

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

IN RE BROILER CHICKEN ANTITRUST
LITIGATION,

Case No.: 1:16-cv-08637

The Honorable Thomas M. Durkin

This Document Relates To:

THE DIRECT PURCHASER PLAINTIFF
ACTION

**DECLARATION OF MICHAEL H. PEARSON IN SUPPORT OF
DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
THE SETTLEMENT WITH SIMMONS FOODS, INC. AND SIMMONS PREPARED
FOODS, INC.**

I, Michael H. Pearson, declare and state as follows:

1. I am a Partner of the law firm of Pearson Warshaw, LLP. This Court has appointed my firm, together with Lockridge Grindal Nauen P.L.L.P., as Co-Lead Class Counsel for the Direct Purchaser Plaintiff Class (“DPPs”) in this litigation.

2. I submit this Declaration in support of Plaintiffs’ Motion for Preliminary Approval of Settlement Between the Direct Purchaser Plaintiffs and Simmons Foods, Inc. and Simmons Prepared Foods, Inc. (collectively referred to as “Simmons”), filed simultaneously herewith.

3. On behalf of DPPs, I, my firm, and my Co-Lead Class Counsel personally conducted settlement negotiations with counsel for Simmons beginning in April 2023. The DPPs and Simmons signed the Settlement Agreement on May 24, 2023.

4. As counsel for DPPs, we performed a thorough investigation and engaged in extensive discovery prior to reaching the Settlement. These efforts commenced prior to the filing of DPPs’ initial complaint and included pre-litigation investigation into Defendants’ conduct that formed the basis of the DPPs’ complaints.

5. During the litigation, DPPs obtained responses to multiple sets of interrogatories, and received over 8 million documents in response to their requests for production and third-party subpoenas.

6. DPPs along with other plaintiffs have taken over 100 depositions of the Defendants and third parties.

7. DPPs have also provided responses to written discovery, produced documents, and appeared for depositions noticed by the Defendants.

8. Prior to the Court’s ruling on Defendants’ motions to dismiss, Plaintiffs reached an “ice-breaker” settlement with Defendant Fieldale. Fieldale, a small producer, agreed to pay \$2.25

million, provide cooperation including attorney and witness proffers, and produce certain documents to DPPs. The Court granted final approval to the Fieldale settlement on November 18, 2018. (*See* ECF No. 1414.) Plaintiffs later reached settlements with Defendants Amick, Peco, and George's. Like Fieldale, these three Defendant groups are small producers. In addition to providing cooperation to DPPs, Peco paid \$4,964,600, George's paid \$4,097,000, and Amick paid \$3,950,000. (*See id.*) The Court granted final approval of the Amick, Peco, and George's settlements on October 27, 2020. (*See* ECF Nos. 3944 (Peco and George's), 3945 (Amick).) DPPs then secured significant settlements with Pilgrim's and Tyson in the amount of \$75 million and \$79,340,000, respectively. The Court granted final approval of the Pilgrim's and Tyson settlements on June 29, 2021. (*See* ECF No. 4789.) Most recently, DPPs secured significant settlements with Mar Jac and Harrison Poultry in the amount of \$7,975,000 and \$3,300,000, respectively. The Court granted final approval of the Mar Jac and Harrison settlements on January 27, 2022. (*See* ECF No. 5397.) These Settlements bring the total amount recovered by DPPs from settling defendants (past and present) to date to \$188,895,591. This is a significant amount of money recovered for the DPP class.

9. DPPs' settlement negotiations with Simmons commenced in April 2023.

10. The Settlement comes after extensive, confidential, protracted arm's-length negotiations between the parties. The hard-fought negotiations were kept confidential over the past few weeks as the parties vigorously litigated the case. The negotiations necessitated numerous conferences as well as written exchanges between counsel during which the parties negotiated the material terms of the Settlement, as well as the final Settlement Agreement. The parties debated many issues and negotiated many terms of the Settlement, including the amount of payment, the timing of payment, potential conditions on payment, and potential cooperation. Throughout this

process, Simmons has been represented by experienced, sophisticated counsel. In engaging in these settlement discussions, counsel for DPPs were focused on obtaining the best possible result for the DPP Class.

