IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BUDICAK, INC., BLUE MARLIN ARBITRAGE, LLC, and PRIME TRADING, LLC, individually and on behalf of others similarly situated,

Plaintiffs,

v.

LANSING TRADE GROUP, LLC, CASCADE COMMODITY CONSULTING, LLC, and JOHN DOES NOS. 6-10

Defendants.

Case No. 2:19-cv-02449

District Judge Toby Crouse

Magistrate Judge Angel D. Mitchell

PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS WITH LANSING TRADE GROUP, LLC AND CASCADE COMMODITY CONSULTING, LLC

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INTRODUCTION

Plaintiffs Budicak, Inc. ("Budicak"), Blue Marlin Arbitrage, LLC ("Blue Marlin"), and Prime Trading, LLC ("Prime" and, collectively with Budicak and Blue Marlin, "Plaintiffs") move under Rule 23 of the Federal Rules of Civil Procedure for preliminary approval of two settlements with Defendant Lansing Trade Group, LLC ("Lansing") and Defendant Cascade Commodity Consulting, LLC ("Cascade") that will completely resolve this Action and establish an $18,000,000 Settlement Fund to ensure eligible Class Members can be compensated for damages Plaintiffs allege were caused by Defendants' alleged manipulation of Chicago Board of Trade ("CBOT") wheat futures and options contracts ("CBOT Wheat Futures or Options").[1] Lansing and Cascade do not oppose this motion and consented to its filing.

Plaintiffs achieved these Settlements following years of hard-fought litigation, arm's length settlement negotiations with Cascade, and separate negotiations with Lansing that involved a mediation and over a year of follow-on negotiations supervised by The Honorable Morton Denlow (Ret.) of JAMS. In light of the benefits the Settlements provide and the risks of this Action, Plaintiffs and Plaintiffs' Counsel, Lowey Dannenberg, P.C. ("Lowey") and Cafferty Clobes Meriwether & Sprengel, LLP ("Cafferty" and, collectively with Lowey, "Plaintiffs' Counsel") consider the Settlements to be fair, reasonable, and adequate.

As discussed below, the Settlements fully satisfy the requirements for preliminary approval from this Court. First, the Settlements are procedurally fair, as Plaintiffs and Plaintiffs' Counsel are adequate representatives for the Settlement Class, and the Settlements themselves resulted from

[1] Unless otherwise noted, capitalized terms not defined herein have the same meaning as in the Stipulation and Agreement of Settlement between Plaintiffs and Lansing dated April 29, 2022 (the "Lansing Stipulation") and the Stipulation and Agreement of Settlement between Plaintiffs and Cascade dated July 1, 2020, as amended April 29, 2022 (the "Cascade Stipulation" and collectively with the Lansing Stipulation, the "Stipulations"), attached as Exhibits 1 and 2 respectively to the Joint Declaration of Raymond P. Girnys and Jennifer W. Sprengel dated April 29, 2022 ("Joint Decl."), filed herewith. Unless otherwise noted, internal citations and quotation marks are omitted and ECF citations are to the docket in this Action.

hard-fought, non-collusive negotiations with both Cascade and Lansing. Second, the terms of each Settlement are substantively fair, providing substantial relief for all Class Members, and fully resolving the litigation against all named Defendants. The Court has an ample basis upon which to conditionally certify the Settlement Class under Federal Rules of Civil Procedure 23(a) and (b)(3). Finally, the proposed Class Notice plan is robust, will fully apprise Class Members of their rights and options, and should be approved. Plaintiffs therefore ask the Court to grant Plaintiffs' motion and enter the respective orders (the "Preliminary Approval Orders") that each:

(a) preliminarily approves the respective Settlement subject to later, final approval;

(b) conditionally certifies a Settlement Class for the claims against Lansing and Cascade, respectively;

(c) appoints Plaintiffs as representatives of the Settlement Class;

(d) appoints Lowey and Cafferty as Class Counsel for the Settlement Class;

(e) (with respect to the Lansing Settlement only) preliminarily approves the proposed Distribution Plan (*see* Joint Declaration of Raymond P. Girnys and Jennifer W. Sprengel, dated April 29, 2022 ("Joint Decl."), Ex. 7);

(f) (with respect to the Lansing Settlement only) appoints Citibank, N.A. ("Citibank") as the Escrow Agent;

(g) appoints A.B. Data, Ltd. ("A.B. Data") as the Settlement Administrator for the respective Settlement;

(h) approves the proposed forms of Class Notice to the Settlement Class (Joint Decl. Exs. 4-6) and the proposed Class Notice plan (*id.*, Ex. 3);

(i) sets a schedule leading to the Court's evaluation of whether to finally approve the respective Settlement, including: (1) the date, time, and place for a hearing to consider the fairness, reasonableness, and adequacy of the Settlement (the "Settlement Hearing"); (2) the deadline for Settlement Class Members to exclude themselves (*i.e.*, opt out) from the Settlement; (3) the deadline for Plaintiffs' Counsel to submit a petition for attorneys' fees and reimbursement of expenses and for Plaintiffs to file their application for Incentive Awards; and (4) the deadline for Class Members to object to the respective Settlement and any of the related petitions; and

(j) stays all proceedings in the Action except those relating to approval of the respective Settlement.

See [Proposed] Preliminary Approval Orders filed herewith.

OVERVIEW OF THE LITIGATION

Procedural History

This case was brought against Lansing, an international commodity merchandising company that is active in the physical wheat and wheat futures markets, and Cascade, a subscription-based agricultural commodities news outlet, on behalf of a Settlement Class (to be certified for settlement purposes) of all Persons and entities that transacted in CBOT Wheat Futures or Options from at least February 1, 2015 through May 15, 2015 (the "Class Period"). Defendants allegedly manipulated the prices of CBOT Wheat Futures or Options by falsely signaling demand for Soft Red Winter ("SRW") wheat. Lansing allegedly established a CBOT Wheat Futures or Options position that would financially benefit from Defendants' false signaling of demand. After establishing the position, Lansing allegedly then acquired wheat shipping certificates, cancelled those certificates, and demanded load out of the underlying SRW wheat, which Plaintiffs allege falsely signaled a demand for SRW wheat that caused artificial prices of CBOT Wheat Futures or Options. Lansing also allegedly conspired with Cascade to enhance the visibility of this false signaling through Cascade's publication of an article that highlighted Lansing's market behavior.

Plaintiffs alleged that Lansing traders knew that cancelling these wheat shipping certificates would signal demand to the market and cause CBOT Wheat Futures or Options prices to be artificial. Plaintiffs further alleged this signal of demand was false because Lansing did not cancel the wheat shipping certificates to satisfy a true demand for SRW wheat, but instead

cancelled the certificates to benefit its CBOT Wheat Futures or Options trading position, at the expense of Class Members' positions.[2]

Plaintiff Budicak filed the Class Action Complaint against Lansing on July 20, 2018 in the United States District Court for the Northern District of Illinois. ECF No. 1. On October 1, 2018, Plaintiffs filed the Amended Class Action Complaint, adding Blue Marlin and Prime as Plaintiffs, and Cascade Commodity Consulting, LLC ("Cascade") as a Defendant. ECF No. 26. On November 16, 2018, Defendants Lansing and Cascade both moved to dismiss the Complaint, which Plaintiffs opposed. ECF. Nos. 52, 59, 87, 89-90, 92.

