

# **EXHIBIT B**

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

*IN RE BROILER CHICKEN ANTITRUST  
LITIGATION*

No. 1:16-cv-08637 TMD  
Hon. Thomas M. Durkin  
Magistrate Judge Jeffrey T. Gilbert

This Document Relates To:  
All Commercial and Institutional Indirect  
Purchaser Plaintiff Actions

**SETTLEMENT AGREEMENT BETWEEN  
COMMERCIAL AND INSTITUTIONAL INDIRECT PURCHASER PLAINTIFFS AND  
THE KOCH FOODS DEFENDANTS**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of the \_\_\_ day of August, 2024 (“Execution Date”), by and between Koch Foods, Incorporated, JCG Foods of Alabama, LLC., JCG Foods of Georgia, LLC, and Koch Meat Co., Inc., (collectively, “Koch Foods” or “Settling Defendant”), on the one hand, and the Commercial and Institutional Indirect Purchaser Plaintiffs (“Plaintiffs” or “CIIPPs”),<sup>1</sup> individually and on behalf of a class of indirect purchasers of Broilers,<sup>2</sup> on the other hand, which Agreement is subject to court approval in the above- captioned action (the “Action”). The Certified Class, as represented

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<sup>1</sup> As used herein, “CIIPPs” means Sargent’s Restaurant and Lounge; Fargo Stopping Center, LLC; Wildwood Tavern LLC; Bodega Brew Pub, Inc.; Sullott Corporation; Chicken Joe’s LLC; Eat This, Inc.; Alpine Special Treatment Center, Inc.; Tennis Bums, LLC; Alabama Joe’s 2, Inc.; Tani Sushi Bistro, LLC; France 44 Foods, Inc.; Alliance Healthcare System, Inc.; Little Figs, Inc.; Da Big Blue Enterprises Corp.; Floersch IGA, Inc.; Avanti’s of Phoenix, Inc.; Midtown Bar and Grill LLC; Mookie’s Southern Cuisine LLC; Eowyn, LLC; Peppers Grill & Bar, Inc.; Daliano’s, Inc.; Sumner County Restaurant & Creamery LLC; Bashara & Company, LC; Tic-Tac-O; Brix Tavern, LLC; Pancho’s Taqueria, Inc.; Legacy 5, LLC; Roost Fried Chicken LLC; Oregano Italian, LLC; Bordenaro’s Pizza, Inc.; Telavi Hospitality, Inc.; and FB Mall, LLC.

<sup>2</sup> Unless otherwise indicated, all capitalized terms shall have the meaning ascribed in the Definitions in Section I.

by CIIPPs, and Koch Foods are referred to herein collectively as the “Parties” or individually as a “Party.”

### RECITALS

A. Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Certified Class (as hereinafter defined).

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

C. Koch Foods denies all allegations that it engaged in a conspiracy or illegal conduct.

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 Koch Foods or of the truth of any of Plaintiffs’ allegations nor shall it be deemed or construed to be an admission or evidence of Koch Foods’ defenses.

E. 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 a settlement with Koch Foods according to the terms set forth herein is fair, reasonable, adequate, and beneficial to and in the best interests of the Certified Class, given the uncertainties, risks, and costs of continued litigation.

F. Despite Koch Foods’ belief that it did nothing wrong or illegal, that it has legitimate defenses to any claims that could be asserted by CIIPPs against it, and that it would prevail at trial, Koch Foods desires to settle the Action to avoid the further expense, inconvenience, disruption,

and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to the Action, to avoid the risks inherent in uncertain complex litigation and trial, and thereby to put to rest this controversy.

G. Koch Foods has entered into a Second Amended Judgment Sharing Agreement with other Defendants, which Co-Lead Counsel have reviewed, and which is addressed in Paragraph II(D)(5) below.

H. Arm's-length settlement negotiations, including in mediation, have taken place between Co-Lead Counsel and the Settling Defendant and its Counsel, the settlement was reached as a result of those negotiations and mediation, and this Settlement Agreement embodies all of the terms and conditions of the settlement.

I. CIIPPs and Co-Lead Counsel believe that the Settlement Fund (as hereinafter defined) reflects fair, reasonable, and adequate compensation for the Certified Class (as hereinafter defined) to release, settle and discharge, without limitation, their claims that they were overcharged by the alleged anticompetitive conduct of which they accuse Koch Foods.

J. The Parties to this Agreement desire to fully and finally settle and compromise this Action and all potential Released Claims by Releasing Parties against the Released Parties as set forth below to avoid the costs and risks of protracted litigation and trial.

K. Both Parties wish to preserve all arguments, defenses and responses to all claims in the Action, including all arguments, defenses and responses to any litigation class proposed and/or represented by CIIPPs, in the event this settlement does not obtain Final Approval.