11. The parties ultimately executed the Simmons Settlement Agreement on May 24, 2023 (attached hereto as Exhibit “A”).

12. There was no collusion or preference among counsel for the parties at any time during these negotiations. To the contrary, the negotiations were contentious, hard fought, and fully informed. Plaintiffs sought to obtain the greatest monetary benefit possible from the Settling Defendants. Furthermore, throughout the course of the negotiations there was never any discussion or agreement at any time regarding the amount of attorneys’ fees Direct Purchaser Plaintiffs’ counsel would ask the Court to award in this case.

13. The Settlement is on behalf of the Class previously certified by the Court on May 27, 2022. (ECF No. 5644.)

14. DPPs have enlisted the services of an experienced class action administrator, A.B. Data Ltd., to administer notice to the Certified Class Members. The details of the proposed class notice program are discussed in our Motion and supporting declaration of Eric Schachter, and essentially mirror the notice programs approved by this Court regarding the earlier settlements.

15. I have practiced law since 2011, I specialize in antitrust class action law, and I have prosecuted numerous antitrust class actions as lead counsel or other leadership positions. I have negotiated many settlements during those years. In my opinion, and in that of my Co-Lead Class Counsel, the proposed settlement agreement is fair, reasonable, and adequate. The settlement provides substantial benefits to the Certified Class, and avoids the delay and uncertainty of continuing protracted litigation with the Settling Defendants.

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

Executed on this 1st day of June, 2023 at Sherman Oaks, California.

/s/ Michael H. Pearson

Michael H. Pearson

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

*IN RE BROILER CHICKEN ANTITRUST
LITIGATION*

Case No. 1:16-cv-08637

This Document Relates To:
DIRECT PURCHASER PLAINTIFF
ACTION

**LONG-FORM SETTLEMENT AGREEMENT BETWEEN
DIRECT PURCHASER CLASS PLAINTIFFS AND SIMMONS FOODS, INC. AND
SIMMONS PREPARED FOODS, INC.**

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into as of the ~~22nd~~ ^{24th} day of May, 2023 (“Execution Date”) by and between the Direct Purchaser Plaintiffs (“DPPs”),¹ through Co-Lead Class Counsel (as hereinafter defined) for the Certified Class (as hereinafter defined), and Simmons Foods, Inc. and Simmons Prepared Foods, Inc. and all of their predecessors; successors; assigns; Affiliates (as hereinafter defined) (including without limitation any affiliates who are alleged co-conspirators); and any and all past, present, and future parents, owners, subsidiaries, divisions, and departments (collectively referred to as “Settling Defendant” or “Simmons”) in the above-captioned action (the “Action”). DPPs, on behalf of the Certified Class, and Simmons are referred to herein collectively as the “Parties” or individually as a “Party.”

WHEREAS, DPPs on behalf of themselves and as representatives of the certified class of similarly situated persons or entities allege in the Action, among other things, that Simmons participated in a conspiracy—with other Defendants and alleged non-Defendant co-conspirators

¹ As used herein, “DPPs” means Maplevale Farms, Inc., John Gross and Company, Inc., Ferraro Foods, Inc., Ferraro Foods of North Carolina, LLC, Joe Christiana Food Distributors, Inc., and Cedar Farms Co., Inc.

in the Action—from at least January 1, 2008 to the present to fix, raise, maintain, and stabilize the price of Broilers (as hereinafter defined);

WHEREAS, Co-Lead Class Counsel have been appointed by the Court to represent the certified class of direct purchasers of Broilers (as hereinafter defined);

WHEREAS, the Parties wish to resolve all claims asserted and all claims that could have been asserted against Simmons in any way arising out of or relating in any way to the direct purchase of Broilers (as hereinafter defined) produced, processed or sold by Simmons or any of the Defendants or their alleged co-conspirators;

WHEREAS, counsel for the Parties have engaged in arm's-length negotiations on the terms of this Settlement Agreement, and this Settlement Agreement embodies all of the terms and conditions of the settlement;