On August 5, 2019, Judge Chang of the Northern District of Illinois granted Lansing's motion to transfer the case to the District of Kansas and terminated the pending motions to dismiss without prejudice to be refiled pursuant to the schedule set in the District of Kansas. ECF No. 110. On September 24, 2019, Lansing refiled its motion to dismiss or strike the Complaint. ECF No. 122. Cascade filed a new motion to dismiss on October 9, 2019. ECF No. 137. Plaintiffs filed their opposition to Cascade's motion to dismiss on November 4, 2019. ECF No. 141. On January 29, 2020, the Court ordered Plaintiffs and Lansing to submit supplemental briefing to specifically address Tenth Circuit authority governing the issues under review. ECF No. 156. Plaintiffs and Lansing filed their supplemental briefs on February 12, 2020. ECF Nos. 158-59. On February 14, 2020, the Court denied Cascade's motion to dismiss. ECF No. 160. On March 25, 2020, the Court denied Lansing's motion to dismiss or strike the Complaint. ECF No. 167.

Plaintiffs and Lansing engaged in extensive discovery thereafter, including the exchange of thousands of pages of documents from each side. As part of the process, the Parties held twenty separate meet and confers to negotiate and resolve many disputes relating to discovery. Due to the

[2] Lansing and Cascade deny Plaintiffs' allegations, and each maintains that it has good and meritorious defenses to Plaintiffs' claims and would prevail if the case were to proceed.

restrictions imposed by the COVID-19 pandemic, both fact and expert depositions were conducted via Zoom.

On October 30, 2020, Plaintiffs moved for class certification of their claims against Lansing[3], and submitted an expert report in support of their motion. ECF Nos. 182-83. Lansing moved to exclude the opinions of Plaintiffs' expert and filed its opposition to Plaintiffs' motion to certify the class on May 11, 2021, submitting its own expert reports to support its argument. ECF Nos. 222-26. In July 2021, Plaintiffs filed a reply in support of their motion for class certification, an opposition to Lansing's motion to exclude Plaintiffs' expert's opinions, and new motions to exclude the opinions of Lansing's experts, among other documents. ECF Nos. 243, 245, 247, 249, 250-51. On August 12, 2021, Lansing filed a reply in support of its motion to exclude the opinions of Plaintiffs' expert, oppositions to Plaintiffs' motions to exclude Lansing's expert opinions, and a motion to strike portions of Plaintiffs' reply in support of class certification, among other documents. ECF Nos. 291, 293, 294-95, 296. On September 2, 2021, Plaintiffs filed replies in support of their motions to exclude the opinions of Lansing's experts, and an opposition to Lansing's motion to strike, among other documents. ECF Nos. 317-20. On September 16, 2021, Lansing filed its reply in support of its motion to strike ECF No. 323.

Summary of Settlement Negotiations

Shortly after Plaintiffs filed their Complaint in July 2018, Lansing and Plaintiffs preliminarily explored settlement. In January 2019, Plaintiffs made a detailed in-person settlement presentation to Lansing that included Plaintiffs' views on liability and damages, as well as an opening settlement demand. In March 2019, Lansing made a presentation to Plaintiffs that provided its response to Plaintiffs' views of the case. For the next few months, the Parties

[3] As discussed below, on July 20, 2019, Plaintiffs and Cascade reached a settlement pursuant to which Cascade agreed to provide cooperation to Plaintiffs.

continued to exchange their views of liability and damages, and continued to attempt to negotiate a settlement. However, by May 1, 2019, settlement negotiations between Plaintiffs and Lansing stalled.

After Cascade filed its new motion to dismiss the case in this Court in October 2019, Plaintiffs and Cascade began discussing the potential for a settlement between them. Settlement negotiations continued throughout early 2020, resulting in a framework to settle the claims against Cascade. On July 1, 2020, Plaintiffs and Cascade executed a settlement agreement for a cooperation-only settlement that would allow Plaintiffs to strengthen their position in the continued prosecution of the case against Lansing.

In the summer of 2020, Lansing and Plaintiffs discussed engaging a mediator to facilitate further settlement discussions, and ultimately retained Judge Denlow to assist. Judge Denlow held a day-long mediation with Plaintiffs and Lansing via Zoom on August 25, 2020. Despite frank and robust discussion between Plaintiffs and Lansing regarding their views on the litigation and the potential exposure, the mediation concluded at an impasse.

Between November 2020 and July 2021, Judge Denlow continued to engage Plaintiffs and Lansing in discussions concerning possible resolution of the Action. Despite these several discussions, the impasse remained. In September 2021, after the class certification motion and related arguments were fully briefed, Judge Denlow again contacted Plaintiffs and Lansing to discuss the possibility of settlement. Lansing and Plaintiffs, during these discussions, once again shared their views of the case concerning liability and damages, further colored by litigation events and the class certification briefing. On October 4, 2021, Judge Denlow made a mediator's proposal of $18,000,000. On October 22, 2021, Plaintiffs and Lansing accepted Judge Denlow's proposal.

After months of additional negotiations over the specific terms, Plaintiffs and Lansing executed the Lansing Stipulation on April 29, 2022.

SUMMARY OF KEY SETTLEMENT TERMS

Lansing has agreed to pay $18,000,000 to Plaintiffs and the Settlement Class. The Settlement Class in the Lansing Stipulation is defined as:

> All Persons or entities that transacted in CBOT Wheat Futures or Options during February 1, 2015 through May 15, 2015 (the "Settlement Class Period"). Excluded from the Settlement Class are: Defendants and their direct or indirect parents, subsidiaries, affiliates, divisions, officers, directors, employees, and agents, whether or not named as a Defendant; the United States government; and any judicial officer presiding over this Action and the members of his or her immediate family and judicial staff. Also excluded from the Settlement Class is any Person or entity who or which properly excludes himself, herself, or itself by filing a valid and timely request for exclusion in accordance with the requirements set forth in the Class Notice, and who is excluded from the Settlement Class by order of the Court.

Lansing Stipulation § 1(ii). Class Members who do not request exclusion from the Settlement Class and submit a timely and valid claim may receive a *pro rata* share of the $18,000,000, after any authorized fees, costs and expenses are deducted, based on a calculation of their Net Artificiality Paid and/or Net Loss on CBOT Wheat Futures or Options transactions, as described in the accompanying Distribution Plan. The cost of settlement administration, including the costs to implement the Class Notice plan, any taxes and tax-related expenses will be paid from the Settlement Fund. In exchange, the Lansing Settlement provides that the Releasing Parties will:

> release and forever discharge and shall be forever enjoined from prosecuting the Settled Claims against the Released Parties. All Releasing Parties covenant and agree that they shall not hereafter seek to establish liability against any Released Party or any other Person based on the facts, conduct, or events, during the Class Period, underlying this Action. The Releasing Parties agree not to rely on or use in any manner the Stipulation or the Settled Claims in connection with any other litigation.

Lansing Stipulation § 11(a).

Under the Cascade Stipulation,[4] Cascade agreed to provide reasonable cooperation in the Action to benefit the Settlement Class.[5] In exchange, the Cascade Settlement provides that Cascade will be released from the Settled Claims by the Releasing Parties.

Approval of the Lansing and Cascade Settlements will fully resolve the current Action. In light of the uncompensated work Plaintiffs' Counsel has performed for the benefit of the Settlement Class over the last three and one-half years, Plaintiffs' Counsel intends to seek attorneys' fee award of one-third of the Settlement Fund, which is in line with awards granted in other cases of similar complexity and results. Plaintiffs' Counsel will also seek no more than $750,000 as reimbursement for the costs and expenses incurred in litigating this action, and Plaintiffs will also seek Incentive Awards totaling up to $60,000 for the three class representatives in recognition of the time spent and work done as class representatives.

