DAPs describe in further detail an element of Defendants' price-fixing conspiracy, Defendants' ultimate goal was the same—to artificially and illegally inflate market-wide prices of Broiler chicken."

For the Restaurant DAPs to now contend that their bid rigging claims arise out of a separate factual predicate is not consistent with their prior statements and is not credible. Rather than

[9] (ECF No. 3663.)
[10] (ECF No. 3835 ("There is a substantial relationship between the alleged bid-rigging claim and the alleged supply reduction and Georgia Dock price index manipulation claims. All three claims have the same goal of maintaining a high price for Broilers, involving the same industry and defendants.").)
[11] (ECF No. 5128, at 4 ("the Court finds that its decision to bifurcate this case was premature and must be vacated.").)
[12] (*Id.*)

address their own admissions and the Court's orders, the Restaurant DAPs instead mischaracterize and misconstrue the Court's orders on motions in limine and pre-trial evidentiary rulings. (Obj. at 28-29). However, those evidentiary rulings were limited to the context of a Track 1 trial, rather than the nature of the claims in the action. (*See* ECF No. 7083 at 4-5 (rejecting this argument as to the Simmons settlement).) The cases cited by the Restaurant DAPs also do not support their argument that their related bid rigging claims cannot be appropriately released in the HRF and Koch Settlements, but stand for the unremarkable proposition that the scope of a class action settlement does not apply to unrelated claims brought in a separate lawsuit.[13] Simply put, there is no support for the argument that the class action release in the Settlements should not apply to the Restaurant DAPs' related bid rigging claims.

3. The Restaurant DAPs' Argument Regarding the Viability of Bid-Rigging Claims Does Not Support Denying Approval of the HRF and Koch Settlements

The Restaurant DAPs' "new" argument in support of their objection to the HRF and Koch Settlements – that the bid rigging claims cannot be subject to a release because they are not available to the Class as a result of the DPP Class's Track 1 election – is puzzling and unpersuasive. It fails because it improperly and unjustifiably ties the permissible scope of a release in a class action settlement to only the legal facts and theories that are specifically asserted in litigation by the class. However, as set forth above, the law is well established that "[a] settlement agreement may preclude a party from bringing a related claim in the future even though the claim was not

[13] *See, e.g.*, *Arandell Corp. v. Xcel Energy, Inc.*, No. 07-cv-076, 2022 WL 2314717, at *4-5 (W.D. Wis. Dec 27, 2022) (holding that a release in a class action alleging violations of the Commodity Futures Exchange Act arising from natural gas futures contracts, did bar distinct class claims brought in a separate action alleging violations of the Kansas Restraint of Trade Act arising from direct retail gas purchases); *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 725 F. App'x 560, 561 (9th Cir. 2018) (same exact ruling and facts as *Arendall Corp.*); *Burgess v. Citigroup Inc.*, 624 F. App'x 6, 8 (2d Cir. 2015) (holding that plaintiffs' Financial Industry Regulatory Authority ("FINRA") claims were barred by the class release in a securities class action because: (1) they failed to exclude themselves from the settlement, and (2) the FINRA claims alleged similar injury arising from the overvaluation of Citibank stock).

presented and might not have been presentable in the class action." *Hesse*, 598 F.3d at 590; *Reyn's*, 442 F.3d at 749; Section IV.B.1 above (citing numerous cases).

The Restaurant DAPs have not cited any case supporting their novel argument that class action releases are limited to claims available to the class. Instead, they rely on the Fourth Circuit's easily distinguishable decision in *In re Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation*, 91 F.4th 174 (4th Cir. 2024), which the Restaurant DAPs incorrectly present as being "on all fours." (Obj. at 7). Notably, *Lumber Liquidators* is not an opinion about approval of a class settlement. Rather, it dealt with assessing the preclusive effect of a consumer class action settlement on a subsequently filed wrongful death case. *See* 91 F.4th at 177-78. The Fourth Circuit held that the earlier class settlement—which involved "allegations focused on the quality of the subject flooring and on LL Flooring's deception in its sales and marketing"—did not bar plaintiff's subsequent lawsuit arising from "claims premised on bodily injury or wrongful death." *Id.* at 184. This scenario is materially different from this case, where the Restaurant DAPs are asserting related antitrust claims arising from the very same Broiler purchases.

