

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE: BROILER CHICKEN ANTITRUST LITIGATION	Case No. 1:16-cv-08637
THIS DOCUMENT RELATES TO: THE END-USER CONSUMER PLAINTIFF ACTION	

**SETTLEMENT AGREEMENT BETWEEN END-USER CONSUMER PLAINTIFFS
AND DEFENDANT PECO FOODS, INC.**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of the Execution Date, by and between Peco Foods, Inc. (“Peco” or “Settling Defendant”) and the End-User Consumer Plaintiffs (“Plaintiffs” or “EUCPs”) individually and on behalf of a class of indirect purchasers of Broilers, as defined herein, subject to the approval of the Court (the “Settlement Class” or “the Class”).

RECITALS

A. Plaintiffs are prosecuting the above-captioned Action on their own behalf and on behalf of the Class. Plaintiffs and the putative class are represented by currently interim Class Counsel.

B. The Action is being litigated in the United States District Court for the Northern District of Illinois in coordination with lawsuits being brought by other plaintiffs and putative classes. The Direct Purchaser Plaintiffs are direct purchasers seeking to represent a class of direct purchasers. The Direct Action Plaintiffs are direct purchasers represented by separate counsel (*i.e.*, counsel other than counsel for the class of direct purchasers). The Commercial and

Institutional Purchaser Plaintiffs are indirect purchasers seeking to represent a different group of indirect purchasers than the indirect purchasers the EUCPs are seeking to represent. The United States Department of Justice has also intervened in the litigation. The EUCP lawsuit that is the subject of this settlement shall be referred to as the “Action.” The entire collection of matters before the Court in this consolidated proceeding shall be referred to as the “Litigation.”

C. Plaintiffs have alleged, among other things, that Peco entered into a contract, combination or conspiracy in restraint of trade, the purpose and effect of which was to suppress competition and to allow Peco to charge supra-competitive prices during the Class Period, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 and the antitrust laws, unfair competition laws, consumer protection laws, and unjust enrichment common laws of the certain states.

D. Settling Defendant denies all allegations of wrongdoing in the Action and would allege numerous defenses to Plaintiffs’ claims if required to do so.

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

F. Class 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 a settlement with Settling Defendant according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of the Class, given the uncertainties, risks, and costs of continued litigation.

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

H. Arm's-length settlement negotiations have taken place between Class Counsel and the Settling Defendant's Counsel over many weeks and many conferences between counsel, and this Agreement has been reached as a result of those negotiations.

I. The Parties to this Agreement desire to fully and finally settle all actual and potential Claims arising from or in connection with the Action, the factual allegations underlying the Action, and to avoid the costs and risks of protracted litigation and trial.

IT IS HEREBY AGREED, by and among the Settling Parties, that this Action and all Released Claims are finally and fully settled and compromised as to the Released Parties and that this Action shall be dismissed in its entirety with prejudice as to the Settling Defendant, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

I. DEFINITIONS

A. Class Definition.

“Settlement Class” or “Class” means the class described in Section II(G)(2) below.

B. General Definitions.

1. “Action” means the End-User Consumer Plaintiff lawsuit in the Litigation captioned *In re Broiler Chicken Antitrust Litigation*, 1:16-cv-08637 (N.D. Ill.) (“Broilers”), which is currently pending in the United States District Court for the Northern District of Illinois.

2. “Broilers” are chickens raised for meat consumption to be slaughtered before the age of 13 weeks, and which may be sold in a variety of forms, including fresh or frozen, raw or cooked, whole or in parts, or as a meat ingredient in a value added product, but excluding chicken that is grown, processed, and sold according to halal, kosher, free range, or organic standards.

3. “Claims” means any and all actual or potential 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 the conduct alleged in the Action.

4. “Claims Administrator” means the third party to be retained by Class Counsel and approved by the Court to manage and administer the process by which Class Members are notified of the Settlement Agreement and paid from Net Settlement Fund.

5. “Class Member” or “Settlement Class Member” means each member of the Settlement Class that does not timely and properly exclude himself or herself from the Class.

6. “Class Notice” means the notice to the Class that is approved by the Court, in accordance with Section II(G)(4) below.

7. “Class Period” means the period from and including January 1, 2009 through July 31, 2019, or the end date Plaintiffs seek in their motion for class certification to be filed on October 30, 2020—whichever date is later.

8. “Class Counsel” and “Settlement Class Counsel” means the law firm of Hagens Berman Sobol Shapiro LLP.

9. “Complaint” or “Operative Complaint” means the Fifth Amended and Consolidated Class Action Complaint in the Action (ECF 3748).

