

**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: COMMERCIAL & INSTITUTIONAL INDIRECT PURCHASER PLAINTIFF ACTIONS	

**SETTLEMENT AGREEMENT BETWEEN COMMERCIAL AND INSTITUTIONAL
INDIRECT PURCHASER PLAINTIFFS AND
THE MAR-JAC DEFENDANTS**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of the Execution Date, by and between Mar-Jac Poultry, Inc., Mar-Jac Poultry MS, LLC, Mar-Jac Poultry AL, LLC, Mar-Jac AL/MS, Inc., Mar-Jac Poultry, LLC, and Mar-Jac Holdings, Inc.¹ (“Mar-Jac” or “Settling Defendant”) on the one hand, and the Commercial and Institutional Indirect Purchaser Plaintiffs (“Plaintiffs” or “CIIPPs”),² individually and on behalf of a class of indirect purchasers of Broilers,³ on the other hand, which Agreement is subject to court approval in the above-captioned action (the “Action”). CIIPPs, on behalf of the Settlement Class, and Mar-Jac are referred to herein collectively as the “Parties” or individually as a “Party.”

¹ Mar-Jac Holdings, Inc. is incorrectly named in the Complaint as Mar-Jac Holdings, LLC.

² 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 Taqeria, Inc.; Legacy 5, LLC; Roost Fried Chicken LLC; Oregano Italian, LLC; Bordenaro’s Pizza, Inc.; Telavi Hospitality, Inc.; and FB Mall, LLC.

³ Unless otherwise indicated, all capitalized terms shall have the meaning ascribed in the Definitions in Section I.

RECITALS

A. Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Settlement Class.

B. Plaintiffs have alleged, among other things, that Mar-Jac entered into a contract, combination or conspiracy in restraint of trade, the purpose and effect of which was to suppress competition and to allow Mar-Jac 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. Mar-Jac vigorously and affirmatively rejects Plaintiffs' Claims and has alleged numerous defenses to Plaintiffs' Claims.

D. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, or regulation or of any liability or wrongdoing by Mar-Jac or of the truth of any of Plaintiffs' Claims, nor shall it be deemed or construed to be an admission or evidence of Mar-Jac's 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 Mar-Jac according to the terms set forth herein is fair, reasonable, adequate, and beneficial to and in the best interests of the Settlement Class, given the uncertainties, risks, and costs of continued litigation.

F. Despite its belief that it is not liable for, and has strong defenses to, Plaintiffs' Claims, Mar-Jac 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. Mar-Jac 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)(6) below.

H. Arm's-length settlement negotiations have taken place between Co-Lead Counsel and the Settling Defendant's Counsel and the settlement was reached as a result of those negotiations.

I. CIIPPs and Co-Lead Counsel believe that the Settlement Fund (as hereinafter defined) reflects fair, reasonable, and adequate compensation for the Settlement Class (as hereinafter defined) to release, settle and discharge their claims that they were overcharged by the alleged anticompetitive conduct of which Mar-Jac is accused.

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.

IT IS HEREBY AGREED, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration, 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 the Released Parties and without cost to the Released Parties, other than those 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. Settlement Class Definition

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

B. General Definitions

1. “Action” means the putative class action filed by CIPPs 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.

3. “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, but excluding chicken that is grown, processed, and sold according to halal, kosher, free range, or organic standards.

4. “Claims” mean any and all, known or unknown, actual or potential causes of action, claims, contentions, allegations, assertions of wrongdoing, suits, damages, losses, or demands for recoveries, remedies, or fees complained of, relating to, referred to, or arising from the conduct alleged in the Action or which could have been alleged in the Action, whether class, individual, or otherwise in nature.

5. “Class Member” means each member of the Class that does not timely and properly exclude itself from the Settlement 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, 2008 through July 31, 2019.

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

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

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

11. “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.

12. “Date of Final Approval” means the date on which Final Approval as provided for in Section II(G)(9) occurs.

13. “Date of Preliminary Approval” means the date on which the Court enters an order granting preliminary approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(G)(3) below.

14. “Defendant” or “Defendants” means any or all of the Defendants named in the Operative Complaint.

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

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

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

18. “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.

19. “Final Approval” shall mean the satisfaction of all the conditions set forth in Section II(G)(9).

