IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

RON BROWN and MINKA GARMON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

JBS USA FOOD COMPANY; TYSON FOODS, INC.; CARGILL, INC.; CARGILL MEAT SOLUTIONS CORP.; HORMEL FOODS CORP.; ROCHELLE FOODS, LLC; AMERICAN FOODS GROUP, LLC; TRIUMPH FOODS, LLC; SEABOARD FOODS LLC; NATIONAL BEEF PACKING CO., LLC; SMITHFIELD FOODS, INC.; SMITHFIELD PACKAGED MEATS CORP.; AGRI BEEF CO.; WASHINGTON BEEF, LLC; PERDUE FARMS, INC.; GREATER OMAHA PACKING CO., INC.; NEBRASKA BEEF, LTD.; INDIANA PACKERS CORPORATION; QUALITY PORK PROCESSORS, INC.; AGRI STATS, INC.; and WEBBER, MENG, SAHL AND COMPANY, INC. d/b/a WMS & COMPANY, INC.,

Defendants.

Civil Action No. 1:22-cv-02946-PAB-STV

PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS WITH JBS USA FOOD COMPANY AND TYSON FOODS, INC., CERTIFICATION OF SETTLEMENT CLASSES, AND APPOINTMENT OF SETTLEMENT CLASS COUNSEL

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs Ron Brown and Minka Garmon (collectively "Plaintiffs") hereby move for an Order granting preliminary approval of settlements reached between Plaintiffs and Defendants JBS USA Food Company ("JBS") and Tyson Foods, Inc. ("Tyson") hereinafter (collectively "Settling Defendants"). The terms of the settlement with JBS are memorialized in a written agreement entered into by JBS and Plaintiffs on January 29, 2024 ("JBS Settlement Agreement"), and the terms of the settlement with Tyson are memorialized in a written agreement entered into by Tyson and Plaintiffs on March 7, 2024 ("Tyson Settlement Agreement").

I. INTRODUCTION

The proposed settlements with JBS and Tyson represent a significant increase in the valuation of the case and in the financial compensation and cooperation benefits for the Settlement Classes.[1] Plaintiffs previously entered into settlements with Perdue Farms Inc. (for $1.25 million and cooperation); Seaboard Foods, LLC and Triumph Foods, LLC (for $10 million and cooperation); and Webber, Meng, Sahl and Company, Inc. (for substantial cooperation) that were each preliminarily approved by the Court.[2] Order, ECF No. 306. Plaintiffs have now entered into these two additional settlements with JBS and Tyson that would recover $55 million and $72.25 million, respectively—for total recovery for class members to date of $138.5 million.

[1] The proposed Settlement Classes for the settlements with JBS and Tyson are identical to each other and nearly identical to the settlement classes that have already been certified by the court for three settlements previously reached in this case other than as to the time period. ECF No. 306. The Settlement Classes here have a class period that begins in 2000, while the prior classes began in 2014.

[2] Hereinafter, Plaintiffs will refer to Perdue Farms Inc. as "Perdue"; Seaboard Foods, LLC as "Seaboard"; Triumph Foods, LLC as "Triumph"; and Webber, Meng, Sahl and Company, Inc. as "WMS."

This sizable financial recovery alone would render the Settlement Agreements adequate, but the Settlement Agreements also contain meaningful cooperation terms that will help Plaintiffs to prosecute their antitrust claims against the remaining Defendants. Among other cooperation requirements, both Settlement Agreements obligate the settling Defendant to produce structured data relating to the compensation of class members, to produce relevant documents from multiple custodians selected by Plaintiffs, to authenticate those documents, and to make multiple current employees available for both deposition and trial testimony.

This motion is made on the grounds that both Settlement Agreements are fair, reasonable, and adequate and that each satisfies the requirements of Rule 23(e) of the Federal Rules of Civil Procedure. Plaintiffs respectfully request that the Court:

(a) Grant preliminary approval of both Settlement Agreements;

(b) Certify the proposed JBS and Tyson Settlement Classes;

(c) Appoint the Named Plaintiffs Ron Brown and Minka Garmon as class representatives of the JBS and Tyson Settlement Classes;

(d) Appoint the law firms Hagens Berman Sobol Shapiro LLP, Cohen Milstein Sellers & Toll, PLLC, and Handley Farah & Anderson PLLC (which currently serve as Interim Co-Lead Counsel) as Settlement Class Counsel;

(e) Defer notice of the Settlement Agreements, instead directing Settlement Class Counsel to submit a motion to approve a plan of notice at an appropriate time, *i.e.*, after Defendants have produced contact and wage information regarding Settlement Classes members and prior to Plaintiffs moving for final approval of the Settlement Agreement; and

(f) Grant a stay of all proceedings in this litigation against the Released Parties (as defined in the Settlement Agreements) except as necessary to effectuate the Settlement Agreements or as otherwise agreed to by the settling parties.

II. BACKGROUND

A. Summary of Allegations

Plaintiffs allege that the nation's leading red meat processors and two consulting companies conspired to stabilize the compensation paid to workers at red meat processing plants. This action was filed after a comprehensive investigation by Plaintiffs' counsel, which included assessments of industry wages, interviewing industry witnesses, and extensive research into the red meat processing industry. As a result of that investigation, Plaintiffs' lengthy complaint was supported by specific allegations, including allegations that Defendants entered into an illegal agreement in violation of the Sherman Act, 15 U.S.C. § 1, under both a *per se* and rule of reason analysis. Defendants filed motions to dismiss the complaint on February 17, 2023. The Court denied multiple motions to dismiss, holding that Plaintiffs have alleged sufficient evidence to pursue both their *per se* wage-fixing claim and their information exchange claim.

On January 2, 2024, Plaintiffs filed an Amended Complaint that expands the Class Period, names additional Defendants, and contains more compelling allegations of conspiratorial misconduct. ECF No. 260.

B. Summary of the Settlement Agreements

Plaintiffs' counsel has extensive experience in antitrust cases, particularly in cases alleging wage suppression. Moreover, the Settlement Agreements with JBS and Tyson were negotiated with the benefit of Plaintiffs' counsel having already obtained multiple earlier settlements on behalf of the class as well having received hundreds of thousands of documents from one of the

earlier settling Defendants. Thus, the settlement discussions with JBS and Tyson were undertaken with an especially deep understanding of both the applicable law and the relevant facts.

1. Summary of the JBS Settlement Agreement

a. Class Definition

The proposed JBS Settlement Class is co-extensive with the class alleged in the operative Amended Complaint: "[a]ll persons employed by Defendant Processors, their subsidiaries, and/or related entities at beef-processing or pork-processing plants in the continental United States from January 1, 2000 until the date of the first preliminary approval of a settlement in this Action."[3]

b. Monetary Terms

JBS has agreed to provide monetary compensation for the benefit of the JBS Settlement Class in the amount of $55 million, which represents significant and guaranteed recovery to class members (providing this Court grants final approval). This amount will be deposited in an escrow account by Settling Defendant within fourteen (14) business days after entry of the preliminary approval order. Scarlett Decl., Ex. A at § II(A)(1). This is a non-reversionary fund; once the JBS Settlement Agreement is finally approved by the Court and after administrative costs, litigation expenses, and attorneys' fees are deducted, the net funds will be distributed to JBS Settlement Class members with no amount reverting back to JBS. Scarlett Decl., Ex. A at § II(E).

c. Required Cooperation Terms

JBS has agreed to significant non-monetary cooperation terms, which will provide material benefits to the Class when litigating their claims against the remaining Defendants. JBS will provide data, documents, information, and witnesses from its Red Meat Processing Operations

[3] Scarlett Decl., Ex. A at § II(F)(3). The following persons and entities are excluded from the JBS Settlement Class: "plant managers; human-resources managers and staff; clerical staff; guards, watchmen, and salesmen; Defendants, co-conspirators, and any of their subsidiaries, predecessors, officers, or directors; and federal, state or local governmental entities." *Id.*

concerning the Allegations (as those terms are defined in the Settlement Agreement), including *inter alia*:

- **Data:** JBS will produce structured data for the JBS Settlement Class Period, and four years prior, and make reasonable efforts to respond to questions from plaintiffs on the interpretation of the data. Scarlett Decl., Ex. A at § II(A)(2)(a).

- **Custodians and depositions:** JBS will each produce documents from fifteen (15) custodians and testimony from up to eight (8) then-current employees. *Id*., Ex. A at § II(A)(2).

- **Non-custodial documents:** JBS will produce, to the extent identified by a reasonable search, certain documents from non-custodial files, including contracts with Agri-Stats, Inc. and/or Express Markets, Inc., contracts with labor unions, documents produced to the DOJ that have not already been produced to Plaintiffs (so long as the agency consents or does not object to the production or the Court orders the production), and structured data. *Id*., Ex. A at § II(A)(2).

- **Phone records and authentication of documents:** JBS has agreed to provide reasonable assistance to Plaintiffs to obtain phone records and to authenticate documents for use at summary judgment and trial. *Id*., Ex. A at § II(A)(2).

d. Release of Liability

The JBS Settlement Agreement releases and discharges JBS's Released Parties from any and all claims arising out of or relating to "an alleged or actual conspiracy or agreement between Defendants relating to reducing competition for the hiring and retaining of, or to fixing, depressing, restraining, exchanging information about, or otherwise reducing the Compensation paid or provided to" the JBS Settlement Class. *Id*., Ex. A at § II(B)(2).

The JBS Settlement Agreement, however, does nothing to abrogate the rights of any member of the JBS Settlement Class to recover from any other Defendant. *Id*. The JBS Settlement Agreement also expressly excludes from the Release "any claims wholly unrelated to the allegations or underlying conduct alleged in the Action that are based on breach of contract, negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods,

product defect, discrimination, COVID-19 safety protocols, failure to comply with wage and hours laws unrelated to anticompetitive conduct, or securities claims." *Id*.

2. Summary of the Tyson Settlement Agreement

a. Class definition

The proposed Tyson Settlement Class is co-extensive with the class alleged in the operative Amended Complaint: "[a]ll persons employed by Defendant Processors, their subsidiaries, and/or related entities at beef-processing or pork-processing plants in the continental United States from January 1, 2000 until the date of the first preliminary approval of a settlement in this Action."[4]

b. Monetary Terms

Tyson has agreed to provide monetary compensation for the benefit of the Tyson Settlement Class in the amount of $72,250,000 (seventy-two million, five hundred thousand), which represents significant and guaranteed recovery to class members (providing this Court grants final approval). This amount will be deposited in an escrow account by Tyson within fourteen (14) business days after entry of the preliminary approval order. Scarlett Decl., Ex. B at § II(A)(1). This is a non-reversionary fund; once the Tyson Settlement Agreement is finally approved by the Court and after administrative costs, litigation expenses, and attorneys' fees are deducted, the net funds will be distributed to Tyson Settlement Class members with no amount reverting back to Tyson. Scarlett Decl., Ex. B at § II(E).

c. Required Cooperation Terms

Tyson has agreed to equally significant non-monetary cooperation terms as JBS, which will provide material benefits to the Class when litigating their claims against the remaining

[4] Scarlett Decl., Ex. B at § II(F)(3). The following persons and entities are excluded from the Tyson Settlement Class: "plant managers; human-resources managers and staff; clerical staff; guards, watchmen, and salesmen; Defendants, co-conspirators, and any of their subsidiaries, predecessors, officers, or directors; and federal, state or local governmental entities." *Id.*

Defendants. Tyson will provide data, documents, information, and witnesses from its Red Meat Processing Operations concerning the Allegations (as those terms are defined in the Settlement Agreement), including *inter alia*:

- **Data:** Tyson will produce structured data for the Tyson Settlement Class Period, and four years prior, and make reasonable efforts to respond to questions from plaintiffs on the interpretation of the data. Scarlett Decl., Ex. B at § II(A)(2)(a).
- **Custodians and depositions**: Tyson will each produce documents from fifteen (15) custodians and testimony from up to eight (8) then-current employees. *Id.*, Ex. B at § II(A)(2). Tyson has agreed to produce documents relating to the Allegations to Class Plaintiffs identified by a reasonable search of the Custodians' files relating to (1) WMS and WMS surveys; (2) the Beef Industry Wage Index ("BIWI") and/or Pork Industry Wage Index ("PIWI"); and those documents provided to and received by various industry trade organizations such as the American Meat Institute, American Meat Institute Foundation, Joint Labor Management Committee or "JLM", North American Meat Institute, National Pork Producers Council, National Cattlemen's Beef Association, the US Meat Export Federation, and the 21st Century Pork Club that reference any form or component of Compensation. *Id.*, Ex. B at § II(A)(2).
- **Non-custodial documents:** Tyson will produce, to the extent identified by a reasonable search, certain documents from non-custodial files, including contracts with Agri-Stats, Inc. and/or Express Markets, Inc., contracts with labor unions, documents produced to the DOJ that have not already been produced to Plaintiffs (so long as the agency consents or does not object to the production or the Court orders the production), and structured data. *Id.*, Ex. B at § II(A)(2).
- **Phone records and authentication of documents**: Tyson has agreed to provide reasonable assistance to Plaintiffs to obtain phone records and to authenticate documents for use at summary judgment and trial. *Id.*, Ex. B at § II(A)(2).

d. Release of Liability

The Tyson Settlement Agreement releases and discharges Tyson's Released Parties from any and all claims arising out of or relating to "an alleged or actual conspiracy or agreement between Defendants relating to reducing competition for the hiring and retaining of, or to fixing, depressing, restraining, exchanging information about, or otherwise reducing the Compensation paid or provided to" the Tyson Settlement Class. *Id.*, Ex. B at § II(A)(2).

The Tyson Settlement Agreement, however, does nothing to abrogate the rights of any member of the Tyson Settlement Class to recover from any other Defendant. *Id*. The Tyson Settlement Agreement also expressly excludes from the Release "any claims wholly unrelated to the allegations or underlying conduct alleged in the Action that are based on breach of contract, negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, discrimination, COVID-19 safety protocols, failure to comply with wage and hours laws unrelated to anticompetitive conduct, or securities claims." *Id*.

III. ARGUMENT

Settlement is strongly favored as a method for resolving disputes.[5] When evaluating the fairness and adequacy of a proposed settlement, courts keep in mind the "important public policy concerns that support voluntary settlements."[6] This is particularly true in large, complex class actions, such as this case.[7]

Under Federal Rule of Civil Procedure 23(e), before a court may approve a proposed settlement, it must conclude that the settlement is "fair, reasonable, and adequate."[8] However, the review at the preliminary approval stage is not "as stringent as [that] applied for final approval."[9] This is because "[p]reliminary approval of a class action settlement is a provisional

[5] *See Sears v. Atchison, Topeka & Santa Fe Ry., Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984).

[6] *Trujillo v. Colorado*, 649 F.2d 823, 826 (10th Cir. 1981).

[7] *Acevedo v. Sw. Airlines Co.*, No. 1:16-cv-00024-MV-LF, 2019 WL 6712298, at *2 (D.N.M. Dec. 10, 2019) (internal citations omitted) (noting that particularly in complex class actions, settlement "minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources"), *report and recommendation adopted*, 2020 WL 85132 (D.N.M. Jan. 7, 2020).

[8] Fed. R. Civ. P. 23(e)(2).

[9] *Ross v. Convergent Outsourcing, Inc.*, 323 F.R.D. 656, 659 (D. Colo. 2018) (quoting *In re Motor Fuel Temperature Sales Pracs. Litig.*, 286 F.R.D. 488, 492 (D. Kan. 2012)).

step."[10] At preliminary approval, the court is tasked with determining whether there is "any reason not to notify the class members of the proposed settlement and to proceed with a fairness hearing."[11] The analysis is "at most a determination that there is probable cause to submit the proposal to class members and hold a full-scale hearing as to its fairness."[12] "A proposed settlement of a class action should therefore be preliminarily approved where it appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to class representatives." *Id*.

"Although the standards for preliminary approval of a class action settlement are not as stringent" as the standards for final approval, "the standards used in the [final] stage inform the Court's preliminary inquiry. Therefore, it is appropriate to review those standards." *Id.* Final approval will be granted if a settlement is "'fair, reasonable, and adequate'" under the Rule 23(e)(2) factors.[13] In the Tenth Circuit, this assessment requires courts to consider whether "(1) the settlement was fairly and honestly negotiated, (2) serious legal and factual questions placed the litigation's outcome in doubt, (3) the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation, and (4) [the parties] believed the settlement was fair and reasonable."[14] "If the settling parties can establish these factors, courts

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[10] *Blanco v. Xtreme Drilling & Coil Servs., Inc.*, No. 16-cv-00249-PAB-SKC, 2020 WL 3833412, at *1 (D. Colo. Mar. 8, 2020).

[11] *Id.* (quoting *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006)).

[12] *In re Molycorp, Inc. Sec. Litig.*, No. 12-cv-00292-RM-KMT, 2017 WL 4333997, at *3 (D. Colo. Feb. 15, 2017) (quotation and alteration marks omitted), *report and recommendation adopted*, 2017 WL 4333998 (D. Colo. Mar. 6, 2017).

[13] *Paulson v. McKowen*, No. 19-CV-02639-PAB-NYW, 2022 WL 168708, at *3 (D. Colo. Jan. 19, 2022) (citing Fed. R. Civ. P. 23(e)(2)).

[14] *Tennille v. W. Union Co.*, 785 F.3d 422, 434 (10th Cir. 2015) (quoting *Weinman v. Fid. Capital Appreciation Fund (In re Integra Realty Res., Inc.)*, 354 F.3d 1246, 1266 (10th Cir. 2004)).

usually presume that the proposed settlement is fair and reasonable."[15] Plaintiffs address both the Rule 23 factors and the unique Tenth Circuit factors.[16] Each of these factors support preliminary approval.

1. The Agreements Were Fairly and Honestly Negotiated.

This factor requires courts to look for "indicia that the settlement negotiations in this case have been fair, honest and at arm's length."[17] Here, all parties are represented by sophisticated counsel who have played active roles in many antitrust cases across the country. Both negotiations—between Plaintiffs' counsel and counsel for JBS, and between Plaintiffs' counsel and counsel for Tyson—lasted for months, and both negotiations required mediations with an experienced third-party mediator to reach successful conclusions. During those intensive negotiations, the parties undertook a robust discussion of the strengths and weaknesses of the case. The negotiations were adversarial throughout and at no time was there any collusion which might compromise the interests of the class. *See* Scarlett Decl. ¶¶ 8–9. Thus, because the parties—advised by sophisticated counsel with expertise on antitrust matters and complex class litigation—engaged in good faith negotiations, this "support[s] the integrity of the parties' settlement."[18]

[15] *Martinez v. Reams*, No. 20-CV-00977-PAB-SKC, 2020 WL 7319081, at *7 (D. Colo. Dec. 11, 2020) (citing *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004)).

[16] *Chavez Rodriguez v. Hermes Landscaping, Inc.*, No. 17-2142-JWB-KGG, 2020 WL 3288059, at *2 (D. Kan. June 18, 2020).

[17] *Lucas*, 234 F.R.D. at 693.

[18] *Acevedo*, 2019 WL 6712298, at *2; *see also In re Urethane Antitrust Litig.*, No. 04-MD-1616-JWL, 2006 WL 2983047, at *1 (D. Kan. Oct. 17, 2006) (finding the settlement "fairly and honestly negotiated" when it results from "negotiations which were undertaken in good faith by counsel with significant experience litigating antitrust class actions").

2. The Immediate Relief Provided to the Class is Adequate and More Favorable Than After Further Litigation.

The analysis under Rule 23(e)(2)(C) looks at whether "the relief provided for the class is adequate." The Tenth Circuit's factors regarding "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" both "largely overlap" with Rule 23(e)(2)(C)(i), the first subfactor of this analysis, and thus these analyses are combined and subsumed into the analysis below.[19]

First, "the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact this case if it were litigated."[20] For example, there is serious disagreement by the parties about whether the Defendants JBS and Tyson illegally conspired to depress their workers' compensation. As in most antitrust cases, questions of predominance and impact are certain to arise, with the Defendants undoubtedly quarreling with the expert analyses Plaintiffs will use to show the class was harmed. The settlements with JBS and Tyson cut short these questions and ensure that the Settlement Classes will be entitled to some financial relief in this litigation.[21] Because the serious, disputed legal issues here render the outcome of the litigation uncertain, this factor weighs heavily in favor of settlement.[22]

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[19] *See Chavez Rodriguez*, 2020 WL 3288059, at *3 (citation omitted).

