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 UNCONTESTED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS WITH LANSING TRADE GROUP, LLC AND CASCADE COMMODITY CONSULTING, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Pursuant to the Preliminary Approval Orders (ECF Nos. 358-59) and Rule 23(e) of the Federal Rules, Plaintiffs Budicak, Inc., Blue Martin Arbitrage, LLC, and Prime Trading, LLC (collectively, "Plaintiffs"), respectfully submit this memorandum in support of their motion for final approval of the class action settlements (the "Settlements") with Defendants Lansing Trade Group, LLC ("Lansing") and Cascade Commodity Consulting, LLC ("Cascade" and with Lansing, "Defendants"), final certification of the Settlement Class, and approval of the Distribution Plan.[1]

INTRODUCTION

After over four years of hard-fought litigation, Plaintiffs have resolved all claims against Defendants and secured $18,000,000 in a non-reversionary all-cash payment for the benefit of the Settlement Class. Plaintiffs litigated numerous motions, including a motion to transfer, motions to dismiss and a heavily contested motion for class certification. Class Counsel's[2] effective analysis and use of the information it developed throughout the litigation, from its experts, independent investigation, and negotiations with Defendants, directly led to these excellent Settlements. This Court preliminarily found that the Settlements were obtained by adequate representatives, are the product of arm's length negotiations, and are substantively fair, reasonable, and adequate. Now, Plaintiffs ask this Court to confirm its previous assessment and finally approve the Settlements.

Class Counsel, together with the Settlement Administrator, A.B. Data, Ltd. ("A.B. Data"), implemented a robust Notice Plan. Since the notice period began, the Mailed Notice and the Proof of Claim and Release (together, the "Notice Packet") have been mailed directly to more than 5,000

---

[1] All capitalized terms not defined herein have the same meaning as in the Stipulation and Agreement of Settlement with Cascade dated July 1, 2020, as amended April 29, 2022 (the "Cascade Settlement Agreement"), ECF No. 351-2; and the Stipulation and Agreement of Settlement with Lansing dated April 29, 2022 (the "Lansing Settlement Agreement"), ECF No. 351-1. Unless otherwise noted, internal citations and quotation marks are omitted.

[2] Lowey Dannenberg, P.C. ("Lowey") and Cafferty Clobes Meriwether & Sprengel, LLP ("Cafferty," and together with Lowey, "Class Counsel").

potential Class Members, and there have been over 9,000 visits to the Settlement Website. To date, there have been no objections and only one request for exclusion.[3] The Class's favorable reaction to the Settlements thus far confirms that this Court should finally approve them.

In Class Counsel's judgment, each Settlement represents a fair and adequate resolution of the claims against each Settling Defendant in light of the substantial risks of continued prosecution. The Settlements are procedurally fair, as Plaintiffs and Class Counsel are adequate representatives of the Settlement Class, and the Settlements themselves resulted from hard-fought, arm's length negotiations. The terms of the Settlements are substantively fair, providing significant relief to eligible Class Members in exchange for the complete resolution of the claims against each Settling Defendant. Additionally, the Distribution Plan fairly and efficiently allocates the Net Settlement Fund. Further, as the Court preliminarily determined, the proposed Settlement Class may be certified under Rule 23(a) and (b)(3). Therefore, Plaintiffs respectfully request that the Court finally approve the Settlements, the Distribution Plan, certify the Settlement Class, and enter Final Judgments dismissing the claims against Cascade and Lansing with prejudice on the merits.

ARGUMENT[4]

I. The Settlements Are Fair, Reasonable, and Adequate

"A district court may approve a proposed settlement only after finding that it is fair, reasonable, and adequate." *Fager v. CenturyLink Commc'ns, LLC*, 854 F.3d 1167, 1174 (10th Cir. 2016); FED. R. CIV. P. 23(e)(2). Class action settlements are strongly favored. *See Sears v. Atchison, Topeka & Santa Fe Ry., Co*., 749 F.2d 1451, 1455 (10th Cir. 1984); *Trujillo v. State of Colo*., 649 F.2d 823, 826 (10th Cir. 1981) ("important public policy concerns [ ] support voluntary

[3] The deadline for objections and requests for exclusion is April 10, 2023.