WHEREAS, DPPs have concluded, after investigation of the facts and after considering the circumstances and the applicable law, that it is in the best interests of DPPs to enter into this Settlement Agreement with Simmons to avoid the uncertainties of further complex litigation, and to obtain the benefits described herein for the Certified Class (as hereinafter defined), and, further, that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of DPPs and the Certified Class;

WHEREAS, DPPs and Co-Lead Class 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 their claims that they were overcharged by the alleged conduct of which Simmons is accused;

WHEREAS, Simmons, notwithstanding its belief that it did nothing wrong or illegal, that it has legitimate defenses to any claims that could be asserted by DPPs against it, and that it

would prevail at trial, enters into this Settlement Agreement to avoid the costs, expenses, and uncertainties of this complex litigation, and thereby put a rest to this controversy;

WHEREAS, DPPs, notwithstanding their belief that they would ultimately prevail at trial and establish liability by Simmons for the conspiracy they have alleged, enter into this Settlement Agreement to avoid the costs, expenses, and uncertainties of this complex litigation; and

WHEREAS, both Parties wish to preserve all arguments, defenses and responses to all claims in the Action, including all arguments, defenses and responses to any proposed litigation class proposed by DPPs, in the event this settlement does not obtain Final Approval.

NOW THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration, it is agreed by and among the Parties that the claims of the DPPs be settled, compromised, and dismissed on the merits with prejudice as to Simmons subject to Court approval and that Simmons be forever fully discharged and released from any and all claims covered by this Settlement Agreement:

1. General Definitions. The terms below and elsewhere in this Settlement Agreement with initial capital letters shall have the meanings ascribed to them for purposes of this Settlement Agreement.

- a. "Simmons Released Parties" means Simmons (as defined above) together with any and all of Simmons's past, current, and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities, Affiliates, associates, divisions, joint ventures, predecessors, successors and each 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. Notwithstanding the foregoing and except as set forth below, “Simmons Released Parties” does not include any Defendant other than Simmons named by DPPs in the Action, either explicitly or as a third-party beneficiary.

- b. “Action” means the class action filed by DPPs in the above-captioned proceeding.
- c. “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 affiliates that share common ownership.
- d. “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, raw or cooked, whole or in parts, or as a meat ingredient in a value added product, but excluding chicken that is grown, processed, and sold according to halal, kosher, free range, or organic standards.
- e. “Complaint” means the DPPs’ Fifth Amended and Consolidated Class Action Complaint (ECF Nos. 3919 (Redacted) and 3935 (Unredacted)).
- f. “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.

- g. “Defendants” means those Defendants named in DPPs’ Fifth Amended and Consolidated Class Action Complaint (ECF Nos. 3919 (Redacted) and 3935 (Unredacted)).
- h. “Escrow Account” means the escrow account established with the escrow agent to receive and maintain funds contributed by Simmons for the benefit of the Certified Class.
- i. “Escrow Agreement” means that certain agreement between the escrow agent that holds the Settlement Fund and DPPs (by and through Co-Lead Class Counsel) pursuant to which the Escrow Account is established and funded for the benefit of the Certified Class, as set forth in Paragraphs 8 and 9 below.
- j. “Fairness Hearing” means a hearing by the Court to determine whether the Settlement Agreement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.
- k. “Final Approval” means an order and judgment by the Court which finally approves this Settlement Agreement, including all of its material terms and conditions without modification, and the settlement pursuant to Federal Rule of Civil Procedure 23 and dismisses Simmons with prejudice from the Action.
- l. “Final Judgment” means the first date upon which both of the following conditions shall have been satisfied: (a) Final Approval; and (b) either (1) no appeal or petition to seek permission to appeal the Court’s approval of the Final Judgment has been made within the time for filing or noticing

any appeal under the Federal Rules of Appellate Procedure, *i.e.*, thirty days after entry of the Final Judgment; or (2) if any timely appeals from the Final Approval or notices of appeal from the Final Approval are filed, (i) the date of final dismissal of all such appeals or the final dismissal of any proceeding on certiorari or otherwise or (ii) the date the Final Judgment is finally affirmed on appeal and affirmance is no longer subject to further appeal or review.