20. “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.

21. “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 administration as provided for in this Settlement Agreement, that may be awarded or approved by the Court.

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

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

24. “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.

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

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

27. “Released Claims” means any and all existing or potential Claims, demands, claims, actions, suits, and causes of action, 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, 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, injuries, or damages 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 arising from the factual predicate of the Action. For the avoidance of doubt, “Released Claims” includes all claims that have been asserted, or could have been asserted, in the Action, including all claims in any way arising out of or relating to the purchase of Broilers produced, processed or sold by Mar-Jac 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, which includes certain claims specifically excluded from the Settlement Class in Section II(G)(2) below. The reservation of claims set forth in (a) through (c) of this Section I(B)(29) 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.

28. “Released Party or Parties” means jointly and severally, individually and collectively, Mar-Jac, any and all of its past and current corporate parents (including holding companies), subsidiaries, Affiliates, divisions, departments, joint ventures, predecessors, successors, assigns and any and all of their respective heirs, executors, devisees, administrators,

officers, executives, directors, stockholders, employees, partners, members, managers, agents, attorneys, advisors, auditors, accountants, contractors, servants, representatives and insurers. “Released Parties” includes any person or entity identified in the previous sentence in relation to Mar-Jac 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.

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

30. “Settling Defendant” and “Mar-Jac” mean Mar-Jac Poultry, Inc., Mar-Jac Poultry MS, LLC, Mar-Jac Poultry AL, LLC, Mar-Jac AL/MS, Inc., Mar-Jac Poultry, LLC, and Mar-Jac Holdings, Inc.

31. “Settling Defendant’s Counsel” means the law firms of Edward C. Konieczny LLC and Smith Gambrell & Russell, LLP, and attorneys associated therewith.

32. “Settlement Amount” means the cash payment of FIVE MILLION NINE HUNDRED NINETY THOUSAND DOLLARS (\$5,990,000), as more specifically described in Section II(C)(1), below.

33. “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 best efforts to seek the Court's Preliminary Approval and Final Approval of the Settlement Agreement.

B. Litigation Standstill. Except to the extent expressly authorized in this Agreement, CIIPPs and their counsel shall cease all litigation activities against Mar-Jac in the Action, and Mar-Jac and its counsel shall cease all litigation activities against CIIPPs in the Action, provided, however, that both CIIPPs and Mar-Jac may seek appropriate discovery in the Action from other persons or entities.

C. Performance By Settling Defendant and CIIPPs

1. Settlement Payment. In exchange for the full consideration described in this Settlement Agreement, Mar-Jac 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 Mar-Jac and shall be inclusive of the Settlement Class recovery amounts, any service awards to Plaintiffs for the work Plaintiffs performed on behalf of the Settlement Class ("Service Awards") as awarded by the Court, fees (including attorneys' fees and any other fees), and costs (including costs related to Class Notice and settlement administration).

a. The Settlement Amount shall be paid by Mar-Jac 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, within thirty (30) calendar days of the Date of Preliminary Approval.

b. Each Class Member and each Releasing Party shall look solely to the Net Settlement Fund for full and complete settlement and satisfaction by Mar-Jac 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 Settlement Class shall have any interest in the Settlement Fund or any portion thereof. CIIPPs, members of the Settlement Class, 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 Settlement Class. Mar-Jac 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. Settling Defendant asserts that its business practices do not constitute a *per se* or other violation of Section 1 of the Sherman Act with respect to the sale of Broilers. 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.

a. When reasonably requested by CIIPPs, Mar-Jac agrees to use reasonable efforts—whether by declarations, affidavits, or depositions as may be necessary for the Action—to authenticate and provide foundation for admissibility of documents and/or things produced in the Action when Mar-Jac can do so in good faith, where the facts indicate that the documents and/or things at issue are authentic and that such foundation is proper.

b. To the extent that Mar-Jac (a) responds to written discovery, (b) makes Rule 34 document productions, or (c) provides other plaintiffs in the Action with formal document or information proffers in conjunction with a settlement with those plaintiffs, Mar-Jac will serve or otherwise provide CIIPPs a copy of such materials within 7 days of their production to any other plaintiff.