The Restaurant DAPs' citation to several non-class cases regarding abandonment of claims (Obj. at 6) also does not support their objection for multiple reasons. First, the abandonment doctrine has no application to this case because the DPP Class's Track 1 election was in response to the Court's case management order, it did not constitute an abandonment of the bid-rigging claims. The Court recognized this in its ruling regarding the Simmons settlement in which it identified that the DPP Class's Track 1 election was a case management decision, which made recovery for these bid rigging claim "more difficult" (ECF No. 7083 at 2), but did not result in "judgment being entered on those claims" (*Id.* at 8). Second, none of the abandonment cases the

Restaurant DAPs cite address the permissible scope of a release or stand for the proposition that abandoned claims cannot be released in a class action.

Given the absence of any authority holding that a class action release must be limited to only viable claims, the Restaurant DAPs' argument that the bid rigging claims are not viable for members of the Class is puzzling. If members of the Class (including the Restaurant DAPs) have no right to assert bid rigging claims, these claims have little or no value to members of the Class. Accordingly, the Restaurant DAPs' objections to the value of the Settlements, which are based exclusively on the purported value of these bid rigging claims, have little or no merit. This exposes one of the key problems with the Restaurant DAPs' objection, which demands that the Court and Class Counsel place the Restaurant DAPs' individual claims and interests ahead of the thousands of Class members who stand to substantially benefit from the $75 million in Settlements obtained from defendants HRF and Koch. The Court should reject this.

C. The Restaurant DAPs' Objection to the Settlements Based on the Value of Their Individual Bid-Rigging Claims is Without Merit

1. The Court-Approved Opt-Out Procedures Allowed Restaurant DAPs to Preserve Their Individual Bid-Rigging Claims

As detailed in Section III above and throughout this brief, the Settlements satisfy the standard for final approval and provide substantial value to the Class, including $75 million in recovery. The Restaurant DAPs offer no real retort for this in their objection, and, in fact, they are unabashedly disinterested in what is in the best interest of the Class. Rather, the Restaurant DAPs' sole interest is on the impact the Settlements have on their individual bid rigging claims against HRF and Koch. Throughout the approval process they have demonstrated this selfish focus, as they have not objected to settlements that recovered less money (*e.g.*, O.K. Foods and Mountaire) or even no money (Prevailing Defendants), based exclusively on the perceived effect the settlements have on their individual bid rigging claims.

But it is neither Class Counsel nor the Court's duty to protect Restaurant DAPs' individual interests, especially when to do so would come at the expense of the Class. That duty lies with the Restaurant DAPs' individual counsel. As the Court recognized in approving the Simmons settlement, the Restaurant DAPs "had an easy and well-established mechanism for avoiding this predicament in the Rule 23 opt-out procedures. They missed the deadline. That is not a reason to find the settlement does not provide substantial value to the Class." (ECF No. 7083 at 9.)

The Court's ruling on the Simmons settlement comports with precedent recognizing that Rule 23 opt-out procedures are the appropriate way for a class member to seek separate consideration for related individual claims. *In re Allstate Ins. Co.*, 400 F.3d 505, 507 (7th Cir. 2005) ("'[W]hen damages are sought, it is quite likely that some individual class members will want to sue on their own (provided that the potential damages per class member are substantial) rather than participate in a class-wide award, because they may have greater than average damages.'"); *Sandoval v. M1 Auto Collisions Centers*, No. 13-CV-03230-EDL, 2017 WL 11679905, at *5 (N.D. Cal. Mar. 20, 2017) (Defendants "have a legitimate stake in assuring that the settlement releases all claims arising from the same set of facts so that they are not subject to serial litigation, and absent class members can opt-out if they not wish to release those potential claims."); *Freeman v. Berge*, 68 F. App'x 738, 743 (7th Cir. 2003) (rejecting appeal on grounds that "many of the objections concerned individualized complaints or matters that were never raised in the lawsuit or approved for class certification.").