- m. “Co-Lead Class Counsel” means Lockridge Grindal Nauen P.L.L.P. and Pearson Warshaw, LLP as appointed by the Court to represent the certified class of direct purchasers of Broilers.
- n. “Preliminary Approval” means an order by the Court to preliminarily approve this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23.
- o. “Released Claims” shall have the meaning set forth in Paragraph 14 of this Agreement.
- p. “Releasing Party” or “Releasing Parties” shall refer individually and collectively, to DPPs, the Certified Class, and all members of the Certified Class, including the DPPs, each on behalf of themselves and their respective predecessors, successors, and all of their respective past, present and future (i) direct and indirect parents, subsidiaries, associates and Affiliates, (ii) agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions, and (iii) shareholders, partners, directors, officers, owners of any kind,

principals, members, agents, employees, contractors, insurers, heirs, executors, administrators, devisees, and representatives; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and to the full extent of the power of the signatories hereto to release past, present and future claims, persons or entities acting in a private attorney general, qui tam, taxpayer or any other capacity, whether or not any of them participate in this Settlement Agreement.

- q. “Settlement Administrator” means the firm retained to disseminate the Settlement Notice and to administer the payment of Settlement Funds to the Certified Class, subject to approval of the Court. DPPs intend to propose A.B. Data Ltd. for the Court’s approval.
- r. “Certified Class” means the class defined in Paragraph 5 below excluding all persons who previously filed a valid request for exclusion from the Certified Class.
- s. “Settlement Notice” means any notice sent to the Certified Class pursuant to Preliminary Approval or otherwise approved by the Court pursuant to Federal Rule of Civil Procedure 23.
- t. “Class Period” means December 1, 2008 until July 31, 2019.
- u. “Settlement Fund” means \$8,018,991.00 (eight million, eighteen thousand, nine hundred ninety one U.S. dollars), the amount Simmons shall pay or cause to be paid into an interest-bearing Escrow Account maintained by an escrow agent on behalf of the Certified Class, pursuant to Paragraphs 8

and 9 below, as well as any interest accruing within such interest-bearing Escrow Account.

2. 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.

3. Litigation Standstill. DPPs through Co-Lead Class Counsel shall cease all litigation activities against Simmons related to the pursuit of claims against Simmons in the Action. Nothing in this Section shall be construed to prohibit DPPs from seeking appropriate discovery from non-settling Defendants or alleged co-conspirators or any other person other than Settling Defendant. Simmons will not take the position that Plaintiffs' references to Simmons at the Track One September Trial, including as an unnamed co-conspirator for purposes of that trial, violate this agreement. Similarly, Simmons shall cease all litigation activities against DPPs and any other Track One Plaintiffs with whom Simmons has settled, specifically including any Track One September Trial pretrial or trial proceedings except as necessary to meet its obligations under this Agreement. For instance, Simmons and Simmons' outside counsel will not (a) participate in or assist in the preparation for, or trial of, the Track One September Trial in any way whatsoever or (b) assist in the analysis, negotiation, or briefing of evidentiary issues relating to the Track One September Trial, such as the current set of evidentiary 30(b)(6) notices to be served pursuant to the Court's May 16, 2023 Order (ECF No. 6562). Simmons' individual expert will not testify on behalf of Simmons at the Track One September Trial. Nothing in this section will preclude Simmons from defending against claims brought by the remaining Track One Parties with whom it has not settled or the Track Two Parties. For the avoidance of doubt, Simmons may participate in motions and hearings, insofar as they address issues involving the

non-settling Track One parties or Track Two parties. Further, this paragraph does not preclude an expert(s) jointly retained before February 21, 2022 (i.e., the date Defendants' served their merits reply reports) by Simmons and a Defendant remaining in the Track One September Trial from testifying in that trial, but neither Simmons nor its outside counsel may assist the expert or remaining Defendants' counsel in any way whatsoever with preparing such expert(s) to testify. To the extent there is any ambiguity or disagreement about what that means, the parties will meet and confer and attempt to resolve that issue in good faith.

