

**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 NATIONAL  
BEEF PACKING CO., LLC; CARGILL,  
INC. AND CARGILL MEAT  
SOLUTIONS CORP.; AND HORMEL  
FOODS CORPORATION; ROCHELLE  
FOODS, LLC; AND QUALITY PORK  
PROCESSORS, INC.,  
CERTIFICATION OF SETTLEMENT  
CLASSES, AND APPOINTMENT OF  
SETTLEMENT CLASS COUNSEL**

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## I. INTRODUCTION

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 three additional Defendants—National Beef Packing Co., LLC (“National Beef”); Cargill, Inc. and Cargill Meat Solutions Corp. (“Cargill”); and Hormel Foods Corporation, Rochelle Foods, LLC, and Quality Pork Processors, Inc. (“Hormel Foods-QPP”), (collectively “Settling Defendants”).<sup>1</sup>

Plaintiffs have now recovered over \$200 million on behalf of a class of workers at the processing plants at Defendants’ red meat facilities across the country. These are the seventh, eighth, and ninth settlements reached in this case. Seven defendant families remain. The Court has already preliminarily approved settlements with Defendants Perdue Farms Inc. (“Perdue”), Seaboard Foods, LLC (“Seaboard”), and Triumph Foods, LLC (“Triumph”). ECF No. 306. Two motions for preliminary approval of settlements with Defendants Tyson Foods, Inc. (“Tyson”), JBS USA Food Co. (“JBS”), and American Foods Group, LLC (“American Foods”) remaining pending before the Court. ECF Nos. 322, 360.

Preliminary approval of these pending six settlements will trigger several necessary and meaningful events for the class. *First*, until preliminary approval is granted, the more than \$188 million recovered by these six settlements (Tyson, JBS, American Foods, National Beef, Cargill, and Hormel Foods-QPP), will not be paid into escrow accounts and will not begin to earn interest

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<sup>1</sup> The terms of the settlement with National Beef are memorialized in a written agreement entered into by National Beef and Plaintiffs on July 2, 2024 (“National Beef Settlement Agreement”); the terms of the settlement with Cargill are memorialized in a written agreement entered into by Cargill and Plaintiffs on July 24, 2024 (“Cargill Settlement Agreement”); and the terms of the settlement with Hormel are memorialized in a written agreement entered into by Hormel and Plaintiffs on August 20, 2024 (“Hormel Settlement Agreement”) (collectively “Settlement Agreements”).

for the class. *Second*, under the terms of the settlement agreements, Defendants are not obligated to produce the data and contact information for the class until the Court grants preliminary approval, stalling Class Counsel’s efforts at disseminating notice to the class and preparing for a distribution. Because this is an employment-related case, Defendants are in possession of the contact information for many class members as well as the amount they were compensated. This data is important in preparing a plan for notice and allocation of funds to class members. *Third*, cooperation under the settlements (production of documents, providing witnesses for depositions) is also triggered off the granting of the motions for preliminary approval. That cooperation will advance both the administration of the settlements as well as the litigation.

These settlements are well within the range of reasonableness required under Rule 23. They each provide meaningful financial recovery for the class: Cargill has agreed to pay the class \$29.75 million, National Beef to pay \$14.2 million, and Hormel Foods-QPP to pay \$13.5 million. These settlements reflect the proportionate number of class employees that each Defendant employed during the Class Period. The following chart shows the recovery to date:

<b>Date</b>	<b>Defendant</b>	<b>Settlement</b>
12/6/2022	Perdue	\$1,250,000
6/20/2023	WMS	(cooperation)
6/23/2023	Seaboard Triumph	\$10,000,000 (cooperation)
1/29/2024	JBS	\$55,000,000
3/7/2024	Tyson	\$72,500,000
5/17/2024	American Foods	\$4,000,000
7/2/2024	National Beef	\$14,200,000
7/24/2024	Cargill	\$29,750,000
8/20/2024	Hormel Foods-QPP	\$13,500,000
	<b>TOTAL</b>	<b>\$200,200,000</b>



This motion is made on the grounds that the 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 the three Settlement Agreements;
- (b) Certify the proposed National Beef, Cargill, and Hormel Foods-QPP Settlement Classes;
- (c) Appoint the Named Plaintiffs Ron Brown and Minka Garmon as class representatives of the National Beef, Cargill, and Hormel Foods-QPP Settlement Classes;
- (d) Appoint the law firms Cohen Milstein Sellers & Toll PLLC, Hagens Berman Sobol Shapiro LLP, 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 Agreements; 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 additional allegations of conspiratorial misconduct. ECF No. 260. The motions to dismiss that complaint are pending before the Court. ECF Nos. 337–343. Settling Defendants have not admitted to any liability or wrongdoing, and maintain that they have strong defenses to Plaintiffs’ claims.

## **B. Summary of the Settlement Agreements**

Plaintiffs’ counsel has extensive experience in antitrust cases, particularly in cases alleging wage suppression. The Settlement Agreements with National Beef, Cargill, and Hormel Foods-QPP 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 National Beef, Cargill, and Hormel Foods-QPP were undertaken with an especially deep understanding of both the applicable law and the relevant facts.

### **1. Summary of the National Beef Settlement Agreement**

#### **a. Class Definition**

The proposed National Beef 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 February 27, 2024.”<sup>2</sup>

**b. Monetary Terms**

National Beef has agreed to provide monetary compensation for the benefit of the National Beef Settlement Class in the amount of \$14,200,000 (fourteen million, two hundred thousand dollars), 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 National Beef within fourteen (14) business days after entry of the preliminary approval order. Ex. A at § II(A)(1). This is a non-reversionary fund; once the National Beef 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 National Beef Settlement Class members with no amount reverting back to National Beef. *Id.*, at § II(E).

**c. Required Cooperation Terms**

National Beef has agreed to significant non-monetary cooperation terms, which will provide material benefits to the class when litigating their claims against the remaining Defendants. National Beef 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:** National Beef will produce structured data for the National Beef Settlement Class Period, and four years prior, identified after a reasonable search and make

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<sup>2</sup> Ex. A to the Declaration of Shana E. Scarlett, at § II(F)(3). The following persons and entities are excluded from the National Beef 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.*

February 27, 2024 is the date of the first preliminary approval of a settlement in this Action. ECF No. 306.

reasonable efforts to respond to questions from Plaintiffs on the interpretation of the data. *Id.*, at § II(A)(2)(a).

- **Custodial documents and depositions:** National Beef will produce documents from up to eight (8) custodians and make up to five (5) current employees available for deposition and, if requested by Class Plaintiffs, trial. *Id.*, at § II(A)(2). National Beef 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 (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.*, at § II(A)(2)(c), (f) & (h).
- **Non-custodial documents:** National Beef will produce, to the extent identified by a reasonable search, certain documents from non-custodial files (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 DOJ consents or does not object to the production or the Court orders the production)). *Id.*, at § II(A)(2)(i).
- **Authentication of documents:** National Beef will use reasonable efforts to provide declarations relating to authentication or admissibility of documents, if reasonably requested by Class Plaintiffs. *Id.*, at § II(A)(2)(b).

**d. Release of Liability**

As set forth more fully in Section II(B)(2), the National Beef Settlement Agreement contains a release and discharge of National Beef's Released Parties, including 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 National Beef Settlement Class. *Id.* at § II(B)(2).

The National Beef Settlement Agreement, however, does nothing to abrogate the rights of any member of the National Beef Settlement Class to recover from any other Defendant. *Id.* The National Beef 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 Cargill Settlement Agreement**

**a. Class definition**

The proposed Cargill 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 February 27, 2024.”<sup>3</sup>

**b. Monetary Terms**

Cargill has agreed to provide monetary compensation for the benefit of the Cargill Settlement Class in the amount of \$29,750,000 (twenty-nine million, seven hundred fifty thousand dollars), 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 Cargill within fourteen (14) business days after entry of the preliminary approval order. Ex. B at § II(A)(1). This is a non-reversionary fund; once the Cargill 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 Cargill Settlement Class members with no amount reverting back to Cargill. *Id.* at § II(E).

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<sup>3</sup> Ex. B at § II(F)(3). The following persons and entities are excluded from the Cargill 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.*

Cargill has agreed to equally significant non-monetary cooperation terms, which will provide material benefits to the Class when litigating their claims against the remaining Defendants. Cargill 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:** Cargill will produce structured data for the Cargill Settlement Class Period, and four years prior, identified after a reasonable search and to the extent such data is in Cargill’s possession, custody, and control, and make reasonable efforts to respond to questions from plaintiffs on the interpretation of the data. Ex. B at § II(A)(2)(a).
- **Custodial documents and depositions:** Cargill will each produce documents from up to ten (10) custodians and testimony from up to six (6) then-current employees. *Id.*, at § II(A)(2). Cargill has agreed to produce documents to Class Plaintiffs relating to the Allegations that are identified by a reasonable search of the Custodian’s files using agreed-upon search terms and responsive to the already served Plaintiffs’ requests for production, as well as documents identified by a reasonable search of the Custodians’ files relating to (1) Cargill’s Red Meat Processing Operations that (a) reference WMS, any of WMS’s employees, or any surveys or survey results prepared by WMS, (b) were sent by Cargill or Cargill’s employees to WMS or WMS’s employees, and/or (c) were received by Cargill or Cargill’s employees from WMS or WMS’s employees; (2) the Beef Industry Wage Index (“BIWI”) and/or Pork Industry Wage Index (“PIWI”); and (3) those documents provided to and received by the following industry trade organizations: 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.*, at § II(A)(2).
- **Non-custodial documents:** Cargill 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 related to the Allegations and within the timeframe covered by the Class Period produced to the DOJ that have not already been produced to Plaintiffs prior to the resolution of this Action (so long as the agency consents or does not object to the production or the Court orders the production). *Id.*
- **Phone records and authentication of documents:** Cargill has agreed to use reasonable efforts to provide declarations or affidavits relating to authentication or admissibility of documents and agreed not to object to Plaintiffs’ efforts to obtain third-party phone records. *Id.*

**c. Release of Liability**

As more fully expressed in Section II.B.2, the Cargill Settlement Agreement releases and discharges Cargill’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 Cargill Settlement Class. Section II.B.2.