**IT IS HEREBY AGREED**, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among the Settling Parties, that the Action and all Released Claims are finally and fully settled and compromised, and that the Action shall be dismissed in its entirety

with prejudice as to Koch Foods and without cost to Koch Foods, other than any costs set forth in this Settlement Agreement, 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. Certified Class Definition**

1. “Certified Class” means the CIIPP litigation classes—both the state damages classes and the nationwide injunctive relief class—certified by the Court’s May 27, 2022, Order (ECF No. 5644). The foregoing classes exclude all persons and entities included in the Exclusion List. (ECF. No. 6566-5).

**B. General Definitions**

1. “Action” means the class action filed by CIIPPs in the above-captioned proceeding.

2. “Affiliate” means with respect to any person, entity or company, any person, entity, or company that, directly or indirectly, controls, is controlled by or is under common control with such person, entity or company, including, without limitation, affiliates that share common ownership.

3. “Broilers” means 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, and whole or in parts, but excluding chicken that is grown, processed, and sold according to halal, kosher, free range, or organic standards. “Broilers” does not include dark meat chicken products, such as chicken thighs. The definition also does not include certain “further processed” products, which include any chicken meat that has been breaded, cooked, or “formed,” such as patties, or nuggets; or products made from mechanically separated meat such as chicken sausages; or

products that are ground, sliced, diced, or cubed. Marinated, seasoned, frozen and portioned products, that are not otherwise further processed, are included within the definition of Broilers.

4. “Class Member” means each member of the Certified Class.

5. “Class Notice” means the notice to the Certified Class that is approved by the Court, in accordance with Section II(G)(3) below.

6. “Class Period” means the period from and including January 1, 2009, through July 31, 2019.

7. “Co-Conspirator” means those entities named as co-conspirators in the Complaint.

8. “Co-Lead Counsel” and “Class Counsel” mean, collectively, the law firms of Gustafson Gluek PLLC and Cotchett, Pitre & McCarthy, LLP, Commercial and Institutional Indirect Purchaser Plaintiffs’ Co-Lead Class Counsel.

9. “Complaint” or “Operative Complaint” means the Seventh Amended Consolidated Class Action Complaint in the Action, ECF Nos. 3929 and 3931.

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 the Action is proceeding.

11. “Date of Final Approval” means the date on which Final Approval as provided for in Section II(G)(8) occurs.

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)(2) below.

13. “Defendant” or “Defendants” means any or all of the Defendants named in

the Operative Complaint.

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

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

16. “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.

17. “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.

18. “Final Approval” shall mean the satisfaction of all the conditions set forth in Section II(G)(8).

19. “Indirect Purchaser State” means Arizona, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

20. “Net Settlement Fund” means the Settlement Fund, plus accrued interest and income, less any award of attorneys’ fees, service awards, and reimbursement of expenses and less applicable taxes, tax preparation expenses, and costs of Class Notice and settlement administration as provided for in this Settlement Agreement, that may be awarded or approved by the Court.

21. “Notice” means the notice in accordance with Section III(M).

22. “Order and Final Judgment” means the order and final judgment of the

Court approving the Settlement Agreement, as described in Section II(G)(6) below.

23. “Parties” or “Settling Parties” means Settling Defendant and the Certified Class, as represented by CIIPPs.

24. “Plaintiffs” means the Commercial and Institutional Indirect Purchaser Plaintiffs (“CIIPPs”).

25. “Released Claims” means any and all existing or potential claims, demands, actions, suits, causes of action, contentions, allegations, assertions of wrongdoing, injuries, losses, damages, or demands for recoveries, remedies, fees or expenses, whether class, individual, or otherwise in nature (whether or not any Class Member has objected to the Settlement Agreement or makes a claim upon or participates in the Settlement Fund, whether directly, indirectly, representatively, derivatively or in any other capacity) that the Releasing Parties (defined below) 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, demands, actions, suits, causes of action, contentions, allegations, assertions of wrongdoing, injuries, losses, damages, or demands for recoveries, remedies, fees or expenses (including but not limited to treble or punitive damages, interest, and attorney’s or professional’s fees, costs and expenses) and whether in tort, in contract, or otherwise, arising from or in connection with any act or omission through the date of Preliminary Approval, relating to or referred to in the Action, or the subject matter of the Action, or arising from or related to the factual predicate of the Action. For the avoidance of doubt, “Released Claims” includes, without limitation, all claims that have been asserted, or could have been asserted, in the Action against the Released Parties, including all claims in any way arising out of or relating to the purchase of Broilers produced, processed or sold by Koch Foods or any of the other Defendants or Co-Conspirators. Notwithstanding the above, “Released Claims” does not

include: (a) claims asserted against any other Defendant or alleged Co-Conspirator other than the Released Parties; (b) damages claims under the state or local laws of any jurisdiction other than an Indirect Purchaser State; or (c) any wholly-unrelated claims based on: (1) product defect or breach of warranty; (2) breach of contract (except such breaches relating to anticompetitive actions and/or unfair or inflated pricing); or (3) purchases of Broilers by persons or entities other than the Releasing Parties. The reservation of claims set forth in subsections (a) through (c) of this Section I(B)(25) does not impair or diminish the right of the Released Parties to deny any such claims or to assert any and all defenses to such claims.