4. Motion for Preliminary Approval. DPPs will move for preliminary approval of this Settlement no later than June 1, 2023. A reasonable time in advance of submission to the Court, the papers in support of the motion for Preliminary Approval shall be provided by Co-Lead Class Counsel to Simmons for its review. To the extent that Simmons objects to any aspect of the motion, it shall communicate such objection to Co-Lead Class Counsel and the Parties shall meet and confer to resolve any such objection. The Parties shall take all reasonable actions as may be necessary to obtain Preliminary Approval of the settlement.

5. Certified Class. The Certified Class shall have the same definition and consist of the litigation class certified by the Court on May 27, 2022 (ECF No. 5644) defined as follows:

All persons who purchased raw Broilers directly from any of the Defendants or their respective subsidiaries or affiliates either fresh or frozen, in the form of: whole birds (with or without giblets), whole cut-up birds, or parts (boneless or bone in) derived from the front half of the whole bird, for use or delivery in the United States from December 1, 2008 until July 31, 2019.

Specifically excluded from the Certified Class are 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. Also excluded from this Settlement Class are any federal, state, or local governmental entities, any judicial officer

presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

6. Settlement Notices. After Preliminary Approval, and subject to approval by the Court of the means for dissemination:

- a. Individual notice of this settlement shall be mailed, emailed, or otherwise sent by the Settlement Administrator, at the direction of Co-Lead Class Counsel, to members of the Certified Class, in conformance with a notice plan to be approved by the Court.
- b. Neither the Certified Class, Co-Lead Class Counsel, nor Simmons shall 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.
- c. Simmons shall not object to Co-Lead Class Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$250,000 to pay the costs for notice and for Preliminary Approval and Final Approval of this Settlement Agreement, provided, however, that such costs will be pro-rated with other contemporaneously-noticed settlements to the extent applicable.
- d. Co-Lead Class Counsel shall use best efforts to send out notice to the Certified Class within 21 days of Preliminary Approval by the Court of the Settlement Agreement. Any costs of notice that Co-Lead Class Counsel

are permitted to withdraw from the Settlement Fund up to \$250,000 (prorated with other contemporaneously-noticed settlements to the extent applicable), either pursuant to the Parties' Settlement Agreement or order of the Court, shall be nonrefundable if, for any reason, the Settlement Agreement is terminated according to its terms or is not finally approved by the Court.

7. Motion for Final Approval and Entry of Final Judgment. If the Court grants Preliminary Approval, then DPPs, through Co-Lead Class Counsel—in accordance with the schedule set forth in the Court's Preliminary Approval—shall submit to the Court a separate motion for Final Approval of this Settlement Agreement by the Court. A reasonable time in advance of submission to the Court, the papers in support of the motion for Final Approval shall be provided by Co-Lead Class Counsel to Simmons for its review. To the extent that Simmons objects to any aspect of the motion, it shall communicate such objection to Co-Lead Class Counsel and the parties shall meet and confer to resolve any such objection. The motion for Final Approval shall seek entry of an order and Final Judgment:

- a. Finally approving the Settlement Agreement as being a fair, reasonable, and adequate settlement for the Settlement Class within the meaning of Federal Rule of Civil Procedure 23, and directing the implementation, performance, and consummation of the Settlement Agreement and its material terms and conditions, without material modification of those terms and conditions;
- b. Determining that the Settlement Notice constituted the best notice practicable under the circumstances of this Settlement Agreement and the

- Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- c. Dismissing the Action with prejudice as to Simmons in all class action complaints asserted by DPPs without further costs or fees;
 - d. Discharging and releasing Simmons Released Parties from all Released Claims;
 - e. Enjoining DPPs and members of the Certified Class from suing any of the Simmons Released Parties for any of the Released Claims;
 - f. Confirming that Simmons has provided the appropriate notice pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1711, *et seq.* (“CAFA”);
 - g. Reserving continuing and exclusive jurisdiction over the Settlement Agreement for all purposes; and
 - h. Determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Simmons shall be final and appealable and entered forthwith.