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)(28) and the provisions of Section II(B) 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. 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 of the Parties or their conduct in connection with the Action, and instead will confine their public comments to essentially the following: “The parties have agreed to resolve this matter. Both sides believe they would have prevailed at trial. Mar-Jac denies the allegations in Plaintiffs’ complaint, and further denies that it did anything wrong or illegal. The parties agreed to settle this case because of the extraordinary cost of litigation and the risk and uncertainty of

trial.” For the avoidance of doubt, the Parties agree that statements made in court filings, arguments, hearings, and trial of this case are not subject to this provision.

5. 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, suspected or unsuspected, contingent or non-contingent, 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 of which this waiver and release is a part. The foregoing release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims is contractual, and not a mere recital.

6. 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 Mar-Jac, calculated pursuant to Section 4 and Exhibits A and B of Defendants’ Agreement (as illustrated by the Appendix to Defendants’ Agreement) as if Mar-Jac 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 releasor in this Settlement Agreement, except for proceeds received by CIIPPs' attorneys for payment of attorneys' fees. 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 Settlement Class, Co-Lead Counsel, Mar-Jac, and the Released Parties shall have no financial obligation or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or obtaining approval of the settlement or administering the settlement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund, subject to any necessary Court approval.
3. Co-Lead Counsel, after obtaining an order of Preliminary Approval, may withdraw from the Settlement Fund up to \$500,000 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 Settlement Class as soon as is reasonably practicable after Preliminary Approval. In the event that Court-ordered notice and administration costs exceed \$500,000, Plaintiffs and Co-Lead Counsel may apply to the Court to pay such additional notice and administration costs from the Settlement Fund.

Up to \$500,000 of the Class Notice and administration costs actually incurred pursuant to this Settlement Agreement shall be nonrefundable in the event that, for any reason, this Settlement Agreement is terminated or rescinded pursuant to Section II(G)(10).

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 funds in this and such other settlement agreements proportionate to the amount of any such settlements, consistent with any such other settlement agreements and the approval of the Court.

6. Under no circumstances will Mar-Jac 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 \$500,000, any such additional payments or disbursements shall be refunded to Mar-Jac in the event that the Settlement Agreement is terminated or rescinded pursuant to Section II(G)(10).

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 Mar-Jac, 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 Interim Co-Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Funds 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 Mar-Jac, 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 Qualified 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

Mar-Jac 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 Released Claims

1. **Cooperation.** Plaintiffs and Mar-Jac 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 Mar-Jac only.

2. Settlement Class Certification. As part of the motion for Preliminary Approval of this Settlement Agreement, Plaintiffs shall seek, and Mar-Jac shall not object to,⁴ appointment of Plaintiffs' Co-Lead Counsel as Settlement Class Counsel for purposes of this Settlement Agreement, and certification in the Action of a Settlement Class for settlement purposes only, defined as follows:

All entities that purchased Broilers indirectly from a Defendant or named co-conspirator in the United States for their own use in commercial food preparation from January 1, 2008, until July 31, 2019 (the "Class Period").

Excluded from this Class are: Natural persons who purchased Broilers for their personal use and not for commercial food preparation (End-User Consumers); purchasers of Broilers directly from Defendants; purchasers of Broilers for resale in unaltered form; purchases of Broilers from an intermediary who has further processed the Broiler; the Defendants; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant; any federal, state governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff; any juror assigned to this action; and any co-conspirator identified in this action.

3. 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"). Mar-Jac 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 Mar-Jac objects to any aspect of the motion, it shall communicate such

⁴ By agreeing not to object to the proposed Settlement Class and appointment of Co-Lead Counsel as Settlement Class Counsel, Mar-Jac is not waiving any rights, arguments or defenses and Mar-Jac expressly preserves all such rights, arguments and defenses including with respect to any situation where the Settlement Agreement is not approved in all material respects by the Court.

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 Settlement 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 exclude themselves must submit an appropriate and timely request for exclusion;

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

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

f. All proceedings in the above-captioned action with respect to Mar-Jac 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. Class Notice shall provide for a right of exclusion, as set forth in Sections II(G)(3). The Class Notice shall also 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. To the extent

that Mar-Jac 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.