[4] The Action's background is described in the Joint Declaration of Raymond P. Girnys and Jennifer W. Sprengel dated March 24, 2023 ("Joint Decl.") ¶¶ 9-23; *see also* ECF No. 350 ("Prelim. App. Br.") at 3-5.

settlements"); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 455 (S.D.N.Y. 2004) ("federal courts favor settlement, especially in complex and large-scale disputes.").

To evaluate the fairness of a proposed 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); *In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prod. Liab. Litig.*, 997 F.3d 1077, 1087 (10th Cir. 2021). Tenth Circuit courts also consider the four *Rutter* factors in evaluating whether a proposed settlement is fair, reasonable, and adequate. *See Wilson v. Circle K Stores, Inc.* (*In re: Motor Fuel Temperature Sales Pracs. Litig.*), 872 F.3d 1094, 1116-17 (10th Cir. 2017). These are:

> (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 *Rutter* factors "largely overlap" with the Rule 23(e)(2) factors, however, "with only the fourth factor not being subsumed", 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 *Rutter* factors. *Chavez Rodriguez v. Hermes Landscaping, Inc.*, No. 17-2142-JWB-KGG, 2020 WL 3288059, at *2 (D. Kan. June 18, 2020). The Court preliminarily determined that both Settlements meet these standards. ECF Nos. 358-59, ¶ 9. As discussed below, the Court's initial disposition was correct, as the Settlements satisfy each Rule 23(e)(2) and *Rutter* factor.

A. The Settlement Satisfies the Rule 23(e) Factors

1. Plaintiffs and Class Counsel Have Adequately Represented the Class

The adequacy of representation requirement is met when the plaintiffs' "interests do not conflict with those of the class members" and the plaintiffs and their counsel "prosecute the action vigorously." *ln re Motor Fuel Temperature Sales Practices Litig*., 271 F.R.D. 221, 231 (D. Kan. 2010); *see also Chavez Rodriguez*, 2020 WL 3288059, at *2 ("Courts have analyzed the adequacy of representation by evaluating adequacy under Rule 23(a)(4)."). Here, there is an alignment of interests because Plaintiffs suffered the same alleged injury derived from the same operative facts as other Class Members. Moreover, there are no conflicting interests among Plaintiffs and the Settlement Class that bar Plaintiffs' representation of the Class. Both have a strong interest in obtaining the maximum recovery for the harm caused by Defendants' alleged manipulation.

Class Counsel's vigorous prosecution of the Action also supports a finding that the Plaintiffs and Class Counsel are adequate representatives. Prior to reaching the Settlements, Class Counsel had, *inter alia*: (i) conducted an extensive investigation, including a review of the CFTC's regulatory filings (Joint Decl. ¶ 11); (ii) engaged economic experts to navigate the complex CBOT Wheat Futures and Options market and analyzed client transaction records (*id.* at ¶ 22); (iii) researched and drafted a detailed, lengthy complaint and subsequently filed an amended complaint that enhanced the factual allegations supporting Plaintiffs' claims (*id.* at ¶¶ 12, 15); (iv) opposed and prevailed on Defendants' motion to dismiss' arguing lack of jurisdiction, improper venue and failure to state a claim (*id.* at ¶¶ 18-20, 30); (v) conducted extensive merits and expert discovery (*id.* at ¶ 21, 24); (vi) negotiated the Settlements with each Settling Defendant (*id.* at ¶¶ 32, 34-38); and (vii) developed the proposed Distribution Plan. (*Id* at. ¶¶ 43, 46-47). The efforts of Class Counsel were critical in achieving the substantial $18 million recovery for the Class.