The procedural history of the case reinforces this point. The Restaurant DAPs initially sought to "confirm" their opt-out status by referring to the filing of their individual lawsuit. (ECF No. 6841.) In this initial motion, the Restaurant DAPs argued that notwithstanding their failure to opt out of the Class, they should be treated as having done so to preserve their individual bid-rigging claims. (ECF No. 6841 at 2 (asserting Restaurant DAPs are "opt-out plaintiffs entitled to

assert all of their claims set forth in the Track Two Second Amended Consolidated Complaint.").) It was only after the Court rejected these constructive opt-out arguments that the Restaurant DAPs changed tack and began objecting to subsequent settlements and demanding additional compensation for their bid-rigging claims as members of the Class. The prejudice the Restaurant DAPs complain about does not arise from any defect in the Settlements or the substantial relief they provide, but from their own action (or inaction) in not opting out of the Class. That is no reason to disapprove the Settlements.

The Restaurant DAPs' attempts to negate the consequences of following simple opt-out procedures are misplaced and unconvincing. Their claim that the "Class's opt-out argument would apply to every objector in every case" is untrue as this argument would carry no weight for an objection based on deficiencies with the settlement that impact all or even a substantial portion of class members. That is not the case here as the Restaurant DAPs' objections, concerns, and interests are purely individualized. Their efforts to denigrate Settlements that provide substantial Class benefits strictly based on furthering their own individual interests should be rejected.

2. The Restaurant DAPs' Arguments Regarding the Purported Value of Their Bid Rigging Damages Do Not Support Denying Final Approval to the Settlements

In an attempt to bolster the attacks based on the value of their bid rigging claims, the Restaurant DAPs now rely upon the declaration of Lauren C. Van Allen, which purportedly shows the Restaurant DAPs' transaction volumes and bid rigging "damages." This analysis is fundamentally flawed and fails for multiple reasons.

First, as this Court has observed, the reasonableness of settlements is not based on a formulaic assessment of experts' damages calculations. It is undoubtedly true that had the Class succeeded at trial the recovery could have been substantial, but it is equally true that the Class could have walked away empty handed.

[redacted]

[redacted]

Given the many deficiencies in the Van Allen declaration, the Restaurant DAPs have failed to support their assertion that they suffered any bid rigging damages. Nor have they demonstrated that the $75 million recovered on behalf of the Class from HRF and Koch (in addition to the hundreds of millions of dollars recovered from other Defendants) does not adequately compensate members of the Class for any such claims. The Restaurant DAPs' references to documents they claim evidence bid rigging also do not establish any deficiency with the Settlements. At best, these documents refer to instances of alleged price fixing involving specific bids to specific customers, almost all of whom validly opted out of the Class. Many of these documents and allegations also relate to Defendants other than HRF and Koch, whose settlements with the DPP Class have been finally approved by the Court. There is no basis to reject the HRF and Koch Settlements and deprive the Class of the substantial benefits they provide based on this record.

D. The Restaurant DAPs' Challenges to Class Certification are Procedurally Defective and Unconvincing

The Restaurant DAPs level various challenges to the certification of the Class and assert that the Court failed to make necessary class certification findings required by Rule 23. The central premise of these arguments—that the scope of class action releases must be limited to certified

claims—is fundamentally flawed and has been universally rejected. To the contrary, "[a] settlement agreement may preclude a party from bringing a related claim in the future even though the claim was not presented and might not have been presentable in the class action." *Hesse*, 598 F.3d at 590; *see also* Section IV.B above (citing to numerous cases which have recognized that class action settlements can release related claims that were not certified).

Without this central premise, the Restaurant DAPs' attacks on class certification fail. Unlike settlement classes that are certified for limited purposes, HRF and Koch settled with the litigated Class, which the Court certified after extensive briefing and a two-day hearing including testimony from experts. (*See* Class Certification Order, ECF No. 5644.) The Restaurant DAPs' claim that this Court did not perform an adequate class certification analysis (*see, e.g.*, Obj. at 24-25) completely ignores this class certification order, which analyzed all the relevant factors under Rule 23(a) and (b)(3). (*Id.*) This case therefore poses none of the issues or concerns relating to the certification of a settlement-only class that was addressed by *Amchem* cited by the Restaurant DAPs, which attempt to cobble together a sprawling settlement only class to resolve a mass tort action that did not satisfy the elements of class certification. 521 U.S. at 592-93, 621-22.