26. “Released Party or Parties” means jointly and severally, individually and collectively, Koch Foods, any and all of its past or current, direct or indirect corporate parents (including holding companies), subsidiaries, related entities, Affiliates, associates, divisions, departments, joint ventures, predecessors, successors, assigns and any and all of their respective past, present, and future, direct or indirect officers, directors, employees, trustees, partners, managing directors, shareholders, managers, members, attorneys, equity holders, agents, beneficiaries, executors, insurers, advisors, assigns, heirs, legal or other representatives, including but not limited to, Joe Grendys, Mark Kaminsky and Lance Buckert. “Released Parties” includes any person or entity identified in the previous sentence in relation to Koch Foods that has been or in the future may be identified in the Action as a “Co-Conspirator.” Notwithstanding the foregoing, “Released Parties” does not include any other Defendant or alleged Co-Conspirator, either explicitly or as a third-party beneficiary.

27. “Releasing Parties” means jointly and severally, individually and collectively, Plaintiffs, the Certified Class, and each Class Member, on behalf of themselves and any person or entity claiming by or through them, including without limitation, their respective past or current, direct or indirect corporate parents (including holding companies), subsidiaries,

related entities, Affiliates, associates, divisions, departments, joint ventures, predecessors, successors, assigns and any and all of their respective past, present, and future, direct or indirect officers, directors, employees, trustees, partners, managing directors, shareholders, managers, members, attorneys, equity holders, agents, beneficiaries, executors, insurers, advisors, assigns, heirs, legal or other representatives.

28. “Settling Defendant” and “Koch Foods” mean Koch Foods, Incorporated, JCG Foods of Alabama, LLC, JCG Foods of Georgia, LLC, and Koch Meat Co., Inc.

29. “Settling Defendant’s Counsel” means Armstrong Teasdale LLP, and attorneys associated therewith.

30. “Settlement Amount” means the cash payment of THIRTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$13,500,000.00), as more specifically described in Section II(C)(1), below.

31. “Settlement Fund” means the funds described in Section II(C) 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.

## **II. SETTLEMENT**

**A. The Parties’ Efforts to Effectuate this Settlement Agreement.** The Parties will cooperate in good faith and use their reasonable best efforts to seek the Court’s Preliminary Approval and Final Approval of the Settlement Agreement.

**B. Litigation Standstill.** Effective with the Execution Date, and except to the extent expressly authorized in this Agreement, CIIPPs and their counsel shall cease all litigation activities against Koch Foods in the Action, and Koch Foods and its counsel shall cease all litigation activities against CIIPPs in the Action, provided, however, that both CIIPPs and Koch Foods may seek appropriate discovery in the Action from other persons or entities. Upon execution of this

agreement, the Parties will inform the Court of the fact of the settlement agreement and the forthcoming motion for preliminary approval. None of the foregoing provisions shall be construed to prohibit CIPPs from seeking appropriate discovery or testimony at trial from non-settling Defendants or co-conspirators or any other person other than Settling Defendant. Koch Foods shall, in turn, cease all litigation activities against CIPPs related to the defense of claims against Koch Foods in the Action. None of the foregoing provisions shall be construed to prohibit Koch Foods from defending itself against the claims of non-settling plaintiffs.

**C. Performance By Settling Defendant and CIPPs**

1. **Settlement Payment.** In exchange for the full consideration described in this Settlement Agreement, Koch Foods shall pay the Settlement Amount in United States dollars, and in immediately available funds. The Parties agree that the Settlement Amount is the only amount to be paid by Koch Foods and shall be inclusive of, without limitation, the Certified Class recovery amounts, any service awards to Plaintiffs for the work Plaintiffs performed on behalf of the Certified Class (“Service Awards”) as awarded by the Court, fees (including attorneys’ fees and any other fees), expenses, and costs (including, without limitation, costs related to Class Notice and settlement administration).

a. The Settlement Amount shall be paid by Koch Foods into the Escrow Account for the Settlement Fund established in Section II(E)(1) by wire transfer, pursuant to instructions from the Escrow Agent or Co-Lead Counsel. The Settlement Payment shall be made within 5 business days (i) of the Court’s grant of Preliminary Approval or (ii) after Co-Lead Counsel has provided wire instructions to Koch Foods, whichever occurs later.

b. Each Class Member and each Releasing Party shall look solely to the Net Settlement Fund for full and complete settlement and satisfaction by Koch Foods and the

Released Parties, as provided herein, of all Released Claims and shall not be entitled to any other payment or relief from the Released Parties.

c. Except as provided by order of the Court, no member of the Certified Class shall have any interest in the Settlement Fund or any portion thereof. CIIPPs, Class Members, and their counsel will be reimbursed solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and expenses, Service Awards, and the costs of notice of the Settlement Agreement to potential members of the Certified Class. Koch Foods and the other Released Parties shall not be liable for any costs, fees, or expenses of any of CIIPPs' and Co-Lead Counsel's attorneys, experts, advisors, or representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Fund.

