IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE: BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO. II)	MDL No. 6:20-2977-RJS-CMR Hon. Chief Judge Robert J. Shelby Hon. Cecilia M. Romero

PLAINTIFFS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH SANDERSON AND FOR CERTIFICATION OF THE SETTLEMENT CLASS

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I. Introduction

Plaintiffs Haff Poultry, Inc., Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles Weaver, Melissa Weaver, Marc McEntire, Karen McEntire, Mitchell Mason, and Anna Mason, (collectively, "Plaintiffs"),[1] individually and on behalf of the proposed Settlement Class (defined *infra*), submit this memorandum in support of their motion seeking (a) preliminary approval of a settlement (the "Settlement") with Defendant Sanderson,[2] and (b) certification of the Settlement Class, for settlement purposes only.[3]

Pursuant to the Settlement, Sanderson has agreed (a) to pay $17.75 million in cash (the "Settlement Amount"), (b) to provide Plaintiffs with cooperation in connection with their claims against the remaining Defendants[4]—cooperation that will potentially be valuable as Plaintiffs continue litigation toward trial, and (c) not to include or enforce provisions in its contracts with members of the Settlement Class that would either mandate arbitration or bar initiation or participation in a class action for five years. The monetary recovery from Sanderson, which

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[1] Anna Mason is an individual plaintiff in a case that is part of this multi-district litigation and is not a proposed class representative.

[2] "Sanderson" means, collectively, Sanderson Farms, Inc., Sanderson Farms, Inc. (Food Division), Sanderson Farms, Inc. (Processing Division), Sanderson Farms, Inc. (Production Division), and any and all past, present, and future parents, owners, subsidiaries, divisions, and/or departments, including but not limited to Sanderson Farms, LLC, Sanderson Farms, LLC (Food Division), Sanderson Farms, LLC (Processing Division), Sanderson Farms, LLC (Production Division), and Wayne Farms, LLC.

[3] As discussed in connection with the prior settlements in this litigation, the Court need not wait for responses to this motion. Objections from absent Settlement Class members to the settlement would be premature (those come after notice is given), non-Settling Defendants lack standing to oppose the Settlement, and in any event, no party or person has indicated its intent to oppose preliminary approval. *E.g.*, *In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1103 (10th Cir. 2001) ("[N]onsettling defendants in a multiple defendant litigation context have no standing to object to the fairness or adequacy of a settlement by other defendants[.]") (citation omitted); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11-MD-2262, 2016 WL 7625708, at *3 (S.D.N.Y. Dec. 21, 2016) (objections to preliminary approval "are unavailing," as "the argument that we should not preliminarily approve the settlement . . . is premature" and "[s]uch an objection can be raised at the next stage in settlement proceedings [final approval]"); *In re Penthouse Exec. Club Comp. Litig.*, No. 10-cv-1145, 2013 WL 1828598, at *2 (S.D.N.Y. Apr. 30, 2013) (rejecting objections to preliminary approval from former named plaintiff as premature: "The proper time for the Court to consider objections to a settlement is at the final approval hearing.").

[4] "Defendants" refers to Koch, Tyson, Perdue, and Pilgrim's Pride Corporation ("Pilgrim's"). The "remaining" Defendants refers to the remaining, non-Settling Defendant, *i.e.*, Pilgrim's.

processes the smallest portion of the total live Broiler[5] pounds processed by the Defendants, brings aggregate recoveries in this action to $69 million. The Settlement is an excellent result for the Settlement Class and merits preliminary, and ultimately, final approval.

In light of the Settlement, Plaintiffs are now moving to certify the Settlement Class under Fed. R. Civ. P. 23(a) and 23(b)(3) and for the Court to appoint Berger Montague PC and Hausfeld LLP ("Interim Co-Lead Class Counsel") as Settlement Class Counsel under Fed. R. Civ. P. 23(g). For the reasons discussed more fully below, the motion and all requested relief should be granted so the process for final approval of the Settlement can proceed.

II. Background

A. Litigation History

Plaintiffs allege that Defendants and seventeen Co-Conspirators,[6] which include the largest vertically integrated Broiler processors ("Integrators") in the United States, engaged in an overarching conspiracy to suppress compensation paid to Broiler farmers ("Growers") nationwide in violation of Section 1 of the Sherman Act and Section 202 of the Packers and Stockyards Act. *See, e.g.*, Consolidated Class Action Compl. ("CCAC") ¶¶ 166-179, ECF No. 59; *see also* Trans. of Mot. Hearing, Case No. 6:17-cv-00033, Dkt. No. 268 (E.D. Okla.) (Jan. 6, 2020) at 12:12-25. Plaintiffs seek to recover damages for themselves and all other similarly situated Growers nationwide that raised Broilers for Defendants and their alleged Co-Conspirators.

Plaintiffs have vigorously prosecuted their claims while Defendants have aggressively contested them at every stage. See, e.g., Smith Decl. ¶¶ 3-16. Plaintiffs responded to numerous motions to dismiss for failure to state a claim, to compel arbitration, for improper venue, for lack of personal jurisdiction, and to dismiss under the "first to file" doctrine. Id. ¶ 3. In order to prosecute their claims efficiently and effectively, Plaintiffs also fought for transfer to this Court by the Judicial

[5] "Broiler" excludes specialty chicken that is grown, processed, and sold according to halal, kosher, free range, pasture-raised, or organic standards. Specialty chicken does not include chicken raised without antibiotics, such as No Antibiotics Ever ("NAE") or Antibiotic Free ("ABF") standards. "Broiler" as used herein includes NAE and ABF chicken. *See* Settlement § 1(d).