Plaintiffs and Plaintiffs' Counsel worked tirelessly to obtain this excellent result for the Settlement Class. After thoroughly investigating the factual and legal issues in the Action and engaging in years of settlement negotiations, Plaintiffs and Plaintiffs' Counsel are confident that this Settlement is a highly favorable result and is in the best interests of Class Members. As described below, the Settlement meets the standard for preliminary approval, and notice of the Settlement may be issued.

[4] The "Settlement Class" under the Cascade Stipulation is identical to the Settlement Class under the Lansing Stipulation. *See* Amendment to Stipulation and Agreement of Settlement with Cascade Commodity Consulting, LLC ("Amendment") attached to the Cascade Stipulation.

[5] Such cooperation may include providing, among other things: (a) communication relating to wheat market and wheat market participants during the period of January 1, 2015 through and including March 31, 2015 (the "Relevant Period"); (b) wheat market data used or relied upon in connection with Cascade's newsletters; (c) trading statements and records of Cascade and its employees; (d) attorney and witness proffers concerning the allegations in the Action; and (e) a witness to be deposed or interviewed by Plaintiffs.

ARGUMENT

I. The Settlements Are Fair, Reasonable, And Adequate

A. Standards for Preliminary Approval of a Proposed Settlement

Under Rule 23(e), parties may settle the claims of a putative class action only with court approval. Pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, the relevant inquiry at the preliminary approval stage is whether the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." FED. R. CIV. P. 23(e)(2)(b). In substance, a court may preliminarily approve a settlement if it is likely that, after a hearing, it will find the settlement "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2).

In deciding whether to approve a class action settlement, courts consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

FED. R. CIV. P. 23 (e)(2). Additionally, the Tenth Circuit has specified four factors that a district court must consider when assessing the fairness, reasonableness and adequacy of a settlement:

> (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.

Rutter & Wilbanks Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002). Because the Tenth Circuit's additional factors "largely overlap" with the Rule 23(e)(2) factors, "with only the fourth

factor not being subsumed" into it, courts in this District now "consider[] the Rule 23(e)(2) factors as the main tool in evaluating the propriety of [a] settlement," while still addressing the Tenth Circuit's factors. *Chavez Rodriguez v. Hermes Landscaping, Inc*., No. 17-2142-JWB-KGG, 2020 WL 3288059, at *2 (D. Kan. June 18, 2020). For purposes of preliminary approval, a court need not undertake an exhaustive examination at this stage; rather, a court may preliminarily approve a settlement where it finds "the proposed settlement is neither illegal nor collusive and is within the range of possible approval." *Seawell v. Konza Prairie Pizza, Inc.*, No. 20-CV-2130-JAR-KGG, 2021 WL 3771690, at *3 (D. Kan. Aug. 25, 2021) (explaining a court applies a "less stringent standard" on preliminary approval).

As discussed below, the proposed Settlements with Lansing and Cascade satisfy each of the Rule 23(e)(2) and Tenth Circuit factors. Accordingly, Plaintiffs request that the Court grant preliminary approval of the Settlements.

B. The Settlements Satisfy the Rule 23(e)(2) Factors

1. Plaintiffs and Plaintiffs' Counsel Have Adequately Represented the Class

To evaluate the adequacy of the representation by Plaintiffs and Plaintiffs' Counsel, courts use the same standard that applies when certifying a class. *Chavez Rodriguez,* 2020 WL 3288059, at *2 ("Courts have analyzed the adequacy of representation [under FED. R. CIV. P. 23(e)] by evaluating adequacy under Rule 23(a)(4)."). The courts in this District and Circuit have found plaintiffs and their counsel adequate after finding there are no significant conflicts of interests with class members, and where the action was prosecuted vigorously on behalf of the class. *See Rutter v. Wilbanks,* 314 F.3d at 1187-88 ("Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the

class?"); *accord Flerlage v. US Foods, Inc.*, No. 18-2614-DDC-TJJ, 2020 WL 4673155, at *3 (D. Kan. Aug. 12, 2020). Here, both prongs of the inquiry are satisfied.

Plaintiffs' interests align precisely with those of the Class Members. Plaintiffs each purchased CBOT Wheat Futures or Options during the Class Period. Plaintiffs allege Defendants falsely signaled demand for physical wheat in the market, which created artificial prices for CBOT Wheat Futures or Options. Not only were Plaintiffs' transaction prices allegedly impacted by Defendants' alleged misconduct, but every Class Member transacting in the CBOT Wheat Futures or Options market during the Settlement Class Period traded based on allegedly artificial prices caused by Defendants' alleged misconduct. Thus, Plaintiffs and the Class seek the same relief for the same injury caused by Defendants' manipulation. *See Bennett v. Sprint Nextel Corp*, 298 F.R.D. 498, 505-06 (D. Kan. 2014) (where "[b]oth Plaintiffs and proposed class members purchased [] securities[,]" would need to demonstrate Defendants made materially false and misleading statements, and "suffered a loss when the price of [ ] securities fell, " the Court held there was no evidence of a potential fundamental conflict); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-MD-2591-JWL, 2016 WL 5371856, at *5 (D. Kan. Sept. 26, 2016) (adequacy met where class representatives' claims are typical of the class and the representatives prosecute such claims); *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, 2020 WL 1180550, at *21 (D. Kan. Mar. 10, 2020).

As demonstrated through their work in this Action, Plaintiffs and Plaintiffs' Counsel have diligently prosecuted the case by, among other things: (i) conducting a thorough pre-filing investigation of relevant factual events; (ii) drafting both the initial complaint and the amended complaint; (iii) successfully opposing Defendants' motions to dismiss; (iv) engaging in document and written discovery, including obtaining, reviewing and analyzing thousands of pages of

documents produced by the Defendants; (v) engaging and working with experts to understand the CBOT Wheat Futures and Options market; (vi) moving for certification of a litigation class, opposing motions to exclude Plaintiffs' expert, and seeking to exclude Lansing's experts; (vii) preparing for and participating in mediation with Lansing before Judge Denlow; and (viii) negotiating the proposed cooperation-only settlement with Cascade and the $18,000,000 settlement for the benefit of the Class. *See* Joint Decl. ¶¶ 25-37.

Further, Plaintiffs' Counsel have decades of experience leading some of the most complex class actions. *See* Joint Decl., Exs. 8-9 (firm resumes). Plaintiffs' Counsel's extensive antitrust, CEA and complex class action experience, combined with their extensive efforts in this litigation, provide direct evidence of Plaintiffs' Counsel's adequacy. The collective tenacity and dedication of Plaintiffs and Plaintiffs' Counsel directly led to the Settlements, which will provide significant and immediate relief to the Settlement Class.

2. The Proposed Settlements Were Negotiated at Arm's Length

The second factor under Rule 23(e)(2)(B) examines the negotiations that resulted in the Settlements and overlaps with the first factor considered by courts in the Tenth Circuit under *Rutter*. *See Chavez Rodriguez,* 2020 WL 3288059, at *3 ("The Tenth Circuit's fair and honest negotiation requirement can be subsumed under Rule 23's second factor—arm's-length negotiation."). A settlement is presumed fair and reasonable when it is reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery. *See* Order, *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, (D. Kan. Mar. 11, 2022), ECF No. 2594 (granting preliminary approval where the proposed settlement was the result of serious, extensive arm's-length and non-collusive negotiations); *Marcus v. State of Kansas, Dept. of Revenue*, 209 F. Supp. 2d 1179, 1182-83 (D.