The Restaurant DAPs' claim that the Settlements give rise to impermissible conflicts of interest that violate the adequacy of class representation under Rule 23(a)(4) also fails. The Restaurant DAPs' accusation of conflicts of interest is based on the flawed premise that Class Counsel had a duty to maximize the value of the Restaurant DAPs' individual claims rather than act for the benefit of the Class as a whole. (Obj. at 10.) This argument is directly at odds with core class action principles, which hold that class counsel has a "duty to the class as a whole [which] frequently diverges from the opinion of either the named plaintiff or other objectors." *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 964 (3d Cir. 1983); *see also Kincade v. General Tire & Rubber Co.*, 635 F.2d 501, 508 (5th Cir. 1981) (holding the "'client' in a class action consists of

numerous unnamed class members as well as the class representatives" which can force class counsel to act in what she or he perceives to be in the best interests of the class as a whole); *Parker v. Anderson*, 667 F.2d 1204, 1211 (5th Cir. 1982) ("The compelling obligation of class counsel in class action litigation is to the group which makes up the class. Counsel must be aware of and motivated by that which is in the maximum best interests of the class considered as a unit.").

Contrary to the Restaurant DAPs (Obj. at 10), this does not mean that Class Counsel contends they owe no duty to the Restaurant DAPs, but rather that they owe the same duty to all Class members. Class Counsel fulfilled this duty by maximizing Settlements with HRF and Koch that will benefit all Class members, including the Restaurant DAPs. Qualified Class members may participate in the Settlements and receive compensation, and the amount of their recovery will be based on their individual *pro rata* portion of qualified claims. (*See, e.g.*, ECF No. 5434 (granting DPPs' motion to distribute over $100 million in settlement proceeds *pro rata* to qualified claimants).) Therefore, the Restaurant DAPs' claim that they will "not receive one extra dollar" for their claim or cannot fully participate in the Settlements is without merit.

This case is thus easily distinguishable from cases the Restaurant DAPs cite to support their conflict of interest accusations based on the existence of distinct classes or class member transactions that would obtain no recovery from a settlement. *See Mirfasihi v. Fleet Mortg. Corp.*, 356 F.3d 781, 785 (7th Cir. 2004) (finding a deficiency in a settlement where members of a distinct subclass would not receive any portion of the settlement proceeds); *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 284-86 (7th Cir. 2002) (finding issues with approval of a proposed settlement including "suspicious circumstances" surrounding the settlement, and the fact that "[t]wo classes were absorbed into the settlement even though their claims were sharply different from those of the classes represented by the settlement counsel."); *Amchem*, 521 U.S. at 626 (citing potential conflicts between class members who were currently injured from asbestos exposure, whose goal

was to recover "generous immediate payments" and those who had potential injuries whose goal was to obtain "an ample, inflation-protected fund for the future."); *Nat'l Super Spuds Inc. v. New York Mercantile Exch.*, 660 F.2d 9, 17 (2d Cir. 1981) (disapproving class action settlement that compensated class members for liquidated potato futures contracts, but provided no compensation for released claims relating to unliquidated contracts that were not possessed by the class representatives.).

In contrast to these cases involving distinct transactions, as the Restaurant DAPs have admitted, "The present case and the related litigations allege claims based on the same transaction or occurrence." (ECF No. 3654 at 2.) There is no dispute regarding class membership by the Restaurant DAPs, and the Settlements allow the Restaurant DAPs to receive a *pro rata* portion of the settlement proceeds for their eligible *Broiler* purchases.[14] *Abbott v. Lockheed Martin Corp.*, 725 F.3d 803, 813 (7th Cir. 2013) (rejecting the argument that "the mere possibility that a trivial level of intra-class conflict may materialize as the litigation progresses forecloses class certification entirely."); *Wolfert ex rel. Estate of Wolfert v. Transamerica Home First, Inc.*, 439 F.3d 165, 173 (2d Cir. 2006) ("[N]ot every variation between the interests of an absent class member and those of the class generally will render the class representatives inadequate."); *Vogt v. State Farm Life Ins.*, 963 F.3d 753, 767 (8th Cir. 2020) (quoting *Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012)) ("Perfect symmetry of interest is not required and not every discrepancy among the interests of class members renders a putative class action untenable. To forestall class certification the intra-class conflict must be so substantial as to overbalance the common interests of the class members as a whole."). The Restaurant DAPs have failed to identify