The Parties shall take all reasonable actions as may be necessary to obtain Final Approval of the Settlement Agreement without modification to any of its material terms and conditions.

8. Escrow Account. The Escrow Account shall be administered by Co-Lead Class Counsel for the DPPs and Certified Class under the Court’s continuing supervision and control pursuant to the Escrow Agreement.

9. Settlement Consideration. In consideration for the release of Released Claims, the dismissal of the Action, and the other material terms and conditions herein, within twenty-one (21) days of the Court’s grant of Preliminary Approval or after Co-Lead Class Counsel have

provided wire instructions to Simmons, whichever occurs later, Simmons shall pay or cause to be paid the Settlement Fund of \$8,018,991.00 (eight million, eighteen thousand, nine hundred ninety one U.S. dollars) into the Escrow Account.

10. Authentication and Admissibility. Simmons agrees to use reasonable efforts to authenticate and provide foundation for admissibility of up to 100 documents and/or things produced in the Action where they can do so in good faith, whether by declarations, affidavits, or no more than one deposition, as may be necessary for the Action.

11. Qualified Settlement Fund. The Parties agree to treat the Settlement Fund as being at all times a Qualified Settlement Fund within the meaning of Treas. Reg. § 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 Class Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(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 Class 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. Co-Lead Class Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned

by the Settlement Fund shall be paid out of the Settlement Fund. Simmons shall not be responsible for the filing or payment of any taxes or expenses connected to the Qualified Settlement Fund.

12. Distribution of Settlement Fund to Certified Class. DPPs, members of the Certified Class, and their counsel shall be entitled to look solely to the Settlement Fund for settlement and satisfaction of the Agreement or in connection with any of the Released Claims against the Simmons Released Parties, and shall not be entitled to any other payment or relief from the Simmons Released Parties. 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. DPPs, members of the Certified 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 and the costs of notice of the Settlement Agreement to potential members of the Certified Class. Simmons and the other Simmons Released Parties shall not be liable for any costs, fees, or expenses of any of DPPs' and Co-Lead Class 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.

13. Fee Awards, Costs and Expenses, and Incentive Payments to DPPs. Subject to Co-Lead Class Counsel's sole discretion as to timing, Co-Lead Class Counsel will apply to the Court for a fee award of up to 33 1/3 % of the settlement proceeds, plus expenses, and costs incurred, and incentive payments to the DPPs to be paid from the proceeds of the Settlement Fund. Simmons shall have no responsibility, financial obligation, or liability for any such fees, costs, payments, or expenses beyond the Settlement Fund.

14. Release. Upon Final Judgment, the Releasing Parties shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever completely compromised, settled, released, acquitted, resolved, relinquished, waived, and discharged the Simmons Released Parties from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature (whether or not any member of the Certified Class has objected to the Settlement Agreement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that the Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, demands, actions, suits, causes of action, injuries, losses, or damages arising from or in connection with any act or omission through April 4, 2023 relating to or referred to in the Action or arising from the factual predicate of the Action (the “Released Claims”). For the avoidance of doubt, “Released Claims” includes all claims that have been asserted, or could have been asserted, in the Action against the Simmons Released Parties, including all claims in any way arising out of or relating to the direct purchase of Broilers produced, processed or sold by Simmons or any of the other Defendants or their alleged co-conspirators. Notwithstanding the above, however, “Released Claims” does not include (i) claims asserted against any Defendant or co-conspirator other than the Simmons Released Parties or (ii) any claims wholly unrelated to the allegations in the Action that are based on breach of contract, negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, securities claim, breach of warranty, or product defect. This reservation of claims set forth in (i) and (ii) of this paragraph does not impair or diminish the right of the Simmons

Released Parties to assert any and all arguments and defenses to such claims, and the Parties agree that all such arguments and defenses are preserved. Prior to Final Judgment, all Releasing Parties shall be preliminarily enjoined and barred from asserting any and all Released Claims against any and all of the Simmons Released Parties. The release of the Released Claims will become effective as to all Releasing Parties upon Final Judgment.