Kan. 2002) (finding settlement to be fair and honest when reached after arm's length negotiations by experienced counsel that included the involvement of an independent mediator); *accord In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1102 (D. Kan. 2018); *Nieberding v. Barrette Outdoor Living, Inc.*, 129 F. Supp. 3d 1236, 1245 (D. Kan. 2015). That presumption applies in this case where both the Cascade and Lansing Settlements were negotiated by skilled and experienced counsel. As noted above, Plaintiffs' Counsel have substantial experience in prosecuting class action matters. Lansing has been represented by counsel from one of the top law firms in the country, with extensive experience in litigating antitrust, CEA and class action cases. *See* Joint Decl. ¶ 39. Cascade has been represented by a firm whose attorneys have more than a century of combined legal experience representing business and individuals nationwide in complex litigation. *See id.*

Prior to negotiating the Settlements, Plaintiffs and Plaintiffs' Counsel were well-informed about the strengths and weaknesses of their claims against Lansing and Cascade. In negotiating the Settlements, Plaintiffs also had the benefit of information developed from Plaintiffs' Counsel's investigation, publicly available data and communications from the CFTC investigation and settlements with Lansing and its employees in which Lansing agreed to pay a fine in connection with its alleged conduct, the CME Group's notices of disciplinary action issued pursuant to CME's settlement with Lansing, news articles and other information, an extensive factual record developed through the production of thousands of pages of documents, arguments raised in the motions to dismiss, and the exchange of expert reports and models in connection with class certification.

The Lansing Settlement was further facilitated by the work of Judge Denlow. His involvement provides a well-recognized basis for finding that the settlement negotiations were

serious and at arm's-length. *See In re Molycorp, Inc. Sec. Litig.*, No. 12-CV-00292-RM-KMT, 2017 WL 4333997, at *4 (D. Colo. Feb. 15, 2017) (Report & Recommendation) ("Utilization of an experienced mediator during the settlement negotiations supports a finding that the settlement is reasonable, was reached without collusion, and should therefore be approved."); *adopted* 2017 WL 4333998 (D. Colo. Mar. 6, 2017); *accord Horton v. Molina Healthcare, Inc.*, No. 17-cv-0266-CVE-JFJ, 2019 WL 2207676, at *1 (N.D. Okla. May 22, 2019) (finding a proposed class action settlement fair and reasonable where it was negotiated in good faith at arm's length between experienced attorneys and aided by an experienced and neutral third-party mediator). On August 25, 2020, the Parties participated in a day long mediation session conducted by Judge Denlow, but failed to reach a settlement. *See* Joint Decl. ¶ 28. Judge Denlow remained involved, engaging Lansing and Plaintiffs in discussions to narrow the issues and advance the settlement negotiations. *See* Joint Decl. ¶ 29. On October 4, 2021, Plaintiffs and Lansing received a mediator's proposal from Judge Denlow, and ultimately reached an agreement to settle in principle on October 22, 2021. *See* Joint Decl. ¶¶ 30-31.

Given the Parties' efforts to reach the respect Settlements, the involvement of a mediator in reaching Lansing's Settlement, and the experience and knowledge of counsel on both sides, the process of reaching this Settlement was non-collusive and fair and meets the requirements of Rule 23(e)(2)(B).

3. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal

In evaluating the Settlements, the Court is to weigh the benefits afforded to the certified Class, including the immediacy and certainty of a recovery, against the significant costs, risks, and delay of proceeding with the litigation. *See* FED. R. CIV. P. 23(e)(2)(C)(i). This assessment is based on the premise that the Class "is better off receiving compensation now as opposed to being

compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted." *McNeely v. Nat'l Mobile Health Care*, LLC, No. CIV-07-933-M, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008). This consideration overlaps with the second and third factors generally evaluated by courts in the Tenth Circuit. *Chavez Rodriguez*, 2020 WL 3288059, at *3 (factors two and three relate to "whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt [and] whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation").

a. Serious Legal and Factual Questions Placed the Action's Outcome in Doubt

Plaintiffs must consider the "likelihood of success certifying a relevant class, surviving summary judgment and winning at trial." *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691 (D. Colo. 2014). The presence of serious legal and factual questions concerning the outcome of the litigation weighs in favor of settlement, "because settlement creates a certainty of some recovery, and eliminates doubt." *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1133, 1138 (D. Colo. 2009). If the Action were to proceed, there are factual and legal issues on which the Parties still disagree. Both Lansing and Cascade deny that they engaged in any wrongdoing as alleged by Plaintiffs, deny any liability whatsoever for any of Plaintiffs' alleged claims, and deny that Plaintiffs suffered any damages. After Plaintiffs filed their class certification motion, Lansing vigorously challenged Plaintiffs' methodology, including Plaintiffs' methodology for demonstrating the existence of a class-wide artificial price and the associated damages; engaged two experts who challenged the propriety of the class Plaintiffs sought to certify; and sought to have the report and testimony of Plaintiffs' expert excluded. Had the Settlement with Lansing not been reached, Plaintiffs anticipate that there would have been further challenges to their class certification motion, including a Rule 23(f) motion if a class had been certified. If the class

certification motion had been resolved in Plaintiffs' favor, it is likely that summary judgment would be hotly contested. In preparing this case for trial, Plaintiffs and Defendants would have spent significant time and effort on motions *in limine* (including *Daubert* motions), proving a merits and damages case, and litigating any post-trial appeals. Additionally, even if a class were certified as to certain issues, Defendants would seek to litigate individual issues relating to liability and damages following any class trial.

In similarly difficult, hard-fought cases, the presence of such factual and legal issues and "the possibility of no recovery after long and expensive litigation" serves to favor settlement. *See McNeely, LLC*, 2008 WL 4816510, at *13; *see also Tennille v. Western Union Co.*, 785 F.3d 422, 435 (10th Cir. 2015) (granting final approval of settlement where "serious disputed legal issues" rendered "the outcome of th[e] litigation . . . uncertain and further litigation would have been costly"). The risk of non-recovery is amplified here because, given the complexity of the allegations and the alleged misconduct, this Action would necessarily focus in large part on a battle of expert opinions. *See In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1242 (D.N.M. 2012) (stating that proving loss causation is a difficult task and adding that damages would be reduced to a battle of the experts); *Lane v. Page*, 862 F. Supp. 2d 1182, 1248 (D.N.M. 2012) (noting that a class victory was uncertain where a battle of the experts existed and proving loss causation would be difficult).

Plaintiffs and Plaintiffs' Counsel have already spent more than three years building their case, arguing and defending motions, and conducting expert discovery at a significant cost. *See* Joint Decl. ¶ 34. These costs would only escalate had these Settlements not been reached and the case was set for trial. *See Rutter & Wilbanks*, 314 F.3d at 1188 (favoring settlements in complex class actions where the parties may gain significantly from avoiding the costs and risks of a lengthy

and complex trial). The proposed Settlements, if approved, avoid any further costs and uncertainty, and in their place provides financial recovery and certainty for the Class, finality as to the Parties, and the preservation of Court's valuable time and resources that can be redirected elsewhere. This factor further supports approval of the Settlement.

b. Immediate Recovery Is More Valuable than the Mere Possibility of a More Favorable Outcome After Further Litigation

The immediate recovery offered by the Lansing Settlement outweighs the "mere possibility of a more favorable outcome after protracted and expensive litigation over many years in the future." *In re Syngenta AG. MIR 162 Corn Litig.*, No. 14-MD-2591-JWL, 2018 WL 1726345, at *2 (D. Kan. Apr. 10, 2018); *In re Thornburg Mortg.*, 912 F. Supp. 2d at 1244 ("[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now").