[20] *Lucas*, 234 F.R.D. at 693-94.

[21] *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1133, 1138 (D. Colo. 2009) (finding the presence of serious legal and factual questions concerning the outcome of the Litigation to weigh heavily in favor of settlement, "because settlement creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.").

[22] *See Tennille*, 785 F.3d at 435 (affirming final approval of settlement where "serious disputed legal issues" rendered "the outcome of th[e] litigation . . . uncertain and further litigation would have been costly").

In addition, the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation. As in most cases, if "this case were to be litigated, in all probability it would be many years before it was resolved."[23] It is inherently difficult to prove a complex antitrust class action, and there are "significant risks associated with continued litigation."[24] In contrast, "the proposed settlement agreement provides the class with substantial, guaranteed relief."[25] And although the case will continue against the non-settling Defendants, continuing to litigate this case against either JBS or Tyson would have required significant additional resources and materially increased the complexity of the case. *See* Scarlett Decl. ¶ 12. The Settlement Classes will be provided with substantial guaranteed relief, and the resulting litigation will benefit by proceeding in a more targeted manner against fewer, remaining Defendants.

In addition, "[a]n evaluation of the benefits of the settlement also must be tempered by the recognition that any compromise involves concessions on the part of the parties."[26] Here, the parties reached agreements that necessitated compromise by both sides. *See* Scarlett Decl. ¶¶ 8–12. Thus, the immediate, substantial relief offered by the Settlement Agreements outweighs the "mere possibility of a more favorable outcome after protracted and expensive litigation over many

[23] *Lucas*, 234 F.R.D. at 694.

[24] *Temp. Servs., Inc. v. Am. Int'l Grp., Inc.*, No. 3:08-cv-00271-JFA, 2012 WL 2370523, at *12 (D.S.C. June 22, 2012). "Experience proves that, no matter how confident trial counsel may be, they cannot predict with 100% accuracy a jury's favorable verdict, particularly in complex antitrust litigation." *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 523 (E.D. Mich. 2003).

[25] *Lucas*, 234 F.R.D. at 694.

[26] *Acevedo*, 2019 WL 6712298, at *3.

years in the future."[27] Accordingly, the relief provided to the class is adequate and satisfies both the Tenth Circuit requirements and those of Rule 23(e)(2)(C).

3. Plaintiffs' Counsel believes the settlement is fair and reasonable.

"Counsels' judgment as to the fairness of the agreement is entitled to considerable weight."[28] Here, counsel—attorneys with substantial experience in complex class action and antitrust litigation—unanimously support this settlement.[29] Courts recognize that "the recommendation of a settlement by experienced plaintiff[s'] counsel is entitled to great weight."[30] Under the Settlement Agreements, JBS will pay $55,000,000 and Tyson will pay $72,250,000 into a fund that will provide tangible financial benefits to the Settlement Classes. And both Settlement Agreements allows Plaintiffs to secure potentially key evidence—in the form of data, documents and testimony—from these Defendants' employees.[31]

In sum, the JBS and Tyson Settlement Agreements are fair, reasonable, and adequate in light of the strength of the claims and the risks and expense of continued litigation. Accordingly, under the Rule 23(e)(2) and Tenth Circuit factors, preliminary approval should be granted.

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[27] *In re Syngenta AG MIR162 Corn Litig.*, No. 14-MD-2591-JWL, 2018 WL 1726345, at *2 (D. Kan. Apr. 10, 2018).

[28] *Lucas*, 234 F.R.D. at 695.

[29] *See e.g., id.* (finding unanimous approval by experienced counsel supports settlement approval).

[30] *O'Dowd v. Anthem, Inc.*, No. 14-cv-02787-KLM-NYW, 2019 WL 4279123, at *14 (D. Colo. Sept. 9, 2019).

[31] *See In re Ampicillin Antitrust Litig.*, 82 F.R.D. 652, 654 (D.D.C. 1979) (approving settlement in light of settling defendant's "assistance in the case against [a non-settling defendant]"); *see generally In re Initial Pub. Offering Sec. Litig.*, 226 F.R.D. 186, 198-99 (S.D.N.Y. 2005) (recognizing the value of cooperating defendants in complex class action litigation).

IV. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASSES

A. The JBS and Tyson Settlement Classes Satisfy Rule 23(a).

The proposed Settlement Classes for the JBS and Tyson settlements are nearly identical to the three settlement classes that have already been certified by the court other than as to the date of the class period. ECF No. 306. Specifically, after evaluating each of the Rule 23(a) factors, the Court certified nearly identical settlement classes that cover the same types of jobs and workers for settlements previously reached with WMS, Seaboard and Perdue. *Id.* Accordingly, the Court should hold that proposed Settlement Classes for the JBS and Tyson settlements also satisfy the Rule 23(a) factors.

1. The Settlement Classes Are Sufficiently Numerous.

Rule 23(a)(1) requires that the class membership be sufficiently large to warrant a class action because the alternative of joinder is impracticable.[32] Here, the precise number of Settlement Classes members is unknown but will number in the tens of thousands, and joinder of tens of thousands of people would be impracticable. As the court previously held when certifying nearly identical settlement classes, "the numerosity requirement is met." ECF No. 306.

2. Questions of Law and Fact are Common to the Settlement Classes.

Rule 23(a)(2) requires that there be "questions of law or fact common to the class."[33] Courts recognize that "[e]ven a single [common] question will" satisfy the commonality requirement.[34] "In the antitrust context, courts have generally held that an alleged conspiracy or monopoly is a common issue that will satisfy Rule 23(a)(2) as the singular question of whether defendants

[32] Fed. R. Civ. P. 23(a)(1).

[33] Fed. R. Civ. P. 23(a)(2).

[34] *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 359 (2011) (quotation omitted); *Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 914 (10th Cir. 2018) ("A finding of commonality requires only a single question of law or fact common to the entire class." (citation omitted)).

conspired to harm plaintiffs will likely prevail."[35] Here, common questions abound. As the court previously held when certifying nearly identical settlement classes, "plaintiffs raise the following common questions of law and fact: whether defendants agreed to restrain wages, whether the agreement had an impact on class members, what the relevant market is for the representative plaintiffs' claims, and what the amount of damages are." *See* Order, ECF No. 306 at 13.

3. Class Representatives' Claims are Typical of the Settlement Classes Members' Claims.

Rule 23(a)(3) requires that the class representatives' claims be "typical" of class members' claims. Fed. R. Civ. P. 23(a)(3). "The typicality requirement ensures that the absent class members are adequately represented by the lead plaintiff such that the interests of the class will be fairly and adequately protected in their absence."[36] In antitrust class action cases, typicality is established by plaintiffs and all class members alleging the same antitrust violations by defendants.[37] Here, typicality is satisfied because both Plaintiffs' claims and the claims of members of the JBS and Tyson Settlement Classes arise out of the same alleged antitrust conspiracy. Indeed, when it previously certified nearly identical settlement classes, the Court agreed "that the representative plaintiffs bring claims that are typical of the proposed class." Order, ECF No. 306 at 15.

[35] *D&M Farms v. Birdsong Corp.*, No. 2:19-CV-463, 2020 WL 7074140, at *3 (E.D. Va. Dec. 2, 2020); *see also In re Urethane Antitrust Litig.*, 768 F.3d 1245, 1256 (10th Cir. 2014) (affirming trial court's certification of class in price-fixing case where "two common questions . . . could yield common answers at trial: the existence of a conspiracy and the existence of impact").

[36] *Paulson v. McKowen*, No. 19-cv-02639-PAB-NYW, 2022 WL 168708, at *5 (D. Colo. Jan. 19, 2022) (referencing *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982)).

[37] *See In re Urethane Antitrust Litig.*, 237 F.R.D. 440, 447 (D. Kan. 2006), *stay granted in part*, 2006 WL 3021126 (D. Kan. Oct. 23, 2006).

4. Ron Brown and Minka Garmon and Interim Class Counsel Are Adequate.

Rule 23(a)(4) requires that, 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."[38] The Tenth Circuit requires that the named plaintiffs and their counsel: (1) do not have any conflicts of interest with other class members and (2) will prosecute the action vigorously.[39] Here, the adequacy requirement is met. The named Plaintiffs have no material conflict with other Class members, and each named Plaintiff shares an overriding interest in establishing Defendants' liability and maximizing class-wide damages.[40] The named Plaintiffs and their experienced counsel have prosecuted, and will continue to prosecute, the action vigorously on behalf of the JBS and Tyson Settlement Classes. Scarlett Decl. ¶ 8. As the court previously concluded when certifying nearly identical settlement classes and appointing the same three law firms as Settlement Class Counsel, "the interests of the class are fairly and adequately protected by the representative plaintiffs and their counsel." Order, ECF No. 306 at 16.

B. The Requirements of Rule 23(b)(3) Are Satisfied

Under Rule 23(b)(3), plaintiffs must show that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Both of these requirements are satisfied here.

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[38] Fed. R. Civ. P. 23(a)(4).

[39] *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187–88 (10th Cir. 2002); Fed. R. Civ. P. 23(a)(4).

[40] *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members.").

1. Common Issues Predominate.

The "predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation."[41] It is a "test readily met in certain cases alleging . . . violations of the antitrust laws.'"[42] To prevail in an antitrust case, Plaintiffs must prove three elements: (1) a violation of the antitrust laws; (2) impact of the unlawful activity; and (3) measurable damages.[43] Common evidence supports each of these elements.

When previously certifying three nearly identical settlement classes, the court "agree[d] with the representative plaintiffs that common questions predominate over the other issues." Order, ECF No. 306 at 18. The court explained: "Proof of a conspiracy between defendants is a question that goes to the alleged antitrust violation common to the entire class. Evidence of market wages and any depression across the wages of defendants' employees is a common question that goes to the alleged injury." *Id.* at 18-19. The court further held that although "damages may vary for individuals in the class, the question of what competitive market wages should have been will be common to the class and is enough at this stage to show a common question on the measure of damages." *Id.* at 19.

2. Proceeding as a Class Is a Superior Method for Resolving This Dispute Fairly and Effectively.

In addition to the predominance of common questions, Rule 23(b)(3) requires a finding that "a class action is superior to other available methods for fairly and efficiently adjudicating of the controversy." In this case, settlement of this action "is a superior method for resolving this dispute" as it "avoids duplicative litigation, saving both plaintiffs and defendants significant time

[41] *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997).

[42] *Paulson*, 2022 WL 168708, at *7 (citing *Amchem*, 521 U.S. at 625).

[43] *In re Urethane*, 237 F.R.D. at 449.

and legal costs to adjudicate common legal and factual issues."[44] Additionally, no other potential Settlement Classes members have filed an analogous antitrust claim against these Defendants. Further, proceeding as a class action, rather than a host of separate individual trials, would provide significant economies in time, effort, and expense, and permit Settlement Classes members to seek damages that would otherwise be too costly to pursue.[45] For those reasons, when previously certifying nearly identical settlement classes, the court concluded "that a class action settlement is a superior method for resolving this dispute fairly and effectively." Order, ECF No. 306 at 19.

Accordingly, the Court should certify the JBS and Tyson Settlement Classes.

V. DEFERRING CLASS NOTICE REMAINS APPROPRIATE

Rule 23(e) requires that, prior to final approval of a settlement, notice of that settlement must be distributed to all class members who would be bound by it. Rule 23(c)(2)(B) requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Here, Plaintiffs respectfully request that the Court agree to defer formal notice of the Settlement Agreements to the JBS and Tyson Settlement Classes until a later date, as the Court had found in preliminarily approving Plaintiffs' Settlements with Perdue, WMS, and Seaboard. Order, ECF No. 306 at 23–24. Given document discovery has not yet started, Plaintiffs do not have the necessary data from Defendants containing class members' contact information. Scarlett Decl. ¶ 13. Deferring notice may also save money for the JBS and Tyson Settlement Classes because Plaintiffs could provide

[44] *In re Crocs, Inc. Secs. Litig.*, 306 F.R.D. 672, 689-90 (D. Colo. 2014).

[45] *See Pliego v. Los Arcos Mexican Rest., Inc.*, 313 F.R.D. 117, 127 (D. Colo. 2016) ("Courts in this District have repeatedly recognized that a class action is superior where the small claims of parties with limited resources are otherwise unlikely to be pursued.").

notice of multiple settlements at once. After the necessary data has been obtained, Plaintiffs will file a motion to direct notice with the Court.

VI. CONCLUSION

Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlement Agreements with JBS and Tyson; (2) certifying the JBS and Tyson Settlement Classes, (3) appointing Interim Co-Lead Counsel Hagens Berman Sobol Shapiro LLP, Cohen Milstein Sellers & Toll, PLLC, and Handley Farah & Anderson PLLC as Settlement Class Counsel as Settlement Counsel, (4) appointing Ron Brown and Minka Garmon as Representatives of the Settlement Classes, (5) deferring notice to the Classes until a later date, and (6) ordering a stay of all proceedings against the JBS and Tyson Defendants.

Dated: March 8, 2024

Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

/s/ Shana E. Scarlett

Shana E. Scarlett
Rio S. Pierce
Abby R. Wolf
715 Hearst Avenue, Suite 300
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
shanas@hbsslaw.com
riop@hbsslaw.com
abbyw@hbsslaw.com

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Telephone: (206) 623-7292
steve@hbsslaw.com

Elaine Byszewski
Abigail D. Pershing
HAGENS BERMAN SOBOL SHAPIRO LLP
301 N. Lake Ave., Suite 920
Pasadena CA, 91101
Telephone: (213) 330-7150
elaineb@hbsslaw.com
abigailp@hbsslaw.com

COHEN MILSTEIN SELLERS & TOLL PLLC

/s/ Brent W. Johnson

Brent W. Johnson
Benjamin D. Brown
Robert A. Braun
Alison S. Deich
Zachary Glubiak
Zachary I. Krowitz
Nina Jaffe-Geffner
1100 New York Avenue NW, 5th Floor
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699

bjohnson@cohenmilstein.com
bbrown@cohenmilstein.com
rbraun@cohenmilstein.com
adeich@cohenmilstein.com
zglubiak@cohenmilstein.com
zkrowitz@cohenmilstein.com
njaffegeffner@cohenmilstein.com

Daniel H. Silverman
COHEN MILSTEIN SELLERS & TOLL PLLC
769 Centre St. Suite 207
Boston, MA 02130
Telephone: (617) 858-1990
dsilverman@cohenmilstein.com

HANDLEY FARAH & ANDERSON PLLC

/s/ George F. Farah
George F. Farah
Rebecca P. Chang
Nicholas J. Jackson
33 Irving Place
New York, NY 10003
Telephone: (212) 477-8090
Facsimile: (844) 300-1952
gfarah@hfajustice.com
rchang@hfajustice.com
njackson@hfajustice.com

William H. Anderson (Co. Bar 45960)
HANDLEY FARAH & ANDERSON PLLC
5353 Manhattan Circle, Suite 204
Boulder, CO 80303
Telephone: (202) 559-2433
Facsimile: (844) 300-1952
wanderson@hfajustice.com

Martha E. Guarnieri
HANDLEY FARAH & ANDERSON PLLC
1727 Snyder Avenue
Philadelphia, PA 19145
Telephone: (215) 422-3478
Facsimile: (844) 300-1952
mguarnieri@hfajustice.com

Simon Wiener
HANDLEY FARAH & ANDERSON PLLC
60 Harrison Avenue, Suite 604
Boston, MA 02111
Telephone: (202) 921-4567
Facsimile: (844) 300-1952
swiener@hfajustice.com

Interim Co-Lead Counsel for Plaintiffs and the Proposed Class

Brian D. Clark
Stephen J. Teti
Arielle S. Wagner
Eura Chang
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Telephone: (612) 339-6900
Facsimile: (612) 339-0981
bdclark@locklaw.com
sjteti@locklaw.com
aswagner@locklaw.com
echang@locklaw.com

Candice J. Enders
Julia R. McGrath
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: (215) 875-3000
cenders@bm.net
jmcgrath@bm.net

Additional Counsel for Plaintiffs and the Proposed Class

CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice to counsel for all parties that have appeared in this case.

/s/ Shana E. Scarlett
SHANA E. SCARLETT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Philip A. Brimmer

Civil Action No. 1:22-cv-02946-PAB-STV

RON BROWN and
MINKA GARMON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

JBS USA FOOD COMPANY,
TYSON FOODS, INC.,
CARGILL, INC.,
CARGILL MEAT SOLUTIONS CORP.,
HORMEL FOODS CORP.,
ROCHELLE FOODS, LLC,
AMERICAN FOODS GROUP, LLC,
TRIUMPH FOODS, LLC,
SEABOARD FOODS LLC,
NATIONAL BEEF PACKING CO., LLC,
SMITHFIELD FOODS, INC.,
SMITHFIELD PACKAGED MEATS CORP.,
AGRI BEEF CO.,
WASHINGTON BEEF, LLC,
PERDUE FARMS, INC.,
GREATER OMAHA PACKING CO., INC.,
NEBRASKA BEEF, LTD.,
INDIANA PACKERS CORPORATION,
QUALITY PORK PROCESSORS, INC.,
AGRI STATS, INC., and
WEBBER, MENG, SAHL AND COMPANY, INC. d/b/a WMS & COMPANY, INC.,

Defendants.

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS WITH JBS USA FOOD COMPANY AND TYSON FOODS, INC., CERTIFICATION OF SETTLEMENT CLASSES, AND APPOINTMENT OF SETTLEMENT CLASS COUNSEL

This matter is before the Court on the Plaintiffs' Motion for Preliminary Approval of Settlements with JBS USA Food Company and Tyson Foods, Inc., Certification of Settlement Classes, and Appointment of Settlement Class Counsel filed by plaintiffs Ron Brown and Minka

Garmon (collectively the "representative plaintiffs") ("Motion" or "Mot."). The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

The representative plaintiffs have reached two settlement agreements with defendants in this case, namely, JBS USA Food Company and Tyson Foods, Inc. Regarding the settlement agreements between the representative plaintiffs and JBS (the "JBS settlement") and the settlement agreement between the representative plaintiffs and Tyson the "Tyson settlement"), the representative plaintiffs move for "an order: (1) preliminarily approving the Settlement Agreements with JBS and Tyson; (2) certifying the JBS and Tyson Settlement Classes, (3) appointing Interim Co-Lead Counsel Hagens Berman Sobol Shapiro LLP, Cohen Milstein Sellers & Toll, PLLC, and Handley Farah & Anderson PLLC as Settlement Class Counsel as Settlement Counsel, (4) appointing Ron Brown and Minka Garmon as Representatives of the Settlement Classes, (5) deferring notice to the Classes until a later date, and (6) ordering a stay of all proceedings against the JBS and Tyson defendants." (Mot.) at 10.

I. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Here, the representative plaintiffs move for preliminary approval of settlements with JBS and Tyson. (Exhibit A, JBS Settlement Agreement; Exhibit B, Tyson Settlement Agreement).

The JBS settlement provides for a $55,000,000 settlement fund. (Exhibit A, JBS Settlement Agreement) at 10. The settlement fund is to "be disbursed in accordance with a plan of distribution to be approved by the Court. The timing of a motion to approve a plan of distribution of the Net Settlement Fund created by [the JBS] Settlement Agreement shall be in the discretion of Interim Co-Lead Counsel, and may be combined with a plan to distribute proceeds from other settlements in this Action." *Id*. at 21. The JBS settlement requires JBS to cooperate with the representative plaintiffs in the following ways: producing data on members of the class employed by JBS or its subsidiaries, providing declarations or affidavits on the

authenticity of documents, providing documents from 15 designated document custodians, allowing eight current employees of JBS to be deposed, and reasonably assisting the representative plaintiffs in their efforts to obtain the phone records from third-party carriers. *Id*. at 10-14, § II.A.2. In exchange, "this Action shall be dismissed in its entirety with prejudice as to JBS." *Id*. at 8.

The Tyson Settlement Agreement provides for a $72,500,000 settlement fund. (Exhibit B, Tyson Settlement Agreement) at 9. The settlement fund is to "be disbursed in accordance with a plan of distribution to be approved by the Court. The timing of a motion to approve a plan of distribution of the Net Settlement Fund created by [the Tyson] Settlement Agreement shall be in the discretion of Interim Co-Lead Counsel, and may be combined with a plan to distribute proceeds from other settlements in this Action." *Id*. at 24. The Tyson settlement requires Tyson to cooperate with the representative plaintiffs in the following ways: producing data on members of the class employed by Tyson or its subsidiaries, providing declarations or affidavits on the authenticity of documents, providing documents from fifteen designated document custodians, allowing eight current employees of Tyson to be deposed, and reasonably assisting the representative plaintiffs in their efforts to obtain the phone records from third-party carriers. *Id*. at 12. In exchange, "this Action shall be dismissed in its entirety with prejudice as to Tyson." *Id*. at 22.