The Cargill Settlement Agreement, however, does nothing to abrogate the rights of any member of the Cargill Settlement Class to recover from any other Defendant. *Id.* The Cargill 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.*

**3. Summary of the Hormel Foods-QPP Settlement Agreement**

Hormel Foods-QPP has agreed to provide monetary compensation for the benefit of the Hormel Foods-QPP Settlement Class in the amount of \$13,500,000 (thirteen 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 Hormel Foods-QPP within thirty (30) calendar days after the later of (i) entry of the preliminary approval order, or (ii) the date on which Hormel Foods-QPP is provided with wiring information for the escrow account. Ex. C at § II(A)(1). This is a non-reversionary fund; once the Hormel Foods-QPP 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 Hormel Foods-QPP Settlement Class members with no amount reverting back to Hormel Foods-QPP. *Id.*, at § II(E).

**a. Required Cooperation Terms**

Hormel Foods-QPP has also agreed to non-monetary cooperation terms and to provide material benefits to the Class when litigating their claims against the remaining Defendants. Hormel Foods-QPP 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:** Hormel Foods-QPP will produce structured data identified after a reasonable search from certain databases, and make reasonable efforts to respond to questions from plaintiffs regarding the database scheme, codes, abbreviations, and different report formats. *Id.*, at § II(A)(2)(a).
- **Custodians and depositions:** Hormel Foods-QPP will produce documents from five (5) custodians and testimony from up to four (4) then-current employees. *Id.*, at §§ II(A)(2)(d)-(e). Hormel Foods-QPP 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 the following industry trade organizations: 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.*, at § II(A)(2)(d).
- **Non-custodial documents:** Hormel Foods-QPP will produce, to the extent identified by a reasonable search, the following documents from non-custodial files: contracts with Agri-Stats, Inc. and/or Express Markets, Inc., contracts with labor unions, and documents that have been produced to the DOJ (so long as the agency consents or does not object to the production or the Court orders the production). *Id.*, at § II(A)(2)(g).
- **Declarations relating to authentication of documents:** Hormel Foods-QPP has agreed to use reasonable efforts to provide declarations relating to authentication of documents. *Id.*, at § II(A)(2)(f).



**b. Release of Liability**

As more fully set forth in section II(B)(2), the Hormel Foods-QPP Settlement Agreement contains a release which discharges Hormel Foods-QPP'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 Hormel Foods-QPP Settlement Class. *Id.*, at § II(B)(2).

The Hormel Foods-QPP Settlement Agreement, however, does nothing to abrogate the rights of any member of the Hormel Foods-QPP Settlement Class to recover from any other Defendant. *Id.* The Hormel Foods-QPP 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.<sup>4</sup> When evaluating the fairness and adequacy of a proposed settlement, courts keep in mind the "important public policy concerns that support voluntary settlements."<sup>5</sup> This is particularly true in large, complex class actions, such as this case.<sup>6</sup>

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<sup>4</sup> *See Sears v. Atchison, Topeka & Santa Fe Ry., Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984).

<sup>5</sup> *Trujillo v. Colorado*, 649 F.2d 823, 826 (10th Cir. 1981).

<sup>6</sup> *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,

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.”<sup>7</sup> However, the review at the preliminary approval stage is not “as stringent as [that] applied for final approval.”<sup>8</sup> This is because “[p]reliminary approval of a class action settlement is a provisional step.”<sup>9</sup> 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.”<sup>10</sup> 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.”<sup>11</sup> “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

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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).

<sup>7</sup> Fed. R. Civ. P. 23(e)(2).

<sup>8</sup> *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)).

<sup>9</sup> *Blanco v. Xtreme Drilling & Coil Servs., Inc.*, No. 16-cv-00249-PAB-SKC, 2020 WL 3833412, at \*1 (D. Colo. Mar. 8, 2020).

<sup>10</sup> *Id.* (quoting *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006)).

<sup>11</sup> *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).

23(e)(2) factors.<sup>12</sup> 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.”<sup>13</sup> “If the settling parties can establish these factors, courts usually presume that the proposed settlement is fair and reasonable.”<sup>14</sup> Plaintiffs address both the Rule 23 factors and the unique Tenth Circuit factors.<sup>15</sup> 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.”<sup>16</sup> Here, all parties are represented by sophisticated counsel who have played active roles in many antitrust cases across the country. Each negotiation lasted for several weeks or months. 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. ¶¶ 10–11. Thus, because the parties—advised by sophisticated counsel

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<sup>12</sup> *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)).

<sup>13</sup> *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)).

<sup>14</sup> *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)).

<sup>15</sup> *Chavez Rodriguez v. Hermes Landscaping, Inc.*, No. 17-2142-JWB-KGG, 2020 WL 3288059, at \*2 (D. Kan. June 18, 2020).

<sup>16</sup> *Lucas*, 234 F.R.D. at 693.

with expertise on antitrust matters and complex class litigation—engaged in good faith negotiations, this “support[s] the integrity of the parties’ settlement.”<sup>17</sup>

**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.<sup>18</sup>

As an initial matter, “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.”<sup>19</sup> For example, there is serious disagreement by the parties about whether the Defendants National Beef, Cargill, and Hormel Foods-QPP illegally conspired to suppress their workers’ compensation. As in most antitrust cases, questions of predominance and impact are certain to arise, with the Defendants disputing the expert analyses Plaintiffs will use to show the class was harmed. The settlements with National Beef, Cargill, and Hormel Foods-QPP cut short these questions and ensure that the Settlement Classes will be entitled to some financial relief in this litigation.<sup>20</sup>

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<sup>17</sup> *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”).

<sup>18</sup> *See Chavez Rodriguez*, 2020 WL 3288059, at \*3 (citation omitted).

<sup>19</sup> *Lucas*, 234 F.R.D. at 693–94.

<sup>20</sup> *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

Because the serious, disputed legal issues here render the outcome of the litigation uncertain, this factor weighs heavily in favor of settlement.<sup>21</sup>

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.”<sup>22</sup> It is inherently difficult to prove a complex antitrust class action, and there are “significant risks associated with continued litigation.”<sup>23</sup> In contrast, “the proposed settlement agreement provides the class with substantial, guaranteed relief.”<sup>24</sup> And although the case will continue against the non-settling Defendants, continuing to litigate this case against any of the Settling Defendants would have required significant additional resources and materially increased the complexity of the case. *See* Scarlett Decl. ¶ 14. 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.”<sup>25</sup> Here, the parties reached agreements that necessitated compromise by both sides. *See* Scarlett Decl. ¶¶ 10–

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recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.”).

<sup>21</sup> *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”).

<sup>22</sup> *Lucas*, 234 F.R.D. at 694.

<sup>23</sup> *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).

<sup>24</sup> *Lucas*, 234 F.R.D. at 694.

<sup>25</sup> *Acevedo*, 2019 WL 6712298, at \*3.

14. 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 years in the future.”<sup>26</sup> 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 settlements are fair and reasonable.**

“Counsel’s judgment as to the fairness of the agreement is entitled to considerable weight.”<sup>27</sup> Here, counsel—attorneys with substantial experience in complex class action and antitrust litigation—unanimously support the settlements.<sup>28</sup> Courts recognize that “the recommendation of a settlement by experienced plaintiff[s]’ counsel is entitled to great weight.”<sup>29</sup> Under the Settlement Agreements, National Beef will pay \$14,200,000, Cargill will pay \$29,750,000, and Hormel Foods-QPP will pay \$13,500,000 into a fund that will provide tangible financial benefits to the Settlement Classes. And the Settlement Agreements allow Plaintiffs to secure potentially key evidence—in the form of data, documents and testimony—from these Defendants and their employees.<sup>30</sup>

In sum, the National Beef, Cargill, and Hormel Foods-QPP Settlement Agreements are fair, reasonable, and adequate in light of the strength of the claims and the risks and expense of

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<sup>26</sup> *In re Syngenta AG MIR162 Corn Litig.*, No. 14-MD-2591-JWL, 2018 WL 1726345, at \*2 (D. Kan. Apr. 10, 2018).

<sup>27</sup> *Lucas*, 234 F.R.D. at 695.

<sup>28</sup> *See, e.g., id.* (finding unanimous approval by experienced counsel supports settlement approval).

<sup>29</sup> *O’Dowd v. Anthem, Inc.*, No. 14-cv-02787-KLM-NYW, 2019 WL 4279123, at \*14 (D. Colo. Sept. 9, 2019).

<sup>30</sup> *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).

continued litigation. Accordingly, under the Rule 23(e)(2) and Tenth Circuit factors, preliminary approval should be granted.

**IV. THE COURT SHOULD CERTIFY THE PROPOSED SETTLEMENT CLASSES**

**A. The National Beef, Cargill, and Hormel Foods-QPP Settlement Classes satisfy Rule 23(a).**

The proposed Settlement Classes for the National Beef, Cargill, and Hormel Foods-QPP 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 National Beef, Cargill, and Hormel Foods-QPP 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.<sup>31</sup> Here, the precise number of Settlement Classes members is unknown but will number in at least 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.