Courts also assess the adequacy of representation by evaluating the competence and skill of plaintiffs' counsel. *See Chavez Rodriguez*, 2020 WL 3288059, at *2 (noting Rule 23(a)(4) analysis includes examination of the adequacy of representation); *Marcus v. Kansas, Dep't of Revenue*, 206 F.R.D. 509, 512 (D. Kan. 2002) (stating that Rule 23(a)(4) requires class counsel that are "qualified, experienced, and generally able to conduct the proposed litigation."). Class Counsel have led the prosecution of this Action from its inception, conducted extensive discovery and negotiated the proposed Settlements. Moreover, Class Counsel are among the most knowledgeable firms in this field, with extensive experience litigating commodity manipulation claims and complex class actions on behalf of some of the nation's largest pension funds and institutional investors. Joint Decl. ¶ 29. *See also* ECF Nos. 351-8, 351-9 (Class Counsel's Firm Resumes). Their ability to advance this challenging Action while navigating a transfer of the Action to a new district, multiple motions to dismiss, extensive discovery and the development of a robust and credible class certification motion, and to achieve these Settlements provides ample evidence of their adequacy to serve as Class Counsel.

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

Rule 23(e)(2)(B) overlaps with the first *Rutter* factor and assesses "whether the proposed settlement was fairly and honestly negotiated." *Rutter*, 314 F.3d at 1188. The Settlements were negotiated by qualified, experienced counsel who concluded that the proposed agreements represent fair and adequate recoveries for the Settlement Class. *See Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("the value of the assessment of able counsel negotiating at arm's length cannot be gainsaid."). "The fairness of the negotiating process is to be examined 'in light of the experience of counsel, the vigor with which the case was prosecuted, and [any] coercion or collusion that may have marred the negotiations themselves.'" *Ashley v. Reg'l Transp. Dist.*, No. 05-cv-1567-WYD-BNB, 2008 WL 38457, at *5 (D. Colo. Feb. 11, 2008).

As described above, Class Counsel engaged in an extensive prosecution. *See* Section I.A.1 *supra*; Joint Decl. ¶¶ 9-12, 30-31. That same thoroughness also continued into Class Counsel's settlement negotiations. Using their vast experience litigating commodity manipulation cases, Class Counsel used various resources to engage the right experts, analyze the market and determine the appropriate methodologies for estimating damages in the Action. Armed with this information and the results of their investigation, Class Counsel was well informed and prepared to negotiate the Settlements. During the Cascade Settlement, this preparation facilitated the resolution of key settlement terms, including the scope of substantial settlement cooperation. Joint Decl. ¶ 33.

The negotiations with Lansing were similarly intensive and hard-fought and were mediated by The Honorable Morton Denlow (Ret.) of JAMS. *See Horton v. Molina Healthcare, Inc*., No. 17-cv-0266-CVE-JFJ, 2019 WL 2207676, at *1 (N.D. Okla. May 22, 2019) (approving class action settlement that was "negotiated in good faith at arms' length between experienced attorneys familiar with the legal and factual issues of this case aided by an experienced and neutral third-party mediator").

Each Settlement is the product of arm's-length negotiations by informed counsel for both sides, and the resulting agreements are devoid of any collusion or coercion. Accordingly, the Court should find that both Settlements satisfy Rule 23(e)(2)(B) and the first *Rutter* factor.

3. The Settlements are Adequate in Light of the Costs, Risks, and Delay

Courts recognize 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." *See 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 is at the core of the Rule 23(e)(2)(C) analysis and overlaps with *Rutter* factors two ("whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt") and three ("whether the value

of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation"). *Chavez Rodriguez*, 2020 WL 3288059, at *2-3.