[6] Co-Conspirator" means the alleged co-conspirators referred to in the Complaint, that is: Agri Stats, Inc., Foster Farms, Mountaire Farms, Wayne Farms, George's, Inc., Peco Foods, Inc., House of Raeford Farms, Simmons Foods, Keystone Foods, Inc., Fieldale Farms Corp., O.K. Industries, Case Foods, Marshall Durbin Companies, Amick Farms, Inc., Mar-Jac Poultry, Inc., Harrison Poultry, Inc., Claxton Poultry Farms, and Norman W. Fries, Inc., including each of their past, present, and future, direct and indirect, corporate parents (including holding companies), owners, subsidiaries, related entities, Affiliates, associates, divisions, departments, joint ventures, predecessors, and/or successors. *See* Settlement § 1(e).

Panel on Multidistrict Litigation ("JPML"), eventually succeeding in obtaining centralization in this District of five related actions. Id. ¶ 4. And Plaintiffs also prevented further enjoinment of Plaintiffs' damages claims against Pilgrim's Pride as a result of Pilgrim's purported bankruptcy discharge. Id. ¶ 5.

Since fact discovery opened in April 2020, Plaintiffs have pursued extensive discovery in this litigation, including, but not limited to, the following:

- Serving requests for production of documents on all Defendants and more than 50 subpoenas on non-parties;
- Negotiating the scope of document productions with Defendants and non-parties, which included protracted negotiations over appropriate initial (and supplemental) document custodians and electronic search methodologies, and complicated remote collections and productions in the midst of the Covid-19 pandemic with five Defendants and over fifteen alleged co-conspirators and even more innocent non-party subpoena recipients;
- Propounding several rounds of interrogatories and requests for admissions on Defendants, and negotiating the sufficiency of responses thereto;
- Responding to several rounds of interrogatories and requests for admissions served on Plaintiffs, and negotiating the sufficiency of responses thereto;
- Undertaking strategic review of the more than 1.7 million documents produced by Defendants and non-parties, consisting of more than 10 million pages and structured transaction data for more than 650,000 Broiler flocks;
- Reviewing and challenging where appropriate Defendants' privilege logs;
- Taking 73 depositions under Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6) and defending eight class representative depositions;
- Participating in emergency conferences before Magistrate Judge Romero concerning scheduled depositions and the invocation of the Fifth Amendment by Pilgrim's William Lovette and Timothy Stiller;
- Producing more than 10,000 pages of documents in response to Defendants' requests for production, which required complicated remote collection amid the Covid-19 pandemic; and

Smith Decl. ¶¶ 6-13. To secure this discovery, Plaintiffs undertook extensive negotiations with

Defendants and non-parties to obtain the requisite discovery while avoiding bringing disputes to the Court where possible and engaging in motion practice, where necessary, regarding non-party depositions, privilege logs, and non-party productions. Id. ¶ 3.

Plaintiffs have also marshalled the evidence to assist the analysis of their economic expert, Dr. Singer. Leading up to the submission of his opening report in August 2022, Plaintiffs' counsel worked extensively with Dr. Singer, and then reviewed and analyzed the opposing expert reports of Defendants' three experts. After taking the depositions of Defendants' experts, Plaintiffs continued to work with Dr. Singer on his rebuttal report, submitted in January 2023, and defended his deposition in February 2023.

B. The Settlement Negotiations and Resulting Agreement

Settlement negotiations occurred directly between counsel for Plaintiffs and Sanderson. The negotiations, which began in earnest in October 2022, were extensive, with counsel regularly engaging in telephonic negotiations and exchanging proposals and counterproposals. The resulting Settlement culminated in a long form settlement agreement executed on February 28, 2023. Smith Decl. ¶¶ 17-30.

The Settlement Class is defined as:

> All individuals and entities in the United States and its territories that were compensated for Broiler Grow-Out Services[7] by a Defendant or Co-Conspirator, or by a division, subsidiary, predecessor, or affiliate of a Defendant or Co- Conspirator, at any time during the period January 27, 2013 through December 31, 2019 (the "Class Period").

Settlement § 5 (attached as Exhibit A to the Smith Decl.). This is the same class definition that applied to the Tyson, Perdue, and Koch Settlements.

1. Monetary Consideration Provided Under the Settlement Agreement

Sanderson agreed to pay $17.75 million as part of the Settlement. Settlement Agreement § 1.z. The monetary component of the Settlement is all cash and non-reversionary and brings aggregate recoveries in this action to $69 million. The Sanderson settlement has a larger cash value than the settlements with Perdue and Koch. In addition, the Sanderson settlement represents a higher settlement value by market share than the Tyson settlement; while Sanderson's relevant market share is about half Tyson's, Sanderson has agreed to settlement for nearly 85% of Tyson's settlement amount. Thus, the Sanderson settlement is an excellent result for the Settlement Class.

[7] "Broiler Grow-Out Services" means Broiler chicken growing services.