2. **Compliance.** The parties agree that Settling Defendant will not, for a period of 24 months from the date of the entry of Final Judgment, engage in conduct that constitutes a per se violation of Section 1 of the Sherman Act with respect to the sale of Broilers.

3. **Cooperation.** When reasonably requested by CIIPPs, Koch Foods agrees to use reasonable efforts to authenticate and provide foundation for admissibility of a reasonable number of documents and/or things produced in the Action (not to exceed 50), where they can do so in good faith by either declarations or affidavits. For avoidance of doubt, CIIPPs shall provide to Koch Foods a list of no more than 50 documents and/or things produced in the Action and Koch Foods agrees to use reasonable efforts to authenticate and provide foundation for admissibility for the documents on this list. If Koch Foods cannot in good faith authenticate and provide foundation for admissibility for all documents on the list, CIIPPs shall not be permitted to provide additional documents to Koch Foods. Koch Foods agrees to take steps to undertake this cooperation in a timely fashion. The cooperation obligations set forth in this paragraph regarding authentication and admissibility shall be the full extent of any further obligations by Koch Foods or any of its

officers, directors, employees, or agents to provide evidence in, or otherwise cooperate in connection with the CIIPPs' Track One Trial (regardless of the date on which such trial proceeds or concludes). Among other things, and for avoidance of doubt, CIIPPs waive their right to issue or enforce any trial subpoenas to Koch Foods or any of its officers, directors, employees, or agents.

**D. Release and Covenant Not to Sue**

1. **Release.** Upon the occurrence of the Date of Final Approval, and in consideration of the terms set forth in this Agreement, the Releasing Parties shall be deemed to have, and by operation of law and of the Order and Final Judgment shall have, hereby fully, finally, and forever completely compromised, settled, released, acquitted, resolved, relinquished, waived, and discharged the Released Parties of all Released Claims.

2. **Covenant Not to Sue.** The Releasing Parties covenant not to sue, directly or indirectly, or otherwise seek to establish liability against, the 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.

3. **Full Release.** The Parties to this Agreement expressly agree and confirm that the Released Claims as set forth in Section I(B)(25) shall be interpreted as broadly as possible and to the fullest extent permitted by law and constitute a full and final release by the Releasing Parties of the Released Parties for the Released Claims.

4. **Waiver.** In addition to Section II(D)(3), the Releasing Parties 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, expressly waived and released 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.”) and 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.”).

The Releasing Parties 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. The Releasing Parties 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 fully, finally, and forever release, acquit, relinquish and discharge the Released Parties of 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, forever released, acquitted, relinquished, and discharged the Released Parties of all Released Claims, known or unknown, foreseen or unforeseen, suspected or unsuspected, actual, contingent or non-contingent, or liquidated or unliquidated, whether or not concealed or hidden, without regard to the subsequent discovery or existence of any such additional or different facts. The Releasing Parties 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 Agreement of which this waiver and release is a part. The foregoing

release of (without limitation) unknown, unanticipated, unsuspected, unforeseen, contingent, unliquidated and unaccrued losses or claims is contractual, and not a mere recital.

5. **Effect of this Settlement Agreement on Final Judgment as to Other Defendants.** CIIPPs have been provided with a copy of the Second Amended Judgment Sharing Agreement entered into by certain Defendants dated February 25, 2020 (hereinafter referred to as “Defendants’ Agreement”). The defined terms in Defendants’ Agreement shall have the same meaning when used in this Settlement Agreement. CIIPPs agree that notwithstanding anything to the contrary contained in this Settlement Agreement, CIIPPs shall reduce the dollar amount collectable from the parties to the Defendants’ Agreement pursuant to any Final Judgment by a percentage equal to the Sharing Percentage of Koch Foods, calculated pursuant to Section 4 and Exhibits A and B of Defendants’ Agreement (as illustrated by the Appendix to Defendants’ Agreement) as if Koch Foods had not settled, had been found liable on the claim, and was a Sharing Party with respect to the Final Judgment. CIIPPs agree that this undertaking is also for the benefit of any Defendant that is a party to the Defendants’ Agreement and that this undertaking may be enforced by any or all of such Defendants as third-party beneficiaries hereof. Any ambiguity in this Section or inconsistency between this Settlement Agreement and the Defendants’ Agreement shall be resolved in favor of Defendants’ Agreement, including, without limitation, Sections 6.D.1 and 6.D.2 thereof. CIIPPs further represent and warrant that they have not reached any agreement to provide any portion of the settlement proceeds provided hereunder to any person or entity that is not explicitly identified as a Releasing Party in this Settlement Agreement, except for proceeds received by CIIPPs’ attorneys for payment of attorneys’ fees and expenses. CIIPPs shall use their best efforts to ensure that the Settlement Agreement constitutes a Qualified Settlement under Defendants’ Agreement and to effectuate the intent of the parties to the Defendants’ Agreement to treat the Settlement Agreement as a Qualified Settlement, including (as may be necessary) to make any

amendments to this Settlement Agreement to reflect the intent to treat the Settlement Agreement as a Qualified Settlement.