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

While Plaintiffs are confident that they would have prevailed, there were serious questions of law and fact that made litigating risky. Such risks "tip[] the balance in favor of settlement." *McNeely*, 2008 WL 4816510, at *13. This Action alleged a sophisticated scheme to manipulate CBOT Wheat Futures and Options, which included cancelling shipping certificates and sending false signals to the market to cause artificial prices. Pursuing this Action required developing a deep understanding of the Wheat Futures market and how the market could be (and was) manipulated. Class Counsel used all resources at their disposal, including consulting experts, industry insiders, and relevant public reports and disclosures, to become well informed about the nature and scope of Defendants' alleged misconduct and the viable claims arising from those actions. Joint Decl. ¶¶ 11, 22-23, 30-31. From the outset, Plaintiffs and Class Counsel bore the risk of gathering facts sufficient to plausibly establish Plaintiffs' claims and overcome any motions to dismiss. Confirming this risk, each Defendant brought a motion to dismiss before discovery.

After the Court denied Defendants' motions and sustained Plaintiffs' claims, the risks of continued prosecution significantly increased. Discovery was contentious, requiring over twenty meet and confers and ultimately resulting in the production of more than 100,000 pages of documents and data. Joint Decl. ¶ 21. Class Counsel closely scrutinized the discovery to find information that would support certification of a litigation class, merits and damages arguments.

The work to obtain class certification necessarily involved expert discovery, adding more risk. *See Cisneros v. EP Wrap-It Insulation, LLC*, No. CV 19-500 GBW/GJF, 2022 WL 2304146, at *5 (D.N.M. June 27, 2022) ("bringing [a] case to trial" would require experts "that could further delay class members' recovery."); *Williams v. Sprint/United Mgmt. Co.*, No. CIV. 03-2200-JWL,

2007 WL 2694029, at *3 (D. Kan. Sept. 11, 2007) (finding that each phase of litigation comes with appeal risk and substantial expert costs, "which makes the benefit of relief now, rather than ten years from now, makes approval of [] settlement in the best interests"). A battle of experts involves inherent uncertainty and could have many different outcomes. *See In re Thornburg Mortg., Inc. Sec. Litig.,* 912 F. Supp. 2d 1178, 1242 (D.N.M. 2012) (noting that damages in the case would have been reduced to a "battle of the experts" and further noting that the case could have resulted in "many different outcomes [such that] a class victory was uncertain."). Expert discovery typically leads to *Daubert* motions, increasing the litigation's costs and risks, and delaying any resolution, and this case was no exception. After Plaintiffs filed their class certification motion, Lansing challenged the fact and application of certain of Plaintiffs' expert's methodologies. Lansing presented two expert reports that challenged the propriety of the class Plaintiffs sought to certify and sought to exclude the report and testimony of Plaintiffs' expert. *See* Joint Decl. ¶¶ 23-28.

Had Plaintiffs succeeded in obtaining class certification, Plaintiffs' risks would have escalated. There, Class Counsel would have had to convince the factfinder that there was sufficient evidence of the alleged manipulation and conspiracy and its impact on the market. Futures markets are inherently complex, and the risk that the factfinder could determine that factors other than the alleged manipulation caused Plaintiffs' and the Class's harm would have been a persistent threat. Further, even if Plaintiffs prevailed on the merits, there is a substantial risk that a jury might accept one or more of Defendants' damages arguments and award far less than the amounts secured by the Settlements, or even nothing at all. *See Nieberding v. Barrette Outdoor Living, Inc.*, No. 12-CV-2353-DDC-TJJ, 2015 WL 1645798, at *6 (D. Kan. Apr. 14, 2015) (finding substantial risk where plaintiff proceeds with litigation through trial on merits, including the potential for a damages award to be "less than the amount guaranteed by the settlement."); *accord In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1133, 1138 (D. Colo. 2009).

Although Plaintiffs and Class Counsel believe that the asserted claims are meritorious and would zealously prosecute those claims at trial, there are substantial risks attendant to continuing to prosecute the claims, and the existence of those risks fully supports approving these Settlements.