II. ANALYSIS OF PROPOSED SETTLEMENT AGREEMENTS

a. Agreements

The representative plaintiffs seek certification of settlement classes that are identical and are nearly identical to the settlement classes previously approved by this court. Docket No. 306. Both the JBS Settlement and Tyson Settlement seek certification of a class of "[a]ll persons employed by Defendant Processors, their subsidiaries, and/or related entities at beef-processing

or pork-processing plants in the continental United States from January 1, 2000 until the date of the first preliminary approval of a settlement in this action." The following persons and entities are excluded from both proposed classes: "plant managers; human-resources managers and staff; clerical staff; guards, watchmen, and salesmen; Defendants, co-conspirators, and any of their subsidiaries, predecessors, officers, or directors; and federal, state or local governmental entities."

b. Rule 23 Factors of Numerosity, Commonality, Typicality, and Adequacy of Representation Are Met

Rule 23(a)(1) requires that the class membership be sufficiently large to warrant a class action because the alternative of joinder is impracticable. Fed. R. Civ. P. 23(a)(1). Here, the representative plaintiffs state the proposed settlement classes likely includes tens of thousands of persons. (Mot.) at 14. The Court agrees that joinder of tens of thousands of people would be impracticable and that the numerosity requirement is met.

The representative plaintiffs raise the following common questions of law and fact: whether defendants agreed to restrain wages, whether the agreement had an impact on class members, what the relevant market is for the representative plaintiffs' claims, and what the amount of damages are. (Mot.) at 15. Here, a conspiracy to fix wages would affect all employees regardless of individual wage negotiations because the representative plaintiffs allege defendants' anticompetitive conduct affected the entire market.

The representative plaintiffs argue that their claims are typical to the class claims because all the class members faced the same antitrust violations. In antitrust conspiracy cases, the plaintiffs' claims are typical of those of the class because the claims all depend on proof of the antitrust violation by the defendants, not on the plaintiffs' individual positions. *Id.* Accordingly, the Court agrees that the representative plaintiffs bring claims that are typical of the proposed class.

Rule 23(a)(4) requires that the class representatives "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Court finds that the interests of the class are fairly and adequately protected by the representative plaintiffs and their counsel. The representative plaintiffs' interests are aligned with those of the proposed settlement class because they seek relief for injuries arising out of the same conspiracy and because they were subject to the same harm, namely, anti-competitive wages. Further, there is nothing in the record to show any conflict of interest between the representative plaintiffs or counsel and the rest of the class; any class members who disagree will be able to challenge this issue at the fairness hearing if they believe otherwise. The proposed class counsel Hagens Berman Sobol Shapiro LLP; Cohen Milstein Sellers & Toll, PLLC; and Handley Farah & Anderson PLLC have been functioning as Interim co-lead counsel for over a year. *See* Docket No. 128 at 2, ¶ 2. Magistrate Judge Varholak found the Interim co-lead counsel had experience handling class actions, antitrust litigation, and the types of claims asserted in this action. *Id.*, ¶ 3. The representative plaintiffs claim "[c]ounsel has extensive experience in antitrust cases, particularly in cases alleging wage suppression." (Mot.) at 3. There are no questions regarding the competency of the proposed class counsel or their ability to prosecute this action and, to the extent any such questions do arise, they will be considered at the fairness hearing. Accordingly, at this preliminary stage, because the representative plaintiffs and proposed class counsel do not have a conflict of interest with the rest of the class and have shown that they can vigorously litigate on behalf of the class, the Court finds that the representative plaintiffs have satisfied Rule 23(a)(4)'s requirements.

c. Rule 23(b)(3)

To qualify for certification under Rule 23(b)(3), class questions must "predominate over any questions affecting only individual members," and class resolution must be "superior to other available methods for the fair and efficient adjudication of the controversy. *Amchem Prods., Inc.*

v. Windsor, 521 U.S. 591, 615 (1997). Rule 23(b)(3) states that courts should consider the following factors when certifying a class: (A) the interest of 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 of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action. *See* Fed. R. Civ. P. 23(b)(3)(A)–(D). In antitrust cases, because price-fixing affects all market participants, there is an inference of a class-wide impact. *Beltran v. Interexchange, Inc.*, No. 14-cv-03074-CMA-CBS, 2018 WL 1948687, at *8 (D. Colo. Feb. 2, 2018). This presumption can be extended to antitrust cases where plaintiffs allege a conspiracy to lower wages across an entire market. *Id*. The Court agrees with the representative plaintiffs that common questions predominate over the other issues. *See* (Mot.) at 17–18. Proof of a conspiracy between defendants is a question that goes to the alleged antitrust violation common to the entire class. Evidence of market wages and any depression across the wages of defendants' employees is a common question that goes to the alleged injury. Although the damages may vary for individuals in the class, the question of what competitive market wages should have been will be common to the class and is enough at this stage to show a common question on the measure of damages.

Second, the Court finds that a class action settlement is a superior method for resolving this dispute fairly and effectively. Settlement avoids duplicative litigation, saving both class members and defendants significant time and legal costs to adjudicate common legal and factual issues. In addition, the representative plaintiffs state the agreements will help them litigate claims against the other defendants and have already been helpful with the recent complaint amendment [Docket No. 260]. (Mot.) at 3. Thus, given that the class members' claims arise out of the same

series of events, the Court finds that conducting the class action settlement in this forum would achieve economies of time, effort, and expense, and promote uniformity of decision to similarly situated persons. Therefore, because the tens of thousands of class members will receive the same type of relief and have claims that present common questions of fact and law, the Court finds that class certification is appropriate because the class questions predominate over individual questions and the settlement classes are a superior method of resolving this litigation. *See Amchem*, 521 U.S. at 623.

d. Rule 23(e) Factors

Rule 23(e) provides that a proposed settlement may only be approved after a "finding that it is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). To determine whether a proposed settlement is fair, reasonable, and adequate, courts consider the following factors: (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).

Based on the information available to the Court, the Court notes the following, which weighs in favor of preliminary approval: (1) the proposed settlement agreements are the product of significant negotiations and discussion between the parties over the course of months, (Mot.) at 10; (2) the parties engaged in robust discussion as to both Settlement Agreements, advised by sophisticated counsel with expertise on antitrust matters and complex class litigation, *Id*. at 10; and (3) there is no evidence that the settlement agreements were the result of a collusive agreement between the parties. The Court therefore finds that the negotiations were conducted fairly and honestly. Furthermore, the representative plaintiffs indicate there is serious disagreement by the

parties about whether defendants, including JBS or Tyson, illegally conspired to depress the compensation of workers for defendant meat processors. *Id*. As a result, the Court finds that the serious questions factor weighs in favor of the proposed settlement agreements.

Next, the Court must determine whether the value of immediate recovery outweighs the mere possibility of future relief. This factor weighs in favor of the proposed settlement. The class will be provided with substantial guaranteed relief and these agreements will cause a more targeted litigation process against the remaining claims. *Id*. at 12. Given the prospect of shortening what could be prolonged litigation and providing at least partial. guaranteed relief, the Court finds that immediate recovery outweighs the possibility of future relief. Accordingly, the Court finds this factor weighs in favor of granting preliminary approval. With regard to the fourth factor, the representative plaintiffs' counsel has extensive experience in antitrust litigation and states that the settlement agreements are fair and reasonable. *Id*. at 13. The Court finds this factor weighs in favor of preliminary approval.

In conclusion, preliminarily approving the Settlement Agreements with JBS and Tyson will allow the representative plaintiffs to gain immediate resources to litigate their ongoing claims against the remaining Defendants and allow the Court to determine whether there are other members of the class that challenge the fairness of the two settlement agreements. Should any class member find the terms of either settlement agreement unfair, he or she may choose not to join the settlement and to litigate independently, or to remain in the case and file objections to the settlement agreement.

III. NOTICE TO THE SETTLEMENT CLASSES IS DEFERRED

Under Rule 23(e)(1), a district court approving a class action settlement "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). Rule 23(c)(2)(B) provides, in relevant part, that for "any class certified under

Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). In addition to the requirements of Rule 23, the Due Process Clause also guarantees unnamed class members the right to notice of a settlement. *DeJulius v. New England Health Care Emps. Pension Fund*, 429 F.3d 935, 943–44 (10th Cir. 2005). However, due process does not require that each class member receive actual notice to be bound by the adjudication of a representative action. *Id*. Instead, the procedural rights of absent class members are satisfied so long as "the best notice practicable [is given] under the circumstances including individual notice to all members who can be identified through reasonable effort." *In re Integra Realty Resources, Inc*., 262 F.3d 1089, 1110 (10th Cir. 2001) (citation omitted). Thus, the legal standards for satisfying Rule 23(c)(2)(B) and the constitutional guarantee of procedural due process are "coextensive and substantially similar." *DeJulius*, 429 F.3d at 944.

The representative plaintiffs request that class notice be deferred because the representative plaintiffs need to begin discovery to identify everyone in the settlement classes and because deferring notice could provide an opportunity to send notice of multiple settlements at once. (Mot.) at 18.

The Court agrees that deferring notice is appropriate under these circumstances.

IV. CLASS COUNSEL

When certifying a class, a court "must appoint class counsel." Fed. R. Civ. P. 23(g). In appointing class counsel, the Court must consider:

> (A)(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class; [and] (B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class[.]

Fed. R. Civ. P. 23(g)(1). The settlement agreements list Hagens Berman Sobol Shapiro LLP, Cohen Milstein Sellers & Toll PLLC, and Handley Farah & Anderson PLLC as interim lead counsel. (Exhibit A, JBS Settlement Agreement); (Exhibit B, Tyson Settlement Agreement). The representative plaintiffs request that interim lead counsel be appointed as co-lead counsel for the settlement classes. (Mot.) at 16. The Court finds that interim lead counsel have sufficient experience in class actions and their knowledge of the applicable law weighs in favor of their appointment. Therefore, the Court finds that it is appropriate to appoint Hagens Berman Sobol Shapiro LLP, Cohen Milstein Sellers & Toll PLLC, and Handley Farah & Anderson PLLC as co-lead settlement class counsel.

V. CONCLUSION

For the foregoing reasons, it is

ORDERED that Plaintiffs' Motion for Preliminary Approval of Settlements with JBS USA Food Company and Tyson Foods, Inc., Certification of Settlement Classes, and Appointment of Settlement Class Counsel is GRANTED. It is further

ORDERED that Terms used in this Order that are defined in the Settlement Agreements are, unless otherwise defined herein, used as defined in the Settlement Agreements. It is further

ORDERED that the Court hereby certifies the following Settlement Class for the purpose of the JBS Settlement Agreement:

> All persons employed by Defendant Processors, their subsidiaries, and/or related entities at beef-processing or pork-processing plants in the continental United States from January 1, 2000 until the date of the first preliminary approval of a settlement in this Action.

The JBS Settlement Class excludes plant managers; human resources managers and staff; clerical staff; guards, watchmen, and salesmen; Defendants, co-conspirators, and any of their

subsidiaries, predecessors, officers, or directors; and federal, state or local governmental entities. It is further

ORDERED that the Court hereby certifies the following Settlement Class for the purpose of the Tyson Settlement Agreement:

> All persons employed by Defendant Processors, their subsidiaries, and/or related entities at beef-processing or pork-processing plants in the continental United States from January 1, 2000 until the date of the first preliminary approval of a settlement in this Action.

The Tyson Settlement Class excludes plant managers; human resources managers and staff; clerical staff; guards, watchmen, and salesmen; Defendants, co-conspirators, and any of their subsidiaries, predecessors, officers, or directors; and federal, state or local governmental entities. It is further

ORDERED that the Court appoints the following Named Plaintiffs as class representatives of both Settlement Classes: Ron Brown and Minka Garmon. It is further

ORDERED that if either Settlement Agreement is terminated or rescinded in accordance with its provisions, then that Settlement Agreement shall become null and void, except insofar as expressly provided otherwise in the Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiffs, Settling Defendants' Released Parties (as that term is defined in § I(B)(28) of the Settlement Agreement), and the members of the Settlement Classes. The parties shall also comply with any terms or provisions of the Settlement Agreement applicable to termination, rescission, or the Settlement Agreement otherwise not becoming Final. It is further

ORDERED that the Court approves the establishment of an escrow account, as set forth in the Settlement Agreement, as a "Qualified Settlement Fund" pursuant to Treas. Reg. § 1.468B-1. The Court retains continuing jurisdiction over any issues regarding the formation or administration of the escrow account. Settlement Class Counsel and their designees are

authorized to expend funds from the escrow account to pay taxes, tax expenses, and notice and administration costs, as set forth in the Settlement Agreement. It is further

ORDERED that notice to the classes is deferred. Counsel for the representative plaintiffs shall file their proposed notice to the settlement classes at an appropriate time, *i.e.* after Defendants have produced contact information regarding Settlement Classes members and prior to Plaintiffs moving for final approval of the Settlement Agreement. It is further

ORDERED that after Settlement Classes Notices have been approved and disseminated, the Court shall hold a hearing (the "Fairness Hearing") regarding the Settlement Agreement to determine whether it is fair, reasonable, and adequate and whether it should be finally approved by the Court. It is further

ORDERED that the case and all related deadlines are STAYED as to JBS USA Food Company and Tyson Foods, Inc. except as stated above.

DATED: _____

HON. PHILIP A. BRIMMER
CHIEF JUDGE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLORADO

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on March 8, 2024, a true and correct copy of the foregoing was electronically filed by CM/ECF, which caused notice to be sent to all counsel of record.

/s/ *Shana E. Scarlett*
SHANA E. SCARLETT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

RON BROWN and MINKA GARMON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

JBS USA FOOD COMPANY; TYSON FOODS, INC.; CARGILL, INC.; CARGILL MEAT SOLUTIONS CORP.; HORMEL FOODS CORP.; ROCHELLE FOODS, LLC; AMERICAN FOODS GROUP, LLC; TRIUMPH FOODS, LLC; SEABOARD FOODS LLC; NATIONAL BEEF PACKING CO., LLC; SMITHFIELD FOODS, INC.; SMITHFIELD PACKAGED MEATS CORP.; LLC; AGRI BEEF CO.; WASHINGTON BEEF, LLC; PERDUE FARMS, INC.; GREATER OMAHA PACKING CO., INC.; NEBRASKA BEEF, LTD.; INDIANA PACKERS CORPORATION; QUALITY PORK PROCESSORS, INC.; AGRI STATS, INC.; and WEBBER, MENG, SAHL AND COMPANY, INC. d/b/a WMS & COMPANY, INC.,

Defendants.

Civil Action No. 1:22-cv-02946-PAB-STV

DECLARATION OF SHANA E. SCARLETT IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS WITH JBS USA FOOD COMPANY AND TYSON FOODS, INC., CERTIFICATION OF SETTLEMENT CLASSES, AND APPOINTMENT OF SETTLEMENT CLASS COUNSEL

I, Shana E. Scarlett, declare as follows:

I am a partner of Hagens Berman Sobol Shapiro LLP (Hagens Berman). This Court has appointed my firm, together with Cohen Milstein Sellers & Toll, PLLC and Handley Farah & Anderson PLLC, as Interim Co-Lead Counsel in this litigation. Based on personal knowledge or discussions with counsel in my firm of the matters stated herein, if called upon, I could and would competently testify thereto.

1. I specialize in antitrust class action law and have prosecuted numerous antitrust class actions as lead counsel. I have negotiated many settlements during my years of practice. The Court is previously familiar with my and my firm's credentials from Plaintiffs' Unopposed Motion for Appointment of Interim Co-Lead Counsel. *See* ECF No. 113.

2. I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of Settlements with JBS USA Food Company ("JBS") and Tyson Foods, Inc. ("Tyson") (hereinafter, collectively "Settling Defendants"), Certification of Settlement Classes and Appointment of Settlement Class Counsel.

3. On behalf of Plaintiffs, other Co-Lead Interim Counsel and I personally conducted intensive settlement negotiations with counsel for JBS over the course of several weeks. Plaintiffs and JBS executed its Settlement Agreement on January 29, 2024. Attached as **Exhibit A** is a true and accurate copy of the Settlement Agreement between Plaintiffs and JBS ("JBS Settlement Agreement").

4. On behalf of Plaintiffs, other Co-Lead Interim Counsel and I also personally conducted intensive settlement negotiations with counsel for Tyson over the course of multiple months, beginning with a mediation on December 12, 2023 and continuing through the execution of the Settlement Agreement on March 7, 2024. Attached as **Exhibit B** is a true and accurate

copy of the Settlement Agreement between Plaintiffs and Tyson ("Tyson Settlement Agreement").

5. In my opinion, and in that of highly experienced Interim Co-Lead Counsel, the proposed Settlement Agreements are fair, reasonable, and adequate. Each provides substantial monetary and non-monetary benefits to the Settlement Class, and it avoids the risks, costs, and delay of continuing protracted litigation against Settling Defendants.

6. In its Settlement Agreement, JBS commits to pay $55,000,000 (fifty-five million U.S. dollars) to a settlement fund within fourteen (14) business days of the grant of preliminary approval. JBS also agrees to cooperate with Plaintiffs, as set forth in detail in the JBS Settlement Agreement, which cooperation will assist Plaintiffs in prosecuting their claims against the remaining Defendants.

7. In its Settlement Agreement, Tyson commits to pay $72,500,000 (seventy-two million, five hundred thousand U.S. dollars) to a settlement fund within fourteen (14) business days of the grant of preliminary approval. Tyson also agrees to cooperate with Plaintiffs, as set forth in detail in the Tyson Settlement Agreement, which cooperation will assist Plaintiffs in prosecuting their claims against the remaining Defendants.

8. Both the Settlement Agreements resulted from extensive arm's-length and hard-fought negotiations. The negotiations between counsel lasted for months and involved mediations with an experienced third-party mediator. The Settling Defendants and Plaintiffs vigorously negotiated over the details of each Settlement Agreement, including the scope and components of Settling Defendants' required cooperation in the litigation against the remaining Defendants. The parties exchanged multiple proposals and drafts prior to executing Settlement Agreements on January 29, 2024, and on March 7, 2024, with JBS and Tyson respectively.

9. There was no collusion or preference among counsel for the parties at any time during these settlement negotiations. To the contrary, the negotiations were contentious, hard fought, and fully informed. Plaintiffs sought to obtain the largest possible monetary recovery and most helpful cooperation from both JBS and Tyson. Furthermore, there was no discussion or agreement at any time regarding the amount of attorneys' fees that Interim Co-Lead Counsel would ask the Court to award in this case.

10. When the Settlement Agreements were executed, Interim Co-Lead Counsel was fully aware of the strengths and weaknesses of each side's positions. As the Court was previously aware (ECF Nos. 170, 205, and 207), even before filing this case in November 2022, Interim Co-Lead Counsel expended considerable time and resources to conduct an investigation of collaboration between red meat processors in setting compensation for plant employees. To that end, Interim Co-Lead Counsel conducted interviews of former employees and others with personal knowledge of the events that give rise to Plaintiffs' claims. Additionally, Plaintiffs were informed about the strengths and weaknesses of each side's positions from the hundreds of thousands of documents produced by settling Defendant WMS last year. Those documents have provided Plaintiffs with substantial insight into the conspiracy that can seldom be achieved prior to considerable fact discovery. Based on the factual information obtained from the extensive pre-filing investigation and the cooperation from other settling Defendants, Interim Co-Lead Counsel were well informed of the value and consequences of the Settlement Agreements at the time of their execution.

11. Interim Co-Lead Counsel has also entered negotiations in this case having already been through a similar process in the case, *Jien v. Perdue Farms, Inc.*, Case No. 1:19-cv-02521-SAG (D. Md). That case, which concerns similar allegations of wage suppression in the poultry

processing industry and in which both JBS and Tyson also participate, has offered Interim Co-Lead Counsel the opportunity to clarify applicable law and legal hurdles. The knowledge and experience gained in *Jien* has set the stage for Interim Co-Lead Counsel's positions in their settlement negotiations in the instant case.