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<sup>31</sup> Fed. R. Civ. P. 23(a)(1).

**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.”<sup>32</sup> Courts recognize that “[e]ven a single [common] question will” satisfy the commonality requirement.<sup>33</sup> “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 conspired to harm plaintiffs will likely prevail.”<sup>34</sup> 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.”<sup>35</sup> In antitrust class action cases, typicality is established by

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<sup>32</sup> Fed. R. Civ. P. 23(a)(2).

<sup>33</sup> *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)).

<sup>34</sup> *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”).

<sup>35</sup> *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)).



plaintiffs and all class members alleging the same antitrust violations by defendants.<sup>36</sup> Here, typicality is satisfied because Plaintiffs' claims and the claims of members of the National Beef, Cargill, and Hormel Foods-QPP 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.

**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, a court must find that "the representative parties will fairly and adequately protect the interests of the class."<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> The named Plaintiffs and their experienced counsel have prosecuted, and will continue to prosecute, the action vigorously on behalf of the National Beef, Cargill, and Hormel Foods-QPP Settlement Classes. Scarlett Decl. ¶ 5. As the court previously concluded when certifying nearly identical settlement classes and appointing the same three law

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<sup>36</sup> 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).

<sup>37</sup> Fed. R. Civ. P. 23(a)(4).

<sup>38</sup> *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187–88 (10th Cir. 2002); Fed. R. Civ. P. 23(a)(4).

<sup>39</sup> 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.").

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.

**1. Common issues predominate.**

The “predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.”<sup>40</sup> It is a “test readily met in certain cases alleging . . . violations of the antitrust laws.”<sup>41</sup> 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.<sup>42</sup> 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

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<sup>40</sup> *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997).

<sup>41</sup> *Paulson*, 2022 WL 168708, at \*7 (citing *Amchem*, 521 U.S. at 625).

<sup>42</sup> *In re Urethane*, 237 F.R.D. at 449.

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 and legal costs to adjudicate common legal and factual issues.”<sup>43</sup> 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.<sup>44</sup> 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 National Beef, Cargill, and Hormel Foods-QPP 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

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<sup>43</sup> *In re Crocs, Inc. Secs. Litig.*, 306 F.R.D. 672, 689-90 (D. Colo. 2014).

<sup>44</sup> *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.”).

individual notice to all members who can be identified through reasonable effort.” Here, Plaintiffs respectfully request that the Court agree to defer notice of the Settlement Agreements to the National Beef, Cargill, and Hormel Foods-QPP 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 and the Settling Defendants have not proceeded with their cooperation yet, Plaintiffs do not have the necessary data from Defendants containing class members’ contact information. Scarlett Decl. ¶ 15. Deferring notice may also save money for the National Beef, Cargill, and Hormel Foods-QPP Settlement Classes because Plaintiffs could provide 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 National Beef, Cargill, and Hormel Foods-QPP; (2) certifying the National Beef, Cargill, and Hormel Foods-QPP 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; (4) appointing Ron Brown and Minka Garmon as Representatives of the Settlement Classes; (5) deferring notice to the Settlement Classes until a later date; and (6) ordering a stay of all proceedings against the National Beef, Cargill, and Hormel Foods-QPP Defendants.

Dated: September 6, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2024, I electronically filed the foregoing with the Clerk of the Court using the Court's 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.

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**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY  
APPROVAL OF SETTLEMENTS WITH NATIONAL BEEF PACKING CO., LLC;  
CARGILL, INC. AND CARGILL MEAT SOLUTIONS CORP.; AND HORMEL  
FOODS CORPORATION; ROCHELLE FOODS, LLC; AND QUALITY PORK  
PROCESSORS, INC., CERTIFICATION OF SETTLEMENT CLASSES, AND  
APPOINTMENT OF SETTLEMENT CLASS COUNSEL**

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This matter is before the Court on Plaintiffs' Motion for Preliminary Approval of Settlements with National Beef Packing Co., LLC; Cargill, Inc. and Cargill Meat Solutions Corp.; and Hormel Foods Corporation, Rochelle Foods, LLC, and Quality Pork Processors, 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 three settlement agreements with defendants in this case, namely, National Beef Packing Co., LLC; Cargill, Inc. and Cargill Meat Solutions Corp.; and Hormel Foods Corporation; Rochelle Foods, LLC; and Quality Pork Processors, Inc. Regarding the settlement agreement between the representative plaintiffs and National Beef (the “National Beef settlement”), the representative plaintiffs and Cargill (the “Cargill settlement”), and the settlement agreement between the representative plaintiffs and Hormel Foods-QPP (the “Hormel Foods-QPP settlement”), the representative plaintiffs move for “an order: (1) preliminarily approving the Settlement Agreements with National Beef, Cargill, and Hormel Foods-QPP; (2) certifying the National Beef, Cargill, and Hormel Foods-QPP 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, (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 National Beef, Cargill, and Hormel Foods-QPP Defendants.” (Mot.) at 22.

## **I. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Here, the representative plaintiffs move for preliminary approval of settlements with National Beef, Cargill, and Hormel Foods-QPP. (Exhibit A, National Beef Settlement Agreement; Exhibit B, Cargill Settlement Agreement; Exhibit C, Hormel Foods-QPP Settlement Agreement).

The National Beef settlement provides for a \$14,200,000 settlement fund. (Exhibit A, National Beef 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 National Beef] 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 National Beef settlement requires National Beef to cooperate with the representative plaintiffs in the following ways: producing data on members of the class employed by National Beef or its subsidiaries, providing declarations or affidavits on the authenticity of documents, providing documents from eight designated document custodians, and allowing up to five current employees of National Beef to be deposed. *Id.* at 10–14, § II.A.2. In exchange, “this Action shall be dismissed in its entirety with prejudice as to National Beef.” *Id.* at 3.

The Cargill Settlement Agreement provides for a \$29,750,000 settlement fund. (Exhibit B, Cargill Settlement Agreement) at 9–10. The settlement fund is to “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 [the Cargill] 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 Cargill settlement requires Cargill to cooperate with the representative plaintiffs in the following ways: producing data on members of the class employed by Cargill or its subsidiaries, to the extent it exists and is in Cargill’s possession, custody, and control; using reasonable efforts to provide declarations or affidavits relating to the authentication or admissibility of documents; providing documents from up to ten designated document custodians that are identified through the use of search terms and responsive to the already served requests for production, allowing up to six then-current employees of Cargill to be deposed; and agreeing not to object to the

representative plaintiffs’ efforts to obtain the phone records from third-party carriers. *Id.* at 11–13. In exchange, “this Action shall be dismissed in its entirety with prejudice as to Cargill.” *Id.* at 3.

The Hormel Foods-QPP Settlement Agreement provides for a \$13,500,000 settlement fund. (Exhibit C, Hormel Foods-QPP 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 Hormel Foods-QPP] 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 22. The Hormel Foods-QPP settlement requires Hormel Foods-QPP to cooperate with the representative plaintiffs in the following ways: producing data on members of the class employed by Hormel Foods-QPP or its subsidiaries, providing declarations or affidavits on the authenticity of documents, providing documents from five designated document custodians, and allowing four then-current employees of Hormel Foods-QPP to be deposed. *Id.* at 11–13. In exchange, “this Action shall be dismissed in its entirety with prejudice as to [Hormel Foods-QPP].” *Id.* at 4.

## **II. ANALYSIS OF PROPOSED SETTLEMENT AGREEMENTS**

### **A. Agreements**

The representative plaintiffs seek certification of settlement classes that nearly identical to the settlement classes previously approved by this court other than as to the time period. ECF No. 306. Each Settlement seeks 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 February 27, 2024,” which was the date of the first preliminary approval of a settlement in this action. The following persons and entities are excluded from the proposed settlement 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 17. 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 18. 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 settlement classes 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 settlement classes.

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 settlement classes are fairly and adequately protected by the representative plaintiffs and their counsel. The

representative plaintiffs' interests are aligned with those of the proposed settlement classes because they seek relief for injuries arising out of the same alleged conspiracy and because they were subject to the same alleged 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 settlement classes; any class members who disagree will be able to challenge this issue at the fairness hearing if they believe otherwise. The proposed settlement class counsel Hagens Berman Sobol Shapiro LLP; Cohen Milstein Sellers & Toll PLLC; and Handley Farah & Anderson PLLC have been functioning as Interim Co-Lead Class Counsel for over a year. *See* ECF No. 128 at 2, ¶ 2. Magistrate Judge Varholak found the Interim Co-Lead Class 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 4. There are no questions regarding the competency of the proposed settlement 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 settlement class counsel do not have a conflict of interest with the rest of the classes and have shown that they can vigorously litigate on behalf of the classes, 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 20. 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 classes, the question of what competitive market wages should have been will be common to the classes 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 [ECF 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 13; (2) the parties engaged in robust discussions as to each Settlement Agreements, advised by sophisticated counsel with expertise on antitrust matters and complex class litigation, *Id.* at 13; 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 National Beef, Cargill, or Hormel Foods-QPP, 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 settlements. The classes will be provided with substantial guaranteed relief and these agreements will cause a more targeted litigation process against the remaining claims. *Id.* at 15. 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 15. The Court finds this factor weighs in favor of preliminary approval.