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

The complexity, uncertainty, expense, and likely duration of further litigation and appeals also supports approval of the proposed Settlements. This Action is over four years old, and Plaintiffs and Class Counsel have already expended significant time and resources. Those costs would only increase as the case proceeded to trial, with the inevitable appeals likely extending the action for years. *See Chavez Rodriguez*, 2020 WL 3288059, at *3 (observing that "the costs and time of moving forward in litigation would be substantial"); *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 694 (D. Colo. 2006) ("If this case were to be litigated, in all probability it would be many years before it was resolved.").

There is a substantial risk that, after years of additional litigation, Plaintiffs could recover significantly less than $18,000,000. The Settlements' immediate benefits, weighed against the risk of no recovery and the costs, delay and uncertainties of additional proceedings, provide ample support for their final approval. *See In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691 (D. Colo. 2014) ("[I]mmediate recovery [ ] outweighs the time and costs inherent in complex [ ] litigation, especially when the prospect is some recovery versus no recovery."); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. Aug. 10, 1976) ("In this respect, '[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush.'").

4. The Plan to Distribute Relief is Effective

As described in Section III below, the proposed Distribution Plan was prepared based on consultation with Plaintiffs' experts and the Settlement Administrator and is designed to

effectively and fairly allocate the Net Settlement Fund to Class Members.

5. Attorneys' Fees and Expenses

Rule 23(e)(2)(C)(iii) requires the Court to consider "the terms of any proposed award of attorney's fees, including timing of payment" as part of the settlement approval process. FED. R. CIV. P. 23(e)(2)(C)(iii). Class Counsel seek an award of attorneys' fees of one-third of the Settlement Amount, along with payment of Class Counsel's expenses incurred, and interest earned on these amounts at the same rate as earned by the Settlement Fund. The Class Notice informed the Settlement Class that Class Counsel would apply for an award of attorneys' fees of up to $6,000,000, and payment of litigation expenses not to exceed $750,000, plus interest on such attorneys' fees and litigation expenses. The Class Notice also advised that Plaintiffs may seek a Service Award totaling, in the aggregate up to $60,000. As described more fully in connection with Class Counsel's Fee and Expense Application, the requested attorneys' fee is well within the range of fees awarded in this Circuit and ensures that a substantial portion of the settlement is received by the Settlement Class. The expenses for which Class Counsel seek reimbursement were reasonably incurred and necessary for the prosecution of the case, and therefore may be reimbursed. Finally, the proposed Service Award is within the range of awards granted by courts in this Circuit considering Plaintiffs' time and efforts to advance the litigation. Accordingly, this factor weighs in favor of approving the Settlements.

6. The Parties Have No Other Agreement

Rule 23(e)(2)(C)(iv) requires the disclosure of any other agreements so that the Court may determine the impact (if any) on the relief provided by the Settlements. As described in the Preliminary Approval Brief, the Lansing Settlement provides Lansing a qualified right to terminate the Settlement under certain circumstances prior to final approval. *See* Joint Decl. ECF No. 351 at ¶ 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.[5] The Cascade Settlement does not contain a similar qualified termination right or otherwise "trad[e] away possible advantages for the class 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).[6]

7. Class Members Are Treated Equitably

Rule 23(e)(2)(D) looks at whether certified Class Members are treated equitably. As discussed below in Section III and reflected in the Distribution Plan (ECF No. 351-7), 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. ECF No. 351-7, at 4-8. Class Members' recovery will be based solely on their CBOT Wheat Futures or Options transactions. Each Class Member will be similarly bound by the releases in the Settlements unless the Class Member opts out. As a result, each Class Member is treated equitably.

8. The Settlements are Honest, Fair and Reasonable in the Judgment of the Parties and Their Counsel

"Counsel's judgment as to the fairness of the agreement is entitled to considerable weight" and is a factor to be considered in granting approval to a class settlement. *Marcus v. Kansas, Dep't of Revenue*, 209 F. Supp. 2d 1179, 1183 (D. Kan. 2002). Here, Class Counsel have carefully

[5] *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).