**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 designated by Co-Lead Counsel.

2. Except as provided herein, the Certified Class, Co-Lead Counsel, Koch Foods, and the Released Parties shall have no financial obligation or liability for any fees, costs, or expenses related to providing notice to the Certified 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.

3. Co-Lead Counsel, after obtaining an order of Preliminary Approval, may withdraw from the Settlement Fund up to \$600,000.00 to pay the costs for Class Notice and administration and for Preliminary Approval and Final Approval.

4. Co-Lead Counsel shall use best efforts to send out notice to the Certified Class as soon as is reasonably practicable after Preliminary Approval. In the event that Court-ordered notice and administration costs exceed \$600,000.00, Plaintiffs and Co-Lead Counsel may apply to the Court to pay such additional notice and administration costs from the Settlement Fund. Up to \$600,000.00 of the Class Notice and administration costs actually expended pursuant to this Settlement Agreement shall be nonrefundable in the event that, for any reason, this Settlement Agreement is terminated or does not receive Final Approval.

5. If there are other settlements at the time of, or within a reasonable amount of time after, the preliminary approval of this Settlement Agreement, Co-Lead Counsel shall

endeavor to ensure that Class Notice and claims administration costs shall be paid from the Settlement Fund in this and such other settlement agreements consistent with any such other settlement agreements and the approval of the Court.

6. Under no circumstances will Koch Foods or the Released Parties be required to pay more or less than the Settlement Amount pursuant to this Settlement Agreement. For purposes of clarification, the payment of any fee and expense award, the Class Notice and administrative costs (including payment of any applicable fees to Escrow Agent), any Service Awards to Plaintiffs, payments to Class Members and any other fees and costs associated with the implementation of this Settlement Agreement shall be exclusively paid from the Settlement Fund.

7. No other funds shall be paid or disbursements made from the Settlement Fund without an order of the Court, and in the event of any such order of the Court authorizing payments or disbursements above \$600,000.00, any such additional payments or disbursements shall be refunded to Koch Foods in the event that the Settlement Agreement is terminated or does not receive Final Approval and thereafter is rescinded pursuant to Section II(G)(9).

8. 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, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Section II(E)(8) 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(C)(1), neither Koch Foods, any other Released Party, nor Settling Defendant's Counsel shall bear any responsibility or risk related to the Settlement Fund or the Net Settlement Fund.

9. 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, to that end, the 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, Co-Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Section, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of 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.

10. 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. Neither Koch Foods, any other Released Party, nor the Settling Defendant’s Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any Taxes or expenses with respect to the Settlement Fund and Net Settlement Fund.

11. 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, reasonable expenses of tax attorneys and accountants) shall timely be paid by the Escrow Agent out of the Settlement Fund. The Class Members shall be solely responsible for paying any and all federal, state, and local income taxes due on any distribution made to them

pursuant to this Agreement.

12. 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 and shall not be entitled to any other payment or relief from the 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 Co-Lead Counsel, and may be combined with a plan to distribute proceeds from other settlements in this Action.

**F. Reversion**

1. This settlement is non-reversionary.

**G. Approval of Settlement Agreement and Dismissal of Released Claims**

1. **Cooperation.** Plaintiffs and Koch Foods shall use their reasonable best efforts to effectuate this Settlement Agreement, including cooperating in 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) by Co-Lead Counsel, and the complete and final dismissal with prejudice of the Action as to Koch Foods only.

2. **Motion for Preliminary Approval.** Plaintiffs shall submit to the District Court a motion, at such time deemed appropriate in the discretion of Co-Lead Counsel (but as soon as is reasonably practicable after the Execution Date), requesting entry of an order preliminarily approving this Settlement Agreement ("Preliminary Approval Order"). Koch Foods shall not oppose and shall reasonably cooperate in such motion. A reasonable time before filing such motion, Co-Lead Counsel shall provide the Settling Defendant's Counsel with a draft of such motion for review. To the extent that Koch Foods objects to any aspect of the motion, it shall

communicate such objection to Co-Lead Counsel and the Parties shall meet and confer to resolve any such objection. 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 Certified Class;

b. 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");

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

d. 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

e. All proceedings in the above-captioned action with respect to Koch Foods and CIPPs are stayed until further order of the Court, except as may be necessary to implement the settlement or comply with the terms thereof.