In conclusion, preliminarily approving the Settlement Agreements with National Beef, Cargill, and Hormel Foods-QPP 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 classes that challenge the fairness of the three settlement agreements. Should any classes 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 21–22.

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 Co-Lead Counsel. (Exhibit A, National Beef Settlement Agreement; Exhibit B, Cargill Settlement Agreement; Exhibit C, Hormel Foods-QPP Settlement Agreement). The representative plaintiffs request that Interim Co-Lead Counsel be appointed as Settlement Class Counsel for the settlement classes. (Mot.) at 22. The Court finds that Interim Co-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 Settlement Class Counsel.

## **V. CONCLUSION**

For the foregoing reasons, it is

ORDERED that Plaintiffs' Motion for Preliminary Approval of Settlements with National Beef Packing Co., LLC; Cargill, Inc. and Cargill Meat Solutions Corp.; and Hormel Foods-QPP Foods Corporation; Rochelle Foods, LLC; and Quality Pork Processors, 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 National Beef 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 February 27, 2024

The National Beef 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 Cargill 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 February 27, 2024.

The Cargill 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 Hormel Foods-QPP 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 February 27, 2024.

The Hormel Foods-QPP 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 each Settlement Class: Ron Brown and Minka Garmon. It is further

ORDERED that if any 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 each

Settlement Agreement)<sup>1</sup>, 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 Agreements, 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 Agreements. 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 Agreements 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 National Beef Packing Co., LLC; Cargill, Inc. and Cargill Meat Solutions Corp.; and Hormel Foods Corporation; Rochelle Foods, LLC; and Quality Pork Processors, Inc. except as stated above.

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<sup>1</sup> National Beef Released Parties as described in Ex. A at § I(B)(5); Cargill Released Parties as described in Ex. B § I(B)(5); and Hormel Settlement Agreement at § I(B)(6).

DATED: \_\_\_\_\_

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

**CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2024, I electronically filed the foregoing with the Clerk of the Court using the Court's 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**

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 NATIONAL BEEF  
PACKING CO., LLC; CARGILL, INC. AND  
CARGILL MEAT SOLUTIONS CORP.;  
AND HORMEL FOODS CORPORATION;  
ROCHELLE FOODS, LLC; AND QUALITY  
PORK PROCESSORS, 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 National Beef Packing Co., LLC ("National Beef"); Cargill, Inc. and Cargill Meat Solutions Corp. ("Cargill"); and Hormel Foods Corporation, Rochelle Foods, LLC, and Quality Pork Processors, Inc. ("Hormel Foods-QPP") (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 National Beef over the course of several months. Plaintiffs and National Beef executed its Settlement Agreement on July 2, 2024. Attached as **Exhibit A** is a true and accurate copy of the Settlement Agreement between Plaintiffs and National Beef ("National Beef Settlement Agreement").

4. On behalf of Plaintiffs, other Co-Lead Interim Counsel and I also personally conducted intensive settlement negotiations with counsel for Cargill over the course of several months. Plaintiffs and Cargill executed its Settlement Agreement on July 24, 2024. Attached as

**Exhibit B** is a true and accurate copy of the Settlement Agreement between Plaintiffs and Cargill (“Cargill Settlement Agreement”).

5. On behalf of Plaintiffs, other Co-Lead Interim Counsel and I personally conducted intensive settlement negotiations with counsel for Hormel Foods-QPP over the course of several weeks. Plaintiffs and Hormel Foods-QPP executed its Settlement Agreement on August 20, 2024. Attached as **Exhibit C** is a true and accurate copy of the Settlement Agreement between Plaintiffs and Hormel Foods-QPP (“Hormel Foods-QPP Settlement Agreement”).

6. 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 Classes, and it avoids the risks, costs, and delay of continuing protracted litigation against Settling Defendants.

7. In its Settlement Agreement, National Beef commits to pay \$14,200,000 (fourteen million two hundred thousand U.S. dollars) to a settlement fund within fourteen (14) business days of the grant of preliminary approval. Ex. A at 9. National Beef also agrees to cooperate with Plaintiffs, as set forth in detail in the National Beef Settlement Agreement, which cooperation will assist Plaintiffs in prosecuting their claims against the remaining Defendants.

8. In its Settlement Agreement, Cargill commits to pay \$29,750,000 (twenty-nine million, seven hundred fifty thousand U.S. dollars) to a settlement fund within fourteen (14) business days of the grant of preliminary approval. Ex. B at 9–10. Cargill also agrees to cooperate with Plaintiffs, as set forth in detail in the Cargill Settlement Agreement, which cooperation will assist Plaintiffs in prosecuting their claims against the remaining Defendants.

9. In its Settlement Agreement, Hormel Foods-QPP commits to pay \$13,500,000 (thirteen million, five hundred thousand U.S. dollars) to a settlement fund within thirty (30)

business days of the later of (a) the grant of preliminary approval, or (b) the date on which Hormel Foods-QPP is provided with wiring information for the escrow account. Ex. C at 10. Hormel Foods-QPP also agrees to cooperate with Plaintiffs, as set forth in detail in the Hormel Foods-QPP Settlement Agreement, which cooperation will assist Plaintiffs in prosecuting their claims against the remaining Defendants.

10. Each Settlement Agreement resulted from extensive arm's-length and hard-fought negotiations. The negotiations between counsel lasted for several weeks. 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 with the Settling Defendants.

11. 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 the Settling Defendants. 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.

12. When the Settlement Agreements were executed, Interim Co-Lead Counsel considered 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 facts of the case 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.

13. 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 Cargill and Hormel Foods-QPP 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.

14. 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.

15. Plaintiffs request that the Court agree to defer formal notice of the Settlement Agreements to the National Beef, Cargill, and Hormel Foods-QPP 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 6th day of September, 2024 at Berkeley, California.

*/s/ Shana E. Scarlett*

SHANA E. SCARLETT

**CERTIFICATE OF SERVICE**

I hereby certify that on September 6, 2024, I electronically filed the foregoing with the Clerk of the Court using the Court's 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

# **EXHIBIT A**

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.;  
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.

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**SETTLEMENT AGREEMENT BETWEEN CLASS PLAINTIFFS AND  
DEFENDANT NATIONAL BEEF PACKING CO., LLC.**

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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 National Beef (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 National Beef 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 National Beef 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.

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

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 National Beef 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 National Beef'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 National Beef 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 National Beef; and (3) the Cooperation (as defined below) to which

National Beef has agreed will reduce the substantial burden and expense associated with prosecuting the Action.

F. Despite National Beef's belief that it is not liable for and has strong defenses to the Claims (as defined below) asserted by Class Plaintiffs, National Beef 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 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.

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

H. The 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 does not receive Final Approval (as defined below).

I. The Settling Parties desire to fully and finally settle all actual and potential claims arising from or related to the conduct alleged, or that could have been 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 National Beef Released Parties (as hereinafter defined) and that this Action shall be dismissed in its entirety with prejudice as to National Beef, 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, or any 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).

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 National Beef 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. For the avoidance of doubt, this definition encompasses allegations that appear in the Class Action Complaint (ECF No. 1), the Corrected Class Action Complaint (ECF No. 23-1), and the Amended Class Action Complaint (ECF No. 260) in the Action.

3. “National Beef” means National Beef Packing Co., LLC and its current and former subsidiaries, and any of the respective former or current, direct or indirect trustees, directors, officers, members, attorneys, agents, and insurers of National Beef Packing Co., LLC and its current and former subsidiaries. “National Beef” includes Iowa Premium, LLC.

4. “National Beef’s Counsel” means the law firm of O’Melveny & Myers LLP, and any other legal advisors retained for purposes of advising National Beef with respect to the Action.

5. “National Beef Released Parties” means National Beef 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 each of their 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. With the exception of Iowa Premium, LLC—which is a National Beef Released Party—“National Beef 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 National Beef.

6. “Claims” means any and all actual or potential, known or unknown, prior or current, 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 Class Action Complaint (ECF No. 1), the Corrected Class Action Complaint (ECF No. 23-1), the Amended Class Action Complaint in the Action (ECF No. 260), and any amendment or supplement thereto or any other complaint filed in the Action.

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 of this Settlement Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, as provided in Section II(F)(9) below (“Final Approval”).

14. “Date of Final Judgment” means the first date upon which both of the following conditions shall have been satisfied: (a) the Court has entered an order granting Final Approval of this Settlement Agreement; 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. The provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be considered in determining the above-stated times.

15. “Date of Preliminary Approval” means the date on which the Court enters an order granting preliminary approval of 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 National Beef 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 beef and pork (collectively referred to as “red meat”) processing plants, 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 \$14,200,000 (fourteen million, two 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 February 27, 2024, 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 National Beef 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 “National Beef Released Parties.”

## II. SETTLEMENT

### A. Performance By National Beef.

1. **Settlement Payment.** In consideration for the release of the Released Claims and the dismissal with prejudice of the Action as to National Beef, within fourteen (14) business days of the later of (i) the Court’s grant of Preliminary Approval or (ii) the date on which National Beef is provided with wiring information for the Escrow Account, National Beef shall pay or



cause to be paid \$14,200,000 (fourteen million, two hundred thousand U.S. dollars) into the Settlement Fund.

a. National Beef'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 National Beef 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 until all claims in the Action against Defendants have been dismissed with prejudice or finally resolved and all appeals relating to the Action have been exhausted. 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. National Beef's obligation to cooperate under this paragraph encompasses the Red Meat Processing Operations operated by National Beef and shall, upon Class Plaintiffs' request and after the Date of Preliminary Approval, consist of the following actions:

a. Within one hundred fifty (150) days of the Date of Preliminary Approval, National Beef will produce to Class Plaintiffs electronic structured compensation data for the Settlement Class Period and four years prior, identified after a reasonable search, regarding Settlement Class Members employed by National Beef's Red Meat Processing Operations. Such electronic structured compensation data will include the following (to the extent such data currently exists in National Beef's possession, custody, and control and is reasonably accessible to National Beef):

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).