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

evaluated the Settlements, and believe they provide exceptional value to Plaintiffs and the Class, when considered against the risks of continuing this litigation, and meet all the standards for approval under Rule 23(c) and Tenth Circuit law. Class Counsel have significant experience in complex CEA and antitrust class actions and only agreed to settle this litigation after an extensive investigation and data analysis, motion practice, discovery, and rigorous arm's-length negotiations—in other words, only after they had developed enough information to make an informed decision about the value of any proposed Settlement compared to ongoing litigation. Joint Decl. at ¶¶ 28-31. Defendants and their counsel likewise concluded that the Settlements reflect a fair resolution of the Action. Because the above factors weigh in favor of the Settlements, Plaintiffs respectfully request the Court grant final approval.

II. The Proposed Settlements Satisfy Rule 23 and Should Finally Be Certified[7]

For all of the reasons detailed in the Preliminary Approval Brief, and as held in the Court's Preliminary Approval Orders (ECF Nos. 358-59), the Settlement Class satisfies all requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy—as well as the predominance and superiority requirements of Rule 23(b)(3). The preliminarily certified Settlement Class is:

> 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.

[7] Defendants consent to the certification of the Settlement Class solely for the purpose of effectuating this Settlement and reserve their rights to challenge the propriety of class certification if the Settlement does not receive final approval by this Court.

There are at least several hundred geographically dispersed persons and entities that fit the Settlement Class definition. *See* Prelim. App. Br. at 24; Joint Decl. ¶ 41; *see also* Declaration of Jack Ewashko on Behalf of A.B. Data, Ltd. Regarding Notice Administration, executed on March 23, 2023 ("Ewashko Decl.") ¶ 13 (stating notice was mailed to 5,623 potential Class Members).

Commonality is easily satisfied here where there are numerous common questions of law and fact and where each Plaintiff and Class Member will have to answer the same liability and impact questions through the same body of common class-wide proof. *See* Prelim. App. Br. at 25. Plaintiffs' claims are typical of those of the entire Settlement Class because Plaintiffs' and Class Members' claims all arise from the same course of conduct involving Defendants' alleged manipulation of CBOT Wheat Futures or Options. *See* Prelim. App. Br. at 25-26.

Plaintiffs are adequate representatives because they share the same overriding interest (1) in securing the invaluable cooperation from Cascade to litigate the Action against Lansing; and (2) in obtaining the largest financial recovery possible. In addition, Class Counsel are highly experienced attorneys who have litigated these and other types of complex class actions for decades. *See also* Section I.A.1, *supra.*

Lastly, common questions predominate, and a class action is the superior method for resolving this case. Predominance exists because the question of whether Defendants engaged in manipulation of CBOT Wheat Futures and Options is common across the Settlement Class. A class action is superior because Settlement Class Members have no substantial interest in proceeding individually given the complexity and expense of the litigation. *See* Prelim. App. Br. at 26-29.

III. The Distribution Plan provides an effective method for distributing relief

The Court should also approve the proposed Distribution Plan. Like a settlement, a distribution plan must also be approved as fair and reasonable. *See In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1262 (D. Kan. 2006). Where, as here, a distribution plan is formulated by

competent and experienced counsel, the plan need only have a reasonable, rational basis. *Id*. The Distribution Plan has been designed to fairly and reasonably allocate the Net Settlement Fund among Authorized Claimants based on their Net Artificiality Paid and/or Net Loss on CBOT Wheat Futures or Options due to Defendants' alleged manipulation, while also serving as a cost-efficient and equitable way to distribute the Net Settlement Fund. *See* Prelim. App. Br. at 18-20. Payments will be calculated by the Settlement Administrator based on each Authorized Claimant's *pro rata* fraction of the total Net Artificiality Paid and Net Loss. *Id.* The distribution method has been approved for use in similar cases. *See*, *e.g.*, *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (KBF) (S.D.N.Y.), ECF No. 287-6 (Plan of Allocation), ECF No. 339 (Final Order and Judgment); *In re Optiver Commodities Litig.*, No. 08-cv-6842 (LAP) (S.D.N.Y.), ECF No. 60-7 (Plan of Allocation), ECF No. 93 (Final Order and Judgment). Class Counsel submit that this proposed Distribution Plan is fair, reasonable, and adequate, and fully merits final approval.