3. **Class Notice.** The Class Notice shall provide for a right to object to the proposed settlement. The timing of a motion to direct or approve Class Notice of this Settlement Agreement shall be in the discretion of Co-Lead Counsel, and may be combined with class notice of other settlements in this Action. A reasonable time before filing such motion, Co-Lead Counsel shall provide the Settling Defendant's Counsel with a draft of such motion for review and comment.

4. **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). Koch Foods shall not have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Certified 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.

5. **CAFA Notice.** Within ten (10) days of the filing of this Settlement Agreement in court in connection with the above-mentioned motion for Preliminary Approval, Koch Foods 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”). Co-Lead Class Counsel shall provide such assistance as is reasonably necessary and such information as is reasonably available to comply with 28 U.S.C. § 1715(b)(7)(A).

6. **Final Judgment.** If this Settlement Agreement is preliminarily approved by the Court, the Certified Class, through Co-Lead Counsel and in accordance with any schedule set forth in the Court’s Preliminary Approval, shall seek entry of an Order and Final Judgment. A reasonable time before filing such motion, Co-Lead Counsel shall provide the Settling Defendant’s Counsel with a draft of such motion for review. To the extent that Koch Foods objects to any aspect of the motion, it shall communicate such objection to Co-Lead Counsel and the Parties shall meet and confer to resolve any such objection. The motion for Final Approval shall seek an entry of an Order and Final Judgment 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 implementation, performance, and consummation according to its terms and conditions, without material modification of those 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 or entities entitled to receive notice;

c. dismisses the Action with prejudice as to Koch Foods in all class action complaints asserted by CIIPPs without further costs or fees;

d. incorporates the Releases set forth in Section II(D) of this Agreement and makes the Releases effective as of the date of the Final Order and Final Judgment;

e. enjoins CIIPPs and Class Members from suing, directly or indirectly, any of the Released Parties for any of the Released Claims;

f. confirms that Koch Foods has provided the appropriate notice pursuant to CAFA;

g. reserves to the Court continuing and exclusive jurisdiction over the Settlement Agreement for all purposes;

h. 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 Koch Foods shall be final and appealable and entered forthwith; and

i. orders that the Net Settlement Fund may be disbursed as provided in the Final Approval Order or other order of the Court. The Parties shall use all reasonable best efforts to obtain Final Approval of the Settlement Agreement without modification to any of its material terms and conditions.

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

a. Except as otherwise provided in Section II(C)(1) of this Settlement

Agreement, the Released Parties shall have no responsibility for any other payments, fees or costs, including Co-Lead Counsel's attorneys' fees, costs, and expenses, Service Awards, or the fees, costs, and 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, Koch Foods shall bear its own costs and attorneys' fees.

b. At their discretion and after Final Approval and proper notice to Class Members and opportunity to object, Class Counsel may seek from the Settlement Fund, separately or in conjunction with other settlements, a court order granting attorneys' fees, reimbursement of costs and expenses, and Service Awards for the class representatives (to compensate for the time and expense they have incurred in bringing this Action). Any such attorneys' fees, reimbursement of costs and expenses, and Service Awards will be paid out of the Settlement Fund, and Koch Foods shall have no responsibility, financial obligation or liability for any such fees, costs, payments, or expenses beyond the Settlement Fund.

c. The procedure for and the allowance or disallowance by the Court of any applications by Co-Lead 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 and the Settlement Agreement, and any order or proceeding relating to any application for attorneys' fees or expenses or Service Awards shall not operate to terminate or cancel this Settlement Agreement or the releases set forth herein, or affect or delay the Final Approval of this settlement and Settlement Agreement.

d. Within a reasonable time period as deemed appropriate by Co-Lead Counsel after any order by the Court awarding attorneys' fees, expenses, or Service Awards, the

Escrow Agent shall pay the approved attorneys' fees, costs, and Service Award via wire transfer from the Settlement Fund as directed by Co-Lead Counsel. In the event the amount of attorneys' fees, costs, or Service Award is reduced on appeal, Co-Lead 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.

8. **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)(6) above, under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Action as against Koch Foods with prejudice and without costs except as set forth herein; 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 and Final Judgment, as described in Section II(G)(6) 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 all material respects 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. "Final Approval" shall mean the satisfaction of all the conditions set forth in this Section II(G)(8). The Parties agree that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure, nor the All Writs Act, 28 U.S.C. § 1651, nor any extensions of time in petitioning for a writ of certiorari under Rule 13 of the Rules of the Supreme Court of the United States, shall be taken into account in determining the above-stated times.