National Beef will use reasonable efforts to respond to a reasonable number of Class Plaintiffs' questions regarding, and otherwise assist Plaintiffs to understand, such electronic structured data.

b. National Beef agrees to use reasonable efforts to provide declarations or affidavits relating to authentication or admissibility of documents, if reasonably requested by the Class Plaintiffs in connection with this Action.

c. Class Plaintiffs will identify up to eight (8) current or former employees of National Beef as document custodians ("Custodians"), and Class Plaintiffs will provide National Beef with a list of reasonable search terms relating to the Allegations ("Search Terms"). With respect to each proposed custodian, National Beef 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 from 2018 and earlier. Notwithstanding the foregoing or anything else contained herein, the Custodians shall not include any current or former Chief(s) or Member(s) of the Board of Managers.

d. If the Parties are unable to reach agreement on a final list of search terms after good faith negotiations, the parties agree—within fourteen (14) days of reaching impasse—to submit any disputed terms to the presiding Magistrate Judge, whose decision shall be final, binding, and non-appealable. National Beef will, within 150 days of either (i) the Date of

Preliminary Approval or (ii) the date upon which the parties reach a resolution on search terms (through agreement or by order of the Magistrate Judge), whichever is later, produce non-privileged documents in its possession, custody, or control that are returned by the Search Terms and responsive to Plaintiffs' requests for production. The Parties may mutually agree to move these deadlines without seeking Court approval.

e. Within 150 days of the later of (i) the Date of Preliminary Approval or (ii) the date upon which Class Plaintiffs identify custodians, National Beef 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 National Beef's possession, custody, and control that are located through a reasonable search of the Custodians' electronic files. National Beef 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. National Beef 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.

f. Class Plaintiffs will identify up to five (5) current employees of National Beef who will be deposed by Class Plaintiffs and will participate as witnesses at trial if requested by Class Plaintiffs, assuming they remain employed by National Beef at the time of trial. This limitation on depositions and trial witnesses does not apply to former employees of National Beef. This limitation includes 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 current or former Chief(s) or Member(s) of the Board of Managers.

g. National Beef 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 National Beef.

h. As part of the custodial searches discussed above in Section II(A)(2)(a), and to the extent such Documents are not protected by the attorney-client privilege, attorney work product doctrine, or another applicable privilege, National Beef 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 National Beef or National Beef's employees to WMS or WMS's employees, and/or (3) were received by National Beef or National Beef'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.

i. In addition to the custodial searches discussed above in Sections II(A)(2)(a) and II(A)(2)(d) and to the extent such Documents are not protected by the attorney-client privilege, attorney work product doctrine, or another applicable privilege, National Beef 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 National Beef'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 National Beef 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. National Beef is required to produce any such documents unless the Department of Justice objects to such production and National Beef is not otherwise ordered by the Court to produce any such documents. Unless prohibited by the Department of Justice, National Beef 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 National Beef reserves the right to designate any produced documents for confidential treatment pursuant to the applicable protective order in this Action.

j. To the extent National Beef withholds the production of any documents on the basis of attorney-client privilege or any other form of protection from disclosure, National Beef 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 Action (ECF No. 320).

k. 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 (ECF No. 321).

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 National Beef 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 have, 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 National Beef 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 National Beef 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, the parties shall cooperate to move the Court to preliminarily enjoin and bar all Releasing Parties who have not submitted a valid request to be excluded from the Settlement Class from asserting any Released Claims against the National Beef 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 National Beef 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 National Beef 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 National Beef 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;

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. 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 a plan of distribution to be approved by the Court (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 shall prepare an appropriate Escrow Agreement in conformance with this Agreement, and provide a draft of the Escrow Agreement to National Beef's Counsel for review and comment.

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, National Beef, nor National Beef'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. National Beef 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 National Beef 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 National Beef or the National Beef 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. If the Settlement Fund is reduced, impaired, or otherwise becomes lost through fraud, negligence, or any other means after the Settlement Amount has been transferred to the Escrow Account, the Parties will continue to seek final approval for this Settlement Agreement and National Beef shall have no obligation to contribute any further amount to secure final approval of this Settlement Agreement.

5. Except 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 National Beef nor National Beef'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. § 1.468B-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 National Beef nor National Beef'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 the Plan of Distribution. 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.**

National Beef 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 National Beef, 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 National Beef, Interim Co-Lead Counsel and National Beef's Counsel shall jointly file with the Court a notice of settlement and stipulation for suspension of all proceedings by Class Plaintiffs against National Beef in the Action pending approval of the Settlement Agreement.

2. **Effectuating the Settlement.** Class Plaintiffs and National Beef 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 National Beef.

3. **Settlement Class Certification.** Class Plaintiffs shall seek, and National Beef 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 February 27, 2024.

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. For the avoidance of doubt, “plant managers” means the General Manager at each plant.

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 National Beef’s Counsel for its review. National Beef 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 National Beef 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, National Beef 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 National Beef 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 National Beef has provided the appropriate notice pursuant to CAFA;

e. orders that all claims made against National Beef 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 National Beef Released Parties from all Released Claims;



g. enjoins Class Plaintiffs from suing, directly or indirectly, any of the National Beef 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 National Beef'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 National Beef shall be final and entered forthwith, and stating:

- i. Final judgment as to the Action is entered in favor of National Beef; and
- ii. Final judgment is granted in favor of the National Beef 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. National Beef 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, National Beef 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. National Beef 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 Class Plaintiffs and National Beef agree to negotiate in good faith to remedy the issues that resulted in that non-approval and to seek final approval of any revised settlement agreement. If, and only if, such good-faith negotiations fail to result in a revised settlement agreement for which parties seek court approval, then National Beef 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) and (3), all other funds remaining in the Escrow Account (including interest earned thereon) shall be returned to National Beef 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. National Beef denies all allegations of wrongdoing in the Action. Nothing in this Settlement Agreement constitutes an admission by National Beef 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 National Beef. The Settling Parties agree they will not make public statements to the media that disparage each other, their claims or defenses, 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 National Beef or other National Beef 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 National Beef 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 National Beef in the Action except to the extent expressly authorized in this Settlement Agreement. National Beef and National Beef'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 National Beef 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), before or after the Date of Final Judgment, any claims against any of the National Beef 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 National Beef employees on topics primarily related to their time of employment at National Beef, this litigation standstill shall not apply to preclude such depositions, and National Beef in its sole discretion shall be permitted to represent the interests of National Beef 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 National Beef consistent with Section II(A)(2)(e), or other third parties. This litigation standstill precludes National Beef or National Beef'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 National Beef 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 National Beef employees in connection with discovery, court hearings, or trial. National Beef will notify Interim Co-Lead 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 National Beef pertaining to the settlement of the Action against National Beef and supersedes any and all prior and contemporaneous undertakings of the Settlement Class and National Beef 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 National Beef Released Parties, and upon all other Persons claiming any interest in the subject matter hereto

through any of the Settling Parties, Releasing Parties, or National Beef 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 National Beef, 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 National Beef 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 National Beef.

**F. Counterparts.**

This Settlement Agreement may be executed in counterparts by Interim Co-Lead Counsel and National Beef'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 National Beef 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 National Beef's Counsel represent that they are authorized to execute the Settlement Agreement on behalf of National Beef.

**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, National Beef 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, National Beef 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.**

Other than as described in Section III(B), 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 National Beef 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 National Beef, 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 National Beef 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:

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nate.hodne@nationalbeef.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: \_\_\_\_\_, 2024

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Dated: July 2 \_\_\_\_\_, 2024



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Dated: 07/02, 2024



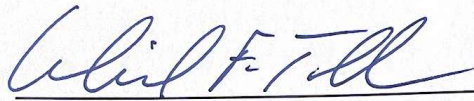
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*Interim Co-Lead Counsel for Plaintiffs and the  
Proposed Class*

Dated: July 2, 2024



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*Attorney for National Beef Packing Co., LLC*

# **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.;  
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.

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**SETTLEMENT AGREEMENT BETWEEN CLASS PLAINTIFFS AND  
DEFENDANTS CARGILL, INC. AND CARGILL MEAT SOLUTIONS CORP.  
(COLLECTIVELY "CARGILL")**

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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 Cargill (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 Cargill 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 Cargill 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.

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

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 Cargill 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 Cargill'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 Cargill 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 Cargill is accused; and (3) the Cooperation (as defined below) to which Cargill has agreed will reduce the substantial burden and expense associated with prosecuting the Action.

F. Despite Cargill's belief that it is not liable for and has strong defenses to the Claims (as defined below) asserted by Class Plaintiffs, Cargill 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.

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

H. 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.

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 Cargill Released Parties (as hereinafter defined) and that this Action shall be dismissed in its entirety with prejudice as to Cargill, 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 Cargill 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. “Cargill” means, collectively, Cargill, Incorporated and its current subsidiaries, and any of its respective former or current, direct or indirect trustees, directors, officers, members, attorneys, agents and insurers, and Cargill Meat Solutions Corporation (“CMS”) and its current subsidiaries, and any of its respective former or current, direct or indirect trustees, directors, officers, members, attorneys, agents and insurers.