12. No matter how confident Interim Co-Lead Counsel are in this case, complex antitrust class actions are risky pieces of litigation. The Plaintiffs can never be entirely assured of a finding of liability by a jury. In the opinion of Interim Co-Lead Counsel, these Settlement Agreements represent a significant recovery for the class while still allowing claims against the remaining Defendants to proceed.

13. Plaintiffs request that the Court agree to defer formal notice of the Settlement Agreements to the JBS and Tyson Settlement Classes until an appropriate later date. Plaintiffs are still in the process of negotiating the production of names and contact information of Settlement Class members. Plaintiffs believe there will be many efficiencies gained in postponing notice until it can be achieved for multiple settlements at once. After the production of this information, Plaintiffs will file a motion to direct notice with the Court.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 8th day of March, 2024 at Berkeley, California.

By: /s/ *Shana Scarlett*
SHANA E. SCARLETT

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on March 8, 2024, a true and correct copy of the foregoing was electronically filed by CM/ECF, which caused notice to be sent to all counsel of record.

/s/ *Shana E. Scarlett*
SHANA E. SCARLETT

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:22-cv-02946-PAB-STV

RON BROWN, et al.,

Plaintiffs,

v.

JBS USA FOOD COMPANY, et al.,

Defendants.

SETTLEMENT AGREEMENT BETWEEN CLASS PLAINTIFFS AND DEFENDANT JBS USA FOOD COMPANY

Subject to the approval of the Court, this Settlement Agreement ("Settlement Agreement" or "Agreement") is made and entered into as of the Execution Date, by and between JBS USA Food Company ("JBS" or "Settling Defendant") and the Class Plaintiffs (as hereinafter defined), individually and on behalf of a Settlement Class (as hereinafter defined), through Interim Co-Lead Counsel (as hereinafter defined) for the proposed Settlement Class, and in the above-captioned Action (as hereinafter defined).

RECITALS

A. Class Plaintiffs are prosecuting the Action on their own behalf and on behalf of a putative litigation class. Class Plaintiffs and the putative litigation class are currently represented by Interim Co-Lead Counsel.

B. Class Plaintiffs have alleged, among other things, that Settling Defendant entered into a contract, combination, or conspiracy in restraint of trade, the purpose and effect of which was to suppress competition for labor and to allow Settling Defendant to pay sub-competitive

compensation to hourly and salaried workers in its Red Meat Processing Operations (as defined below) in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, through a series of overt acts including, but not limited to, sharing compensation information and entering into so-called "no-poach" agreements with and among Defendants (as hereinafter defined), alleged co-conspirators, their respective subsidiaries and/or related entities, to refrain from soliciting, recruiting, and/or hiring one another's employees.

C. Settling Defendant denies all allegations of wrongdoing in the Action (as previously, currently, or thereinafter alleged) and believes it has numerous legitimate defenses to Class Plaintiffs' Claims (as hereinafter defined).

D. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, or regulation or of any liability or wrongdoing by Settling Defendant or of the truth of the Allegations or Claims, nor shall it be deemed or construed to be an admission or evidence of Settling Defendant's defenses.

E. Interim Co-Lead Counsel have conducted an investigation into the facts and law regarding the Action and the possible legal and factual defenses thereto and have concluded that (1) a settlement with Settling Defendant according to the terms set forth below is fair, reasonable, adequate, and beneficial to, and in the best interests of, the Settlement Class, given the uncertainties, risks, and costs of continued litigation; (2) the Settlement Fund (as hereinafter defined) reflects fair, reasonable, and adequate compensation for the Settlement Class to release, settle, and discharge their claims that they were undercompensated as a result of the alleged anticompetitive conduct of which Settling Defendant is accused; and (3) the Cooperation (as defined below) to which Settling Defendant has agreed will reduce the substantial burden and expense associated with prosecuting the Action.

F. Despite Settling Defendant's belief that it is not liable for and has strong defenses to the Claims asserted by Class Plaintiffs, Settling Defendant desires to settle the Action to avoid the further expense, inconvenience, disruption, and burden of litigation and other present or future litigation arising out of the allegations giving rise to this Action, to avoid the risks inherent in uncertain complex litigation and trial, and thereby to put to rest this controversy.

G. Arm's-length settlement negotiations with the help of an experienced mediator have taken place between Interim Co-Lead Counsel, Settling Defendant, and Settling Defendant's Counsel (as hereinafter defined), and this Settlement Agreement has been reached as a result of those negotiations.

H. Settling Parties (as hereinafter defined) wish to preserve all arguments, defenses, and responses related to all Claims in the Action, including any arguments, defenses, and responses related to any litigation class proposed by Class Plaintiffs in the event this Settlement Agreement fails to satisfy the conditions set out in Section II(F)(11) below.

I. The Settling Parties desire to fully and finally settle all actual and potential Claims arising from or related to the conduct alleged in the Action, and to avoid the costs and risks of protracted litigation and trial.

IT IS THEREFORE HEREBY AGREED, by and among the Settling Parties, that in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, this Action and all Released Claims (as hereinafter defined) are finally and fully discharged, settled, and compromised as to the Settling Defendant's Released Parties (as hereinafter defined) and that this Action shall be dismissed in its entirety with prejudice as to Settling Defendant, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

I. DEFINITIONS

A. Class Definition.

1. "Settlement Class" means the class described in Section II(F)(3) below.

B. General Definitions.

2. "Action" means the putative class action filed by Class Plaintiffs captioned *Brown, et al. v. JBS USA Food Co., et al*., 1:22-CV-02946 (D. Colo.), which is currently pending in the United States District Court for the District of Colorado, or any related action that is based on or related to the same set of facts, circumstances, or allegations as previously, currently, or hereafter set forth in the Complaint (as hereinafter defined).

3. "Allegations" means the allegations in the Complaint (as previously, currently, or thereinafter alleged), and includes any supplemental or amended complaint, including that Settling Defendant and its predecessors, wholly owned and/or controlled subsidiaries, parents, and/or other affiliates entered into a contract, combination, or conspiracy in restraint of trade, the purpose and effect of which was to suppress competition for labor and to allow Settling Defendant to pay sub-competitive compensation to hourly and salaried workers in its Red Meat Processing Operations in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, through a series of overt acts including, but not limited to, sharing compensation information and entering into so-called "no-poach" agreements with and among defendants in the Action, alleged co-conspirators, their respective subsidiaries and/or related entities, to refrain from soliciting, recruiting, and/or hiring one another's employees.

4. "Claims" means any and all actual or potential, known or unknown, causes of action, claims, contentions, allegations, assertions of wrongdoing, damages, losses, or demands for recoveries, remedies, or fees complained of, arising from or related to the conduct alleged (as previously, currently, or hereinafter alleged) in the Action, or that could or should have been

alleged in the Action, including but not limited to any claim relating to or arising from the Allegations or any other allegations in the Complaint.

5. "Claims Administrator" means the third party to be retained by Interim Co-Lead Counsel and approved by the Court to manage and administer the process by which Settlement Class Members (as hereinafter defined) are notified of the Settlement Agreement and paid from the Net Settlement Fund (as hereinafter defined).

6. "Class Plaintiffs" means all Plaintiffs named in the Complaint, including but not limited to Ron Brown, Minka Garmon, and Jessie Croft.[1]

7. "Compensation" means the provision of anything of value to Settlement Class Members and includes (but is not limited to) wages, salaries, insurance benefits, bonuses, overtime pay, night shift premiums, raises, promotions, retirement benefits, stocks or stock options, meals, and any other monetary and nonmonetary forms of remuneration or benefits.

8. "Complaint" means the Corrected Class Action Complaint (ECF 23-1, filed November 14, 2022), and the Amended Complaint (ECF 260, filed January 12, 2024) in the Action, and any amendment or supplement thereto or any other complaint filed in an Action.

9. "Cooperation," as described in Section II(A)(2) below, shall mean providing data, Documents, information and witnesses concerning the Allegations per the terms of the conditions set forth herein.

10. "Court" means the United States District Court for the District of Colorado and the Honorable Chief Judge Philip A. Brimmer or his successor, or any other Court with jurisdiction over an Action.

[1] For the avoidance of doubt, the term "Class Plaintiffs" includes Jessie Croft, notwithstanding that she is not named as a plaintiff in the Amended Complaint (ECF 260).

11. "Date of Final Approval" means the date on which the Court enters an order granting final approval to this Settlement Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Final Approval"), as provided in Section II(F)(8) below.

12. "Date of Final Judgment" means the first date upon which both of the following conditions shall have been satisfied: (a) Final Approval of this Settlement Agreement by the Court; and (b) either (1) thirty days have passed from the date of Final Approval with no notice of appeal having been filed with the Court; or (2) Final Approval has been affirmed by a mandate issued by any reviewing court to which any appeal has been taken, and any further petition for review (including certiorari) has been denied, and the time for any further appeal or review of Final Approval has expired.

13. "Date of Preliminary Approval" means the date on which the Court enters an order granting preliminary approval to this Settlement Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, as provided in Section II(F)(4) below.

14. "Defendant" or "Defendants" means any or all of the defendants named in the Action, now, in the past, or in the future.[2]

15. "Defendant Processors" means all Defendants other than Webber, Meng, Sahl, and Company, Inc. ("WMS") and Agri Stats, Inc. ("Agri Stats").

16. "Documents" means (a) all papers, electronically stored information ("ESI"), statements, transcripts, or other materials within the scope of Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure; and (b) any copies or reproductions of the foregoing, including microfilm copies or computer images.

[2] For the avoidance of doubt, the term "Defendants" includes Iowa Premium LLC and any of its predecessors, wholly owned and/or controlled subsidiaries, and/or other affiliates, notwithstanding the fact that Iowa Premium LLC is not named as a defendant in the Amended Complaint (ECF 260).

17. "Effective Date" shall be the Date of Final Judgment as defined in Section I(B).

18. "Escrow Account" means the account with the Escrow Agent that holds the Settlement Fund.

19. "Escrow Agent" means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Section II(D) of this Agreement.

20. "Escrow Agreement" means the certain agreement between the Escrow Agent that holds the Settlement Fund and Class Plaintiffs (by and through Interim Co-Lead Counsel) pursuant to which the Escrow Account is established and funded for the benefit of the Settlement Class, as set forth in Section II(D) of this Agreement.

21. "Execution Date" means the date on which this Settlement Agreement is entered into and executed by all Settling Parties.

22. "Fairness Hearing" has the meaning provided in Section II(F)(4) below.

23. "Interim Co-Lead Counsel" and "Settlement Class Counsel" mean the law firms of Cohen Milstein Sellers & Toll PLLC, Hagens Berman Sobol Shapiro LLP, and Handley Farah & Anderson PLLC.

24. "Net Settlement Fund" means the Settlement Fund, plus accrued interest, less any award of attorneys' fees or reimbursement of expenses and less applicable taxes, tax preparation expenses, or costs of notice and administration, that may be awarded or approved by the Court.

25. "Order and Final Judgment" means the order and final judgment of the Court approving the Settlement Agreement, including all of its material terms and conditions without modifications (except any modifications agreed upon by the Settling Parties and, as necessary, approved by the Court), and the settlement pursuant to Federal Rule of Civil Procedure 23, and

dismissing Settling Defendant with prejudice from the Action, as described in Section II(F)(8) below.

26. "Person(s)" means an individual, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other entity or organization.

27. "Red Meat Processing Operations" means beef and pork (collectively referred to as "red meat(s)") processing plants, including, but not limited to, slaughterhouse plants and further-processing plants, in the United States.

28. "Released Claims" means those claims identified and defined in Section II(B)(2) of this Settlement Agreement.

29. "Releasing Party" or "Releasing Parties" shall refer, individually and collectively, to the Settlement Class and all members of the Settlement Class, including the Class Plaintiffs, each on behalf of themselves and their respective predecessors and successors; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and any of their past, present, and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions, and divisions; and also means, to the full extent of the power of the signatories hereto to release past, present, and future claims, persons, or entities acting in a private attorney general, qui tam, taxpayer, or any other capacity, whether or not any of them participate in this Settlement Agreement.

30. "Settlement Agreement" or "Agreement" means this document and the agreement reflected herein.

31. "Settlement Amount" means the cash payment of $55,000,000 (fifty-five million U.S. dollars) described in Section II(A)(1), below.

32. "Settlement Class Member" means each member of the Settlement Class who is not timely and properly excluded from the Settlement Class.

33. "Settlement Class Notice" means the notice to the Settlement Class that is approved by the Court, in accordance with Section II(F)(5) below.

34. "Settlement Class Period" means the period from January 1, 2000 until the date of the first preliminary approval of a settlement in this action.

35. "Settlement Fund" means the funds described in Section II(A) of this Settlement Agreement, plus accrued interest, in the separate Escrow Account to be maintained by the Escrow Agent for the settlement contemplated by this Settlement Agreement established in accordance with Section II(D) below.

36. "Settling Defendant" means JBS USA Food Company.

37. "Settling Defendant's Counsel" means the law firms of Kasowitz Benson Torres LLP and Spencer Fane LLP, and any other legal advisors retained for purposes of advising Settling Defendant with respect to the Action.

38. "Settling Defendant's Released Parties" means JBS and all of its respective former or current, direct or indirect, parents, subsidiaries and affiliates, including but not limited to the predecessors, successors and assigns of each of them; and any of their respective former or current, direct or indirect trustees, owners, parents, subsidiaries, divisions, departments, principals, partners, directors, officers, shareholders, managers, members, attorneys, equity holders, agents, insurers, supervisors, representatives and employees.

39. "Settling Parties" means Settling Defendant and the Settlement Class, as represented by the Class Plaintiffs.

40. "Unrelated Co-Conspirator" means any alleged co-conspirator in the Action that does not satisfy the criteria for inclusion as a "Released Party" in the definition of "Settling Defendant's Released Parties."

II. SETTLEMENT

A. Performance By Settling Defendant.

1. **Settlement Payment**. In consideration for the release of the Released Claims and the dismissal with prejudice of the Action as to Settling Defendant within fourteen days of the Date of Preliminary Approval, Settling Defendant shall pay or cause to be paid $55,000,000 (fifty-five million U.S. dollars) into the Settlement Fund.

a. Settling Defendant's payment to the Escrow Agent described herein shall be by wire transfer pursuant to instructions from the Escrow Agent or Interim Co-Lead Counsel.

b. The payment described in Section II(A)(1) shall constitute the total Settlement Amount and Settling Defendant shall have no other payment obligations to the Settlement Class or Settlement Class Counsel or owe any further amount under this Settlement Agreement so long as this Settlement Agreement remains in effect. The obligations described in Section II(A)(2) shall continue so long as this Settlement Agreement remains in effect.

2. **Cooperation**. Cooperation is a material term of this Settlement Agreement. Settling Defendant's obligation to cooperate under this paragraph encompasses the Red Meat Processing Operations operated by Settling Defendant's Released Parties. Such cooperation shall consist of the following actions:

a. Within 120 days of the Date of Preliminary Approval, Settling Defendant will produce to Class Plaintiffs structured compensation data for the Settlement Class Period and four years prior, identified after a reasonable search, regarding Settlement Class Members employed by Settling Defendant's Released Parties. Such structured compensation data will

include the following (to the extent such data currently exists in JBS's possession, custody, and control):

i. A running history of personal information, including name, email address, physical address, telephone number, hire date, employee ID, Social Security number, date of birth, contact information, gender, education level, race, ethnicity, immigration status, channel of hiring, and information on seniority/prior employer(s);

ii. Job title, dates of employment, job changes, wages or salaries, bonuses, overtime pay, shift premiums, benefits, changes in wage or salary rate, and any other reasonably accessible components of Compensation; and

iii. Exit information, including date of termination of employment, reason(s) for termination of employment, and subsequent employer(s).

Settling Defendant will use reasonable efforts to respond to a reasonable number of Plaintiffs' questions regarding, and otherwise assist Plaintiffs to understand, such structured data.

b. Settling Defendant agrees to use reasonable efforts to authenticate and lay the foundation for admissibility of Documents and/or things produced by it in the Action where the facts indicate that the Documents and/or things at issue are authentic, whether by declarations, affidavits, hearings, and/or trials as may be necessary and as qualified herein in Section II(A)(2)(e).

c. Class Plaintiffs will identify fifteen (15) either current or former employees of Settling Defendant's Released Parties as document custodians (collectively, the "Document Custodians"), and provide Settling Defendant with a list of reasonable proposed search terms relating to the Allegations. If the Settling Parties are unable to reach agreement on a final list of reasonable search terms after good faith negotiations, Settling Defendant will, within 120 days of either (i) the Date of Preliminary Approval or (ii) the date upon which the Document Custodians are identified and any reasonable search terms are agreed-upon, whichever is later, produce non-

privileged Documents in its possession, custody or control that are returned by the agreed-upon search terms and responsive to Class Plaintiffs' requests for production (the "RFPs"). After any agreement on additional search terms by the non-settling defendants or a court order ordering the use of any additional search terms, Class Plaintiffs will provide those search terms to Settling Defendant, and within 120 days, Settling Defendant will produce any additional non-privileged Documents of the Document Custodians in its possession, custody or control that are returned by any of those additional search terms not previously run and responsive to the RFPs. The Settling Parties may mutually agree to alter the search terms run by Settling Defendant and to move these deadlines. Notwithstanding the foregoing or anything else contained herein, the Document Custodians shall not include any Chief(s), President(s), or Board Director(s).

d. Within 120 days of either (i) the Date of Preliminary Approval or (ii) the identification of the Document Custodians by Class Plaintiffs, whichever is later, the Settling Defendant will produce all records of phone calls placed or received by those Document Custodians during the Settlement Class Period, as well as the phone numbers associated with those Document Custodians, in Settling Defendant's possession, custody, and control that are located through a reasonable search. Settling Defendant will also use reasonable efforts, including obtaining signed authorizations, to allow Class Plaintiffs to obtain records of such phone calls from third-party carriers, if necessary.

e. Class Plaintiffs will identify up to eight (8) then-current employees of Settling Defendant's Released Parties who will be deposed by Class Plaintiffs and who will participate as witnesses at trial (if requested by Class Plaintiffs and still employed by JBS at the time of trial) (collectively, the "Depo and Trial Witnesses"), including any witnesses called for authentication or admissibility purposes. This limitation on Depo and Trial Witnesses does not

apply to former employees of Settling Defendant's Released Parties. This limitation does, however, include depositions of corporate representatives under Fed.R.Civ.P. 30(b)(6), regarding the topics concerning factual allegations underlying the Claims in the Action, and general industry knowledge, which will be negotiated by the Settling Parties. Notwithstanding the foregoing or anything else contained herein, the Depo and Trial Witnesses referenced herein shall not include any Chief(s), President(s), or Board Director(s).

f. In addition to the custodial searches discussed above in Sections II(A)(2)(c) and II(A)(2)(d), within 120 days of Date of Preliminary Approval, Settling Defendant will produce the following Documents to Class Plaintiffs:

- All written agreements or contracts with Agri Stats, Inc. or Express Markets, Inc., related to Red Meat Processing Operations, identified by a reasonable search;
- All contracts executed with labor unions representing Class Members at Settling Defendant's Released Parties' Red Meat Processing Operations executed during the Settlement Class Period, identified by a reasonable search.
- Any Documents that have been or will be produced to the Department of Justice by Settling Defendant in connection with any investigation regarding Compensation paid to workers at Red Meat Processing Operations that have not already been produced to Class Plaintiffs, and thereafter JBS will do so within 14 days of the production of such Documents to the Department of Justice. Settling Defendant is required to produce any such Documents unless the Department of Justice objects to such production and Settling Defendant is not otherwise ordered by the Court to produce any such Documents. Unless prohibited by the Department of Justice, Settling Defendant agrees to take no position on submissions by Class Plaintiffs to any court to obtain any Documents produced to the Department of Justice; provided, however, that Settling Defendant reserves the right to designate any produced Documents for confidential treatment pursuant to the applicable protective order in this Action.

g. If JBS withholds the production of any Documents due to attorney-client privilege or other forms of protection from disclosure, Settling Defendant will produce a privilege log (that accords with the format outlined in the ESI order to be entered in the Action) no later than 21 days after the document production from which Documents were withheld.

h. The Settling Parties will have discretion to agree to modifications of these discovery obligations and deadlines, and such modifications will not require Court approval.

i. Documents or information provided pursuant to these Cooperation provisions shall not be used for any purpose outside of this Action. Once a protective order has been entered, confidential Documents or information provided pursuant to these Cooperation provisions will be subject to and conditioned upon the entry of the protective order in this case, except as provided in the preceding sentence. Nothing in this provision prevents Plaintiffs from complying with a lawfully issued subpoena, request for production, or CID, provided that Class Plaintiffs will give notice to JBS within 5 business days of the receipt of such subpoena, request, or CID, and a reasonable opportunity to respond, object, or intervene. Nothing in this provision shall affect or modify the legal standards that govern whether a Document satisfies the criteria for requiring that the Document be filed under seal rather than publicly.