9. **Termination and Rescission.**

a. **Rejection or Alteration of Settlement Terms.** If the Court declines to grant a Preliminary Approval Order or Order and Final Judgment (as set forth in Sections II(G)(2) or II(G)(6) 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 Final Approval is not obtained; 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 Koch Foods and Plaintiffs shall each, in their respective sole and absolute discretion, have the option to rescind, cancel, or terminate this Settlement Agreement in its entirety by providing written Notice of their election to do so ("Termination Notice") to the other Party within twenty-one (21) calendar days of any of the Triggering Events. For purposes of Section II(G)(6)(a) and this Section II(G)(9)(a), a material modification includes, but is not limited to, any modification to the Settlement Amount or a material change to the scope of the Released Claims. In no way shall CIIPPs have the right to rescind, cancel or terminate this Settlement Agreement if the Court fails or refuses to grant any requested attorneys' fees, any costs, or any Service Awards to Class Representatives.

b. **Effect of Termination or Rescission of Settlement.** In the event this Settlement Agreement is rescinded or terminated by a Termination Notice, then: (i) within fifteen (15) calendar days thereafter, the Settlement Fund, including accrued interest, less taxes and tax expenses that have been paid or that have accrued and will be payable at some later date, and less expenses and costs that have been disbursed pursuant to Sections II(E)(3)-(4), shall be refunded by the Escrow Agent to Koch Foods pursuant to written instructions from Settling Defendant's Counsel to Co-Lead Counsel; and (ii) the Parties shall be deemed to have reverted to their respective status in the Action as of the day before the Execution Date, and without waiver of any positions asserted in the Action as of the day before the Execution Date, shall then resume proceedings in the Court, the Court having retained jurisdiction over the settlement and related matters and, except as otherwise expressly provided in this Settlement Agreement, the Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

10. **No Admission.**

a. Koch Foods denies all allegations of wrongdoing in the Action. Whether or not Preliminary Approval is granted, Final Judgment is entered or this Settlement Agreement is terminated, the Parties expressly agree nothing in this Settlement Agreement or its contents, nor any statements, negotiations, documents, or discussions associated with it, constitutes an admission by Koch Foods or any other Released Party as to the merits of the allegations that have been, could have been, or could be made in the Action, or an admission by Plaintiffs or the Certified Class of the validity of any defenses that have been, could have been, or could be asserted by Koch Foods or any other Released Party.

b. This Settlement Agreement, its terms, and any agreement or order relating thereto, shall not be deemed to be, and shall not be offered by any of the 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 Koch Foods or any other Released Party; provided, however, that nothing contained in this Section II(G)(10) 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 Agreement (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. 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, the filing of the Settlement Agreement and/or the Order and Final Judgment in any other action that may be brought against any Released Party 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 constitutes the entire, complete and integrated agreement between the Parties and supersedes any and all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions (either oral or written) between the Parties in connection therewith. All terms of the Settlement Agreement are contractual and not mere recitals. The Parties agree that this Settlement Agreement may be modified only by a written instrument signed by the Parties and that no Party will assert any claim against another based on any alleged agreement affecting or relating to the terms of this Settlement Agreement not in writing and signed by the Parties.

**B. Inurement.** This Settlement Agreement constitutes a binding and enforceable agreement as to the terms contained herein. The Settlement Agreement shall be binding upon and, to the fullest extent possible, inure to the benefit of the successors, assigns, and heirs of each of the Parties, the Class Members, the Releasing Parties and the Released Parties, and upon all other persons or entities claiming any interest in the subject matter hereof through any of the Settling Parties, Releasing Parties, or Released Parties, including any Class Members. Without limiting the generality of the foregoing, upon Final Approval, each and every covenant and agreement herein by the CIIPPs shall be binding upon all of the Class Members and Releasing Parties.

**C. Modification.** This Settlement Agreement, including this Paragraph, may be modified or amended only by a writing executed by the Parties, subject (if after the Date of Preliminary Approval) to approval by the Court. Amendments and modifications may be made without notice to the Certified 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. 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. This Agreement does not waive or otherwise limit the 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 Parties acknowledge and agree that the 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.

**D. Drafted Mutually.** For the purpose of construing or interpreting this Settlement Agreement or any provision hereof, Plaintiffs, the Certified Class and Koch Foods 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. Voluntary Settlement.** The Parties agree that this Settlement Agreement was negotiated in good faith by the Parties, and reflects a settlement and compromise that was reached voluntarily after consultation with competent counsel, and no Party has entered this Settlement Agreement as the result of any coercion or duress.

**G. Confidentiality.** The Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation. However, Koch Foods and CIIPPs can inform other parties to this Action that they have reached a settlement agreement and disclose both the Settlement Amount and the cooperation and release obligations

contained in this Settlement Agreement. The Parties agree that they will confine their public comments, if any, concerning this settlement to no more than essentially the following: “The Parties have agreed to resolve and have settled this matter.” Additionally, consistent with its obligations under the Defendants’ Agreement, Koch Foods may share copies of this Settlement Agreement with parties to the Defendants’ Agreement, as well as with its lenders, accountants and financial advisers.