This litigation has been pending for over three years, and but for these Settlements, the Parties would have expended significant additional time and resources preparing for trial and any potential appeals, stretching the timeline of this case many years into the future. *Chavez Rodriguez*, 2020 WL 3288059, at *3 (observing that "the costs and time of moving forward in litigation would be substantial"). Given the complex legal and factual issues associated with continued litigation, there was an undeniable and substantial risk that, after years of continued litigation, Plaintiffs could receive an amount significantly less than the Settlement Amount in the Lansing Settlement, or even nothing at all. While Plaintiffs believe they ultimately could have prevailed, at the time of reaching the Settlements, there was no certainty if Plaintiffs would prevail, much less how much they could recover from a jury at trial.

The cooperation Plaintiffs received from Cascade represented a significant hedge that benefited the Settlement Class and increased the likelihood of a substantial recovery for the Class. It was the type of "ice-breaker" settlement that eventually led to the Settlement with Lansing. *See*

In re Linerboard Antitrust Litig., 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) (noting additional value in an icebreaker settlement is the increased likelihood of futures settlements); *In re Corrugated Container Antitrust Litig.*, No. M.D.L. 310, 1981 WL 2093, at *19 (S.D. Tex. June 4, 1981) (finding the ice-breaking effect of the settlement to be invaluable).

Plaintiffs' $18 million Settlement with Lansing represents an excellent result in light of the various risks and hurdles that Plaintiffs would have encountered if the Action had continued. The proposed Lansing Settlement provides the Class with substantial, guaranteed immediate relief. *See Lucas v. Kmart Corp.*, 234 F.R.D. 688 (D. Colo. 2006) (noting immediate relief provided by settlement in contrast with hurdles associated with years of continued litigation); *McNeely*, 2008 WL 4816510, at *13 ("The class . . . is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted."). Based on Plaintiffs' Counsel's analysis, the Lansing Settlement reflects a recovery of at least 15% of the total damages that Plaintiffs could have recovered at trial.[6] Joint Decl. ¶ 42. Antitrust class action settlements reached prior to trial typically settle for a fraction of the alleged damages. *See, e.g.*, *In re Linerboard Antitrust Litig.*, No. CIV. 98-5055, 2004 WL 1221350, at *4 (E.D. Pa. June 2, 2004) (collecting cases in which courts have approved settlements of 5.35% to 28% of potential damages). Thus, the $18 million immediate recovery that the Lansing Settlement would provide, particularly when viewed in the context of the risks, costs, delay, and the uncertainties of further proceedings, weighs in favor of preliminary approval of the Settlement.

4. The Proposed Method for Distributing Relief to the Class Is Effective

Plaintiffs' Counsel consulted with an industry and economic expert to develop the proposed Distribution Plan. *See* Joint Decl. ¶ 45. Procedurally, the Distribution Plan is structured

[6] Lansing disputes Plaintiffs' estimate of the class-wide damages that would be recoverable, even if Plaintiffs succeeded on all triable issues.

to be efficient to administer and simple for Class Members, thus incentivizing participation. *See* WILLIAM B. RUBENSTEIN, 4 NEWBERG ON CLASS ACTIONS § 13:53 (5th ed. 2020) ("the goal of any distribution method is to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible").

To receive a portion of the Net Settlement Fund, Class Members will be required to submit a Proof of Claim and Release form ("Claim Form"). The Claim Form is straight-forward and simple, only requiring a claimant to provide certain background information and readily accessible information about their CBOT Wheat Futures or Options, including trade date, volume, trade price, option type, strike price and premium (if applicable). *See* Joint Decl., Ex. ¶ 46.

Substantively, the Distribution Plan allocates 85% of the Net Settlement Fund based upon the *pro rata* fraction of the Net Artificiality Paid by each Authorized Claimant on Net Artificiality Paid Transactions. The remaining 15% of the Net Settlement Fund will be allocated based upon the *pro rata* fraction of the Net Loss by each Authorized Claimant on Net Loss Transactions. *See* Joint Decl., Ex. 7, at 4-8. Net Artificiality Paid Transactions are those transactions that occurred between March 5-March 13, 2015. Net Loss Transaction are those CBOT Wheat Futures or Options transactions that occurred during the alleged Class Period, but not during the period of March 5-March 13, 2015.

The Settlements do not favor or disfavor any Class Members; nor do they discriminate against, create any limitations, or exclude from payments any persons or groups within the Settlement Class. In consultation with Plaintiffs' Counsel, the Settlement Administrator will implement a reasonable minimum payment to ensure that the administrative costs of issuing small payments do not burden the Net Settlement Fund while not diverting a substantial portion of the Net Settlement Fund. *See* JOSEPH M. MCLAUGHLIN, 2 MCLAUGHLIN ON CLASS ACTIONS § 6:23

(17th ed. 2020) ("minimum payment thresholds for payable claims benefit the class as a whole because they protect the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs"). In addition to providing for a *pro rata* distribution of the Net Settlement Fund among Authorized Claimants, the Settlements provide that all Class Members would similarly release the Released Parties for claims based on the facts, conduct, or events, during the Class Period, underlying this Action.

Any potential inequity in the Settlements is avoided through the use of an adequate notice program that advises Class Members of their rights, including the impact of the releases. Where class members have received sufficient notice of the impact of the settlement, courts have enforced the bar on prosecuting released claims so long as they were based on the identical factual predicate and the class members were adequately represented. *See In re Gen. Am. Life Ins. Co. Sales Practices Litig.*, 357 F.3d 800, 803 (8th Cir. 2004) (affirming injunction against prosecution of claim released by a related class action where adequate notice of the release was given, and the class was adequately represented). Thus, should a Class Member wish not to be bound by the release, that Class Member may elect to opt out of the Settlements. The notice program will provide Class Members with information about opting out of the Settlements should they wish. But absent opting out, each Settlement Class Member would be bound by the release.

Because the Distribution Plan and the Settlements' release wholly avoid any improper preferences, these factors weigh in favor of preliminary approval of the Settlements. Further, the Court should preliminarily approve the Distribution Plan proposed for the Net Settlement Fund.

5. The Requested Attorneys' Fees and Other Awards Are Limited to Ensure That the Settlement Class Receives Adequate Relief

Plaintiffs' Counsel will limit their attorneys' fee request to no more than one-third of the Settlement Fund ($6 million), which may be paid upon final approval. *See* Joint Decl. ¶ 44. An

attorneys' fees request of one-third is comparable to the fees awarded in other cases of similar size and complexity. *See, e.g.*, *Chavez Rodriguez*, 2020 WL 3288059, at *4 (awarding attorneys' fees of 33% of the settlement amount after costs); *Nakamura v. Wells Fargo Bank, N.A.*, No. 17-4029-DDC-GEB, 2019 WL 2185081, at *1 (D. Kan. May 21, 2019) (awarding attorneys' fees of 33% of the gross settlement fund); *In re Universal Serv. Fund Tel. Billing Pracs. Litig.*, No. 02-MD-1468-JWL, 2011 WL 1808038, at *2 (D. Kan. May 12, 2011) (finding a fee of one-third of the total amount of the settlement fund to be "a reasonable and appropriate fee"). In addition to the request for attorneys' fees, Plaintiffs' Counsel will ask for an award of no more than $750,000 for unreimbursed litigation costs and expenses. Plaintiffs may also seek to share Incentive Awards totaling no more than $60,000 in connection with their representation of the Class.