4. “Cargill’s Counsel” means the law firm of WilmerHale, and any other legal advisors retained for purposes of advising Cargill with respect to the Action.

5. “Cargill Released Parties” means Cargill 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. “Cargill 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 Cargill.

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. “Executive Team” means any current or former member of Cargill’s Executive Team (CEO, CFO, CIO, Chief HR Officer, General Counsel, Chief Risk Officer, and the heads of its Business Operations and Supply Chain, Asia Pacific, Animal Health & Nutrition, Protein & Salt, and Agricultural Supply Chain divisions) or Board of Directors.

27. “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.

28. “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 Cargill with prejudice from the Action, as described in Section II(F)(8) below.

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

30. “Red Meat Processing Operations” means Cargill’s beef processing plants (referred to as red meat), including slaughterhouse plants and further-processing plants, in the United States.

31. “Released Claims” means claims defined in Section II(B)(2) of this Settlement Agreement.

32. “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.

33. “Settlement Agreement” means this document and the agreement reflected herein.

34. “Settlement Amount” means the cash payment of \$29,750,000 (twenty nine million, seven hundred fifty thousand U.S. dollars) described in Section II(A)(1), below.

35. “Settlement Class Member” means each member of the Settlement Class who is not timely and properly excluded from the Settlement Class.

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

37. “Settlement Class Period” means the period from and including January 1, 2000, through February 27, 2024, the date of the first preliminary approval of a settlement in this action.

38. “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.

39. “Settling Parties” means Cargill 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 “Cargill Released Parties.”

## **II. SETTLEMENT**

### **A. Performance By Cargill.**

1. **Settlement Payment.** In consideration for the release of the Released Claims and the dismissal with prejudice of the Action as to Cargill, within fourteen business days of the later of (i) the Court’s grant of Preliminary Approval or (ii) the date on which Cargill is provided with wiring information for the Escrow Account, Cargill shall pay or cause to be paid \$29,750,000 (twenty nine million, seven hundred fifty thousand U.S. dollars) into the Settlement Fund.

a. Cargill’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 Cargill 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.

2. **Cooperation.** Cooperation is a material term of this Settlement Agreement and is intended to provide responsive information to Class Plaintiffs, while also alleviating the significant costs and burdens of discovery on Cargill. Cargill's obligation to cooperate under this paragraph encompasses the Red Meat Processing Operations operated by Cargill and shall, upon Class Plaintiffs' request and after the Date of Preliminary Approval, include the following actions:

a. Within one hundred fifty (150) calendar days of the Date of Preliminary Approval, Cargill 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 Cargill's Red Meat Processing Operations. Such structured compensation data will include the following (to the extent such data currently exists, is reasonably available, and is in Cargill'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).

The inclusion of these types of data in this agreement is not an admission by Cargill that they necessarily exist in their structured data. Cargill will use reasonable efforts to respond to a reasonable number of Class Plaintiffs' questions regarding, and otherwise assist Plaintiffs to understand, such structured data, but those efforts will not include answering formal discovery like interrogatories.

b. Cargill 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.

c. Class Plaintiffs will identify up to ten (10) current or former employees of Cargill as document custodians ("Custodians") and provide Cargill with a list of reasonable search terms relating to the Allegations ("Search Terms"). If the Parties are unable to reach agreement on a final list of search terms after good faith negotiations, the parties agree—within fourteen (14) days of reaching impasse—to submit any disputed terms to the presiding Magistrate Judge, whose decision shall be final, binding, and non-appealable. Cargill will, within 150 days of either (i) the Date of Preliminary Approval or (ii) the date upon which the parties reach a resolution on search terms (through agreement or by order of the Magistrate Judge), whichever is later, produce non-privileged documents in its possession, custody or control that are returned by the Search Terms and responsive to the already served Plaintiffs' requests for production.<sup>1</sup> The Parties may mutually agree to move these deadlines without seeking Court

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<sup>1</sup> Cargill will determine responsiveness to those requests for production as if (1) they had been served with the definition of "Class Members" being the Settlement Class contained in this agreement in Section II(f)(3), (2) consistent with Section II(A)(2) of this Settlement Agreement, responsiveness to the already-served requests for production will be limited to Compensation related to Cargill's Red Meat Processing Operations; and (3) they contained the following three requests in addition to those already enumerated:

approval. Notwithstanding the foregoing or anything else contained herein, the Custodians shall not include any members of the Executive Team.

d. Within 150 days of the later of (i) the Date of Preliminary Approval or (ii) the date upon which Class Plaintiffs identify custodians, Cargill will produce all records of phone calls placed and received by the Custodians during the Class Period, including phone calls to or from phone numbers specifically associated with the Custodians, that are in Cargill's possession, custody, and control that are located through a reasonable search of the Custodians' electronic files. Cargill will also use reasonable efforts to identify phone numbers used for business that are reasonably available and specifically associated with the Custodians even if records of phone calls associated with those numbers are not in its possession, custody or control. Cargill 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.

e. Class Plaintiffs will identify up to six (6) then-current employees of Cargill (i.e., current employees of Cargill at the time Class Plaintiffs identify deponents) 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

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(a) Documents related to Cargill's Red Meat Processing Operations that (1) reference WMS, any of WMS's employees, or any surveys or survey results prepared by WMS, (2) were sent by Cargill or Cargill's employees to WMS or WMS's employees, and/or (3) were received by Cargill or Cargill's employees from WMS or WMS's employees;

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

(c) 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.

trial witnesses does not apply to former employees of Cargill. 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, the depositions shall not include members of the Executive Team.

f. Cargill will not object to Class Plaintiffs' subpoenas to third-party phone carriers for phone records of Defendants' current and former employees that relate to the period such employees were employed by Cargill in a capacity relating to Compensation of employees in Cargill's Red Meat Processing Operations.

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 relevant, within the Settlement Class Period, and not protected by the attorney-client privilege, attorney work product doctrine, or another applicable privilege, Cargill 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, in whole or in part, to compensation of employees involved in Cargill's Red Meat Processing Operations;
- All contracts executed with labor unions representing Class Members at Cargill's Red Meat Processing Operations and executed during the Settlement Class Period;
- Any documents related to the Allegations and within the timeframe covered by the Class Period that have been or will be produced to the Department of Justice by Cargill 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. Cargill is required to produce any such documents unless the Department of Justice objects to such production and Cargill is not otherwise ordered by the Court to produce any such documents. Unless prohibited by the Department of Justice, Cargill

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 Cargill reserves the right to designate any produced documents for confidential treatment pursuant to the applicable protective order in this Action.

h. To the extent Cargill withholds the production of any documents on the basis of attorney-client privilege or any other form of protection from disclosure, Cargill is obligated to produce a privilege log no later than 75 days after the document production from which documents were withheld. The privilege log must conform to the requirements of the ESI protocol in this Action (ECF No. 320).

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 (ECF No. 321).

For the avoidance of doubt, if Class Plaintiffs settle with all Defendants in the Action, Cargill's cooperation obligations outlined above shall cease immediately upon the last Defendant's Date of Final Approval. 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 Cargill 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 Cargill 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 Cargill 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 Cargill 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 Cargill 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 Cargill 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 Cargill 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;

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. 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.

Cargill shall have the right to review, edit and comment on the notice plan and the Plan of Distribution prior to being submitted to the Court.



**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, Cargill, and Cargill'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, Cargill, nor Cargill'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. Cargill 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 Cargill 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 Cargill or the Cargill 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 Cargill nor Cargill'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 Cargill nor Cargill'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.**

Cargill 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 Cargill, 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 Cargill, Interim Co-Lead Counsel and Cargill’s Counsel shall jointly file with the Court a notice of settlement and stipulation for suspension of all proceedings by Class Plaintiffs against Cargill in the Action pending approval of the Settlement Agreement.

2. **Effectuating the Settlement.** Class Plaintiffs and Cargill 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 Cargill.

3. **Settlement Class Certification.** Class Plaintiffs shall seek, and Cargill 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 February 27, 2024.

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 Cargill's Counsel for its review. Cargill 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 Cargill 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, Cargill 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 Cargill 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 Cargill has provided the appropriate notice pursuant to CAFA;

e. orders that all claims made against Cargill 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 Cargill Released Parties from all Released Claims;

g. enjoins Class Plaintiffs from suing, directly or indirectly, any of the Cargill 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 Cargill'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 Cargill shall be final and entered forthwith, and stating:



- i. Final judgment as to the Action is entered in favor of Cargill; and
  - ii. Final judgment is granted in favor of the Cargill 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. Cargill 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, Cargill 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. Cargill 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 Cargill 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) and (3), all other funds remaining in the Escrow Account (including interest earned thereon) shall be returned to Cargill 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. Cargill denies all allegations of wrongdoing in the Action. Nothing in this Settlement Agreement constitutes an admission by Cargill 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 Cargill.

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 Cargill or other Cargill 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. Cargill may file or use this Settlement Agreement in other proceedings, where relevant, to demonstrate the fact of its existence and of this settlement 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 Cargill in the Action except to the extent expressly authorized in this Settlement Agreement. Cargill and Cargill'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 Cargill 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 Cargill 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 Cargill employees on topics primarily related to their time of employment at Cargill, this litigation standstill shall not apply to preclude such depositions, and Cargill in its sole discretion shall be permitted to represent the interests of Cargill 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 Cargill consistent with Section II(A)(2)(d), or other third

parties. This litigation standstill precludes Cargill or Cargill'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 Cargill 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 Cargill employees in connection with discovery, court hearings, or trial. Cargill 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 Cargill pertaining to the settlement of the Action against Cargill and supersedes any and all prior and contemporaneous undertakings of the Settlement Class and Cargill 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 Cargill Released Parties, and upon all other Persons claiming any interest in the subject matter hereto through any

of the Settling Parties, Releasing Parties, or Cargill 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 Cargill, 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 Cargill 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 Cargill.