After deducting reasonable attorneys' fees and litigation expenses (as determined by the Court) as well as claims administration costs, the common fund will be distributed to members of the Settlement Class *pro rata* as discussed below, meaning that none of the money will ever revert to Sanderson. The Settlement Class stands to recover even more as the case continues to proceed against the non-settling Defendant with the cooperation of the Settling Defendants.

2. Non-Monetary Consideration Provided Under the Settlement Agreement

In connection with the Settlement, Sanderson agreed: to assist Plaintiffs in authenticating documents for trial, and to consider reasonable requests from Interim Co-Lead Counsel for additional relevant information about Plaintiffs' claims. Settlement § 10. This cooperation will be valuable to Plaintiffs and the Class as this case continues through class certification, summary judgment, and trial.

Sanderson also agrees, for a period of five years after the Court enters a final judgment as to Sanderson in this action: (a) not to require that any member of the Settlement Class arbitrate any claims against Sanderson or any alleged Co-Conspirator or Defendant, (b) not to argue that any Settlement Class members are required to arbitrate claims against Sanderson or against any alleged Co-Conspirator or Defendant based on principles of estoppel, and (c) not to enforce any provisions in any agreements with one or more Growers purporting to ban collective or class actions against Sanderson. Settlement § 10.e.

3. Release for Sanderson

Plaintiffs and those members of the Settlement Class who do not opt out agree to release Sanderson for all claims relating to or referred to in the action or arising out of the factual predicates of this action. *See* Settlement § 14.

4. Rescission Based on Opt-Outs

Under the Settlement Agreement, Sanderson has the right and option (but not obligation) to rescind the Settlement Agreement under certain conditions based on the number of opt-outs from the Settlement Class, which are set forth in a separate confidential supplement agreement between Sanderson and Plaintiffs (the "Confidential Supplement"). *See* Settlement § 20.[8]

C. The Proposed Distribution to Settlement Class Members

Growers (Settlement Class members) are paid in all or substantial part per pound of live

[8] The Confidential Supplement will be made available to the Court for *in camera* review upon request.

weight of Broilers raised to slaughtering age. Plaintiffs allege and intend to prove at trial that due to the alleged conspiracy in this case, Growers were deprived of vigorous competition for their Broiler-Grow Out Services, causing the pay of all Growers for each pound of Broiler chicken produced to be artificially suppressed. CCAC ¶ 74.

Plaintiffs propose to the use the same plan of allocation for the Sanderson settlement fund as was previously approved for distribution of the Tyson, Perdue, and Koch settlement funds. Namely, Plaintiffs propose to distribute the common fund, net of Court-approved attorneys' fees, litigation expenses, and claims administration costs (the "Net Settlement Fund"), to the Settlement Class *pro rata* based on total payments received by individual Settlement Class members during the settlement Class Period. Such a *pro rata* distribution is fair and reasonable because it will compensate Settlement Class members commensurate with the degree of alleged harm suffered.
For example, Growers that raised more Broilers (and thus likely suffered more in damages than Settlement Class members that grew fewer Broilers) will receive proportionately more from the Settlement. As discussed below, a *pro rata* distribution of this sort is the norm in complex antitrust class action settlements, *see* Section III.F., *infra*, and has been approved by this Court for use in connection with the Tyson and Perdue settlements, *see* ECF No. 285.

Plaintiffs' proposed allocation plan will be efficient and streamlined. Those members of the Settlement Class for which Plaintiffs possess enough pay data—Growers accounting for approximately 99% of production volume covered by the Settlement Class—will receive a pre-populated form that will include each of their total payments over the Class Period. Smith Decl. ¶ 22. Those Growers will have an opportunity to respond to that form by either accepting those calculations or contesting them using their own records. *Id*. Settlement Class members that do not respond will be deemed to have accepted the calculations and be compensated based on those amounts. *Id.* This ensures that the vast majority of the Settlement Class will receive a distribution from the common fund even if they do nothing—*i.e*., without having to participate in a formal claims process, and without having to submit their own documentation, unless they so choose. *Id.* All members of the Settlement Class for which Plaintiffs do not presently possess sufficient pay data—Growers accounting for approximately 1% of production volume covered by the Settlement Class—will have the opportunity to answer a series of simple questions through which a reasonable estimate of their total payments can be calculated using data obtained from Agri Stats,

Inc.[9] Alternatively, they will be able to submit their own documentation of the amounts paid to them during the Class Period. After an estimate of total pay to each Settlement Class member is determined, the Net Settlement Fund will then be distributed *pro rata* to each Settlement Class member in proportion to each member's total pay during the Class Period. This plan of allocation will ensure the common fund is distributed to as many members of the Settlement Class as possible, as efficiently and fairly as possible.

III. The Sanderson Settlement Merits Preliminary Approval

A. Legal Standards for Preliminary Approval of Class Action Settlements

Preliminary approval of the Settlement Agreement is appropriate here because the proposed settlement is "fair, reasonable, and adequate." The proposed Settlement Class should be given notice, and a hearing should be scheduled to consider final approval. *Tennille v. W. Union Co.*, 785 F.3d 422, 430 (10th Cir. 2015).