B. Release of Claims.

1. The Release of Claims is a material term of this Settlement Agreement.

2. **Release**. Upon the Date of Final Judgment, the Releasing Parties shall completely release, acquit, and forever discharge the Settling Defendant's Released Parties from any and all claims, demands, actions, suits, causes of action, whether known or unknown, whether class, individual, parens patriae, or otherwise in nature, and regardless of whether or not any member of the Settlement Class has objected to the Settlement Agreement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively, or in any

other capacity, that the Releasing Parties ever had, now has, or hereafter can, shall, or may ever have, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, losses, civil or other penalties, restitution, disgorgement, damages, and the consequences thereof that have been asserted in the Allegations in the Action, or could have been asserted, under federal or state law in any way arising out of or relating in any way to an alleged or actual conspiracy or agreement between or among Defendants, any purported or alleged co-conspirators, their respective subsidiaries, parents, and/or related entities, relating to reducing competition for the hiring, solicitation, and retaining of, or to fixing, depressing, restraining, exchanging information about, or otherwise reducing the Compensation paid or provided to, the Releasing Parties by Defendants, alleged co-conspirators, their respective subsidiaries, parents, and/or related entities (collectively, the "Released Claims"). Notwithstanding the above, "Released Claims" do not include (i) claims asserted against Defendants other than the Settling Defendant's Released Parties except as provided below concerning the Predecessor Owner(s), and (ii) any claims wholly unrelated to the Allegations or underlying conduct alleged in the Action that are based on breach of contract, negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, discrimination, COVID-19 safety protocols, failure to comply with wage and hours laws unrelated to anticompetitive conduct, or securities claims. "Released Claims" also includes Acquired Claims (as defined below). "Acquired Claims" shall mean claims or potential claims relating to the Allegations in the Action against an entity from which a Settling Defendant's Released Party acquired Red Meat Processing Operations ("Predecessor Owner(s)"), but only to the extent that such claims arise out of or result from the ownership, maintenance or conduct of such Red Meat Processing Operations prior to the

effective date of such acquisition and for which a Settling Defendant's Released Party has assumed, or indemnified Predecessor Owner(s) from, liabilities attributable to such Red Meat Processing Operations for the period prior to the effective date of such acquisition or assumption of liabilities. Upon the Date of Final Judgment, the Releasing Parties shall completely release, acquit, and forever discharge the Predecessor Owner(s) from the Acquired Claims. The reservation of claims set forth in (i) and (ii) of this paragraph does not impair or diminish the right of the Settling Defendant's Released Parties to assert any and all defenses to such claims. During the period after the expiration of the deadline for submitting an opt-out notice, as determined by the Court, and prior to Final Judgment, all Releasing Parties who have not submitted a valid request to be excluded from the Settlement Class shall be preliminarily enjoined and barred from asserting any Released Claims against the Settling Defendant's Released Parties. The release of the Released Claims will become effective as to all Releasing Parties upon final approval of the Settlement Agreement and the passing of the time to appeal such final approval. Upon Final Judgment, the Releasing Parties further agree that they will not file any other suit against the Settling Defendant's Released Parties arising out of or relating to the Released Claims.

3. **Covenant Not to Sue**. Upon the Date of Final Judgment, Class Plaintiffs and each Settlement Class Member covenant not to sue, directly or indirectly, or otherwise seek to establish liability against the Settling Defendant's Released Parties for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of or related to the Released Claims, including, without limitation, seeking to recover damages or other relief relating to any of the Released Claims. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

4. **Full Release**. The Settling Parties to this Settlement Agreement expressly agree and confirm that the Released Claims as set forth in the provisions of Section II(B) constitute a full and final release of the Settling Defendant's Released Parties by the Releasing Parties of the Released Claims, and of the Predecessor Owner(s) solely with respect to Acquired Claims by the Releasing Parties.

5. **Waiver**. In addition to the provisions of Section II(B)(2), the Releasing Parties hereby expressly waive and release, solely with respect to the Released Claims, upon the Date of Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasing Party may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Section II(B)(2), but each Releasing Party hereby expressly waives and fully, finally, and forever settles and releases, upon the Date of Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties have agreed to release pursuant to Section II(B)(2), whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

C. Claims Administrator.

Pursuant to the Preliminary Approval Order (as hereinafter defined), and subject to Court approval, Interim Co-Lead Counsel shall engage a qualified Claims Administrator. The Claims Administrator will assist with the settlement claims process as set forth herein.

1. The Claims Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order, shall administer and calculate the claims, and shall oversee distribution of the Net Settlement Fund in accordance with the Plan of Distribution.

2. The Claims Administrator also shall assist in the development of the Plan of Distribution and the resolution of any disputes regarding the Plan of Distribution.

D. Settlement Fund Administration.

The Settlement Fund shall be administered pursuant to the provisions of this Settlement Agreement and subject to the Court's continuing supervision and control, until the funds in the Settlement Fund are fully distributed, as follows:

1. The Settlement Fund shall be established within an Escrow Account and administered by an Escrow Agent designated by Interim Co-Lead Counsel. Interim Co-Lead Counsel, Settling Defendant, and Settling Defendant's Counsel agree to cooperate in good faith to prepare an appropriate Escrow Agreement in conformance with this Agreement.

2. All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

3. Neither the Settlement Class, Interim Co-Lead Counsel, Settling Defendant, nor Settling Defendant's Counsel shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or obtaining

approval of the settlement or administering the settlement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund, subject to any necessary Court approval. Settling Defendant shall not object to Interim Co-Lead Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to $500,000 to pay the costs for notice and for Preliminary and Final Approval of the Settlement Agreement. Any costs of notice that Interim Co-Lead Counsel are permitted to withdraw from the Settlement Fund, either pursuant to the Settling Parties' Settlement Agreement or order of the Court, shall be nonrefundable if, for any reason, the Settlement Agreement is terminated according to its terms. At their discretion, Class Plaintiffs may combine the notice of the Settling Defendant's settlement with the notice for any other Defendant in the action. The timing of the filing of a motion to approve notice of the Settlement Agreement to the Settlement Class, and the timing proposed to the Court for the actual distribution of that notice to the Settlement Class, shall be at the sole discretion of Interim Co-Lead Counsel.

4. Under no circumstances will Settling Defendant or the Settling Defendant's Released Parties be required to pay more than the Settlement Amount pursuant to this Agreement and the settlement set forth herein. For purposes of clarification, the payment of any fee and expense award, the notice and administrative costs (including payment of any applicable fees to Escrow Agent) and any other costs associated with the implementation of this Settlement Agreement shall be exclusively paid from the Settlement Amount.

5. Except for as provided in Section II(F)(11), no other funds shall be paid or disbursements made from the Settlement Fund without an order of the Court.

6. The Escrow Agent shall, to the extent practicable, invest the funds deposited in the Settlement Fund in discrete and identifiable instruments backed by the full faith and credit of the

United States Government, or fully insured by the United States Government or any agency thereof, including a United States Treasury Fund or a bank account that is either: (i) fully insured by the Federal Deposit Insurance Corporation; or (ii) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Section II(D)(6) shall be maintained by the Escrow Agent, and not commingled with any other funds or monies, in a federally insured bank account. Subsequent to payment into the Settlement Fund pursuant to Section II(A)(1), neither Settling Defendant nor Settling Defendant's Counsel shall bear any responsibility or risk related to the Settlement Fund or the Net Settlement Fund.

7. The Settling Parties agree that the Settlement Fund and the Net Settlement Fund are each intended to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1, and to that end, the Settling Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. In addition, the Escrow Agent, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing all necessary information and tax returns for the Escrow Account and paying from the Escrow Account any Taxes, as defined below, owed with respect to the Escrow Account. In addition, Interim Co-Lead Counsel shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in compliance

with the procedures and requirements contained in such regulations. It shall be the responsibility of Interim Co-Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Fund being a "Qualified Settlement Fund" within the meaning of Treas. Reg. § 1.4688-1. Interim Co-Lead Counsel shall timely and properly file, or cause to be filed through the Escrow Agent, all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund. Neither Settling Defendant nor Settling Defendant's Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any Taxes with respect to the Escrow Account.

8. All: (i) taxes on the income of the Settlement Fund ("Taxes"), and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) shall timely be paid by the Escrow Agent out of the Settlement Fund. Settlement Class Members shall be responsible for paying any and all federal, state, and local income taxes due on any distribution made to them pursuant to the Settlement provided herein.

9. After the Date of Final Approval, the Net Settlement Fund shall be disbursed in accordance with a plan of distribution to be approved by the Court. The timing of a motion to approve a plan of distribution of the Net Settlement Fund created by this Settlement Agreement shall be in the discretion of Interim Co-Lead Counsel, and may be combined with a plan to distribute proceeds from other settlements in this Action.

E. No Reversion.

Settling Defendant shall have no rights to reversion, except as provided in Section II(F)(11) of this Settlement Agreement. In the event of a reversion, all funds not previously spent on notice and administrative costs shall be returned to Settling Defendant, including any interest accrued.

F. Approval of Settlement Agreement and Dismissal of Claims.

1. **Notice of Settlement**. No later than seven (7) days after the execution of this Settlement Agreement by Settling Defendant, Interim Co-Lead Counsel and Settling Defendant's Counsel shall jointly file with the Court a notice of settlement and stipulation for suspension of all proceedings by Class Plaintiffs against Settling Defendant in the Action pending approval of this Settlement Agreement.

2. **Effectuating the Settlement**. Class Plaintiffs and Settling Defendant shall cooperate in good faith and use their best efforts to effectuate this Settlement Agreement, including cooperating in seeking the Court's approval of the Settlement Agreement without modification of any of its material terms and conditions, providing appropriate Settlement Class Notice under Federal Rules of Civil Procedure 23, and seeking the complete and final dismissal with prejudice of the Action as to Settling Defendant.

3. **Settlement Class Certification**. Class Plaintiffs shall seek, and Settling Defendant shall take no position with respect to, the appointment of Interim Co-Lead Counsel as Settlement Class Counsel for purposes of this Settlement and the certification in the Action of a class for settlement purposes only, referred to herein as the "Settlement Class," which shall include Class Plaintiffs and be defined as:

> All persons employed by Defendant Processors, their subsidiaries, and/or related entities at beef-processing or pork-processing plants in the continental United States

from January 1, 2000 until the date of the first preliminary approval of a settlement in this action.

The following persons and entities are excluded from the Settlement Class: plant managers; human-resources managers and staff; clerical staff; guards, watchmen, and salesmen; Defendants, co-conspirators, and any of their subsidiaries, predecessors, officers, or directors; and federal, state or local governmental entities ("Excluded Personnel"), unless such Excluded Personnel are added as plaintiffs in any Complaint in this Action. For the avoidance of doubt, the Settlement Class includes all persons employed by Defendant Processors, their subsidiaries, affiliates, and/or related entities at Red Meat Processing Operations from January 1, 2000 until the date of the first preliminary approval of a settlement in this action.

4. **Preliminary Approval**. No later than thirty (30) days after the Execution Date, Class Plaintiffs shall submit to the Court a motion requesting entry of an order preliminarily approving the settlement ("Preliminary Approval Order"). Class Plaintiffs may combine the motion for Preliminary Approval with a motion to grant preliminary approval for settlement with any other Defendants. The Settling Parties may delay the filing of Preliminary Approval by mutual agreement. At a reasonable time in advance of submission to the Court, the papers in support of Preliminary Approval, which shall include the proposed form of an order preliminarily approving this Settlement Agreement, shall be provided by Interim Co-Lead Counsel to Settling Defendant's Counsel for their review. Settling Defendant shall not oppose and shall reasonably cooperate in such motion, subject to the provisions below. The proposed Preliminary Approval Order shall provide that, *inter alia*:

a. the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;

b. after Settlement Class Notice has been carried out, a hearing on the settlement proposed in this Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court (the "Fairness Hearing");

c. Settlement Class Members who wish to exclude themselves from the settlement and the Settlement Agreement must submit an appropriate and timely request for exclusion;

d. Settlement Class Members who wish to object to this Agreement must submit an appropriate and timely written statement of the grounds for objection;

e. Settlement Class Members who wish to appear in person to object to this Agreement may do so at the Fairness Hearing pursuant to directions by the Court; and

f. all proceedings in the Action with respect to Settling Defendant, and Class Plaintiffs are stayed until further order of the Court, except as may be necessary to implement the settlement reflected in this Settlement Agreement or comply with the terms thereof.

5. **Settlement Class Notice**. The Settlement Class Notice shall provide for a right of exclusion, as set forth in Section II(F)(4). The Settlement Class Notice shall also provide for a right to object to the proposed Settlement. Individual notice of the Settlement to all Settlement Class Members who can be identified through reasonable effort shall be mailed, emailed and/or sent via text message to the Settlement Class in conformance with a notice plan to be approved by the Court. Interim Co-Lead Counsel will undertake all reasonable efforts to notify potential Settlement Class Members of the settlement, including publication notice through traditional, digital, and/or social media sources likely to reach Settlement Class Members. The timing of a motion to approve notice to the Settlement Class of this Settlement Agreement ("Notice

Motion") shall be in the discretion of Interim Co-Lead Counsel, and may be combined with notice of other settlements in this Action. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice.

6. **Cost of Settlement Class Notice**. The costs of providing Settlement Class Notice to Settlement Class Members shall be paid by the Escrow Agent from the Settlement Fund pursuant to Section II(D)(2) and (3).

7. **CAFA Notice**. Within ten days of the filing of the motion for Preliminary Approval, Settling Defendant will provide to the appropriate state officials and the appropriate federal official the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) ("CAFA").

8. **Final Approval**. If this Settlement Agreement is preliminarily approved by the Court, the Settlement Class shall seek entry of an Order and Final Judgment, which Settling Defendant shall not oppose and with which it shall reasonably cooperate, that *inter alia:*

a. certifies the Settlement Class described in Section II(F)(3), pursuant to Rule 23 of the Federal Rules of Civil Procedure, for purposes of this settlement as a settlement class;

b. finally approves this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;

c. determines that the Settlement Class Notice constituted, under the circumstances, the most effective and practicable notice of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;

d. confirms that Settling Defendant has provided the appropriate notice pursuant to CAFA;

e. orders that all claims made against Settling Defendant in the Action, including in all class action complaints asserted by the Class Plaintiffs, are dismissed with prejudice and without further costs or fees;

f. discharges and releases the Settling Defendant's Released Parties from all Released Claims;

g. enjoins Class Plaintiffs from suing, directly or indirectly, any of the Settling Defendant's Released Parties for any of the Released Claims;

h. requires Interim Co-Lead Counsel to file with the clerk of the Court a record of potential Settlement Class Members that timely excluded themselves from the Settlement Class, and to provide a copy of the record to Settling Defendants' Counsel;

i. incorporates the release set forth in Section II(B)(2) of this Agreement and makes that release effective as of the Effective Date as to the Class Plaintiffs and all Settlement Class Members that were not timely and validly excluded from the Settlement Class;

j. determines under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to Settling Defendant shall be final and entered forthwith, and stating:

i. Final judgment as to the Action is entered in favor of Settling Defendant; and

ii. Final judgment is granted in favor of the Settling Defendant's Released Parties on any Released Claim of a Settlement Class Member that did not file a timely notice for exclusion.

k. reserves to the Court exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this Agreement; and

l. orders that Settlement Funds may be disbursed as provided in the Final Approval Order or other order of the Court.

9. **Class Counsel Fees and Expenses; No Other Costs**.

a. Settling Defendant shall have no responsibility for any other costs or expenses, including Interim Co-Lead Counsel's attorneys' fees, costs, and expenses or the fees, costs, or expenses of any Plaintiff's or Settlement Class Member's respective attorneys, experts, advisors, or representatives, provided, however, that with respect to the Action, including this Settlement Agreement, Settling Defendant shall bear its costs and attorneys' fees.

b. Subject to Interim Co-Lead Counsel's sole discretion as to whether to apply and timing of such an application, Interim Co-Lead Counsel may apply to the Court for an attorney fee award, reimbursement of expenses and costs, and/or service awards for class representatives, to be paid from the proceeds of the Settlement Fund. Settling Defendant shall have no responsibility, financial obligation, or liability for any such fees, costs, expenses, or service awards.

c. The procedure for and the allowance or disallowance by the Court of any applications by Interim Co-Lead Counsel for attorneys' fees, reimbursement of expenses, and/or service awards to class representatives are not part of or a condition to the settlement set forth herein, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth in this Agreement, and any order or proceeding relating to any application for attorneys' fees, reimbursement of expenses, and/or service awards to class representatives shall not operate to terminate or cancel this Agreement or the release set forth herein, or affect or delay the finality of the judgment approving this settlement.

d. Within 15 days after any order by the Court awarding attorneys' fees, reimbursing expenses, and/or providing service awards to class representatives, the Escrow Agent shall pay the approved attorneys' fees, reimbursement of expenses, and service award via wire transfer from the Settlement Fund as directed by Settlement Class Counsel in accordance with and attaching the Court's order. In the event the Court does not grant Final Approval of the settlement set forth herein or the award of attorneys' fees, reimbursement of expenses, and/or provision of service awards is reversed or modified, Settlement Class Counsel will cause the difference in the amount paid and the amount awarded to be returned to the Settlement Fund within 30 days of the order from a court of appropriate jurisdiction.

10. **When Settlement Becomes Final**. The settlement contemplated by this Settlement Agreement shall become final on the Date of Final Judgment.

11. **Termination and Reduction**. If the Court declines to grant either preliminary or final approval to this Settlement Agreement or any material part hereof (as set forth in Sections II(F)(4) or (F)(8) above, respectively), or if the Court approves this Settlement Agreement in a materially modified form, or if after the Court's approval, such approval is materially modified or set aside on appeal, or if the Court does not enter the Order and Final Judgment, or if the Court enters the Order and Final Judgment and appellate review is sought and on such review such Final Order and Judgment is not affirmed (collectively, "Triggering Events"), then Settling Defendant and Class Plaintiffs shall each, in their respective sole discretion, have the option to rescind this Settlement Agreement in its entirety by providing written notice of their election to do so ("Termination Notice") to each other within thirty (30) calendar days of any such Triggering Event. For purposes of this Section II(F)(11), a material modification includes but is not limited to any modification to the Settlement Amount, settlement payments, scope of the Settlement

Class definition, or the scope of the Released Claims. If rescinded or terminated, this Settlement Agreement shall become null and void, and, with the exception of any Settlement Funds used for notice purposes pursuant to Section II(D)(3), all other funds remaining in the Escrow Account (including interest earned thereon) shall be returned to Settling Defendant and the Settling Parties' position shall be returned to the status quo ante. In no way shall Class Plaintiffs have the right to rescind or terminate this Settlement Agreement if the Court fails or refuses to grant any request for attorneys' fees, reimbursement of costs, or any service awards to class representatives.