10. “Court” or “District Court” means the United States District Court for the Northern District of Illinois and the Honorable Thomas M. Durkin or his successor, or any other Court in which an Action is proceeding.

11. “Date of Final Approval” means the date on which the Court enters an order granting final approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(G)(7) below.

12. “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(e) of the Federal Rules of Civil Procedure, as provided in Section II(G)(3) below.

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

14. “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.

15. “Effective Date” shall be the date the Settlement becomes final as set forth in Section II(G)(9), entitled “When Settlement Becomes Final.”

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

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

18. “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Section II(E) of this Agreement.

19. “Fairness Hearing” means a hearing on the settlement proposed in this Settlement Agreement 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.

20. “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, and costs of notice and administration, that may be awarded or approved by the Court.

21. “Opt-Out Claim” means any claim, as set forth in Section II(G)(3) and (4) of this Settlement Agreement, made by a Person, otherwise qualifying as a member of the Class, that has validly and timely excluded himself or herself from the Class.

22. “Order and Final Judgment” means the order and final judgment of the Court approving the Settlement Agreement, as described in Section II(G)(7) below.

23. “Parties” or “Settling Parties” means Settling Defendant and the Class, as represented by End-User Consumer Plaintiffs.

24. “Person(s)” includes an individual and an entity.

25. “Plaintiffs” means End-User Consumer Plaintiffs as that term is used in the Complaint.

26. “Released Claims” means any and all claims asserted in the Action and any and all existing or potential claims, demands, actions, suits, causes of action, upon any theory of law or equity, whether class, individual, or otherwise in nature (whether or not any Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Releasing Parties (defined below), or each of them, ever had, now has, or hereafter can, shall, or

may 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, damages or other relief, 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 Litigation. Notwithstanding the above, “Released Claims” do not include claims asserted against any other Defendant or against any Unrelated Co-Conspirator.

27. “Released Parties” means jointly and severally, individually and collectively, the Settling Defendant, its predecessors, successors, assigns and affiliates; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, and affiliates, and all of their heirs, executors, devisees, administrators, officers, executives, directors, stockholders, partners, members, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees. “Released Parties” includes any person or entity identified in the previous sentence who has been or in the future may be identified in the Litigation as a “Co-Conspirator, including but not limited to Peco Farms of Mississippi, LLC. “Released Parties” does not include any other Defendant or any Unrelated Co-Conspirator, either explicitly or as a third party beneficiary.

28. “Releasing Parties” means jointly and severally, individually and collectively, Plaintiffs, the Class, and each Class Member, on behalf of themselves and any person or entity claiming by or through them as, including without limitation, their respective predecessors, successors, and assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, affiliates, heirs, executors, devisees, administrators, officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees.

29. “Settling Defendant” means Peco Foods, Inc.

30. “Settling Defendant’s Counsel” means the law firm of Skadden, Arps, Slate, Meagher & Flom LLP.

31. “Settlement Amount” means the cash payment of \$1,900,000 described in Section II(B)(1), below.

32. “Settlement Fund” means the funds described in Section II(B) of this Settlement Agreement, plus accrued interest, in the separate Escrow Account for the settlement contemplated by this Settlement Agreement established in accordance with Section II(E) below.

33. “Unrelated Co-Conspirator” means a Co-Conspirator that does not satisfy the criteria for inclusion as a “Released Party” in the first sentence of the definition of “Released Parties.”

II. SETTLEMENT

A. Appointment of Class Counsel and Removal of “Interim” Status

This Agreement is contingent upon the Court’s prior or contemporaneous approval of Class Counsel as class counsel (without the “interim” status) pursuant to Rule 23(g).

B. Performance By Peco.

1. Settlement Payment. Peco shall pay \$1.9 million (\$1,900,000) in United States dollars, all in cash, as the Settlement Amount in settlement of the Action, inclusive of class recovery amounts, fees (including attorneys’ fees and any other fees), and costs. This Settlement Amount shall be paid by Peco into the Escrow Account described herein within 30 days of the Date of Preliminary Approval.

a. Peco’s payment to the Escrow Agent described herein shall be by wire transfer pursuant to instructions from the Escrow Agent or Class Counsel.

b. The payment described in Section II(B)(1) shall constitute the total Settlement Amount, and the obligations described in Section II(B) shall continue so long as this Settlement Agreement remains in effect.

c. Each Class Member shall look solely to the Settlement Amount for settlement and satisfaction, as provided herein, of all Released Claims pursuant to this Agreement.

d. Authentication and Admissibility of Documents. Peco agrees to use reasonable efforts to provide declarations or affidavits relating to authentication or foundation for admissibility of documents (e.g. business records) and/or things at issue, if reasonably requested by the Plaintiffs in connection with this Action.