There are two applicable sets of multi-factor tests for evaluating whether a proposed settlement is fair, reasonable, and adequate: factors set forth in Tenth Circuit precedent, and the factors set forth in Federal Rule of Civil Procedure 23(e), as amended. In determining whether a proposed settlement is fair, reasonable, and adequate, the Tenth Circuit considers: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist which place the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) whether the parties judge the settlement to be fair and reasonable. *Cazeau v. TPUSA, Inc.*, No. 2:18-cv-00321, 2021 WL 1688540, at *3 (D. Utah Apr. 29, 2021) (Shelby, J.) (citing *Tennille*, 785 F.3d at 434).

Rule 23(e), which was amended in 2018 to include its own four-factor test for adequacy of a proposed class action settlement, considers:[10] (1) whether the class representatives and class counsel have adequately represented the class; (2) whether the proposal was negotiated at arm's length; (3) whether the relief provided for the class is adequate, taking into account: (i) the costs,

[9] These questions will include primarily (1) the Co-Conspirator Broiler Grow-Out Services were performed for; (2) the years Broiler Grow-Out Services were performed, (3) the number of farms the Settlement Class member operated, and (4) for any partial years the Settlement Class member provided Broiler Grow-Out Services, the number of flocks raised during that partial year. Smith Decl. ¶ 23 n.17.

[10] These factors are delineated in Rule 23(e)(2) with letters but are reflected here with numbers for the sake of consistency.

risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (4) whether the proposal treats class members equitable relative to each other. Fed. R. Civ. P. 23(e)(2).

The Tenth Circuit has, in at least one opinion, continued to apply its own factors after the 2018 amendments. *Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 F. App'x 752 (10th Cir. 2020) (unpublished). The Settlement satisfies both sets of factors, and Plaintiffs discuss overlapping Tenth Circuit and Rule 23(e) factors together where appropriate.

B. Plaintiffs and Interim Co-Lead Class Counsel Have Represented the Settlement Class Vigorously and Skillfully (1st Rule 23 Factor)

Plaintiffs and Interim Co-Lead Counsel have more than adequately represented the proposed Settlement Class, which satisfies the first Rule 23 factor. To satisfy the adequacy requirement, "counsel must be qualified, experienced, and generally able to conduct the proposed litigation; the class representatives must have sufficient interest in the outcome to ensure vigorous advocacy; and the class representatives must not have antagonistic or conflicting interests with other members of the proposed class." *McNeely v. Nat'l Mobile Health Care, LLC*, No. 07-cv-933, 2008 WL 4816510, at *7 (W.D. Okla. Oct. 27, 2008). There is a "presumption of competence and experience that applies," particularly with "experienced . . . class action litigators." *Id.*

Interim Co-Lead Class Counsel—experienced class action litigators who have collectively recovered billions of dollars for injured plaintiffs over the course of their careers—have zealously and skillfully represented the interests of Plaintiffs and the Settlement Class through more than five years of hotly contested litigation. Interim Co-Lead Class Counsel have obtained an excellent result for the Settlement Class and will continue to do so as this case proceeds against the non-settling Defendants through discovery, class certification, summary judgment, and trial. Plaintiffs and the proposed Settlement Class do not have antagonistic or conflicting claims. Indeed, they are all Growers asserting the same claims against the same Defendants to recover for the same injury inflicted by one alleged overarching anticompetitive scheme. Plaintiffs have "participated in the litigation" and are "genuinely concerned about the" alleged conduct's effects on other "similarly situated" Growers, and there has been "no evidence, let alone any 'real probability' that [Plaintiffs] have antagonistic interests with other members of the Settlement

Class." *McNeely*, 2008 WL 4816510, at *7 (noting further that a purported "conflict must be more than merely speculative or hypothetical").

As such, Rule 23(e)(2)(A) is satisfied.

C. The Settlement is the Product of Informed, Arm's Length Negotiations (1st Tenth Cir. Factor and 2nd Rule 23 Factor)

The Settlement was negotiated by experienced counsel for Plaintiffs and Sanderson, at arm's length and after years of hard-fought litigation. Accordingly, the Settlement satisfies both the first Tenth Circuit factor and the second Rule 23 factor. "The fairness of the negotiating process is to be examined 'in light of the experience of counsel, the vigor with which the case was prosecuted, and [any] coercion or collusion that might have marred the negotiation themselves." *McNeely*, 2008 WL 4816510, at *11; *id.* at *12 (a "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery") (internal quotations omitted).

As described above, the Plaintiffs and Defendants have been engaged in protracted litigation over the course of more than five years, involving the review of over 1.7 million documents (spanning many tens of millions of pages), dozens of deposition transcripts from prior litigation, and extensive motion practice. *See* Section II.A., *supra*. Plaintiffs have taken 73 depositions of Defendant and alleged Co-Conspirator witnesses, defended 8 class representative depositions, and have worked extensively with Plaintiffs' economist expert on class certification and merits analysis. Smith Decl. ¶¶ 11, 14-16. In light of the significant amount of discovery and expert analysis conducted, Plaintiffs and Sanderson possess sufficient information to reach a fair, reasonable, and adequate settlement.

Further, the terms of the Settlement were vigorously negotiated by Plaintiffs' and Sanderson's counsel at arm's length. Smith Decl. ¶ 19. The negotiations between Plaintiffs and Sanderson were hard-fought and conducted in good faith—a fair process with a fair settlement. As such, Rule 23(e)(2)(B) and the first Tenth Circuit factor are satisfied.