5. Cost of Class Notice. The costs of providing Class Notice to Settlement 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 the filing of this Settlement Agreement in court in connection with the above-mentioned motion for Preliminary Approval, Mar-Jac 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 Judgment. If this Settlement Agreement is preliminarily approved by the Court, the Settlement 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 Mar-Jac 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. certifies the Settlement Class described in Section II(G)(2), pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this settlement as a Settlement Class for the Action;

b. 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, without material modification of those terms and conditions;

c. 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;

d. orders that all Claims made by CIIPPs against Mar-Jac in the Action, be dismissed with prejudice and, except as expressly provided for in this Settlement Agreement, without further costs or fees;

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

f. enjoins members of the Settlement Class from suing, directly or indirectly, any of the Released Parties for any of the Released Claims;

g. confirms that Mar-Jac has provided the appropriate notice pursuant to CAFA;

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

i. 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 Released Parties shall be final and entered forthwith; and

j. 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.

8. 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 Settlement Class Member's respective attorneys, experts, advisors, or representatives; provided, however, that with respect to the Action, including this Settlement Agreement, Mar-Jac 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 Mar-Jac shall have no obligation to pay any fees or expenses of Co-Lead Counsel.

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 15 calendar days 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.

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 Mar-Jac with prejudice as to all Settlement 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 and 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 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)(9). 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.

10. 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)(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 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 Mar-Jac 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 fifteen (15) calendar days of any of the Triggering Events. For purposes of Section II(G)7(b) and this Section II(G)(10)(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 Mar-Jac pursuant to written instructions from Mar-Jac'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.

11. No Admission.

a. Mar-Jac denies all allegations of wrongdoing in the Action. Nothing in this Settlement Agreement or its contents, nor any statements, negotiations, documents, or discussions associated with it, constitutes an admission by Mar-Jac 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 Settlement Class of the validity of any defenses that have been, could have been, or could be asserted by Mar-Jac 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 Mar-Jac or any other Released Party; 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 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 pertaining to the settlement of the Action as to Mar-Jac, and the release of the Released Parties, and supersedes any and all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions (either oral or written) of 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 terms of this Settlement Agreement are and shall be binding upon and, to the fullest extent possible, insure to the benefit of the successors, assigns, and heirs of each of the Releasing Parties and the Released Parties, and upon all other persons or entities claiming any interest in the subject matter hereto through any of the Settling Parties, Releasing Parties, or Released Parties, including any Class Members. Without limiting the generality of the foregoing, upon certification of the Settlement Class and Final Approval, each and every covenant and agreement herein by the CIPPs shall be binding upon all members and potential members of the Settlement Class and Releasing Parties who have not validly excluded themselves from the Settlement Class.

C. Modification. This Settlement Agreement may be modified or amended only by a writing executed by Co-Lead Counsel and Mar-Jac or Settling Defendant's Counsel, subject (if after the Date of Preliminary Approval) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court. The waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party. 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 Settlement Class and Mar-Jac 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, and any and all disputes regarding this Settlement Agreement or the Supplemental Agreement will be mediated in good faith with Judge Daniel Weinstein (ret.) before any suit, action, proceeding or dispute may be filed in the Court.

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, Mar-Jac 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 obligations contained in this Settlement Agreement. Additionally, consistent with its obligations under the Defendants' Agreement, Mar-Jac may share copies of this Settlement Agreement with parties to the Defendants' Agreement.

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. 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 Settlement Class, and Mar-Jac 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, 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 Settlement Class; and the undersigned Settling Defendant's Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Mar-Jac.

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 the attorney 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, 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 Mar-Jac, to the Settling Defendants' Counsel at the addresses set forth below, or such other addresses as Co-Lead Counsel or Settling Defendants' 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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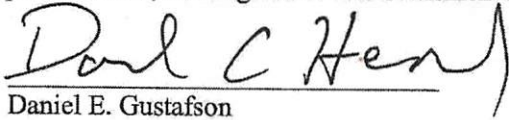
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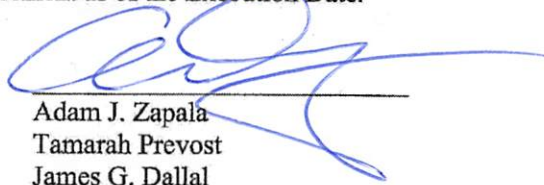
N. **Headings.** All headings contained in this Settlement Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Settlement Agreement.

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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