C. Release of Claims.

1. Release. Upon the occurrence of the Effective Date, and in consideration of the valuable consideration set forth in this Agreement, the Releasing Parties shall be deemed to, and by operation of the Order and Final Judgment shall have, hereby fully, finally, and forever released, relinquished, and discharged the Released Parties of all Released Claims.

2. Covenant Not to Sue. Plaintiffs and each Settlement Class Member covenant not to sue or otherwise seek to establish liability against the Settling Defendant 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.

3. Full Release. The Parties to this Agreement expressly agree and confirm that the Released Claims as set forth in Section I(B)(26) and the provisions of Section II(C)

constitute a full and final release of the Settling Defendant by Plaintiffs and each Settlement Class Member of the Released Claims.

4. Waiver. Upon the Date of Final Approval, Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Order and Final Judgment shall have, with respect to the subject matter of the Released Claims, waived the provisions, rights, and benefits of Section 1542 of the California Civil Code (providing “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 Section 20-7-11 of the South Dakota Codified Laws (providing “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”).

Plaintiffs and each Settlement Class Member shall further be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived all similar provisions, statutes, regulations, rules, or principles of law or equity of any other state or applicable jurisdiction, or principle of common law. In connection with the waiver and relinquishment set forth in this Paragraph, Plaintiffs and each Settlement Class Member acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Released Claims, but that it is their intention to release fully, finally, and forever all Released Claims, and, upon the Date of Final

Approval, shall be deemed to have, and by operation of the Order and Final Judgment, shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, notwithstanding the discovery or existence of any such additional or different facts. Plaintiffs and each Settlement Class Member intend and, by operation of the Order and Final Judgment, shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this waiver and release is a part.

D. Claims Administrator. Pursuant to the Preliminary Approval Order, and subject to Court approval, Class 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.

E. 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 Class Counsel and administered by an Escrow Agent designated by Class Counsel. Class Counsel, Settling Defendant, and Settling

Defendant's Counsel agree to cooperate in good faith to prepare an appropriate escrow agreement in conformance with this Agreement.

2. Neither the Class nor Class Counsel shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Class, obtaining approval of the Settlement, or administering the Settlement. Class Counsel may request an order from the Court authorizing Class Counsel to withdraw from the Settlement Fund up to \$300,000 to pay the costs for notice and administration of this Settlement, provided however the Parties agree that no funds shall be advanced from the Settlement Fund prior to the date the Court approves a plan of notice and distribution. In the event that Court-ordered notice and administration costs exceed \$300,000, Plaintiffs and Class Counsel may apply to the Court to pay such additional notice and administration costs from the Settlement Fund. Such costs of notice shall be nonrefundable in the event that, for any reason, the Settlement is not finally approved.

3. If there are other settlements at the time of the motion for preliminary approval of this Settlement, Class Counsel shall endeavor to ensure that notice and claims administration costs shall be paid from the settlement funds proportionate to the amount of any such settlements, consistent with any such other agreements and the approval of the Court.

4. Under no circumstances will Settling Defendant 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. 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(E)(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(B)(1), neither the Settling Defendant nor Settling Defendant's Counsel shall bear any responsibility or risk related to the Settlement Fund or the Net Settlement Fund.

7. The 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 that 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 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, Class 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. Neither the Settling Defendant nor the Settling Defendant’s Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any Taxes with respect to the Escrow Account.

8. All: (i) taxes on the income of the Settlement Fund (“Taxes”), and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) shall timely be paid by the Escrow Agent out of the Settlement Fund. The 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 Class Counsel, and may be combined with a plan to distribute proceeds from other settlements in this Action.

F. No Reversion.

Except for the opt-out rescission provision as provided in Section II(G)(10)(b), Settling Defendant shall have no rights to reversion in the event that Class Members request

exclusion or opt out of the Class, and any Opt-Out Claims shall have no effect on this Settlement Agreement.

G. Approval of Settlement Agreement and Dismissal of Claims.

1. Cooperation. Plaintiffs and Settling Defendant shall use their best efforts to effectuate this Settlement Agreement, including cooperating in promptly seeking the Court's approval of the Settlement Agreement, the giving of appropriate class notice under Federal Rules of Civil Procedure 23(c) and (e), and the prompt, complete, and final dismissal with prejudice of the Action as to the Settling Defendant only.