**H. 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; provided, however, that, as set forth in Section III(O), the release provisions herein may be pleaded as a complete defense in any appropriate jurisdiction (or arbitration) to any claim of any kind filed against a Released Party in violation of the terms of such release. If for any reason this Settlement Agreement is rescinded, terminated, fails to obtain Final Approval or otherwise fails to become effective, then, in such event, neither this Settlement Agreement nor any conduct required by it shall constitute or 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 the Released Parties, nor shall it constitute any waiver of any defenses based on personal or subject matter jurisdiction.

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

**J. Represented by Counsel.** Plaintiffs, the Certified Class, and Koch Foods each

acknowledge that they 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. 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.

**K. Authorization.** Each of the undersigned attorneys represents that he or she is fully authorized to enter into and execute this Settlement Agreement, and each of its terms and conditions, subject to Court approval; the undersigned Co-Lead Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs and the Certified Class; and the undersigned Settling Defendant's Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Koch Foods.

**L. Privilege.** Nothing in this Settlement Agreement or the negotiations or proceedings relating to it are 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, the common interest privilege, and work product immunity.

**M. Notice.** Any notice, other than Class Notice, required pursuant to or in connection with this Settlement Agreement ("Notice") 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, together with a courtesy copy by electronic mail, addressed, in the case of notice to any Plaintiff or Class Member, to Co-Lead Counsel at their addresses set forth below, and, in the case of notice to Koch Foods, to the Settling Defendant's Counsel at the addresses set forth below, or such other addresses as Co-Lead Counsel or Settling Defendant's Counsel may designate, from time to time, by giving notice to all Parties in the manner described in this Section III(M).

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For Settling Defendant Koch Foods:

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ssiegel@atllp.com  
ewolicki@atllp.com  
jja@atllp.com

**N. Headings.** All headings contained in this Settlement Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Settlement Agreement.

**O. Complete Defense.** If any of the Releasing Parties hereafter sues any of the Released Parties (or brings an arbitration) for any of the Released Claims, this Settlement Agreement, when pleaded, shall be and constitute a complete defense and bar thereto.

**P. Ownership of Claims.** Each Releasing Party represents and warrants that it is the sole owner of any and all claims that it has or ever had against any of the Released Parties and that

it has not sold, assigned, or in any way encumbered any such claims, in whole or in part, to any person or party.

**Q. Non-Disparagement.** The Parties agree they will not disparage one another or their respective claims or defenses, such as by making extrajudicial public statements that disparage either the Parties or their conduct in connection with the Action. For the avoidance of doubt, the Parties agree that statements made in the Action in court filings, arguments, hearings, and trial are not subject to this provision.

**R. Sole Remedy.** This Settlement Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any Released Party, and upon entry of Final Judgment, the Releasing Parties shall be forever barred from initiating, asserting, maintaining, or prosecuting any and all Released Claims against any Released Party.

**S. Admissibility.** It is agreed that this Settlement Agreement shall be admissible in any proceeding for establishing the terms of the Parties' agreement or for any other purpose with respect to implementing or enforcing this Settlement Agreement.

**T. No Unstated Third-Party Beneficiaries.** Except as provided in Section II.D.5 above, no provision of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Released Party, CIIPP, Class Member, or Co-Lead Class Counsel.

**U. No Reliance.** Each Party represents and warrants that, in entering into this Settlement Agreement, it has not relied on any representations by or on behalf of any other Party, other than those representations expressly set forth in writing in this Settlement Agreement.

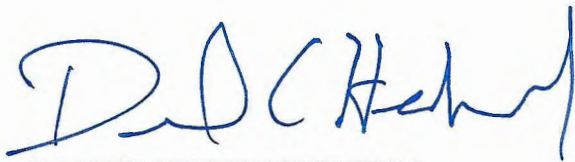
**V. Intent to Be Bound.** Each Party represents and warrants that it has read and understands this Agreement and that it intends to be legally bound thereby.

**W. Waiver of Right to Appeal or Further Adjudication.** CIIPPs will not seek to

further adjudicate at the district court, via appeal, or any other means, the orders of the Court in connection with the Action as they pertain to the CHPPs' claims as they relate to Koch Foods in their Operative Complaint.

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

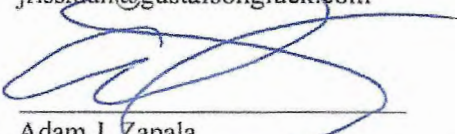
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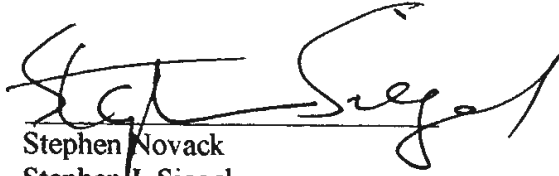


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Dated: \_\_\_\_\_

8/13/24

*Co-Lead Counsel for Commercial and Institutional Indirect Purchaser Plaintiffs*



Dated: August 14, 2024

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