D. Serious Questions of Law and Fact Exist That Place the Outcome of the Litigation in Doubt (2nd Tenth Cir. Factor)

It has long been recognized that "[a]ntitrust cases are particularly risky, challenging, and widely acknowledged to be among the most complex actions to prosecute." *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-2420, 2020 WL 7264559, at *15 (N.D. Cal. Dec. 12, 2020) (collecting cases from across the circuits). Plaintiffs remain confident in their claims, but there are

questions of law and fact that pose risks in any antitrust litigation. At a minimum, absent a settlement, Settlement Class members would likely need to wait at least another year before any recovery, with summary judgment briefing not scheduled to conclude until October 2023, and trial and an inevitable lengthy appeals period thereafter. The Settlement assures that there will be further monetary recovery now (on top of the $51.25 million recovered in connection with the Tyson, Perdue, and Koch Settlements). *See also* Section II.B.2., *supra* (describing Sanderson's cooperation).

Courts often recognize the value of earlier recoveries. *E.g.*, *McNeely*, 2008 WL 4816510, at *13 (noting that the class was "better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted"); *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 547 (D. Colo. 1989) ("It has been held prudent to take a bird in the hand instead of a prospective flock in the bush.") (quotation omitted).

But here, the Settlement provides both the certainty of some recovery now—particularly important while so many, including Settlement Class members, recover from the economic consequences of the Covid-19 pandemic—along with the prospects of additional recoveries in the future from the remaining Defendants. The substantial relief it affords "creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation.'" *Childs v. Unified Life Ins. Co.*, No. 10-cv-23, 2011 WL 6016486, at *13 (N.D. Okla. Dec. 2, 2011) (quotation omitted).

Thus, the relief provided by the Settlement satisfies the second Tenth Circuit factor.

E. The Relief Provided to the Settlement Class is Substantial (3rd Tenth Cir. Factor and 3rd Rule 23 Factor)[11]

The proposed Settlement provides substantial relief to the Settlement Class, which satisfies the third factors of both the Tenth Circuit and Rule 23. Additionally, the Settlement—if approved—provides Plaintiffs and the members of the Settlement Class the benefit of Sanderson's cooperation as defined above in continuing to litigate their case. Sanderson's agreement concerning arbitration

[11] Rule 23(e)(2)(C)(i), which asks the Court to consider the adequacy of the relief taking into account "the costs, risks, and delay of trial and appeal" overlaps almost entirely with the second Tenth Circuit factor: whether serious questions of law and fact exist which place the ultimate outcome of the litigation in doubt. *Cazeau*, 2021 WL 1688540, at *3. As such, Rule 23(e)(2)(C)(i) is not discussed separately. Additionally, and as there is only one agreement relevant to Rule 23(e)(2)(C)(iv) identified herein in Section II.B.4., that factor will also not be discussed separately.

and class-waiver non-enforcement provide a separate form of structural relief for the Settlement Class, allowing Growers to not face these impediments to bringing claims. Settlement § 10.e.

For decades, courts around the country have recognized the benefit of cooperation in settlements in antitrust class actions like this one. *In re Corrugated Container Antitrust Litig.*, MDL No. 310, 1981 WL 2093, at *16 (S.D. Tex. June 4, 1981), *aff'd*, 659 F.2d 1322 (5th Cir. 1981) (noting that the cooperation provisions in the settling parties' agreements "constituted a substantial benefit to the class"); *see also In re Domestic Airline Travel Antitrust Litig.*, 378 F. Supp. 3d 10, 29 (D.D.C. 2019) (noting that the cooperation provisions of the settling parties' agreement weigh in favor of court approval); *In re Processed Egg Prod. Antitrust Litig.*, 284 F.R.D. 249, 275 (E.D. Pa. 2012) ("[T]he Court recognizes that [settling Defendant's] agreement to cooperate with Plaintiffs throughout the course of pre-trial proceedings and trial is valuable consideration in light of the risks in proceeding with this suit against the remaining Defendants."). This Circuit is no exception. *In re Urethane Antitrust Litig.*, No. 04-MD-1616, 2006 WL 2983047, at *1 (D. Kan. Oct. 17, 2006) (approving antitrust class action settlement, relying in part on the value of "the significant cooperation provisions of the Settlement Agreement").

1. The Relief is Adequate Considering the Effectiveness of Plaintiffs' Proposed Method of Distributing Relief to the Settlement Class

As discussed in more detail below in Section III.F., Plaintiffs propose to use the same plan of allocation as was approved for the Tyson, Perdue, and Koch settlements, and distribute the Net Settlement Fund *pro rata*, based on total payments received by individual Settlement Class members during the settlement Class Period, which treats all members of the Settlement Class equitably.[12] Such a *pro rata* distribution is fair and reasonable because it will compensate Settlement Class members commensurate with the degree of harm suffered. For example, Growers that raised more Broilers (and thus likely suffered more in damages than Settlement Class members that grew fewer Broilers) will receive proportionately more from the Settlement. In other words, the method of distribution will ensure that Settlement Class members are compensated in proportion to the alleged injuries they suffered. Such *pro rata* distribution is the norm in complex class action antitrust settlements, *see* Section III.F, *infra*, including in this Court, *see* ECF No. 285.