6. The Settling Parties Have No Unidentified Additional Agreements That Impact the Adequacy of the Relief for the Settlement Class

Rule 23(e)(3) requires that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." The Lansing Settlement identifies that Lansing has a qualified right to terminate the Settlement under certain circumstances prior to final approval. *See* Joint Decl. ¶ 31; Ex. 1 (Lansing Stipulation) § 19(a). This type of qualified termination right contained in the Supplemental Agreement is typical in complex class actions and does not impact the fairness of the Lansing Settlement.[7] The Cascade Settlement does not contain a similar qualified termination right or otherwise "trad[e] away possible advantages for the class

[7] *See, e.g.*, *In re Carrier IQ, Inc., Consumer Privacy Litig.*, No. 12-md-2330, 2016 WL 4474366, at *5, 7 (N.D. Cal. Aug. 25, 2016) (observing that such "opt-out deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest," and granting final approval of class action settlement); *accord* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.631 (2004) (explaining that "[k]nowledge of the specific number of opt outs that will vitiate a settlement might encourage third parties to solicit class members to opt out.").

in return for advantages for [the class representatives]." *Rowe v. E.I. DuPont de Nemours & Co.*, No. 06-cv-1810 RMB/AMD, 2011 WL 3837106, at *5 (D.N.J. Aug. 26, 2011).[8]

7. Settlement Class Members Are Treated Equitably

The final factor, Rule 23(e)(2)(D), examines whether Class Members are treated equitably. As reflected in the Distribution Plan (Joint Decl., Ex. 7) and explained above, the Settlements treat all Class Members equitably relative to each other, with recovery from the Net Settlement Fund based on their Net Artificiality Paid and/or Net Losses on CBOT Wheat Futures or Options transactions. Each Authorized Claimant shall receive their *pro rata* share of the Net Settlement Fund based on their transactions during the Class Period. Thus, as the Distribution Plan avoids any improper preferences, all Class Members are treated equitably.

C. The Parties Endorse These Settlements As Fair And Reasonable Resolutions Of The Action

Courts in the Tenth Circuit also consider whether it is "the judgment of the parties that the settlement is fair and reasonable" when evaluating whether to approve a settlement. *Chavez Rodriguez*, 2020 WL 3288059, at *2. In conducting this analysis, courts recognize that "'[c]ounsels' judgment as to the fairness of the agreement is entitled to considerable weight.'" *Hapka v. CareCentrix, Inc.*, No. 2:16-cv-02372-KGG, 2018 WL 1871449, at *5 (D. Kan. Feb. 15, 2018); *see also Crocs*, 306 F.R.D. at 690 (finding that, even without formal discovery, the parties were able to give adequate consideration to the strengths and weaknesses of their claims).

Plaintiffs' Counsel—skilled attorneys at law firms with considerable experience in complex CEA and antitrust class actions—agreed to settle this litigation only after extensive investigation, motion practice (including the submission of a motion to certify a litigation class),

[8] The individually named Plaintiffs agreed to release their individual claims against Cascade in exchange for the settlement cooperation if the Court did not certify a class.

data analyses, and years of rigorous arm's-length negotiations. *See* Joint Decl. ¶ 38, 40. Additionally, as noted above, Plaintiffs and Plaintiffs' Counsel have compared the substantial recovery the Settlement Class will receive from the Settlements against the risks, delays, and uncertainties of continued litigation and appeals. Plaintiffs and Plaintiffs' Counsel believe the Settlements are fair, adequate, and reasonable, and thus, should be approved. Cascade, Lansing and their respective counsel likewise believe their respective Settlements should be approved, having willingly and voluntarily entered into the agreements and consented to this motion for preliminary approval. Because the above factors weigh in favor of the Settlements, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlements.

II. The Court Should Conditionally Certify the Proposed Settlement Class[9]

At the preliminary approval stage, the Court must also determine if the proposed Settlement Class should be certified for settlement purposes. Under Rule 23, class actions can be certified for settlement purposes only. *See, e.g.*, *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). For a settlement class to be certified, it must satisfy each requirement delineated in Rule 23(a), as well as at least one of the separate divisions of Rule 23(b). *Id.* at 613-614. As described below, the Settlement Class meets the class certification requirements of Rule 23(a) and Rule 23(b)(3) for preliminary and final approval. The Court should therefore conditionally certify the proposed Settlement Class for both Settlements.

[9] Lansing consents to the certification of the Settlement Class solely for the purpose of effectuating this Settlement and reserves its right to challenge the propriety of class certification if the Settlement does not receive final approval by this Court.

A. The Proposed Class Meets the Requirements of Rule 23(a)

1. Rule 23(a)(1) - Numerosity

Rule 23(a)(1) requires that the class be so numerous as to make joinder of its members "impracticable." Generally, a class of more than 40 members is believed to be sufficiently numerous for Rule 23 purposes. *See Whitton v. Deffenbaugh Indus., Inc.*, No. 2:12-CV-02247-CM-KGG, 2016 WL 4493570, at *4 (D. Kan. Aug. 26, 2016) (citing WILLIAM B. RUBENSTEIN, 1 NEWBERG ON CLASS ACTIONS, § 3.12 ("In light of prevailing precedent, the difficulty inherent in joining as few as 40 class members should raise a presumption that joinder is impracticable, and the Plaintiff whose class is that large or larger should meet the test of Rule 23(a)(1) on that fact alone."); *Stambaugh v. Kan. Dept. of Corrs.*, 151 F.R.D. 664, 673 n.3 (D. Kan. 1993) ("[T]he difficulty in joining as few as 40 class members should raise a presumption that joinder is impracticable."). The proposed Settlement Class consists of all persons and entities that transacted in CBOT Wheat Futures or Options during the period February 1, 2015 through May 15, 2015. *See* Lansing Stipulation §§ 1(ii), 1(kk). Based on Plaintiffs' investigation, which includes a review of data concerning CBOT Wheat Futures or Options trades, there are several hundred people and entities that participated in such transactions during the Class Period. Joint Decl. ¶ 43. Joinder would be impracticable and Rule 23 (a)(1) is satisfied.

2. Rule 23(a)(2) - Commonality

Fed. R. Civ. P. 23(a)(2) requires that there be "questions of law or fact common to the class." Plaintiffs must show that resolution of an issue of fact or law "is central to the validity of each" class member's claim and "[e]ven a single [common] question will" satisfy the commonality requirement. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 359 (2011).

A central allegation in the Complaint is that Defendants manipulated the prices of CBOT Wheat Futures or Options by falsely signaling demand for SRW wheat, which caused artificial prices of CBOT Wheat Futures or Options. Proof of this alleged market manipulation will be common to all Class Members. Additional questions of law and fact common to the proposed Settlement Class include, among others:

- whether the Defendants' conduct violated the CEA;
- the appropriate measure of the damages suffered by the Class.