[14] The claims administration process also allows Restaurant DAPs and other class members to supplement their purchase volume and ensure that all qualifying purchases are accounted for as part of the claims process and ultimate *pro rata* distribution. (Schachter Decl. ¶¶ 14-17.)

any case where a court rejected a settlement based on intra-class conflicts under such circumstances.

E. The Restaurant DAPs' Challenge to the Class Notice Does Not Support Overturning the Settlements

The Restaurant DAPs' argument that the Class Notice did not comply with Rule 23 because it did not specifically refer to bid rigging fails for two reasons. First, as active participants in the case, the Restaurant DAPs admittedly knew of the DPP Class's Track 1 election and its implications. As the Seventh Circuit held in *Senegal v. JPMorgan Chase Bank, N.A.*, 939 F.3d 878 (7th Cir. 2019), the Restaurant DAPs must establish they were "aggrieved by the decisions of which they complain" and could not satisfy this standard if the changes they seek to the notice would not change their action or the result. 939 F.3d at 881. The same is true in this case. As the Court recognized in approving the Simmons settlement, the Restaurant DAPs "unquestionably" were aware of these facts because they received actual notice of all filings in the case. (ECF No. 7083.) The Restaurant DAPs confirmed they were fully aware of the two-track structure of the case and would not act differently if the Class Notice was modified. (*See, e.g.*, Obj. at 27.) Therefore, they have not been aggrieved by any claimed deficiency in the notice. *Senegal*, 939 F.3d at 881.

Second, the Class notice complied with the requirements of Rule 23, by disclosing the nature of the action; the definition of the class certified; the class claims, issues, or defenses; the procedures for opting out; and the binding effect of a class judgment on members who do not opt out. (*See* ECF No. 6195 (Class Notice); Section III.A above.) There is nothing in the Class Notice which would leave reasonable Class members in doubt that they needed to opt out to preserve their individual Broiler antitrust claims, including bid-rigging. *Air Lines Stewards & Stewardesses Ass'n Loc. 550 v. Am. Airlines, Inc*., 455 F.2d 101, 108 (7th Cir. 1972) ("[T]he notice sufficiently

conveyed the required information … thus satisfying the demands of due process."); *Tennille v. W. Union Co.*, 785 F.3d 422, 436 (10th Cir. 2015) (the class notice satisfies Rule 23 and due process when it apprises class members of the "nature of the claims at issue" and waiver of individual claims by class members who fail to opt out); *Elna Sefcovic*, 807 F. App'x at 764 (rejecting objector's argument that the notice was deficient by not detailing all potential affected claims, because no such level of specificity is required by Rule 23).

The reaction of the Class confirms that there was no confusion regarding the opt-out process. Indeed, virtually all of the hundreds of Track 2 plaintiffs except the Restaurant DAPs opted out to preserve their individual bid-rigging claims. *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 1996 WL 167347, at *4 (N.D. Ill. Apr. 4, 1996) (recognizing the fact that numerous putative class members successfully exercised their opt-out right as evidence of the sufficiency of the class notice) (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 813 (1985)). Revising the Class Notice to add references to bid rigging as the Restaurant DAPs suggest not only would be pointless, it would increase the likelihood of Class member confusion and contravene the directive of Rule 23(c)(2)(B) that the notice be provided "clearly and concisely … in plain, easily understood language."

V. CONCLUSION

For these reasons, DPPs and Co-Lead Class Counsel respectfully request that the Court overrule Restaurant DAPs' objection to the Settlements and grant final approval to the HRF and Koch Settlements.

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/s/ Bobby Pouya

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