12. **No Admission**.

a. Settling Defendant denies all allegations of wrongdoing in the Action. Nothing in this Settlement Agreement constitutes an admission by Settling Defendant or Settling Defendant's Released Parties as to the merits of the Allegations made in the Complaint or Action, or an admission by Class Plaintiffs or the Settlement Class of the validity of any defenses that have been or could be asserted by Settling Defendant.

b. This Settlement Agreement, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any of the Settling Parties to be received in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of Settling Defendant or other Settling Defendant's Released Parties; provided, however, that nothing contained in this Section II(F)(12) shall prevent this Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the settlement (or any agreement or order relating thereto) or the Order and Final Judgment, or in which the

reasonableness, fairness, or good faith of any Settling Party participating in the settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement Agreement or the Order and Final Judgment. This Settlement Agreement may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this settlement, including but not limited to Settling Defendant filing this Settlement Agreement and/or the Order and Final Judgment in any other action that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, waiver, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. **Litigation Standstill**. Class Plaintiffs shall cease all litigation activities against Settling Defendant in the Action except to the extent expressly authorized in this Settlement Agreement in connection with providing the Cooperation provided for in Section II(A), or to enforce this Settlement Agreement subject to Sections III(E) and III(K). Except to the extent expressly authorized in this Section II(F)(13), Settling Defendant and Settling Defendant's Counsel shall cease all litigation activities against Class Plaintiffs in the Action. As may be necessary to effectuate this Agreement, Class Plaintiffs may continue to name Settling Defendant as a defendant in any amended Complaint filed in the Action before the Date of Final Judgment provided, however, that in any such amended Complaint or otherwise, Class Plaintiffs will not assert (or assist any other persons in asserting) any claims against any of the Settling Defendant's Released Parties other than the claims asserted in the operative Complaint as of the date this Settlement Agreement is executed; and in any event, all such claims and those in the current operative Complaint and any amended Complaint have been and will be released as Released Claims. For the avoidance of doubt, should Class Plaintiffs seek to depose or call as trial

witnesses former employees of Settling Defendant's Released Parties on topics related to their time of employment at any of the Settling Defendant's Released Parties, this litigation standstill shall not preclude such depositions or trial witnesses or testimony, and Settling Defendant in its sole discretion shall be permitted to represent the interests of Settling Defendant's Released Parties and the former employee in such deposition and any related discovery practice or at trial. None of the foregoing provisions shall be construed to prohibit Class Plaintiffs from seeking appropriate discovery from non-settling Defendants, Unrelated Co-Conspirators, former employees of Settling Defendant consistent with Section II(A)(2)(d), or other third parties. This litigation standstill precludes Settling Defendant (whether through Settling Defendant's Counsel or otherwise) from assisting any non-settling Defendant in the litigation or defense of this Action, including by assisting in opposing Class Plaintiffs' motion for class certification or working with expert witnesses or on expert materials. This litigation standstill does not, however, preclude Settling Defendant from (i) responding to discovery served by any non-Settling Defendant; (ii) negotiating in good faith to resolve any disputes regarding the scope of such discovery; (iii) taking steps they believe in good faith are necessary to reduce the scope or burden of such discovery from non-Settling Defendants, including without limitation by providing information related to structured data productions, or (iv) moving to dismiss any subsequent claims, allegations, or causes of action asserting Released Claims against Settling Defendant's Released Parties (and Class Plaintiffs agree not to oppose such motion). Settling Defendant will notify Interim Co-Lead Class Counsel within two (2) business days in the event any non-Settling Defendant requests a declaration, affidavit, or other written statement in lieu of a deposition.

III. MISCELLANEOUS

A. Entire Agreement.

This Settlement Agreement shall constitute the entire, complete, and integrated agreement between the Settlement Class and Settling Defendant pertaining to the settlement of the Action and supersedes any and all prior and contemporaneous undertakings of the Settlement Class and Settling Defendant or Settling Defendant's Released Parties in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals.

B. Inurement.

The terms of the Settlement Agreement are and shall be binding upon and inure to the benefit of, to the fullest extent possible, each of the Releasing Parties and the Settling Defendant's Released Parties, and upon all other Persons claiming any interest in the subject matter herein through any of the Settling Parties, Releasing Parties, or Settling Defendant's Released Parties, including any Settlement Class Members.

C. Modification and Waiver.

Except for minor modifications of discovery obligations and deadlines as set forth in Section II(A)(2)(i) above, this Settlement Agreement may be modified or amended only by a writing executed by the Class Plaintiffs (through Interim Co-Lead Counsel) and Settling Defendant, subject (if after Preliminary or Final Approval) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court. The waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party.

D. Drafted Mutually.

For the purpose of construing or interpreting this Settlement Agreement, the Settlement Class and Settling Defendant shall be deemed to have drafted it equally, and it shall not be construed strictly for or against any party.

E. Governing Law & Jurisdiction.

Any disputes relating to this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the state of Colorado without regard to its choice of law or conflicts of law provisions. The Settling Parties have agreed, as set forth in Section III(K) below, that any dispute concerning this Settlement Agreement, including but not limited to the implementation, enforcement, breach, or performance of this Settlement Agreement (a "Settlement Dispute"), that cannot be resolved by negotiation and agreement by the Settling Parties, shall be brought confidentially pursuant to the rules of the American Arbitration Association consistent with the Federal Arbitration Act before Eric Green, who shall be the sole arbitrator of such dispute and his opinion shall be binding upon the Settling Parties. If Professor Green is no longer willing or has otherwise notified the Settling Parties of his refusal to arbitrate any such Settlement Dispute, the Settling Parties will select an alternative, mutually agreeable arbitrator.

F. Counterparts.

This Settlement Agreement may be executed in counterparts by Interim Co-Lead Counsel and Settling Defendant's Counsel, each of which shall be deemed an original and all of which taken together shall constitute the same Settlement Agreement. A facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

G. Represented by Counsel.

Class Plaintiffs, the Settlement Class, and Settling Defendant acknowledge that each have been represented by counsel, and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so and are not relying on any representation or warranty by the other party other than as set forth herein. Therefore, the Settling Parties and their respective counsel agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake. The Settling Parties agree that this Settlement Agreement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with competent counsel, and no Settling Party has entered this Settlement Agreement as the result of any coercion or duress.

H. Authorization.

Each of the undersigned attorneys represents that he or she is fully authorized to enter into and execute this Settlement Agreement, subject to Court approval; the undersigned Interim Co-Lead Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Class Plaintiffs; and the undersigned Settling Defendant's Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Settling Defendant.

I. Privilege and Confidentiality.

1. Nothing in this Settlement Agreement, settlement, or the negotiations or proceedings relating to the foregoing is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the accountants' privilege, the attorney-client privilege, the joint defense privilege, or work product immunity.

2. The Settling Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation. The Settling Parties may disclose the fact of the settlement and the cooperation provided for in Section II(A)

of this Settlement Agreement to other parties in the Action. Furthermore, during the period following the notice of settlement in Section II(F)(1) and prior to the public filing of this Agreement, Settling Defendant and Class Plaintiffs can, in addition, inform other parties to this Action as to the amount of the settlement. Moreover, during the period prior to the public filing of this Agreement, Settling Defendant may disclose the fact of settlement, the amount of settlement, and other terms of the Settlement Agreement to the Department of Justice or to comply with any legal obligations.

J. No Unstated Third-Party Beneficiaries.

No provision of this Agreement shall provide any rights to, or be enforceable by, any Person that is not a Settling Party, Settling Defendant's Released Party, Class Plaintiff, Settlement Class Member, or Interim Co-Lead Counsel, as well as a Predecessor Owner(s) (but only with respect to the release of the Acquired Claims).

K. Breach.

Except as set forth in Section III(E), this Agreement does not waive or otherwise limit the Settling Parties' rights and remedies for any breach of this Agreement. Any breach of this Agreement may result in irreparable damage to a Settling Party for which such Settling Party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Settling Parties acknowledge and agree that the Settling Parties and any Settling Defendant's Released Parties may immediately seek enforcement of this Settlement Agreement by means of specific performance or injunction, without the requirement of posting a bond or other security; provided however that any dispute or effort to seek enforcement of this Settlement Agreement shall be brought confidentially before Eric Green in accordance with Section III(E), who shall be the sole arbitrator of such dispute and his opinion shall be binding upon the Settling Parties. The waiver by any Settling Party of any particular breach of this Agreement shall not be

deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

L. Notice.

Other than Settlement Class Notice, any notice required pursuant to or in connection with this Settlement Agreement shall be in writing and shall be given by: (1) hand delivery; (2) registered or certified mail, return receipt requested, postage prepaid; or (3) UPS or similar overnight courier, addressed, in the case of notice to any Plaintiff or Settlement Class Member, to Interim Co-Lead Counsel at their physical addresses set forth below, with a copy by email at the email addresses set forth below and, in the case of notice to Settling Defendant, to their representatives at their physical addresses set forth below, with a copy by email at the email addresses set forth below, or such other physical or email addresses as Settling Defendant or Interim Co-Lead Counsel may designate, from time to time, by giving notice to all Settling Parties in the manner described in this Section III(L).

For Class Plaintiffs:

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, Washington 98101
Telephone: (206) 623-7292
steve@hbsslaw.com

Shana E. Scarlett
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, California 94710
Telephone: (510) 725-3000
shanas@hbsslaw.com

Brent W. Johnson
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Avenue, NW, 5th Floor
Washington, DC 20005

Telephone: (202) 408-4600
Facsimile: (202) 408-4699
bjohnson@cohenmilstein.com

George F. Farah
HANDLEY FARAH & ANDERSON PLLC
33 Irving Place
New York, New York 10003
Telephone: (212) 477-8090
Facsimile: (844) 300-1952
gfarah@hfajustice.com

For Settling Defendant:

Marc E. Kasowitz
Hector Torres
Daniel J. Fetterman
Kenneth R. David
Christian T. Becker
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 506-1700
Fax: (212) 506-1800
Email: MKasowitz@kasowitz.com
Email: HTorres@kasowitz.com
Email: DFetterman@kasowitz.com
Email: KDavid@kasowitz.com
Email: CBecker@kasowitz.com

Jonathon Watson
Joseph Hunt
SPENCER FANE LLP
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203
Telephone: (303) 839-3800
Fax: (303) 839-3838
Email: jmwatson@spencerfane.com
Email: jhunt@spencerfane.com

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Execution Date.

Dated: January 29, 2024

George F. Farah
Rebecca Chang
HANDLEY FARAH & ANDERSON PLLC
33 Irving Place
New York, New York 10003
Telephone: (212) 477-8090
Facsimile: (844) 300-1952
gfarah@hfajustice.com
rchang@hfajustice.com

Matthew K. Handley
Stephen Pearson
HANDLEY FARAH & ANDERSON PLLC
200 Massachusetts Avenue, NW, Seventh Floor
Washington, D.C. 20001
Telephone: (202) 559-2433
mhandley@hfajustice.com
spearson@hfajustice.com

Dated: January 29, 2024

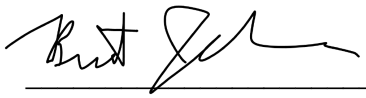
_____

Shana E. Scarlett
Rio S. Pierce
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, California 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
shanas@hbsslaw.com
rios@hbsslaw.com

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, Washington 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0954
steve@hbsslaw.com

Abigail D. Pershing
HAGENS BERMAN SOBOL SHAPIRO LLP
301 N. Lake Avenue, #920
Pasadena, California 91101
Telephone: (213) 330-7150
Facsimile: (213) 330-7152
abigailp@hbsslaw.com

Dated: January 29, 2024



Brent W. Johnson
Benjamin D. Brown
Daniel Silverman
Alison Deich
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Avenue, NW, 5th Floor
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
bjohnson@cohenmilstein.com
bbrown@cohenmilstein.com
dsilverman@cohenmilstein.com
adeich@cohenmilstein.com

Proposed Interim Co-Lead Counsel for Plaintiffs and the Proposed Class

Dated: January 29, 2024

_____

Marc E. Kasowitz
Hector Torres
Daniel J. Fetterman
Kenneth R. David
Christian T. Becker
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 506-1700
Fax: (212) 506-1800
MKasowitz@kasowitz.com
HTorres@kasowitz.com
DFetterman@kasowitz.com
KDavid@kasowitz.com
CBecker@kasowitz.com

Jonathon Watson
Joseph Hunt
SPENCER FANE LLP
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203
Telephone: (303) 839-3800
Fax: (303) 839-3838
jmwatson@spencerfane.com
jhunt@spencerfane.com

Attorneys for JBS USA Food Company

Abigail D. Pershing
HAGENS BERMAN SOBOL SHAPIRO LLP
301 N. Lake Avenue, #920
Pasadena, California 91101
Telephone: (213) 330-7150
Facsimile: (213) 330-7152
abigailp@hbsslaw.com

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COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Avenue, NW, 5th Floor
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
bjohnson@cohenmilstein.com
bbrown@cohenmilstein.com
dsilverman@cohenmilstein.com
adeich@cohenmilstein.com

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Marc E. Kasowitz
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Kenneth R. David
Christian T. Becker
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, New York 10019
Telephone: (212) 506-1700
Fax: (212) 506-1800
MKasowitz@kasowitz.com
HTorres@kasowitz.com
DFetterman@kasowitz.com
KDavid@kasowitz.com
CBecker@kasowitz.com

Jonathon Watson
Joseph Hunt
SPENCER FANE LLP
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203
Telephone: (303) 839-3800
Fax: (303) 839-3838
jmwatson@spencerfane.com
jhunt@spencerfane.com

Attorneys for JBS USA Food Company

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:22-cv-02946-STV

RON BROWN,
and MINKA GARMON,
individually and on behalf of others similarly situated,

Plaintiffs,

v.

JBS USA FOOD COMPANY;
TYSON FOODS, INC.;
CARGILL, INC.;
CARGILL MEAT SOLUTIONS CORP.;
HORMEL FOODS CORP.;
ROCHELLE FOODS, LLC;
AMERICAN FOODS GROUP, LLC;
TRIUMPH FOODS, LLC;
SEABOARD FOODS LLC;
NATIONAL BEEF PACKING CO., LLC;
SMITHFIELD FOODS, INC.;
SMITHFIELD PACKAGED MEATS CORP.;
MURPHY-BROWN OF MISSOURI, LLC;
AGRI BEEF CO.;
WASHINGTON BEEF, LLC;
PERDUE FARMS, INC.;
GREATER OMAHA PACKING CO., INC.;
NEBRASKA BEEF, LTD.;
INDIANA PACKERS CORPORATION;
QUALITY PORK PROCESSORS, INC.;
AGRI STATS, INC.;
and WEBBER, MENG, SAHL AND COMPANY, INC. d/b/a WMS & COMPANY, INC.,

Defendants.

SETTLEMENT AGREEMENT BETWEEN CLASS PLAINTIFFS AND DEFENDANT TYSON FOODS, INC.

Subject to the approval of the Court, this Settlement Agreement ("Settlement Agreement" or "Agreement") is made and entered into as of the Execution Date, by and between Tyson (as hereinafter defined) and the Class Plaintiffs (as hereinafter defined), individually and on behalf of a Settlement Class (as hereinafter defined), through Interim Co-Lead Counsel for the proposed Settlement Class, and in the above-captioned action (the "Action").

RECITALS

A. Class Plaintiffs are prosecuting the Action on their own behalf and on behalf of a putative litigation class. Class Plaintiffs and the putative litigation class are currently represented by Interim Co-Lead Counsel.

B. Class Plaintiffs have alleged, among other things, that Tyson entered into a contract, combination or conspiracy in restraint of trade, the purpose and effect of which was to suppress competition for labor and to allow Tyson to pay sub-competitive compensation to hourly and salaried workers in its Red Meat Processing Operations (as defined below) in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

D. Tyson denies all allegations of wrongdoing in the Action and believes it has numerous legitimate defenses to Class Plaintiffs' claims.

E. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, or regulation or of any liability or wrongdoing by Tyson or of the truth of the Allegations or Claims (as those terms are defined below), nor shall it be deemed or construed to be an admission or evidence of Tyson's defenses.

F. Interim Co-Lead Counsel have conducted an investigation into the facts and law regarding the Action and the possible legal and factual defenses thereto and have concluded that (1) a settlement with Tyson according to the terms set forth below is fair, reasonable, adequate, and beneficial to, and in the best interests of, the Settlement Class, given the uncertainties, risks, and costs of continued litigation; (2) the Settlement Fund (as hereinafter defined) reflects fair, reasonable, and adequate compensation for the Settlement Class to release, settle, and discharge their claims that they were undercompensated as a result of the alleged anticompetitive conduct of which Tyson is accused; and (3) the Cooperation (as defined below) to which Tyson has agreed will reduce the substantial burden and expense associated with prosecuting the Action.

G. Despite Tyson's belief that it is not liable for and has strong defenses to the Claims (as defined below) asserted by Class Plaintiffs, Tyson desires to settle the Action to avoid the further expense, inconvenience, disruption, and burden of litigation and other present or future litigation arising out of the facts that gave rise to this Action, to avoid the risks inherent in uncertain complex litigation and trial, and thereby to put to rest this controversy.

H. Arm's-length settlement negotiations have taken place between Interim Co-Lead Counsel and Tyson's Counsel, and this Agreement has been reached as a result of those negotiations.

I. Both Settling Parties (as hereinafter defined) wish to preserve all arguments, defenses, and responses related to all claims in the Action, including any arguments, defenses, and responses related to any litigation class proposed by Class Plaintiffs in the event this Settlement Agreement fails to satisfy the conditions set out in Section II(F)(11) below.

J. The Settling Parties desire to fully and finally settle all actual and potential claims arising from or related to the conduct alleged in the Action, and to avoid the costs and risks of protracted litigation and trial.

IT IS THEREFORE HEREBY AGREED, by and among the Settling Parties, that in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, this Action and all Released Claims (as hereinafter defined) are finally and fully discharged, settled, and compromised as to the Tyson Released Parties (as hereinafter defined) and that this Action shall be dismissed in its entirety with prejudice as to Tyson, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

I. DEFINITIONS

A. Class Definition.

"Settlement Class" means the class described in Section II(F)(3) below.

B. General Definitions.

1. "Action" means the putative class action filed by Class Plaintiffs captioned *Brown, et al., v. JBS USA Food Co., et al*., 1:22-CV-02946 (D. Colo.), which is currently pending in the United States District Court for the District of Colorado.

2. "Allegations" means the allegations in the Action concerning an agreement, contract, combination or conspiracy in restraint of trade in the red meat industry, the purpose and effect of which was to suppress competition for labor and to allow Tyson to pay sub-competitive compensation to hourly and salaried workers in its Red Meat Processing Operations (as defined below) in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

3. "Tyson" means Tyson Foods, Inc. and its current subsidiaries, and any of its respective former or current, direct or indirect trustees, directors, officers, members, attorneys, agents and insurers. For the avoidance of doubt, Tyson includes "Tyson Prepared Foods, Inc.," "Tyson Fresh Meats, Inc. (f/k/a IBP Inc.)," "The Hillshire Brands Company (f/k/a Sara Lee Corp.)," "Tyson Processing Services, Inc.," and "Tyson Refrigerated Processed Meats, Inc."

4. "Tyson's Counsel" means the law firm of Simpson Thacher & Bartlett LLP, and any other legal advisors retained for purposes of advising Tyson with respect to the Action.

5. "Tyson Released Parties" means Tyson and all of its respective former or current, direct or indirect, parents, subsidiaries and affiliates, including but not limited to the predecessors, successors and assigns of each of them; and any of the respective former or current, direct or indirect trustees, owners, principals, partners, directors, officers, shareholders, managers, members, attorneys, equity holders, agents, insurers, supervisors, representatives and

employees. "Tyson Released Parties" does not include any Defendant or Co-Conspirator named by Class Plaintiffs in any complaint filed to date in the Action, other than Tyson.

6. "Claims" means any and all actual or potential, known or unknown, causes of action, claims, contentions, allegations, assertions of wrongdoing, damages, losses, or demands for recoveries, remedies, or fees complained of, or relating or referred to, arising from or related to the conduct alleged in the Action, or that could or should have been alleged in the Action.

7. "Claims Administrator" means the third party to be retained by Interim Co-Lead Counsel and approved by the Court to manage and administer the process by which Settlement Class Members are notified of the Settlement Agreement and paid from the Net Settlement Fund.

8. "Class Plaintiffs" means all Plaintiffs named in the Complaint: Ron Brown and Minka Garmon.

9. "Compensation" means the provision of anything of value to Settlement Class Members and includes wages, salaries, insurance benefits, bonuses, overtime pay, night shift premiums, raises, promotions, retirement benefits, stocks or stock options, meals, and any other monetary and nonmonetary forms of remuneration or benefits.

10. "Complaint" means the Amended Class Action Complaint in the Action (ECF 260).

11. "Cooperation," as described in Section II(A)(2) below, shall mean providing data, documents, information and witnesses concerning the Allegations.

12. "Court" means the United States District Court for the District of Colorado and the Honorable Chief Judge Philip A. Brimmer or the Honorable Scott T. Varholak or a successor, or any other Court with jurisdiction over the Action.

13. "Date of Final Approval" means the date on which the Court enters an order granting final approval to this Settlement Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, as provided in Section II(F)(8) below.