Plaintiffs' proposed allocation plan will be efficient and streamlined. Plaintiffs' proposed method of distribution includes the mailing of claim forms to Settlement Class members, which is

[12] Plaintiffs are filing a separate motion to address their proposed form of notice and manner of distribution of monetary relief to the members of the Settlement Class. *See* Section VI, *infra*.

widely accepted as an effective form of distributing notice in class actions. *See, e.g.*, *Montgomery v. Cont'l Intermodal Grp.-Trucking LLC*, No. 19-cv-940, 2021 WL 1339305, at *7 (D.N.M. Apr. 9, 2021). Furthermore, Plaintiffs propose to send pre-populated claim forms to Settlement Class members for whom they have sufficient structured data, which will essentially mean that those Settlement Class members will not need to take any additional action at all (unless they disagree with the data on their pre-populated form) in order to receive monetary relief under the Settlement. This method of distribution eliminates a barrier to settlement awards for known Settlement Class members who are entitled to an award but who may forget to return the claim form or discard it. This plan of allocation will ensure the common fund is distributed to as many members of the Settlement Class as possible, as efficiently and fairly as possible.

As such, and for the reasons stated more fully in Plaintiffs' motion for approval of their proposed form of notice, Plaintiffs' proposed method of distributing relief to the Settlement Class is highly effective and satisfies Rule 23(e)(2)(C)(ii).

2. The Relief is Adequate Considering the Contemplated Requests for Attorneys' Fees and Expenses, Which Are Within the Range Routinely Awarded in Analogous Antitrust Litigation

Plaintiffs' Counsel will submit an application(s) to the Court for: (i) an award of attorneys' fees of one-third (33%) of the Settlement Amount, and (ii) reimbursement of expenses and costs reasonably and actually incurred in connection with prosecuting the action, not to exceed $2,500,000.[13] Plaintiffs are not seeking another interim incentive award for the named class representatives, but reserve the right to seek incentive awards from future settlements or judgments.

With respect to attorneys' fees, courts in this Circuit routinely award attorneys' fees of one-third of settlement funds in class actions, including in analogous antitrust cases. *See, e.g.*, *Cazeau*, 2021 WL 1688540, at *8 (awarding attorney's fees of one-third of the settlement fund in an FLSA

[13] Consistent with practice in class actions under Rule 23, Plaintiffs will file a separate motion addressing their requested attorneys' fees and litigation expenses in advance of the opt out and objection deadline established by the Court. Prior to notice being given to the Settlement Class, the Court must determine whether it will likely be able to approve the proposal under Rule 23(e)(2)—that is, whether the requested percentage is within the range typically approved by courts. After Settlement Class members have had the opportunity to weigh in on the request, and a final approval hearing is held, the Court will decide whether to approve the requested attorneys' fees and litigation expenses. *See In re Blue Cross Blue Shield Antitrust Litig.*, No. 2:13-cv-20000, 2020 WL 8256366, at *23 (N.D. Ala. Nov. 30, 2020) (preliminarily approving proposed fee percentage "in line with benchmarks" in the Circuit, noting that settlement class members would receive the formal "fee and expense request and will have an opportunity to object to any such award prior to final approval").

class action); *In re Urethane Antitrust Litig.*, No. 04-MD-1616, ECF Nos. 3251, 3276 (D. Kan. July 29, 2016) (awarding fees of one-third of antitrust settlement of $835 million).[14]

Accordingly, Rule 23(e)(2)(C)(iii) is satisfied.

F. The Relief is Adequate Because the Settlement and the Proposed Plan of Allocation Treats Class Members Equitably (4th Rule 23 Factor)

The Settlement treats Settlement Class members equitably, in that every person or entity that provided Broiler Grow-Out Services for a Defendant or Co-Conspirator from January 27, 2013, through December 31, 2019, is subject to the same terms of Settlement, and the proposed plan of allocation will provide for relief in proportion to the harm allegedly suffered.

A plan of allocation will pass muster so long as "it has a 'reasonable, rational basis,' particularly if 'experienced and competent' class counsel support it." MCLAUGHLIN ON CLASS ACTIONS § 6.23 (17th ed. 2020). Courts in this Circuit routinely find that proposed *pro rata* allocations of net common fund settlements are reasonable and appropriate, including in antitrust class actions. *In re Urethane Antitrust Litig.*, No. 04-MD-1616, 2013 WL 3879264, at *3 (D. Kan. July 26, 2013) ("The Court concludes that plaintiffs' proposed plan for the distribution of the damages is reasonable and appropriate."), *aff'd*, 768 F.3d 1245 (10th Cir. 2014); *Nakamura v. Wells Fargo Bank, Nat'l Ass'n*, No. 17-cv-4029, 2020 WL 5118070, at *2 (D. Kan. Aug. 31, 2020) ("The court determines that it is practicable and reasonable to distribute the remaining Net Settlement Fund proceeds, on a pro rata basis, to the 351 Settlement Class Members who cashed their original checks."); *O'Dowd v. Anthem, Inc.*, No. 14-cv-02787, 2019 WL 4279123, at *15 (D. Colo. Sept. 9, 2019) (similar); *Koehler v. Freightquote.com, Inc.*, No. 12-cv-2505, 2016 WL 1403730, at *9 (D. Kan. Apr. 11, 2016) (similar).