15. Further Release. In addition to the provisions of Paragraph 14, the Releasing Parties hereby expressly waive and release, solely with respect to the Released Claims, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

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

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code, including without limitation 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”). Each Releasing Party may hereafter discover facts other than or different from those that he, she, or it knows or believes to be true with respect to the claims that are released pursuant to the provisions of Paragraph 14, but each Releasing Party hereby expressly waives and fully, finally, and forever settles and releases, upon Final Judgment,

any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties have agreed to release pursuant to Paragraph 14, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The foregoing release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims is contractual, and not a mere recital.

16. Full Release. The Released Claims and the provisions of Paragraphs 14 and 15 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 Simmons Released Parties for the Released Claims.

17. Covenant Not to Sue. DPPs and each Certified Class Member covenant not to sue any of the Simmons Released Parties for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of or relating to the Released Claims, including, without limitation, seeking to recover damages relating to any of the Released Claims. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

18. 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, 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. Simmons denies the allegations in DPPs’ complaints, 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 the Action in court filings, arguments, hearings, and trial are not subject to this provision.

19. This Settlement Agreement shall not be construed as an admission of liability, or used as evidence of liability, for any purpose in any legal proceeding, claim, regulatory proceeding, or government investigation.

20. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein when executed.

21. Effect of Disapproval. If the Court does not approve this Settlement Agreement in all material respects, or if the Court does not enter Final Approval as provided for in Paragraph 7 herein, or if any judgment approving this Settlement Agreement is materially modified or set aside on appeal, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 7 of this Settlement Agreement, then this Agreement may be rescinded, cancelled or terminated by Simmons or DPPs on behalf of the Certified Class. If rescinded, cancelled or terminated, this Settlement Agreement shall become null and void, and, with the exception of any Settlement Funds used for notice purposes pursuant to Paragraph 6.c, in the event the settlement is not preliminarily or finally approved by the Court, all other funds in the Escrow Account shall be returned to Simmons and the Parties' position shall be returned to the status quo ante. In no way shall DPPs have the right to rescind, cancel or terminate this Settlement Agreement if the Court fails or refuses to grant any requested attorney's fees, any costs, or any awards to DPPs.

22. Choice of Law and Dispute Resolution. Any disputes relating to this Settlement Agreement shall be governed by Illinois law without regard to conflicts of law provisions, and any and all disputes regarding this Settlement 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 pursuant to Paragraph 23 below.

23. Consent to Jurisdiction. The Parties and Releasing Parties hereby irrevocably submit to the 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. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of Paragraphs 14-17, including but not limited to, any suit, action, or proceeding in which the provisions of Paragraphs 14-17 are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of or relating to this Settlement Agreement. In the event that the provisions of Paragraphs 14-17 are asserted by any Simmons Released Party as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Simmons Released Party shall be entitled to a stay of that suit, action, or proceeding until the mediation required by Paragraph 22 is complete and, if the matter is not resolved by mediation, the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on such provisions. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, the Parties and any Releasing Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the in personam jurisdiction of the Court. Nothing shall be construed as a submission to jurisdiction for any purpose other than enforcement of this Settlement Agreement.

24. Class Action Fairness Act. Within ten (10) days of filing of this Settlement Agreement in court with the abovementioned motion for preliminary approval, Simmons, at its sole expense, shall serve upon appropriate Federal and State officials all materials required

pursuant to CAFA, and shall confirm to DPPs' Co-Lead Class Counsel that such notices have been served. DPP's Co-Lead Class Counsel shall provide such assistance as is reasonably necessary and information as is reasonably available to comply with 28 U.S.C. § 1715(b)(7)(A).

25. Costs Relating to Administration. The Simmons Released Parties shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Funds.

26. Binding Effect. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein. This Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, Certified Class Members, the Releasing Parties, and the Simmons Released Parties. Without limiting the generality of the foregoing, upon Final Approval, each and every covenant and agreement herein by the DPPs shall be binding upon all members of the Certified Class and Releasing Parties.