The proof required to establish Defendants' alleged unlawful conduct is common to all members of the Class and, therefore, Rule 23(a)(2) is satisfied.

3. Rule 23(a)(3) - Typicality

Fed. R. Civ. P. 23(a)(3) requires that the class representatives' claims be "typical" of class members' claims. Typicality exists when "plaintiffs' claims arise from the same course of conduct that gives rise to the claims of the proposed class members." *Emig v. Am. Tobacco Co.*, 184 F.R.D. 379, 387 (D. Kan. 1998). As the Tenth Circuit has explained, "[t]he interests and claims of Named Plaintiffs and class members need not be identical to satisfy typicality." *DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1198 (10th Cir. 2010). If the claims of "Named Plaintiffs and class members are based on the same legal or remedial theory, differing fact situations of the class members do not defeat typicality." *Id.* at 1198–99.

Courts generally find typicality in cases alleging a theory of manipulative conduct that affects all class members in the same fashion. *See, e.g., Ploss v. Kraft Foods Grp., Inc.*, 431 F. Supp. 3d 1003, 1011 (N.D. Ill. 2020) (finding typicality where named representative and class members bought and lost money on wheat futures due to defendants' alleged scheme to create artificial prices). Here, the injuries of the proposed class representatives are typical of the injuries

of the members of the Class because they arise from the same unitary course of Defendants' alleged manipulative conduct in connection with CBOT Wheat Futures or Options. Thus, Rule 23(a)(3) is satisfied.

4. Rule 23(a)(4) – Adequacy of Representation

Under Rule 23(a)(4), for a case to proceed as a class action, the court must find that "the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23. A named plaintiff is an adequate class representative when she is a member of the class, her interests do not conflict with those of other class members, and she can prosecute the action vigorously through competent counsel. *Olenhouse v. Commodity Credit Corp.*, 136 F.R.D. 672, 680 (D. Kan. 1991) (finding that counsel and named plaintiffs were adequate representatives where counsel was knowledgeable in matters relating to the case and plaintiffs' interests aligned with class members'). As discussed above in Section I.B.1, Plaintiffs and Plaintiffs' Counsel have satisfied the Rule 23(a)(4) requirements.[10]

B. The Class May Be Properly Certified Under Rule 23(b)(3)

To satisfy Rule 23(b)(3), Plaintiffs must conditionally establish: (1) "that the questions of law or fact common to class members predominate over any questions affecting only individual members;" and (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b)(3). As detailed below, the Class satisfies these requirements.

[10] This is the case even though the Settlement Class Period is longer that the class period originally alleged in the Complaint. The expansion of the Settlement Class Period to May 15, 2015 (from March 31, 2015) is consistent with the findings of Plaintiffs' expert that the impact of Lansing's alleged manipulation extended beyond March 31, 2015. Plaintiffs and Plaintiffs' Counsel remain adequate representatives as the underlying alleged conduct by Lansing and Cascade remains unchanged, and as a result the expanded Settlement Class' interests are fully aligned with the interests of Plaintiffs.

The predominance inquiry "tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014). Predominance is satisfied "if there is a common nucleus of operative facts relevant to the dispute and those common questions represent a significant aspect of the case which can be resolved for all members of the class in a single adjudication." *Chavez Rodriquez v. Hermes Landscaping, Inc.*, No. 17-cv-2142, 2018 WL 4257712, at *5 (D. Kan. Sept. 5, 2018); *see also Hershey v. ExxonMobil Oil Corp.*, No. 07-1300-JTM, 2011 WL 1234883, at *6 (D. Kan. Mar. 31, 2011) (finding class issues predominant even where numerous individual leases underlie the claims of the perspective class). Here, the numerous questions common to the Class, including those listed above to demonstrate commonality under Rule 23(a)(2), predominate over any individual issues. The same conduct, the alleged manipulation of CBOT Wheat Futures or Options prices, underlies all Class Members' claims. The same proof required to establish Defendants' liability under the CEA and Sherman Act and to demonstrate Plaintiffs' injury would be used by all other Class Members to establish their injury and damages. *See Amchem,* 521 U.S. at 625, (stating that predominance is a test "readily met" in cases alleging violations of the antitrust laws); *In re Aluminum Phosphide Antitrust Lit.*, 160 F.R.D. 609, 615 (D. Kan. 1995) (citing case law to evidence that impact may be presumed in price-fixing cases); *In re Nat. Gas Commodities Litig.*, 231 F.R.D. 171, 180 (S.D.N.Y. 2005) (finding common questions predominated where all class members would engage in the same analysis of data to establish a CEA manipulation claim). The timing, nature and impact of Defendants' alleged manipulation serve as that common nucleus of facts that links together each Class Member's claim. As a result, the predominance requirement is satisfied.

Plaintiffs must also show that a class action is superior to individual actions, which involves four considerations:

> (A) the interest of the members of the class in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
>
> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> (D) the difficulties likely to be encountered in the management of the class action.

FED. R. CIV. P. 23(b)(3). Here, any Class Member's interest in individually controlling the prosecution of a separate claim is likely low given that the cost of litigating a claim individually would likely exceed the potential individual recovery. Further, because hundreds of individuals and entities traded CBOT Wheat Futures or Options during the Class Period, a class settlement conserves both judicial and private resources and hastens Class Members' recovery. In addition, while Plaintiffs see no management difficulties in this case, this consideration is not pertinent to approving a settlement class. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). In sum, resolving all Class Members' claims jointly, particularly through a class-wide settlement negotiated on their behalf by counsel well-versed in class action litigation, is superior to a series of individual lawsuits and promotes judicial economy. *See In re Universal Serv. Fund Tele. Billing Practices Litig.*, 219 F.R.D. 661, 679 (D. Kan. 2004) (finding that individual lawsuits would be grossly inefficient, costly and time consuming and noting that a class action is the most superior method to resolve the claims at issue where class members are dispersed across the country with similar claims).

Because the requirements of Rule 23(a) and Rule 23(b)(3) are satisfied, conditional certification of the proposed Settlement Class is appropriate.

III. Appointment of Settlement Class Representatives and Settlement Class Counsel

"An order certifying a class action . . . must also appoint class counsel under Rule 23(g)." FED. R. CIV. P. 23(c)(1)(B). In appointing class counsel, courts should 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. FED. R. CIV. P. 23(g)(1)(A).

As discussed above, both Plaintiffs and Plaintiffs' Counsel have adequately represented the interests of all Class Members through vigorous prosecution of this case. *See* Section I.B.1, *supra*. Plaintiffs' Counsel have devoted substantial efforts and resources in developing the claims in this case. As top-tier class action law firms, Lowey and Cafferty not only have extensive experience with complex class actions, but also have ample resources to support such lawsuits. In particular, Plaintiffs' Counsel have frequently prosecuted violations of the CEA and Sherman Act related to manipulative schemes and are very familiar with the applicable law. *See* Joint Decl. ¶ 38. Thus, the court should appoint Plaintiffs' Counsel, Lowey Dannenberg, P.C. and Cafferty Clobes Meriwether & Sprengel, LLP, as Class Counsel, and Plaintiffs, who have ably represented the interests of all class members, as Class Representatives.