**F. Counterparts.**

This Settlement Agreement may be executed in counterparts by Interim Co-Lead Counsel and Cargill'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 Cargill 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 Cargill's Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Cargill.

**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, Cargill 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, Cargill 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 Cargill 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 Cargill, 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 Cargill 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:

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For Cargill, Incorporated and Cargill, Meat Solutions:

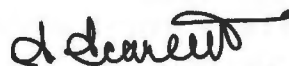
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IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Execution Date.

Dated: July 18, 2024



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

Dated: July 24 2024



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Solutions*

# **EXHIBIT C**

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.;  
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.

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**SETTLEMENT AGREEMENT BETWEEN CLASS PLAINTIFFS AND  
DEFENDANTS HORMEL FOODS CORPORATION; ROCHELLE FOODS, LLC; AND  
QUALITY PORK PROCESSORS, INC.**

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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 Defendants Hormel Foods Corporation; Rochelle Foods, LLC; and Quality Pork Processors, Inc. (collectively, “Settling Defendants,” and 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 Settling Defendants 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 Defendants to pay sub-competitive compensation to hourly and salaried workers in their Red Meat Processing Operations (as defined below) in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

C. Settling Defendants deny all allegations of wrongdoing in the Action and believe they have numerous legitimate defenses to Class Plaintiffs’ claims.

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 Defendants 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 Settling Defendants’ defenses.

E. Interim Co-Lead Counsel have conducted an investigation into the allegations and law regarding the Action and the possible legal and factual defenses thereto and have concluded that (1) a settlement with Settling Defendants 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 Defendants are accused; and (3) the Cooperation (as defined below) to which Settling Defendants have agreed will reduce the substantial burden and expense associated with prosecuting the Action.

F. Despite Settling Defendants' belief that they are not liable for and have strong defenses to the Claims (as defined below) asserted by Class Plaintiffs, Settling Defendants desire 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 complex litigation and trial; and thereby to put to rest this controversy.

G. Arms-length settlement negotiations have taken place between Interim Co-Lead Counsel and Settling Defendants' Counsel, and this Agreement has been reached as a result of those negotiations.

H. All 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 Defendants Released Parties (as

hereinafter defined) and that this Action shall be dismissed in its entirety with prejudice as to the Settling Defendants, 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 alleged purpose and/or effect of which was to suppress competition for labor and/or to allow Settling Defendants to pay sub-competitive compensation to hourly and salaried workers in their Red Meat Processing Operations (as defined below) in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

3. “Hormel Foods” means Hormel Foods Corporation (f/k/a George A. Hormel & Co.) and its current and former subsidiaries and plants—including, but not limited to Rochelle Foods, LLC—and any of its respective former or current, direct or indirect trustees, directors, officers, members, attorneys, agents, and insurers.

4. “QPP” means Quality Pork Processors, Inc. and its current and former subsidiaries, and any of its respective former or current, direct or indirect trustees, directors, officers, members, attorneys, agents and insurers.

5. “Settling Defendants’ Counsel” means the law firm of Faegre Drinker Biddle & Reath LLP, and any other legal advisors retained for purposes of advising Settling Defendants with respect to the Action.

6. “Settling Defendants Released Parties” means Hormel Foods Corporation (f/k/a George A. Hormel & Co.); Rochelle Foods, LLC; and Quality Pork Processors, Inc., and all of their respective former or current, direct or indirect, parents, subsidiaries and affiliates,<sup>1</sup> 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. “Settling Defendants 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 Hormel Foods Corporation; Rochelle Foods, LLC; and Quality Pork Processors, Inc.

7. “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.

8. “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.

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<sup>1</sup> For the avoidance of doubt, Settling Defendants Released Parties includes—but is not limited to—the following Hormel Foods subsidiaries: Alma Foods, LLC; Burke Marketing Corporation; Dan’s Prize, Inc.; Dold Foods, LLC; Fontanini Foods, LLC; Hormel Foods Operations, LLC; Lloyd’s Barbeque Company, LLC; Osceola Food, LLC; Progressive Processing, LLC; Provena Foods, Inc.; and Swiss American Sausage Company.

9. “Class Plaintiffs” means all Plaintiffs named in the Complaint: Ron Brown and Minka Garmon.

10. “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.

11. “Complaint” means the Amended Class Action Complaint in the Action (ECF 260).

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

13. “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.

14. “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.

15. “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.

16. “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.

17. “Defendant” or “Defendants” means any or all of the Defendants named in the Action, now, in the past, or in the future.

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

19. “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.

20. “Effective Date” shall be the Date of Final Judgment as defined in Section I(B).

21. “Escrow Account” means the account with the Escrow Agent that holds the Settlement Fund.

22. “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.

23. “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.

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

25. “Fairness Hearing” has the meaning provided in Section II(F)(4) below.

26. “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.

27. “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.

28. “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 Defendants with prejudice from the Action, as described in Section II(F)(8) below.

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

30. “Red Meat Processing Operations” means the beef and pork (referred to as red meat) processing plants, including slaughterhouse plants and further-processing plants, owned by Hormel Foods in the United States. For purposes of the Cooperation contemplated in Section II(A)(2), Red Meat Processing Operations include sixteen (16) plants identified by Class Plaintiffs and located in Fremont, NE; Algona, IA; Tucker, GA; Austin, MN; Beloit, WI; Nevada, IA; Long Prairie, MN; Wichita, KS; McCook, IL; Knoxville, IA; Mendota Heights, MN; Osceola, IA; Papillion, NE; Dubuque, IA; Rochelle, IL; and Lathrop, CA. QPP processes red meat in Hormel Foods’ Austin, MN plant.

31. “Released Claims” means claims defined in Section II(B)(2) of this Settlement Agreement.

32. “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.

33. “Settlement Agreement” means this document and the agreement reflected herein.

34. “Settlement Amount” means the electronic payment of \$13,500,000 (thirteen million, five hundred thousand U.S. dollars) described in Section II(A)(1), below.

35. “Settlement Class Member” means each member of the Settlement Class who is not timely and properly excluded from the Settlement Class.

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

37. “Settlement Class Period” means the period from and including January 1, 2000, through February 27, 2024, the date of the first preliminary approval of a settlement in this action.

38. “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.

39. “Settling Parties” means Settling Defendants 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 Defendants Released Parties.”

## II. SETTLEMENT

### A. Performance By Settling Defendants.

1. **Settlement Payment.** In consideration for the release of the Released Claims and the dismissal with prejudice of the Action as to Settling Defendants, within thirty calendar days of the later of (i) the Court’s grant of Preliminary Approval, or (ii) the date on which Settling Defendants are provided with wiring information for the Escrow Account, Settling Defendants shall pay or cause to be paid \$13,500,000 (thirteen million, five hundred thousand U.S. dollars) into the Settlement Fund.

a. Settling Defendants’ 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 Defendants 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.

2. **Cooperation.** Cooperation is a material term of this Settlement Agreement. Settling Defendants’ obligation to cooperate under this paragraph encompasses the Red Meat Processing Operations as set forth in Section I(B)(30) and shall, upon Class Plaintiffs’ request and after the Date of Preliminary Approval, include the following actions:



a. Within two hundred seventy (270) days of the Date of Preliminary Approval, Settling Defendants will produce to Class Plaintiffs structured compensation data from (i) two Hormel Foods databases, ADP and Oracle, which have collectively stored structured compensation data since approximately January 1, 2007; and (ii) a QPP database for the Settlement Class Period, identified after a reasonable search, regarding Settlement Class Members employed by Settling Defendants at their Red Meat Processing Operations. Settling Defendants are not required to search or produce electronically stored information that are inaccessible under the circumstances; for example, a reasonable search does not entail the restoration or production of backup tapes. The date range of Settling Defendants' structured-data production may be shortened should any Court order impact the relevant time period at issue. Such structured data will include the following (to the extent such data currently exists in Settling Defendants' possession, custody, and control):

- i. Personal information, including name, email address, physical address, telephone number, hire date, employee ID, Social Security number, date of birth, contact information, and gender.
- ii. Job title and level, dates of employment, wages or salaries, bonuses, overtime pay, shift premiums, and benefits.
- iii. Exit information, in the form of date of termination of employment and reason(s) for termination of employment.