14. "Date of Final Judgment" means the first date upon which both of the following conditions shall have been satisfied: (a) final approval of the Settlement Agreement by the Court ("Final Approval"); and (b) either (1) thirty days have passed from the date of Final Approval with no notice of appeal having been filed with the Court; or (2) Final Approval has been affirmed by a mandate issued by any reviewing court to which any appeal has been taken, and any further petition for review (including certiorari) has been denied, and the time for any further appeal or review of Final Approval has expired.

15. "Date of Preliminary Approval" means the date on which the Court enters an order granting preliminary approval to this Settlement Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, as provided in Section II(F)(4) below.

16. "Defendant" or "Defendants" means any or all of the Defendants named in the Action, now, in the past, or in the future.

17. "Defendant Processors" means all Defendants other than Webber, Meng, Sahl, and Company, Inc. ("WMS") and Agri Stats, Inc. ("Agri Stats").

18. "Documents" means (a) all papers, electronically stored information ("ESI"), statements, transcripts, or other materials within the scope of Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure; and (b) any copies or reproductions of the foregoing, including microfilm copies or computer images.

19. "Effective Date" shall be the Date of Final Judgment as defined in Section (I)(B).

20. "Escrow Account" means the account with the Escrow Agent that holds the Settlement Fund.

21. "Escrow Agent" means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Section II(D) of this Agreement.

22. "Escrow Agreement" means the certain agreement between the Escrow Agent that holds the Settlement Fund and Class Plaintiffs (by and through Interim Co-Lead Counsel) pursuant to which the Escrow Account is established and funded for the benefit of the Settlement Class, as set forth in Section II(D) of this Agreement.

23. "Execution Date" means the date on which this Settlement Agreement is entered into and executed by all Settling Parties.

24. "Fairness Hearing" has the meaning provided in Section II(F)(4) below.

25. "Interim Co-Lead Counsel" and "Settlement Class Counsel" mean the law firms of Cohen Milstein Sellers & Toll PLLC, Hagens Berman Sobol Shapiro LLP, and Handley Farah & Anderson PLLC.

26. "Net Settlement Fund" means the Settlement Fund, plus accrued interest, less any award of attorneys' fees or reimbursement of expenses and less applicable taxes, tax preparation expenses, or costs of notice and administration, that may be awarded or approved by the Court.

27. "Order and Final Judgment" means the order and final judgment of the Court approving the Settlement Agreement, including all of its material terms and conditions without modifications (except any modifications agreed upon by the Settling Parties and, as necessary, approved by the Court), and the settlement pursuant to Federal Rule of Civil Procedure 23, and dismissing Tyson with prejudice from the Action, as described in Section II(F)(8) below.

28. "Person(s)" means an individual, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other entity or organization.

29. "Red Meat Processing Operations" means Tyson's pork and beef processing plants (referred to as red meat), including slaughterhouse plants and further-processing plants, in the United States.

30. "Released Claims" means claims defined in Section II(B)(2) of this Settlement Agreement.

31. "Releasing Party" or "Releasing Parties" shall refer individually and collectively, to the Settlement Class and all members of the Settlement Class, including the Class Plaintiffs, each on behalf of themselves and their respective predecessors and successors; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and any of their past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions; and also means, to the full extent of the power of the signatories hereto to release past, present and future claims, persons or entities acting in a private attorney general, qui tam, taxpayer or any other capacity, whether or not any of them participate in this Settlement Agreement.

32. "Settlement Agreement" means this document and the agreement reflected herein.

33. "Settlement Amount" means the cash payment of $72,500,000 (seventy-two million, five hundred thousand U.S. dollars) described in Section II(A)(1), below.

34. "Settlement Class Member" means each member of the Settlement Class who is not timely and properly excluded from the Settlement Class.

35. "Settlement Class Notice" means the notice to the Settlement Class that is approved by the Court, in accordance with Section II(F)(5) below.

36. "Settlement Class Period" means the period from and including January 1, 2000, through the date of the first preliminary approval of a settlement in this action.

37. "Settlement Fund" means the funds described in Section II(A) of this Settlement Agreement, plus accrued interest, in the separate Escrow Account to be maintained by the Escrow Agent for the settlement contemplated by this Settlement Agreement established in accordance with Section II(D) below.

38. "Settling Parties" means Tyson and the Settlement Class, as represented by the Class Plaintiffs.

39. "Unrelated Co-Conspirator" means any alleged co-conspirator in the Action that does not satisfy the criteria for inclusion as a "Released Party" in the definition of "Tyson Released Parties."

II. SETTLEMENT

A. Performance By Tyson.

1. **Settlement Payment**. In consideration for the release of the Released Claims and the dismissal with prejudice of the Action, within fourteen business days of the later of (i) the Court's grant of Preliminary Approval or (ii) the date on which Tyson is provided with wiring information for the Escrow Account, Tyson shall pay or cause to be paid $72,500,000 (seventy-two million, five hundred thousand U.S. dollars) into the Settlement Fund.

a. Tyson's payment to the Escrow Agent described herein shall be by wire transfer pursuant to instructions from the Escrow Agent or Interim Co-Lead Counsel.

b. The payment described in Section II(A)(1) shall constitute the total Settlement Amount and Tyson shall have no other payment obligations to the Settlement Class or owe any further amount under this Settlement Agreement, and the obligations described in Section II(A)(2) shall continue so long as this Settlement Agreement remains in effect. Each Class Member shall look solely to the Net Settlement Amount for settlement and satisfaction, as provided herein, of all Released Claims pursuant to this Agreement.

2. **Cooperation**. Cooperation is a material term of this Settlement Agreement. Tyson's obligation to cooperate under this paragraph encompasses the Red Meat Processing Operations operated by Tyson and shall, upon Class Plaintiffs' request and after the Date of Preliminary Approval, include the following actions:

a. Within one hundred twenty (120) days of the Date of Preliminary Approval, Tyson will produce to Class Plaintiffs structured compensation data for the Settlement Class Period and four years prior, identified after a reasonable search, regarding Settlement Class Members employed by Tyson's Red Meat Processing Operations. Such structured compensation data will include the following (to the extent such data currently exists in Tyson's possession, custody, and control):

i. A running history of personal information, including name, email address, physical address, telephone number, hire date, employee ID, Social Security number, date of birth, contact information, gender, education level, race, ethnicity, immigration status, channel of hiring, and information on seniority/prior employer(s);

ii. Job title, dates of employment, job changes, wages or salaries, bonuses, overtime pay, shift premiums, benefits, changes in wage or salary rate, and any other reasonably accessible components of Compensation.

iii. Exit information, including date of termination of employment, reason(s) for termination of employment, and subsequent employer(s).

Tyson will use reasonable efforts to respond to a reasonable number of Class Plaintiffs' questions regarding, and otherwise assist Plaintiffs to understand, such structured data. Tyson agrees to use reasonable efforts to provide declarations or affidavits relating to authentication or

admissibility of documents and/or things at issue, if reasonably requested by the Class Plaintiffs in connection with this Action.

b. Class Plaintiffs will identify up to fifteen (15) current or former employees of Tyson as document custodians ("Custodians") and provide Tyson with a list of reasonable search terms relating to the Allegations ("Search Terms"). With respect to each proposed custodian, Tyson will (i) identify the particular years for which it possesses ESI for that custodian and inform plaintiffs of the amount of ESI for that custodian, and (ii) plaintiffs will be given the opportunity to select a replacement custodian for any custodian that has two years or less of ESI dating prior to (or including) 2018. If the Parties are unable to reach agreement on a final list of search terms after good faith negotiations, Tyson will, within 150 days of either (i) the Date of Preliminary Approval or (ii) the date upon which Class Plaintiffs identify custodians, whichever is later, produce non-privileged documents in its possession, custody or control that are returned by the agreed-upon Search Terms and responsive to Plaintiffs' requests for production. After any agreement on search terms by the non-settling defendants or a court order ordering the use of search terms, Class Plaintiffs will provide those search terms to Tyson, and within 150 days, Tyson will produce any additional non-privileged documents from the Custodians in its possession, custody or control that are returned by any of those search terms not previously run and responsive to Plaintiffs' requests for production. The Parties may mutually agree to alter the search terms run by Tyson and to move these deadlines. Notwithstanding the foregoing or anything else contained herein, the Custodians shall not include any Chief(s) or Board Director(s).

c. Within 150 days of the later of (i) the Date of Preliminary Approval or (ii) the date upon which Class Plaintiffs identify custodians, Tyson will produce all records of phone calls placed and received by the Custodians, including phone calls to or from phone

numbers specifically associated with the Custodians, in Tyson's possession, custody, and control that are located through a reasonable search of the Custodians' electronic files. Tyson will also identify phone numbers specifically associated with the Custodians even if records of phone calls associated with those numbers are not in its possession, custody or control. Tyson will also use reasonable efforts to obtain signed authorizations from the Custodians to allow Class Plaintiffs to obtain records of phone calls placed and received from third-party carriers, if necessary.

d. Class Plaintiffs will identify up to eight (8) then-current employees of Tyson who will be deposed by Class Plaintiffs and will participate as witnesses at trial if requested by Class Plaintiffs, assuming they remain employed at the time of trial. This limitation on depositions and trial witnesses does not apply to former employees of Tyson. This limitation does, however, include depositions of corporate representatives under Fed.R.Civ.P. 30(b)(6) regarding the topics concerning the Allegations, and general industry knowledge, which will be negotiated by the Settling Parties. Notwithstanding the foregoing or anything else contained herein, deponents and trial witnesses shall not include any Chief(s) or Board Director(s).

e. Tyson will provide reasonable assistance with respect to Class Plaintiffs' efforts to obtain phone records from third-party phone carriers and will not object to Class Plaintiffs' subpoena to third-party phone carriers for phone records of Defendants' current and former employees that relate to the period such employees were employed by Tyson.

f. As part of the custodial searches discussed above in Section II(A)(2)(b), and to the extent such Documents are not protected by the attorney-client privilege, attorney work product doctrine, or another applicable privilege, Tyson will also produce the following Documents relating to the Allegations to Class Plaintiffs identified by a reasonable search of the Custodians' files:

- All Documents that (1) reference WMS, any of WMS's employees, or any surveys or survey results prepared by WMS, (2) were sent by Tyson or Tyson's employees to WMS or WMS's employees, and/or (3) were received by Tyson or Tyson's employees from WMS or WMS's employees;

- All documents related to, preparing, or discussing the Beef Industry Wage Index ("BIWI") and/or "Pork Industry Wage Index" PIWI;

- All documents produced to, and received from, the American Meat Institute, American Meat Institute Foundation, Joint Labor Management Committee or "JLM", North American Meat Institute, National Pork Producers Council, National Cattlemen's Beef Association, the US Meat Export Federation, and the 21st Century Pork Club that reference any form or component of Compensation.

g. In addition to the custodial searches discussed above in Sections II(A)(2)(b) and II(A)(2)(e) and to the extent such Documents are not protected by the attorney-client privilege, attorney work product doctrine, or another applicable privilege, Tyson will produce the following Documents to Class Plaintiffs identified by a reasonable search:

- All written agreements or contracts with Agri-Stats, Inc. and/or Express Markets, Inc. related to Red Meat Processing Operations;

- All contracts executed with labor unions representing Class Members at Tyson's Red Meat Processing Operations and executed during the Settlement Class Period;

- Any documents that have been or will be produced to the Department of Justice by Tyson prior to the resolution of this Action against all Defendants in connection with any investigation regarding any form or component of Compensation paid to workers at Red Meat Processing Operations that have not already been produced to Class Plaintiffs within 14 days of the production of such Documents to the Department of Justice. Tyson is required to produce any such documents unless the Department of Justice objects to such production and Tyson is not otherwise ordered by the Court to produce any such documents. Unless prohibited by the Department of Justice, Tyson agrees to take no position on submissions by Class Plaintiffs to any court to obtain any documents submitted to the Department of Justice; provided, however, that Tyson reserves the right to designate any produced documents for confidential treatment pursuant to the applicable protective order in this Action.

h. To the extent Tyson withholds the production of any documents on the basis of attorney-client privilege or any other form of protection from disclosure, Tyson is obligated to produce a privilege log no later than 60 days after the document production from which documents were withheld. The privilege log must conform to the requirements of the ESI protocol in this matter. If the privilege log is due to be produced before such an ESI protocol is ordered in this matter, the privilege log must conform to the requirements of the ESI protocol in *Jien et al., v. Perdue Foods et al.*, No. 19-cv-02521 (D. Md.) (ECF 457).

i. The documents and information produced pursuant to this Settlement Agreement will be treated in conformance with the requirements of the protective order entered in this Action. If the documents and information are due to be produced before such a protective order is entered in this Action, the documents and information will be treated in this Action consistent with the requirements of the protective order in *Jien et al., v. Perdue Foods et al.*, No. 19-cv-02521 (D. Md.) (ECF 450).

The Parties will have discretion to agree to modifications of these discovery obligations and deadlines, and such modifications will not require Court approval.

B. Release of Claims.

1. The Release of Claims is a material term of this Settlement Agreement.

2. **Release**. Upon the Date of Final Judgment, the Releasing Parties shall completely release, acquit, and forever discharge the Tyson Released Parties from any and all existing or potential, known or unknown, claims, demands, actions, suits, causes of action, upon any theory of law or equity, whether class, individual, parens patriae, or otherwise in nature (whether or not any member of the Settlement Class has objected to the Settlement Agreement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that the Releasing Parties ever had, now has, or hereafter can, shall, or may

ever have, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, causes of action, injuries, losses, civil or other penalties, restitution, disgorgement, damages, and the consequences thereof that have been asserted, or could have been asserted, under federal or state law in any way arising out of or relating in any way to an alleged or actual conspiracy or agreement between Defendants relating to reducing competition for the hiring and retaining of, or to fixing, depressing, restraining, exchanging information about, or otherwise reducing the Compensation paid or provided to, the Releasing Parties by Defendants, co-conspirators, their respective subsidiaries and/or related entities or arising from or in connection with any act or omission during the Class Period relating to or referred to in the Action or arising from the factual predicate of the Action or any conduct that could have or should have been challenged, raised or alleged in the Action (collectively, the "Released Claims"). Notwithstanding the above, "Released Claims" do not include (i) claims asserted against any Defendant other than the Tyson Released Parties, and (ii) any claims wholly unrelated to the allegations or underlying conduct alleged in the Action that are based on breach of contract, negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, discrimination, COVID-19 safety protocols, failure to comply with wage and hours laws unrelated to anticompetitive conduct, or securities claims. This reservation of claims set forth in (i) and (ii) of this paragraph does not impair or diminish the right of the Tyson Released Parties to assert any and all defenses to such claims. During the period after the expiration of the deadline for submitting an opt-out notice, as determined by the Court, and prior to Final Judgment, all Releasing Parties who have not submitted a valid request to be excluded from the Settlement Class shall be preliminarily enjoined and barred from asserting any Released Claims against the Tyson Released Parties. The release of the Released Claims will become

effective as to all Releasing Parties upon Final Judgment. Upon Final Judgment, the Releasing Parties further agree that they will not file any other suit against the Tyson Released Parties arising out of or relating to the Released Claims.

3. **Covenant Not to Sue**. Upon the Date of Final Judgment, Class Plaintiffs and each Settlement Class Member covenant not to sue, directly or indirectly, or otherwise seek to establish liability against the Tyson Released Parties for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of or related to the Released Claims, including, without limitation, seeking to recover damages or other relief relating to any of the Released Claims. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

4. **Full Release**. The Settling Parties to this Agreement expressly agree and confirm that the Released Claims as set forth in the provisions of Section II(B) constitute a full and final release of the Tyson Released Parties by the Releasing Parties of the Released Claims, and that the Parties expressly agree that they intend for this Section II(B) to be interpreted as broadly as possible and to the fullest extent permitted by law.

5. **Waiver**. In addition to the provisions of Section II(B)(2), the Releasing Parties hereby expressly waive and release, solely with respect to the Released Claims, upon the Date of Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

and Section 20-7-11 of the South Dakota Codified Laws, which states:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

or by any law, regulation or rule of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code or Section 20-7-11 of the South Dakota Codified Laws. Each Releasing Party may hereafter discover facts other than or different from those which he, she, they, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Section II(B)(2), but each Releasing Party hereby expressly waives and fully, finally, and forever settles and releases, upon the Date of Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties have agreed to release pursuant to Section II(B)(2), whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

C. Claims Administrator.

Pursuant to the Preliminary Approval Order, and subject to Court approval, Interim Co-Lead Counsel shall engage a qualified Claims Administrator. The Claims Administrator will assist with the settlement claims process as set forth herein.

1. The Claims Administrator shall effectuate the notice plan approved by the Court in the Preliminary Approval Order, shall administer and calculate the claims, and shall oversee distribution of the Net Settlement Fund in accordance with the Plan of Distribution.

2. The Claims Administrator also shall assist in the development of the Plan of Distribution and the resolution of any disputes regarding the Plan of Distribution.

D. Settlement Fund Administration.

The Settlement Fund shall be administered pursuant to the provisions of this Settlement Agreement and subject to the Court's continuing supervision and control, until the funds in the Settlement Fund are fully distributed, as follows:

1. The Settlement Fund shall be established within an Escrow Account and administered by an Escrow Agent at a bank designated by Interim Co-Lead Counsel. Interim Co-Lead Counsel, Tyson, and Tyson's Counsel agree to cooperate in good faith to prepare an appropriate Escrow Agreement in conformance with this Agreement.

2. All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

3. Neither the Settlement Class, Interim Co-Lead Counsel, Tyson, nor Tyson's Counsel shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or obtaining approval of the settlement or administering the settlement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund, subject to any necessary Court approval. Tyson shall not object to Interim Co-Lead Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to $500,000 to pay the costs for notice and for Preliminary and Final Approval of the Settlement Agreement. Any costs of notice that Interim Co-Lead Counsel are permitted to withdraw from the Settlement Fund, either pursuant to the Settling Parties' Settlement Agreement or order of the Court, shall be nonrefundable if, for any reason, the Settlement Agreement is terminated according to its terms. At their discretion, Class Plaintiffs may combine the notice of the Tyson settlement with the notice for any other Defendant in the action. The

timing of the filing of a motion to approve notice of the Settlement Agreement to the Settlement Class, and the timing proposed to the Court for the actual distribution of that notice to the Settlement Class, shall be at the sole discretion of Interim Co-Lead Counsel.

4. Under no circumstances will Tyson or the Tyson Released Parties be required to pay more than the Settlement Amount pursuant to this Agreement and the settlement set forth herein. For purposes of clarification, the payment of any fee and expense award, the notice and administrative costs (including payment of any applicable fees to Escrow Agent) and any other costs associated with the implementation of this Settlement Agreement shall be exclusively paid from the Settlement Amount.

5. Except for as provided in Section II(F)(11), no other funds shall be paid or disbursements made from the Settlement Fund without an order of the Court.

6. The Escrow Agent shall, to the extent practicable, invest the funds deposited in the Settlement Fund in discrete and identifiable instruments backed by the full faith and credit of the United States Government, or fully insured by the United States Government or any agency thereof, including a United States Treasury Fund or a bank account that is either: (i) fully insured by the Federal Deposit Insurance Corporation; or (ii) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Section II(D)(6) shall be maintained by the Escrow Agent, and not commingled with any other funds or monies, in a federally insured bank account. Subsequent to payment into the Settlement Fund

pursuant to Section II(A)(1), neither Tyson nor Tyson's Counsel shall bear any responsibility or risk related to the Settlement Fund or the Net Settlement Fund.

7. The Settling Parties agree that the Settlement Fund and the Net Settlement Fund are each intended to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation § 1.468B-1, and to that end, the Settling Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. In addition, the Escrow Agent, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing all necessary information and tax returns for the Escrow Account and paying from the Escrow Account any Taxes, as defined below, owed with respect to the Escrow Account. In addition, Interim Co-Lead Counsel shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Interim Co-Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Fund being a "Qualified Settlement Fund" within the meaning of Treas. Reg. § 1.4688-1. Interim Co-Lead Counsel shall timely and properly file, or cause to be filed through the Escrow Agent, all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund. Neither Tyson nor Tyson's Counsel shall have

any liability or responsibility of any sort for filing any tax returns or paying any Taxes with respect to the Escrow Account.

8. All: (i) taxes on the income of the Settlement Fund ("Taxes"), and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) shall timely be paid by the Escrow Agent out of the Settlement Fund. Settlement Class Members shall be responsible for paying any and all federal, state, and local income taxes due on any distribution made to them pursuant to the Settlement provided herein.