IV. The Court Should Approve The Proposed Class Notice Plan And A.B. Data, Ltd. As Settlement Administrator

If the Court preliminarily approves the Settlement, it must separately consider whether the proposed notice is appropriate. Class Members are entitled to "the best notice practicable under the circumstances including individual notice to all members who can be identified through

reasonable effort." *DeJulius v. New England Health Care Emps. Pension Fund*, 429 F.3d 935, 944 (10th Cir. 2005). But neither Rule 23 nor due process require "actual notice to each party intended to be bound by the adjudication of a representative action." *Id.*; *accord In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1110–11 (10th Cir. 2001) (holding Rule 23 and Due Process requisites were satisfied where the record reflected that only seventy-seven percent of class members actually received notice of the settlement).

The proposed Class Notice plan and related forms of notice (*see* Joint Decl. Exs. 3-6) are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). The direct notice component of the notice program will involve sending potential Class Members the Mailed Notice (Joint Decl. Ex. 4) and the Proof of Claim and Release form (*id*., Ex. 6) via first class mail or the Publication Notice (*id*., Ex. 5) via email with a direct link to the Settlement Website. *See* Declaration of Linda V. Young dated April 29, 2022, attached as Joint Decl., Ex. 3. The Supreme Court has consistently found that direct notice satisfies the requirements of due process. *See, e.g.*, *Mullane*, 339 U.S. at 319.

The Settlement Administrator also will publish the Publication Notice in various periodicals, industry publications, websites, and other digital media. *See* Joint Decl., Ex. 3. Any Settlement Class Members that do not receive the Class Notice via direct mail or email likely will receive the Class Notice through the foregoing publications or word of mouth.

The Settlements Website, www.2015CBOTwheatfuturesclassactionsettlement.com, will serve as an information source regarding the Settlements. Settlement Class Members can review and obtain: (i) a blank Proof of Claim and Release form to claim from the Net Settlement Fund; (ii) the mailed and publication notices; (iii) the proposed Distribution Plan; (iv) the Cascade and

Lansing Stipulations; and (v) key pleadings and Court orders. The Settlement Administrator will also operate a toll-free telephone number to answer Class Members' questions and facilitate claims filing.

Plaintiffs' Counsel recommends that A.B. Data, Ltd. ("A.B. Data") be appointed as Settlement Administrator. A.B Data developed the Class Notice plan and has experience in administering notice plans and class action settlements involving securities in over-the-counter and exchange markets, including in cases involving futures and options.[11]

V. The Court Should Appoint Citibank, N.A. As Escrow Agent

Plaintiffs' Counsel have designated Citibank, N.A. ("Citibank") to serve as Escrow Agent, to which Lansing has consented. Citibank has served as escrow agent in a number of settlements, including *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y) and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD) (S.D.N.Y.); *Boutchard v. Tower Research Capital LLC*, No. 18-cv-7041 (JJT) (N.D. Ill.); *In re JPMorgan Precious Metals Spoofing Litig.*, 18-cv-10356 (GHW) (S.D.N.Y.); and *In re JPMorgan Treasury Futures Spoofing Litig.*, No. 20-cv-3515 (PAE) (S.D.N.Y.). Citibank has agreed to provide its services at market rates. Based on Citibank's experience and familiarity with performing the services of an escrow agent, Plaintiffs'

[11] *See, e.g., In re Libor-Based Fin. Instruments Antitrust Litig.*, No. 11-md-2262 (NRB) (covering a class period of August 1, 2007 through May 31, 2010 and concerning the alleged manipulation of exchange-based financial products price-based upon U.S. Dollar LIBOR); *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (S.D.N.Y.) (covering a class period of January 1, 2008 through May 15, 2008 and including West Texas Intermediate crude oil futures contracts and option contracts traded on the New York Mercantile Exchange and Intercontinental Exchange); *Ploss v. Kraft Foods Group, Inc. et al.*, 15-cv-2937 (EEC) (N.D. Ill.) (administering settlement for those who purchased a Chicago Board of Trade ("CBT") December 2011 soft red wheat futures contract or a CBT March 2012 soft red wheat futures contract after October 31, 2011, or sold a put option or purchased a call option on one or both of these contracts after October 31, 2011); *Boutchard v. Tower Research Capital LLC*, No. 18-cv-7041 (JJT) (N.D. Ill.) (covering a class period of March 1, 2012 through October 31, 2014 and involving settlement of claims relating to the alleged manipulation of E-Mini Index Futures and Options on E-Mini Index Futures); *In re JPMorgan Precious Metals Spoofing Litig.*, 18-cv-10356 (GHW) (S.D.N.Y.) (administering settlement covering a class period of March 1, 2008 through August 31, 2016 and including precious metals futures or options on precious metals futures on the New York Mercantile Exchange or Commodity Exchange Inc.); *In re JPMorgan Treasury Futures Spoofing Litig.*, No. 20-cv-3515 (PAE) (S.D.N.Y.) (covering a class period of April 1, 2008 through January 31, 2016 and including U.S. Treasury Futures or Options on U.S. Treasury Futures on United States-based exchanges).

Counsel are confident Citibank will properly perform the duties of Escrow Agent as ordered by the Court.

VI. Proposed Schedule of Settlement Events

In connection with preliminary approval of the Settlements, the Court must set a Settlement Hearing date, set dates for initial mailing of the mailed notice and distribution of the publication notice, and set deadlines for requesting exclusion from the Class, objecting to the Settlements, and filing claims. In addition to considering final approval of the Settlements and the Distribution Plan, Plaintiffs' Counsel will also file a motion for fees and expenses, and Plaintiffs may file an application for Incentive Awards. Plaintiffs propose the following schedule:

Begin distribution of mailed notice to Class	No later than 35 days after entry of the Preliminary Approval Order ("Notice Date")
Commencement of the distribution of the publication notice; launch of Settlement Website	No later than the Notice Date
Complete initial distribution of mailed and publication notices	30 days after the Notice Date
Deadline to file motions for final approval of the Settlements, an award of attorneys' fees and expenses, and incentive awards	75 days prior to the Settlement Hearing
Deadline to object to the Settlements, Distribution Plan for settlement proceeds, request for an award of attorneys' fees and expenses, or application for incentive awards	60 days prior to the Settlement Hearing
Deadline to request exclusion from the Settlement Class	60 days prior to the Settlement Hearing
Deadline to file reply papers in support of final approval of the Settlements, request for an award of attorneys' fees and expenses, and request for incentive awards	7 days prior to the Settlement Hearing
Settlement Hearing	At the Court's convenience, but no earlier than 150 days after entry of the Preliminary Approval Order
Last day for submitting Proof of Claim and Release forms	30 days after Settlement Hearing

CONCLUSION

For the foregoing reasons, the proposed Settlements warrant the Court's preliminary approval. Plaintiffs respectfully request that the Court enter the accompanying proposed orders that among other things: (a) preliminarily approves the Settlements, subject to later, final approval; (b) conditionally certifies a Settlement Class on the claims against Lansing and Cascade; (c) approves the Distribution Plan with respect to the Net Settlement Fund; (d) appoints Plaintiffs as representatives of the Settlement Class; (e) appoints Lowey and Cafferty as Class Counsel for the Settlement Class; (f) appoints Citibank as Escrow Agent for purposes of the Lansing Settlement; (g) appoints A.B. Data as the Settlement Administrator for the Settlements; (h) approves the proposed forms of Notice to the Settlement Class of the Settlements and the proposed Notice plan; (i) sets a schedule leading to the Court's consideration of final approval of the Settlements; and (j) stays all proceedings as to Lansing except with respect to approval of the Settlements.

Dated: April 29, 2022

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