As discussed in detail above and below, *see* Sections II.C., *supra*, Plaintiffs propose the same *pro rata* allocation and method of processing claims and distributing funds as were previously approved in relation to the Tyson, Perdue, and Koch settlements. The proposed allocation and

[14] *See also, e.g.*, *In re Universal Serv. Fund Tel. Billing Practices Litig.*, No. 02-MD-1468, 2011 WL 1808038, at *2 (D. Kan. May 12, 2011) ("[A]n award of one-third of the fund falls within the range of awards deemed reasonable by courts.") (citation omitted); *Shaw v. Interthinx, Inc.*, No. 13-cv-01229, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) ("The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class."), *Lewis v. Wal-Mart Stores, Inc*., No. 02-cv-0944, 2006 WL 3505851, at *1, *5 (N.D. Okla. Dec. 4, 2006) (awarding one-third of the settlement fund in case settling after three years of litigation and noting that "[a] contingency fee of one-third is relatively standard in lawsuits that settle before trial").

method of processing claims and distributing funds ensures that as many members of the Settlement Class can participate as possible, as easily as possible. Indeed, approximately 99% of the Settlement Class will receive their fair share of the Settlement without having to take any action at all, unless they so choose. *Id.* As such, the relief provided by the Settlement is adequate considering the effectiveness of the proposed method of distributing relief to the class, which will get funds into as many hands as possible, as easily as possible. And the proposed plan of *pro rata* allocation treats class members equitably relative to one another.

This satisfies Rules 23(e)(2)(C)(ii) and (e)(2)(D).

G. Counsel, in Their Judgment, Recommend the Settlement (4th Tenth Cir. Factor)

The Settlement, which was extensively negotiated, reflects the opinion of counsel to both Plaintiffs and Sanderson that the Settlement is fair and reasonable and satisfies the fourth Tenth Circuit factor. Counsel's opinion that the Settlement is fair and reasonable is entitled to "considerable weight." *McNeely*, 2008 WL 4816510, at *13 (quotation omitted); *see also In re Dep't of Energy Stripper Well Exemption Litig.*, 653 F. Supp. 108, 116 (D. Kan. 1986) ("Although the Court has independently evaluated the proposed settlement, the professional judgment of counsel involved in the litigation—who have made a determination that the settlement represents a fair allotment for their clients—is entitled to significant weight."); *Alvarado Partners*, 723 F. Supp. at 548 ("Courts have consistently refused to substitute their business judgment for that of counsel and the parties."). This is particularly true where, as demonstrated above, Counsel and the Plaintiffs have already zealously represented the interests of the Settlement Class. *See* Section II.B., *supra*.

Plaintiffs' counsel are experienced antitrust litigators who, at the time of the Settlement, were extremely knowledgeable about the factual and legal issues in the case. Over the years, Plaintiffs' counsel have worked, and continue to work, diligently to prosecute the case. *See* Section II.A., *supra*. Sanderson's counsel are also very experienced antitrust litigators, giving them a view into the reasonableness of this Settlement. Counsel for Plaintiffs and Sanderson agree that this Settlement is fair, reasonable, and adequate.

As such, the fourth Tenth Circuit factor is satisfied.

IV. The Settlement Class Satisfies Rule 23(a) and Rule 23(b)(3)

This Court should certify the proposed Settlement Class because it satisfies the four requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—and Rule 23(b)(3)—namely, that "questions of law or fact common to class members predominate

over any questions affecting only individual members," and that class action treatment is the "superior" method to fairly and efficiently adjudicate the controversy." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 621 (1997). Moreover, according to the Supreme Court, the class certification burden is lower for "settlement-only class certification," because the Court "need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620 (citations omitted). The Court's focus is instead "on whether a proposed class has sufficient unity so that absent class members can fairly be bound by" the Settlement. *Id.* at 621.

A. The Numerosity Requirement is Satisfied

The Settlement Class is so numerous that joinder is impracticable. *See* Rule 23(a)(1) (requiring that "the class is so numerous that joinder of all members is impracticable"). "The Tenth Circuit does not prescribe any set formula to satisfy the numerosity element, nor has it said numerosity may be presumed by a specific number of class members." *McNeely*, 2008 WL 4816510, at *5. But numerosity has been satisfied where "the class consists of hundreds, if not thousands, of geographically dispersed businesses." *In re Urethane Antitrust Litig.*, 237 F.R.D. 440, 446 (D. Kan. 2006). In any given year, there are thousands of Growers spread across the United States, performing Broiler Grow-Out Services for Defendants and their alleged Co-Conspirators. Joinder would be more than impracticable—it would be essentially impossible.

Rule 23(a)(1) is satisfied.

B. The Commonality Requirement is Satisfied

There are numerous questions of law and fact common to the Settlement Class members. Under Rule 23(a)(2), however, a *single* common question of either "law *or* fact" suffices. Fed. R. Civ. P. 23(a)(2) (emphasis added). Indeed, courts consistently recognize that the commonality requirement "does not present plaintiffs with a particularly exacting standard." *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775, 2014 WL 7882100, at *30 (E.D.N.Y. Oct. 15, 2014)*; see also, e.g.*, *In re Urethane Antitrust Litig*., 768 F.3d 1245, 1256 (10th Cir. 2014) (affirming trial court's certification of class in price-fixing case where "two common questions [] could yield common answers at trial: the existence of a conspiracy and the existence of impact"); *In re Universal Serv. Fund Tel. Billing Practices Litig*., 219 F.R.D. 661, 666 (D. Kan. 2004) (common issues include: whether defendants "engaged in a combination or conspiracy to raise, fix, stabilize, and maintain . . . surcharges at supracompetitive levels; the effect of the alleged . . .

conspiracy; . . . and whether the alleged combination or conspiracy violated the antitrust laws").