IV. The Notice Plan Satisfies Rule 23 and Due Process

Rule 23(c)(2)(B) requires that notice of a settlement be "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." FED. R. CIV. P. 23(c)(2)(B). Also, Rule 23(e)(1) instructs courts to "direct notice in a reasonable manner to all class members who would be bound by the proposal." FED. R. CIV. P. 23(e)(1). In terms of due process, a settlement notice need only be "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 & Trust Co*., 339 U.S. 306, 314 (1950). "While due process and Rule 23(e) require notice of a settlement, the content and form of that notice are left to the court's discretion. The Rule 23(e) standard is that it must 'fairly apprise' the class members of the terms of the proposed settlement and of their options." *In re Integra Realty Res., Inc*., 262 F.3d 1089, 1111 (10th Cir. 2001). The

Settlement Class Members have received adequate notice and have been given sufficient opportunity to weigh in on or exclude themselves from the Settlements.

The Class Notice plan has been fully implemented. *See generally* Ewashko Decl. A.B. Data has sent 5,623 copies of the mailed notice to potential Class Members. A.B. Data also caused the publication notice to be published in *The Wall Street Journal, Investor's Business Daily, The Financial Times, and Stocks & Commodities*, and on hundreds of websites. In addition, A.B. Data disseminated a news release via PR Newswire's US1 Newsline distribution list, which was distributed to approximately 10,000 newsrooms. *See* Ewashko Decl., at ¶¶ 13-21. A.B. Data also maintained a Settlement Website, where class members were able to review and obtain key documents such as the Settlement Agreements, the mail and publication notices, the proposed Distribution Plan, and a Proof of Claim form.

Viewed in its totality the notice program described above amply satisfies due process. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Class Members have been advised on the nature of the Action, including the relevant claims, issues, and defenses. *See* Ewashko Decl., at Ex. A (Notice Packet). Class Members have been afforded a full and fair opportunity to consider the proposed Settlements, exclude themselves from the Settlements, and respond and/or appear in Court. Further, the Class Notice fully advised Class Members of the binding effect of the judgment on them. *Id.*, Ex. A.

The Court should find that the Class Notice plan was reasonable and satisfied due process.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court finally approve the Settlements and the Distribution Plan, finally certify the Settlement Class, and enter the proposed Final Approval Orders and Final Judgments dismissing with prejudice the claims against the Defendants.

Dated: March 24, 2023

Respectfully submitted,

/s/ Gary D. McCallister
Gary D. McCallister (KS #8928)
McCALLISTER LAW GROUP, LLC
777 North Michigan Avenue, #3502
Chicago, IL 60611
Tel.: (312) 345-0611
Fax: (312) 345-0612
Email: gdm@mccallisterlawgroup.com

Vincent Briganti
Raymond P. Girnys
LOWEY DANNENBERG, P.C.
44 South Broadway, Suite 1100
White Plains, NY 10601
Tel.: (914) 997-0500
Fax: (914) 997-0035
Email: vbriganti@lowey.com
rgirnys@lowey.com

Jennifer W. Sprengel
Kaitlin Naughton
CAFFERTY CLOBES MERIWETHER & SPRENGEL, LLP
135 S. LaSalle, Suite 3210
Chicago, IL 60603
Tel.: (312) 782-4880
Fax: (312) 782-4485
Email: jsprengel@caffertyclobes.com
knaughton@caffertyclobes.com

Eric I. Unrein
CAVANAUGH BIGGS & LEMON P.A.
3200 SW Huntoon
Topeka, KS 66604
Tel.: (785) 440-4000
Email: eunrein@cavlem.com

Counsel for Plaintiffs and the Settlement Class