9. After the Date of Final Approval, the Net Settlement Fund shall be disbursed in accordance with a plan of distribution to be approved by the Court. The Class Members shall look solely to the Net Settlement Fund for settlement and satisfaction of any and all Released Claims from Released Parties. The timing of a motion to approve a plan of distribution of the Net Settlement Fund created by this Settlement Agreement shall be in the discretion of Interim Co-Lead Counsel, and may be combined with a plan to distribute proceeds from other settlements in this Action.

E. No Reversion.

Tyson shall have no rights to reversion, except as provided in Section II(F)(11) of this Settlement Agreement. In the event of a reversion, all funds not previously spent on notice and administrative costs shall be returned to Tyson, including any interest accrued.

F. Approval of Settlement Agreement and Dismissal of Claims.

1. **Notice of Settlement**. No later than thirty (30) days after the execution of this Settlement Agreement by Tyson, Interim Co-Lead Counsel and Tyson's Counsel shall jointly file with the Court a notice of settlement and stipulation for suspension of all proceedings by Class Plaintiffs against Tyson in the Action pending approval of the Settlement Agreement.

2. **Effectuating the Settlement**. Class Plaintiffs and Tyson shall cooperate in good faith and use their best efforts to effectuate this Settlement Agreement, including cooperating in seeking the Court's approval of the Settlement Agreement without modification of any of its material terms and conditions, providing appropriate Settlement Class Notice under Federal Rules of Civil Procedure 23, and seeking the complete and final dismissal with prejudice of the Action as to Tyson.

3. **Settlement Class Certification**. Class Plaintiffs shall seek, and Tyson shall take no position with respect to, the appointment of Interim Co-Lead Counsel as Settlement Class Counsel for purposes of this Settlement and the certification in the Action of a class for settlement purposes only, referred to herein as the Settlement Class, which shall include Class Plaintiffs and be defined as:

> All persons employed by Defendant Processors, their subsidiaries, and/or related entities at beef-processing or pork-processing plants in the continental United States from January 1, 2000 until the date of the first preliminary approval of a settlement in this action.

The following persons and entities are excluded from the Settlement Class: plant managers; human-resources managers and staff; clerical staff; guards, watchmen, and salesmen; Defendants, co-conspirators, and any of their subsidiaries, predecessors, officers, or directors; and federal, state or local governmental entities.

4. **Preliminary Approval**. No later than thirty (30) business days after the Execution Date, Class Plaintiffs shall submit to the Court a motion requesting entry of an order preliminarily approving the settlement ("Preliminary Approval Order"). Class Plaintiffs may combine the motion for Preliminary Approval with a motion to grant preliminary approval for settlement with any other Defendants. The Settling Parties may delay the filing of Preliminary Approval by mutual agreement. At a reasonable time in advance of submission to the Court, the

papers in support of Preliminary Approval, which shall include the proposed form of an order preliminarily approving this Settlement Agreement, shall be provided by Interim Co-Lead Counsel to Tyson's Counsel for its review. Tyson shall not oppose and shall reasonably cooperate in such motion, subject to the provisions below. The proposed Preliminary Approval Order shall provide that, *inter alia*:

a. the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;

b. after Settlement Class Notice has been carried out, a hearing on the settlement proposed in this Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court (the "Fairness Hearing");

c. Settlement Class Members who wish to exclude themselves from the settlement and the Settlement Agreement must submit an appropriate and timely request for exclusion;

d. Settlement Class Members who wish to object to this Agreement must submit an appropriate and timely written statement of the grounds for objection;

e. Settlement Class Members who wish to appear in person to object to this Agreement may do so at the Fairness Hearing pursuant to directions by the Court; and

f. all proceedings in the Action with respect to Tyson and Class Plaintiffs are stayed until further order of the Court, except as may be necessary to implement the settlement reflected in this Settlement Agreement or comply with the terms thereof.

5. **Settlement Class Notice**. The Settlement Class Notice shall provide for a right of exclusion, as set forth in Section II(F)(4). The Settlement Class Notice shall also provide for a

right to object to the proposed Settlement. Individual notice of the Settlement to all Settlement Class Members who can be identified through reasonable effort shall be mailed, emailed and/or sent via text message to the Settlement Class in conformance with a notice plan to be approved by the Court. Interim Co-Lead Counsel will undertake all reasonable efforts to notify potential Settlement Class Members of the settlement, including publication notice through traditional, digital, and/or social media sources likely to reach Settlement Class Members. The timing of a motion to approve notice to the Settlement Class of this Settlement Agreement ("Notice Motion") shall be in the discretion of Interim Co-Lead Counsel, and may be combined with notice of other settlements in this Action. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice.

6. **Cost of Settlement Class Notice**. The costs of providing Settlement Class Notice to Settlement Class Members shall be paid by the Escrow Agent from the Settlement Fund pursuant to Section II(D)(2) and (3).

7. **CAFA Notice**. Within ten days of the filing of the motion for Preliminary Approval, Tyson will provide to the appropriate state officials and the appropriate federal official the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) ("CAFA").

8. **Final Approval**. If this Settlement Agreement is preliminarily approved by the Court, the Settlement Class shall seek entry of an Order and Final Judgment, which Tyson shall not oppose and with which it shall reasonably cooperate, that *inter alia:*

a. certifies the Settlement Class described in Section II.F.3, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for purposes of this settlement as a settlement class;

b. finally approves this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of

Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;

c. determines that the Settlement Class Notice constituted, under the circumstances, the most effective and practicable notice of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;

d. confirms that Tyson has provided the appropriate notice pursuant to CAFA;

e. orders that all claims made against Tyson in the Action, including in all class action complaints asserted by the Class Plaintiffs, are dismissed with prejudice and without further costs or fees;

f. discharges and releases the Tyson Released Parties from all Released Claims;

g. enjoins Class Plaintiffs from suing, directly or indirectly, any of the Tyson Released Parties for any of the Released Claims;

h. requires Interim Co-Lead Counsel to file with the clerk of the Court a record of potential Settlement Class Members that timely excluded themselves from the Settlement Class, and to provide a copy of the record to Tyson's Counsel;

i. incorporates the release set forth in Section II(B)(2) of this Agreement and makes that release effective as of the Effective Date as to the Class Plaintiffs and all Settlement Class Members that were not timely and validly excluded from the Settlement Class;

j. determines under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to Tyson shall be final and entered forthwith, and stating:

i. Final judgment as to the Action is entered in favor of Tyson; and

ii. Final judgment is granted in favor of the Tyson Released Parties on any Released Claim of a Settlement Class Member that did not file a timely notice for exclusion.

k. reserves to the Court exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this Agreement; and

l. orders that Settlement Funds may be disbursed as provided in the Final Approval Order or other order of the Court.

9. **Class Counsel Fees and Expenses; No Other Costs**.

a. Tyson shall have no responsibility for any other costs, including Interim Co-Lead Counsel's attorneys' fees, costs, and expenses or the fees, costs, or expenses of any Plaintiff's or Class Member's respective attorneys, experts, advisors, or representatives, provided, however, that with respect to the Action, including this Settlement Agreement, Tyson shall bear its own costs and attorneys' fees.

b. Subject to Interim Co-Lead Counsel's sole discretion as to whether to apply and timing of such an application, Interim Co-Lead Counsel may apply to the Court for an attorney fee award, reimbursement of expenses and costs, and/or service awards for class representatives, to be paid from the proceeds of the Settlement Fund. Tyson shall have no responsibility, financial obligation, or liability for any such fees, costs, expenses, or service awards.

c. The procedure for and the allowance or disallowance by the Court of any applications by Interim Co-Lead Counsel for attorneys' fees, reimbursement of expenses, and/or service awards to class representatives are not part of or a condition to the Settlement set forth herein, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Agreement, and any

order or proceeding relating to any application for attorneys' fees, reimbursement of expenses, and/or service awards to class representatives shall not operate to terminate or cancel this Agreement or the release set forth herein, or affect or delay the finality of the judgment approving this settlement.

d. Within 15 days after any order by the Court awarding attorneys' fees, reimbursing expenses, and/or providing service awards to class representatives, the Escrow Agent shall pay the approved attorneys' fees, reimbursement of expenses, and service award via wire transfer from the Settlement Fund as directed by Settlement Class Counsel in accordance with and attaching the Court's order. In the event the Settlement does not become Final or the award of attorneys' fees, reimbursement of expenses, and/or provision of service awards is reversed or modified, Settlement Class Counsel will cause the difference in the amount paid and the amount awarded to be returned to the Settlement Fund within 30 days of the order from a court of appropriate jurisdiction.

10. **When Settlement Becomes Final**. The settlement contemplated by this Settlement Agreement shall become final on the Date of Final Judgment.

11. **Termination and Reduction**. If the Court declines to grant either preliminary or final approval to this Settlement Agreement or any material part hereof (as set forth in Sections II(F)(4) or (F)(8) above, respectively), or if the Court approves this Settlement Agreement in a materially modified form, or if after the Court's approval, such approval is materially modified or set aside on appeal, or if the Court does not enter the Order and Final Judgment, or if the Court enters the Order and Final Judgment and appellate review is sought and on such review such Final Order and Judgment is not affirmed (collectively, "Triggering Events"), then Tyson and Class Plaintiffs shall each, in their respective sole discretion, have the option to rescind this Settlement Agreement in its entirety by providing written notice of their election to do so

("Termination Notice") to each other within thirty (30) calendar days of any such Triggering Event. For purposes of this Section II(F)(11), a material modification includes but is not limited to any modification to the settlement payments, scope of the Settlement Class definition, or the scope of the Released Claims. If rescinded or terminated, this Settlement Agreement shall become null and void, and, with the exception of any Settlement Funds used for notice purposes pursuant to Section II(D)(2), all other funds remaining in the Escrow Account (including interest earned thereon) shall be returned to Tyson and the Settling Parties' position shall be returned to the status quo ante. In no way shall Class Plaintiffs have the right to rescind or terminate this Settlement Agreement if the Court fails or refuses to grant any request for attorneys' fees, reimbursement of costs, or any service awards to class representatives.

12. **No Admission**.

a. Tyson denies all allegations of wrongdoing in the Action. Nothing in this Settlement Agreement constitutes an admission by Tyson as to the merits of the allegations made in the Action, or an admission by Class Plaintiffs or the Settlement Class of the validity of any defenses that have been or could be asserted by Tyson. The Parties agree they will not disparage one another or their claims or defenses, such as by making public statements to the media that disparage either of the Parties or their conduct in connection with the Action.

b. This Settlement Agreement, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any of the Settling Parties to be received in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of Tyson or other Tyson Released Parties; provided, however, that nothing contained in this Section II(F)(12) shall prevent this Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any

proceeding to approve, enforce, or otherwise effectuate the settlement (or any agreement or order relating thereto) or the Order and Final Judgment, or in which the reasonableness, fairness, or good faith of any Settling Party participating in the settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement Agreement or the Order and Final Judgment. This Settlement Agreement may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this settlement, including but not limited to Tyson filing the Settlement Agreement and/or the Order and Final Judgment in any other action that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, waiver, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. **Litigation Standstill**. Class Plaintiffs shall cease all litigation activities against Tyson in the Action except to the extent expressly authorized in this Settlement Agreement. Tyson and Tyson's Counsel shall cease all litigation activities against Class Plaintiffs in the Action, except in connection with providing the Cooperation provided for in Section II(A)(2). As is necessary to effectuate this Settlement Agreement, Class Plaintiffs will continue to name Tyson as a defendant in any amended complaint filed in the Action before the Date of Final Judgment. Provided, however, that in any such amended complaint or otherwise, Class Plaintiffs will not assert (or assist any other persons in asserting) any claims against any of the Tyson Released Parties other than the claims asserted in the operative complaint as of the date this Settlement Agreement is executed, which claims would be released as of the Effective Date. For the avoidance of doubt, should Class Plaintiffs seek to depose former Tyson employees on topics primarily related to their time of employment at Tyson, this litigation standstill shall not apply to preclude such depositions, and Tyson in its sole discretion shall be permitted to represent the

interests of Tyson and the former employee in the deposition and any related discovery practice. None of the foregoing provisions shall be construed to prohibit Class Plaintiffs from seeking appropriate discovery from non-settling Defendants, Unrelated Co-Conspirators, former employees of Tyson consistent with Section II(A)(2)(d), or other third parties. This litigation standstill precludes Tyson or Tyson's Counsel from assisting any non-settling Defendant in the litigation or defense of this Action, including by assisting in opposing Class Plaintiffs' motion for class certification, working with expert witnesses or on expert materials or providing relevant documents to non-settling Defendants without any formal discovery request from them. This litigation standstill does not, however, preclude Tyson or its counsel from (i) responding to discovery served by any non-Settling Defendant; (ii) negotiating in good faith to resolve any disputes regarding the scope of such discovery; (iii) taking steps they believe in good faith are necessary to reduce the scope or burden of discovery from non-Settling Defendants, including without limitation by providing information related to structured data productions; or (iv) representing (or paying for the representation of) current or former Tyson employees in connection with discovery, court hearings, or trial. Tyson will notify Interim Co-Lead Class Counsel within two (2) business days in the event any non-Settling Defendant requests a declaration, affidavit, or other written statement in lieu of a deposition.

III. MISCELLANEOUS

A. Entire Agreement.

This Settlement Agreement shall constitute the entire, complete, and integrated agreement between the Settlement Class and Tyson pertaining to the settlement of the Action against Tyson and supersedes any and all prior and contemporaneous undertakings of the Settlement Class and Tyson in connection therewith. All terms of the Settlement Agreement are contractual and not mere recitals.

B. Inurement.

The terms of the Settlement Agreement are and shall be binding upon and inure to the benefit of, to the fullest extent possible, each of the Releasing Parties and the Tyson Released Parties, and upon all other Persons claiming any interest in the subject matter hereto through any of the Settling Parties, Releasing Parties, or Tyson Released Parties, including any Settlement Class Members.

C. Modification and Waiver.

Except for minor modifications of discovery obligations and deadlines as set forth in Section II(A)(2) above, this Settlement Agreement may be modified or amended only by a writing executed by the Class Plaintiffs (through Interim Co-Lead Counsel) and Tyson, subject (if after Preliminary or Final Approval) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court. The waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party.

D. Drafted Mutually.

For the purpose of construing or interpreting this Settlement Agreement, the Settlement Class and Tyson shall be deemed to have drafted it equally, and it shall not be construed strictly for or against any party.

E. Governing Law & Jurisdiction.

Any disputes relating to this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the state of Colorado without regard to its choice of law or conflicts of law provisions. Subject to Court approval, the United States District Court for the District of Colorado shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement and shall have exclusive jurisdiction over any suit,

action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement that cannot be resolved by negotiation and agreement by Class Plaintiffs and Tyson.

F. Counterparts.

This Settlement Agreement may be executed in counterparts by Interim Co-Lead Counsel and Tyson's Counsel, each of which shall be deemed an original and all of which taken together shall constitute the same Settlement Agreement. A facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

G. Represented by Counsel.

Class Plaintiffs, the Settlement Class, and Tyson acknowledge that each have been represented by counsel, and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so and are not relying on any representation or warranty by the other party other than as set forth herein. Therefore, the Settling Parties and their respective counsel agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake. The Settling Parties agree that this Settlement Agreement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with competent counsel, and no Settling Party has entered this Settlement Agreement as the result of any coercion or duress.

H. Authorization.

Each of the undersigned attorneys represents that he or she is fully authorized to enter into and execute this Settlement Agreement, subject to Court approval; the undersigned Interim Co-Lead Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Class Plaintiffs; and the undersigned Tyson's Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Tyson.

I. Privilege and Confidentiality.

1. Nothing in this Settlement Agreement, settlement, or the negotiations or proceedings relating to the foregoing is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the accountants' privilege, the attorney-client privilege, the joint defense privilege, or work product immunity.

2. The Settling Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation. The Settling Parties may disclose the fact of the settlement and the cooperation provided for in Section II(A) of this Settlement Agreement to other parties in the Action. Furthermore, during the period following the notice of settlement in Section II.F.1 and prior to the public filing of this Agreement, Tyson and Class Plaintiffs can, in addition, inform other parties to this Action as to the amount of the settlement, and the cooperation provided for in Section II(A) of this Settlement Agreement. Moreover, during the period prior to the public filing of this Agreement, Tyson may disclose the fact of settlement, the amount of settlement, and other terms of the Settlement Agreement to comply with any legal obligations.

J. No Unstated Third-Party Beneficiaries.

No provision of this Agreement shall provide any rights to, or be enforceable by, any Person that is not a Released Party, Class Plaintiff, Settlement Class Member, or Interim Co-Lead Counsel.

K. Breach.

This Agreement does not waive or otherwise limit the Settling Parties' rights and remedies for any breach of this Agreement. Any breach of this Agreement may result in irreparable damage to a Party for which such Party will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Settling Parties

acknowledge and agree that the Settling Parties and any Tyson Released Parties may immediately seek enforcement of this Settlement Agreement by means of specific performance or injunction, without the requirement of posting a bond or other security. The waiver by any Party of any particular breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.

L. Notice.

Other than Settlement Class Notice, any notice required pursuant to or in connection with this Settlement Agreement shall be in writing and shall be given by: (1) hand delivery; (2) registered or certified mail, return receipt requested, postage prepaid; or (3) UPS or similar overnight courier, addressed, in the case of notice to any Plaintiff or Settlement Class Member, to Interim Co-Lead Counsel at their physical addresses set forth below, with a copy by email at the email addresses set forth below and, in the case of notice to Tyson, to its representatives at their physical addresses set forth below, with a copy by email at the email addresses set forth below, or such other physical or email addresses as Tyson or Interim Co-Lead Counsel may designate, from time to time, by giving notice to all Settling Parties in the manner described in this Section III(L).

For Class Plaintiffs:

Shana E. Scarlett
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 300
Berkeley, California 94710
Telephone: (510) 725-3000
shanas@hbsslaw.com

Brent W. Johnson
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Avenue, NW, 5th Floor
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
bjohnson@cohenmilstein.com

George F. Farah
HANDLEY FARAH & ANDERSON PLLC
33 Irving Place
New York, New York 10003
Telephone: (212) 477-8090
Facsimile: (844) 300-1952
gfarah@hfajustice.com

For Tyson:

John F. Terzaken
SIMPSON THACHER & BARTLETT LLP
900 G Street, N.W.
Washington, DC 20001
Telephone: (202) 636-5500
john.terzaken@stblaw.com

Eli J. Glasser
TYSON FOODS, INC.
2200 West Don Tyson Parkway
Springdale, Arkansas 72762
Telephone: (479) 313-3561
eli.glasser@tyson.com

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Execution Date.

Dated: March 7, 2024

Shana E. Scarlett
Rio S. Pierce
Abby R. Wolf
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 300
Berkeley, California 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
shanas@hbsslaw.com
rios@hbsslaw.com
abbyw@hbsslaw.com

Steve W. Berman
Abigail Pershing
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, Washington 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com
abigailp@hbsslaw.com

Dated: March 7, 2024

Brent W. Johnson
Benjamin D. Brown
Daniel Silverman
Alison Deich
COHEN MILSTEIN SELLERS & TOLL, PLLC
1100 New York Ave. NW
Suite 500, West Tower
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699
bjohnson@cohenmilstein.com
bbrown@cohenmilstein.com
dsilverman@cohenmilstein.com
adeich@cohenmilstein.com

Dated: March 7, 2024

George F. Farah
Rebecca Chang
HANDLEY FARAH & ANDERSON PLLC
33 Irving Place
New York, NY 10003
T: (212) 477-8090
F: (844) 300-1952
gfarah@hfajustice.com
rchang@hfajustice.com

Matthew K. Handley (D. Md. Bar # 18636)
Stephen Pearson
HANDLEY FARAH & ANDERSON PLLC
200 Massachusetts Avenue, NW, Seventh Floor
Washington, DC 20001
Telephone: (202) 559-2433
mhandley@hfajustice.com
spearson@hfajustice.com

Interim Co-Lead Counsel for Plaintiffs and the Proposed Class

Dated: March 7, 2024

John F. Terzaken
Abigail W. Williams
Laurel E. Fresquez
SIMPSON THACHER & BARTLETT LLP
900 G Street, N.W.
Washington, DC 20001
Telephone: (202) 636-5500
john.terzaken@stblaw.com
abigail.williams@stblaw.com
laurel.fresquez@stblaw.com

Attorneys for Tyson Foods, Inc.