27. Sole Remedy. This Settlement Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any Simmons 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 Simmons Released Party.

28. Counsel's Express Authority. Each counsel signing this Settlement Agreement on behalf of a Party or Parties has full and express authority to enter into all of the terms reflected herein on behalf of each and every one of the clients for which counsel is signing.

29. 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.

30. Notices. All notices under this Settlement Agreement shall be in writing. Each such notice shall be given either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier, and, in the case of either (a), (b) or (c) shall be addressed:

If directed to DPPs, the Settlement Class, or any member of the Settlement Class, to:

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Sherman Oaks, CA 91403
cpearson@pwfirm.com
bpouya@pwfirm.com

If directed to Simmons, to:

Lynn H. Murray
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Drive, Suite 4700
Chicago IL 60606
lhurray@shb.com

or such other address as the Parties may designate, from time to time, by giving notice to all parties hereto in the manner described in this Paragraph. The Parties shall also provide courtesy copies of all notices by electronic mail.

31. No Admission. Whether or not Preliminary Approval is granted, Final Judgment is entered or this Settlement Agreement is terminated, the Parties expressly agree that this Settlement Agreement and its contents, and any and all statements, negotiations, documents,

and discussions associated with it, are not and shall not be deemed or construed to be an admission of liability by any Party or Simmons Released Party.

32. No Unstated Third-Party Beneficiaries. Except as is provided in Paragraph 39 below, no provision of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Simmons Released Party, DPP, member of the Certified Class, or Co-Lead Class Counsel.

33. No Party is the Drafter. None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

34. Amendment and Waiver. This Settlement Agreement shall not be modified in any respect except by a writing executed by the Parties, and 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.

35. Execution in Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. Facsimile or Electronic Mail signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Settlement Agreement and filed with the Court.

36. Integrated Agreement. This Settlement Agreement comprises the entire, complete, and integrated agreement between the Parties, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or written, between the Parties. 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.

37. Voluntary Settlement. The Parties agree that this Settlement Agreement was negotiated in good faith by the Parties, and reflects a settlement 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.

38. Confidentiality. The Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation. However, Simmons and DPPs can inform other parties to this Action that they have reached a settlement agreement, the amount of the settlement, and the cooperation provided for in this Settlement Agreement. Simmons also may provide a copy of this Settlement Agreement to all parties to the Defendants' Agreement (defined below).

39. Final Judgment as to other Defendants. DPPs have been provided with a copy of the 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. DPPs agree that notwithstanding anything to the contrary contained in this Settlement Agreement, DPPs 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 Simmons, calculated pursuant to Section 4 and Exhibits A and B of Defendants’ Agreement (as illustrated by the Appendix to Defendants’ Agreement) as if Simmons had not settled, had been found liable on the claim, and was a Sharing Party with respect to the Final Judgment. DPPs 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 Paragraph or inconsistency between this Settlement Agreement and the Defendants’ Agreement shall be resolved in favor of the Defendants’ Agreement, including, without limitation, Sections 6.D.1 and 6.D.2 thereof. DPPs 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 DPPs’ attorneys for payment of attorneys’ fees. DPPs shall use their best efforts to ensure that this 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.

IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Settlement Agreement on the Execution Date.



W. Joseph Bruckner (*Pro Hac Vice*)
Brian D. Clark (*Pro Hac Vice*)
Simeon A. Morbey (*Pro Hac Vice*)
Kyle J. Pozan (IL# 6306761)
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Dated: ~~May 19, 2023~~

May 22, 2023

*Co-Lead Class Counsel for the Direct Purchaser
Plaintiff Class*




Dated: May 19²³, 2023

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*Co-Lead Class Counsel for the Direct Purchaser
Plaintiff Class*



Simmons Foods, Inc.
By: Brian Dietrich
Title: CFO

Dated: 5/24/23



Simmons Prepared Foods, Inc.
By: Brian Dietrich
Title: CFO

Dated: 5/24/23



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Dated: 5/22/23

*Counsel for Simmons Foods, Inc. and
Simmons Prepared Foods, Inc.*