2. Settlement Class Certification. Plaintiffs shall seek, and Settling Defendant shall not object to, appointment of Class Counsel as Settlement Class Counsel for purposes of this Settlement, and certification in the Action of a Class for settlement purposes only, defined as follows:

All persons and entities who indirectly purchased fresh or frozen raw chicken (defined as whole birds (with or without giblets), whole cut-up birds purchased within a package, or "white meat" parts including breasts and wings (or cuts containing a combination of these), but excluding chicken that is marketed as halal, kosher, free range, or organic) from Defendants or alleged co-conspirators for personal consumption, where the person or entity purchased in California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, and Wisconsin during the Class Period (except for Rhode Island, which is from July 15, 2013 to the end of the Class Period).

3. Preliminary Approval. Plaintiffs shall submit to the District Court a motion, at such time deemed appropriate in the discretion of Class Counsel, requesting entry of an order preliminarily approving the settlement ("Preliminary Approval Order"). Settling

Defendant shall not oppose and shall reasonably cooperate in such motion. 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 Class;

b. the Claims Administrator is appointed;

c. the proposed Class Notice meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances for settlement purposes;

d. after 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");

e. Class Members who wish to exclude themselves must submit an appropriate and timely request for exclusion;

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

g. 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

h. All proceedings in the Action with respect to Settling Defendant and Plaintiffs are stayed until further order of the Court, except as may be necessary to implement the Settlement or comply with the terms thereof.

4. Class Notice. The Class Notice shall provide for a right of exclusion, as set forth in Section II(G)(3). The Class Notice shall also provide for a right to object to the proposed Settlement. Individual notice of the Settlement to all Class Members who can be identified through reasonable effort shall be mailed or emailed to the Class in conformance with a notice plan to be approved by the Court. Class Counsel will undertake all reasonable efforts to notify potential Class Members of the settlement. The timing of a motion to approve notice to the Class of this Settlement Agreement shall be in the discretion of Class Counsel, and may be combined with notice of other settlements in this Action.

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

6. CAFA Notice. Within ten (10) days of filing of this Settlement Agreement in court, Settling Defendant will provide to the appropriate state officials and the appropriate federal official the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (“CAFA”).

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

a. finally approves this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the 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;

b. determines that the 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;

c. orders that all claims made against the Settling Defendant in the Action be dismissed with prejudice and without further costs or fees;

d. requires Class Counsel to file with the Clerk of Court a record of potential Class Members that timely excluded themselves from the Class, and to provide a copy of the record to Settling Defendant's Counsel;

e. incorporates the Release set forth in this Agreement and makes the Release effective as of the Effective Date as to the EUCPs and all Class Members that did not file a timely notice for exclusion;

f. 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 the Settling Defendant shall be final and entered forthwith, and stating:

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

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

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

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

8. Class Counsel Fees and Expenses; No Other Costs.

a. Settling Defendant shall have no responsibility for any other costs, including Class 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 Defendant shall bear its own costs and attorneys' fees.

b. At their discretion and after proper notice to the Class and opportunity to object, Class Counsel may seek a court order granting attorneys' fees and expenses from the Settlement Fund, separately or in conjunction with other settlements. Any such attorneys' fees will be paid out of the Settlement Amount, and Settling Defendant shall have no additional obligation to pay any fees or expenses of Class Counsel.

c. At their discretion and after proper notice to the Class and opportunity to object, Class Counsel may seek from the Settlement Fund, separately or in conjunction with other settlements, a court order granting reimbursement of costs and service awards for the work Plaintiffs performed on behalf of the class, and to compensate for the time and expense they have incurred in bringing this Action. Any such payments for reimbursements of costs or service awards will not be paid until after the Effective Date.

d. The procedure for and the allowance or disallowance by the Court of any applications by Class Counsel for attorneys' fees and expenses or the expenses of or service awards to Plaintiffs to be paid out of the Settlement Fund 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 or expenses shall not operate to terminate or cancel this Agreement or the releases set forth herein, or affect or delay the finality of the judgment approving this settlement.

e. Within 15 days after any order by the Court awarding attorneys' fees, expenses, class representative service awards or expenses, the Escrow Agent shall pay the approved attorneys' fees, costs, and service award via wire transfer from the Settlement Fund as directed by Class Counsel in accordance with and attaching the Court's order. In the event the amount of attorneys' fees, costs, or service award is reduced on appeal, class counsel shall, within 30 days of such appellate order, cause the difference in the amount paid and the amount awarded on appeal to be returned to the Settlement Fund.