For Settlement Class Members employed at any plants within Hormel Foods' Red Meat Processing Operations that were acquired during the alleged class period, Hormel Foods will produce structured data starting on the date on which payroll for the plant was integrated into the ADP or Oracle database maintained by Hormel Foods. For Settlement Class Members employed at any plants within Hormel Foods' Red Meat Processing Operations that were divested during

the alleged class period, Hormel Foods will produce structured data subject to its availability and accessibility and ending on the date of the divestiture.

b. Settling Defendants will use reasonable efforts to respond, through counsel, to a reasonable number of Class Plaintiffs' questions regarding the database scheme, codes, abbreviations, and different report formats.

c. Settling Defendants agree to use reasonable efforts to provide declarations relating to authentication or the status of documents as records of regularly conducted activity within the meaning of Fed. R. of Evid. 803(6), to the extent reasonably requested by the Class Plaintiffs in connection with this Action. Settling Defendants agree that the depositions allowed in Section II(A)(2)(e) may include a deposition taken under Fed. R. Civ. P. 30(b)(6) related to authenticity or the status of documents as records of regularly conducted activity within the meaning of Fed. R. of Evid. 803(6).

d. Class Plaintiffs will identify up to five (5) current or former employees of Settling Defendants as document custodians ("Custodians") and provide Settling Defendants with a list of reasonable search terms relating to the Allegations ("Search Terms"). If the Parties are unable to reach agreement on a final list of search terms after good faith negotiations, the Parties agree—within fourteen (14) days of reaching impasse—to submit any disputed terms to the presiding Magistrate Judge, whose decision shall be final, binding, and non-appealable. Settling Defendants will, within one hundred eighty (180) days of either (i) the Date of Preliminary Approval or (ii) the date upon which the Parties reach a resolution on search terms (through agreement or by order of the Magistrate Judge), whichever is later, produce the following non-privileged documents in its possession, custody or control that are returned by the Search Terms applied to reasonably accessible Custodians' files from January 1, 2000 through

November 11, 2022 and responsive to Plaintiffs' requests for production and the following requests:

- All Documents that (1) reference WMS, any of WMS's employees, or any surveys or survey results prepared by WMS; (2) were sent by Hormel Foods or Hormel Foods' employees to WMS or WMS's employees; and/or (3) were received by Hormel Foods or Hormel Foods' 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"); and
- 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 U.S. Meat Export Federation; and the 21st Century Pork Club that reference any form or component of Compensation.

The Parties may mutually agree to move these deadlines without seeking Court approval.

e. Class Plaintiffs will identify up to four (4) then-current employees of Settling Defendants who will be deposed by Class Plaintiffs. This limitation on depositions does not apply to former employees of Settling Defendants. 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.

f. Settling Defendants will not object to Class Plaintiffs' subpoena to third-party phone carriers for phone records of their current and former employees that relate to the period such employees were employed by Settling Defendants. Settling Defendants will not assist in the collection or imaging of the cell phones of their current and former employees, and Class Plaintiffs will not subpoena cell-phone information from any current or former employees of Settling Defendants.

g. In addition to the custodial searches discussed above in Sections II(A)(2)(d) and to the extent such Documents are not protected by the attorney-client privilege, attorney work-product doctrine, or another applicable privilege, Settling Defendants will produce, within one hundred eighty (180) days of Preliminary Approval, the following Documents to Class Plaintiffs identified by a reasonable search:

- Agri-Stats, Inc. and/or Express Markets, Inc. reports related to Red Meat Processing Operations sent to Hormel Foods;
- All contracts executed with labor unions representing Class Members at Settling Defendants' Red Meat Processing Operations and executed during the Settlement Class Period, to the extent union contracts are stored in a centrally located repository, are reasonably accessible, and to the extent production does not violate confidentiality obligations to the unions;
- Any documents that have been produced to the Department of Justice by Hormel Foods in connection with any investigation regarding any form or component of Compensation paid to workers at Red Meat Processing Operations.

h. To the extent Settling Defendants withhold the production of any documents on the basis of attorney-client privilege or any other form of protection from disclosure, Settling Defendants are 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 Action (ECF No. 320).

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 (ECF No. 321).

j. Within 30 days of public notice of the last settlement with a Defendant Processor or communication by Class Plaintiffs as specified by Section II(A)(2)(k), whichever is

earlier, and if Settling Defendants have not yet produced structured data pursuant to Section II(A)(2)(a) above, the Parties will confer in good faith to narrow Settling Defendants' structured-data production to those fields reasonably necessary for notice to the Class and administration of the settlement funds for the purposes of allocation and distribution.

k. For the avoidance of doubt, if Class Plaintiffs settle with all Defendant Processors, Plaintiffs shall notify Settling Defendants' Counsel by e-mail as soon as permitted under the settlement agreements themselves, or if the settling Defendant Processors give permission for this disclosure, at which time Settling Defendants' efforts to comply with their cooperation obligations outlined above other than that concerning structured data in Section II(A)(2)(a) as subsequently narrowed by Section II(A)(2)(j) will be stayed pending the Court's preliminary approval of that subsequent settlement. Settling Defendants' cooperation obligations outlined above other than that concerning structured data in Sections II(A)(2)(a) and (j) shall permanently cease immediately upon the last Defendant Processor's Date of Preliminary Approval.

1. The Parties will have discretion to mutually agree to modifications of these Cooperation obligations and deadlines, and such agreed-upon 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 Settling Defendants 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”). The Releasing Parties deem the compensation set forth herein as full and adequate restitution for any harm allegedly caused by the Allegations or related to the Released Claims. Notwithstanding the above, “Released Claims” do not include (i) claims asserted against any Defendant other than the Settling Defendants 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 Settling Defendants 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 Defendants 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 Settling Defendants 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 Defendants 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 Settling Defendants 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;

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. 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, Settling Defendants, and Settling Defendants' 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 Defendants, nor Settling Defendants' 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 Defendants 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 Defendants' 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 Defendants or the Settling Defendants 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 Defendants nor Settling Defendants' 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 Settling Defendants nor Settling

Defendants' 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 Defendants 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 Defendants, including any interest accrued.

**F. Approval of Settlement Agreement and Dismissal of Claims.**

1. **Notice of Settlement.** No later than two (2) business days after the execution of this Settlement Agreement by Settling Defendants, Interim Co-Lead Counsel and Settling Defendants' Counsel shall jointly file with the Court a notice of settlement disclosing the amount of the settlement, and stipulation for suspension of all proceedings by Class Plaintiffs against Settling Defendants in the Action pending approval of the Settlement Agreement.

2. **Effectuating the Settlement.** Class Plaintiffs and Settling Defendants 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 Hormel.

3. **Settlement Class Certification.** Class Plaintiffs shall seek, and Settling Defendants 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 February 27, 2024.

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 Hormel's Counsel for its review. Settling Defendants 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 Defendants 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 Defendants will provide or cause to be provided 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 Defendants 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 Defendants have provided the appropriate notice pursuant to CAFA;

e. orders that all claims made against Settling Defendants 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 Defendants Released Parties from all Released Claims;

g. enjoins Class Plaintiffs from suing, directly or indirectly, any of the Settling Defendants 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 Defendants shall be final and entered forthwith, and stating:

- i. Final judgment as to the Action is entered in favor of Settling Defendants; and
- ii. Final judgment is granted in favor of the Settling Defendants 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 Defendants 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, Settling Defendants shall bear their 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. Settling Defendants 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 Settling Defendants 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) and (3), all other funds remaining in the Escrow Account (including interest earned thereon) shall be returned to Settling Defendants 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 Defendants deny all allegations of wrongdoing in the Action. Nothing in this Settlement Agreement constitutes an admission Settling Defendants 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 Settling Defendants. 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. Class Plaintiffs shall confine their public statements to

essentially the following: “The parties have agreed to resolve this matter.” Settling Defendants shall confine their public statements to disclosing the dollar amount of the settlement, briefly referring to the need for Court approval, and essentially the following additional comments (not intended to be verbatim): “The parties have agreed to resolve this matter. Settling Defendant strongly denies liability and continues to deny the allegations in Class Plaintiffs’ complaint. Settling Defendant believes that it has valid defenses to Class Plaintiffs’ claims, but it has decided to settle these claims to avoid the uncertainty, risk, expense, and distraction of continued litigation. This settlement is in the best interests of its stakeholders, employees, customers, and consumers. By putting this case behind it, Settling Defendant can focus on achieving the long-term goals of its business.”

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 Defendants or other Settling Defendants 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 Defendants

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 Settling Defendants in the Action except to the extent expressly authorized in this Settlement Agreement. Settling Defendants and Settling Defendants' 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 Settling Defendants as defendants 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 Defendants 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 Settling Defendant employees on topics primarily related to their time of employment at Hormel, this litigation standstill shall not apply to preclude such depositions, and Settling Defendants in their sole discretion shall be permitted to represent the interests of Settling Defendants 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 Settling Defendants consistent with Section II(A)(2)(d), or other third parties. This litigation standstill precludes Settling Defendants or Settling Defendants' 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 Settling Defendants 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 Settling Defendants employees in connection with discovery. Settling Defendants will notify Interim Co-Lead Class Counsel by e-mail or cause Interim Co-Lead Counsel to be notified within five (5) 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 Defendants pertaining to the settlement of the Action against Settling Defendants and supersedes any and all prior and contemporaneous undertakings of the Settlement Class and Settling Defendants 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 Settling Defendants Released Parties, and upon all other Persons claiming any interest in the subject matter hereto

through any of the Settling Parties, Releasing Parties, or Settling Defendants 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 Settling Defendants, 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 Defendants 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 Settling Defendants.

**F. Counterparts.**

This Settlement Agreement may be executed in counterparts by Interim Co-Lead Counsel and Settling Defendants' 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 Defendants 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 Defendants' Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Settling Defendants.

**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 Defendants and Class Plaintiffs can, if both agree to do so, inform other parties to this Action as to the cooperation provided for in Section II(A) of this Settlement Agreement. Moreover, during the period prior to the public filing of this Agreement, Settling Defendants may disclose the fact of settlement, the amount of settlement, and other terms of the Settlement Agreement to comply with any legal obligations, stock exchange listing requirements, and/or in connection with earnings press releases or disclosures to investors and shareholders, and make public statements as permitted by Section II(F)(12)(a).

**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 Settling Defendants 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 Hormel, 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 Settling Defendants' Counsel 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).

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

Dated: August 20, 2024

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

Dated: August 20, 2024



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