9. When Settlement Becomes Final. The settlement contemplated by this Settlement Agreement shall become final on the date that: (a) the Court has entered the Order and Final Judgment approving this Settlement Agreement, and all of its material terms and conditions, in accordance with Section II(G)(7), above, under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Action as against the Settling Defendant with prejudice as to all Class Members and without costs; and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement and entry of the Order of Final Judgment, as described in Section II(G)(7) above, has expired with no appeal having been filed or, if appealed, approval of this Settlement Agreement and the Order and Final Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review.

10. Termination and Reduction.

a. Rejection or Alteration of Settlement Terms. 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(G)(3) or (G)(7) 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 Final Order and Judgment, or if the Court enters the Final Order and Judgment and appellate review is sought and on such review such Final Order and Judgment is not affirmed (collectively "Triggering Events"), then Settling Defendant and 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 such Triggering Event. For purposes of this Section II(G)(10), a material modification includes but is not limited to any modification to the settlement payments, the scope of the Released Claims pursuant to Section I(B) and Section II(C), and the opt-out rescission provision in Section II(G)(10)(b).

b. Option of Rescission Based on Opt-Outs. In the event that a minimum of 500,000 of potential members of the Settlement Class timely and validly exclude themselves from the Settlement Class pursuant to the procedures approved by the Court, Settling Defendant shall, in its sole discretion, have the authority to rescind this Settlement Agreement in its entirety by providing written notice of its election to do so (the "Opt-Out Termination Notice"). Settling Defendant shall provide the Opt-Out Termination Notice within fifteen (15) calendar days of the date that the final list of potential Class Members who timely and validly opt out is provided to Settling Defendant.

11. No Admission.

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

b. This Settlement Agreement, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any of the Settling Parties to be received in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of the Settling Defendant or other Released Parties; provided, however, that nothing contained in this Section II(G)(11) 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 Party participating in the Settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement Agreement or the Order and Final Judgment. This Settlement Agreement may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this Settlement, including but not limited to Settling Defendant filing the Settlement Agreement and/or the Order and Final Judgment in any other action that may be brought against them 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.

III. MISCELLANEOUS

A. Entire Agreement. This Settlement Agreement shall constitute the entire agreement between the Class and Settling Defendant pertaining to the settlement of the Action against Settling Defendant and supersedes any and all prior and contemporaneous undertakings of the Class and Settling Defendant 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, to the fullest extent possible, each of the Releasing Parties and the Released Parties, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties, Releasing Parties, or Released Parties, including any Class Members.

C. Modification. This Settlement Agreement may be modified or amended only by a writing executed by the Class (through Class Counsel) and Settling Defendant, subject (if after preliminary or final approval) to approval by the Court. Amendments and modifications may be made without notice to the Class unless notice is required by law or by the Court.

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

E. Governing Law. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of Illinois without regard to its choice-of-law or conflict-of-law principles.

F. Jurisdiction. This Settlement Agreement is subject to the continuing and exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. If for any reason this Settlement Agreement is rescinded, terminated or fails to become effective, then, in such event, nothing in this Settlement Agreement or with regard to any conduct of Settling Defendant or Settling Defendant's Counsel pursuant to any obligations Settling Defendant has pursuant to the Agreement shall constitute or are intended to be construed as any agreement to personal jurisdiction (general or specific) or subject matter jurisdiction so as to confer the jurisdiction of the District Court over Settling Defendant, nor shall it constitute any waiver of any defenses based on personal or subject matter jurisdiction.

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

H. Represented by Counsel. Plaintiffs, the Class, and Settling Defendant acknowledge that each have been represented by counsel, and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so and are not relying on any representation or warranty by the other party other than as set forth herein. Therefore, the Settling Parties and their respective counsel agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake.

I. 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 Class Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs and the Class; and the undersigned Settling Defendant's Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Settling Defendant.

J. Privilege. 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.

K. Notice. Any notice required pursuant to or in connection with this Settlement 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 Class Member, to Class Counsel at their addresses set forth below, and, in the case of notice to Settling Defendant, to its representative at the address set forth below, or such other address as Settling Defendant or Class Counsel may designate, from time to time, by giving notice to all Parties in the manner described in this Section III(K).

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

Dated: October 28, 2020



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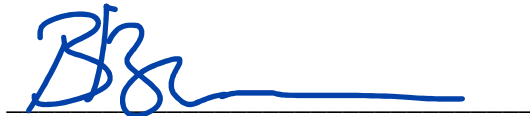
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