Common questions in this action include the numerous legal and factual questions regarding whether the Defendants and their Co-Conspirators entered into an unlawful combination, contract, or conspiracy, whether that conduct suppressed Grower compensation below competitive levels, and what is the proper measure of damages. CCAC ¶ 163. Each of these legal and factual questions will be the same for all Settlement Class members. Thus, as in other antitrust class actions, these overwhelmingly common questions here satisfy Rule 23(a)(2).

C. The Typicality Requirement is Satisfied

Plaintiffs' claims are typical of those of the members of the Settlement Class. The "typicality" requirement of Rule 23(a)(3) "may be satisfied even though varying fact patterns support the claims or defenses of individual class members or there is a disparity in the damages claimed by the representative parties and the other members of the class." *United Food & Com. Workers Union v. Chesapeake Energy Corp*., 281 F.R.D. 641, 652 (W.D. Okla. 2012) (quotation omitted). Typicality is rarely at issue in antitrust conspiracy cases because the named plaintiffs need to prove a conspiracy, its effectuation, and damages, which is precisely what the absentee class members must also prove. *See Universal Serv. Fund*, 219 F.R.D. at 666.

Typicality is satisfied here because the representative Plaintiffs each allege the same legal theories and fact issues that underlie the rest of the Settlement Class' claims—that Defendants and their Co-Conspirators engaged in a common course of conduct to stabilize and suppress Grower compensation throughout the United States. CCAC ¶¶ 1-11, 66-89, 159. Plaintiffs allege that each member of the Settlement Class suffered the same type of injury—suppressed Grower pay—arising out of the same factual scenario—a conspiracy to suppress grower pay—and seek to recover damages flowing from that conduct. This is more than enough to satisfy Rule 23(a)(3).

D. The Adequacy Requirement is Satisfied

Plaintiffs and Interim Co-Lead Counsel satisfy the test for adequacy of representation under Rule 23(a)(4) because (1) "the named plaintiffs and their counsel" do not "have any conflicts of interest with other class members;" and (2) "the named plaintiffs and their counsel" have "prosecute[d] the action vigorously on behalf of the class." *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187-88 (10th Cir. 2002); *McNeely*, 2008 WL 4816510, at *7.

First, there are no conflicts of interest between Plaintiffs, Interim Co-Lead Counsel, and the Settlement Class. To pose a problem under Rule 23(a)(4), such a conflict must be "more than merely

speculative or hypothetical." *McNeely*, 2008 WL 4816510, at *7. There is no such conflict here, nor has anyone ever suggested any conflict, actual or hypothetical.

Second, Plaintiffs are represented by seasoned counsel who are thoroughly familiar with class action and antitrust litigation. *McNeely*, 2008 WL 4816510, at *7 (applying presumptions of competence and experience of class counsel) (citation omitted); *Zapata v. IBP, Inc*., 167 F.R.D. 147, 161 (D. Kan. 1996) ("In the absence of proof to the contrary, courts presume that class counsel is competent and sufficiently experienced to vigorously prosecute the action on behalf of the class."). As discussed above, Plaintiffs and Interim Co-Lead Class Counsel have vigorously litigated this action for over four years. As such, Rule 23(a)(4) is satisfied.

E. The Predominance Requirement is Satisfied

Questions of law and fact common to Settlement Class members predominate over any questions affecting only individual members, and thus, Rule 23(b)(3) is satisfied.

The predominance inquiry "asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 454 (2016) (quotation omitted). "When one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Id.* (quotation omitted). And predominance requires that "*questions* common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013) (emphasis in original).

As the Tenth Circuit has recognized, "[i]n price-fixing cases, courts have regarded the existence of a conspiracy as the overriding issue even when the market involves diversity in products, marketing, and prices." *In re Urethane Antitrust Litig.*, 768 F.3d at 1255 (collecting cases). This rule persists in the litigation class context, but it is particularly true in the context of settlement classes, where "the proposal is that there be no trial." *Amchem*, 521 U.S. at 620-21.[15] In the settlement context, the Supreme Court has noted that "the predominance requirement of Rule 23(b)(3) is similar to the requirement of Rule 23(a)(3) that 'claims or defenses' of the named

[15] *See also, e.g.*, *In re Processed Egg Prod. Antitrust Litig.*, No. 08-MD-2002, 2016 WL 3584632, at *8 (E.D. Pa. June 30, 2016) (holding that certain litigation class concerns, like common impact, fall away in the context of a settlement class because they are trial management issues).

representatives must be 'typical of the claims or defenses of the class.'" *Id.* at n.18.

For litigation class certification purposes, by contrast, Plaintiffs intend to prove through facts and expert analysis that are common to the proposed Class as a whole, that all or virtually all Class members suffered antitrust injury due to the challenged conduct. The CACC in this case shows in detail how Plaintiffs will prove their claims, including class-wide impact, with proof common to the class as a whole. In particular, Plaintiffs will use common evidence and analysis to show that the Defendants' alleged anticompetitive conduct, including the "no poach" agreement, artificially suppressed Grower compensation generally, and more specifically that the challenged conduct artificially suppressed both base pay and the total (or net) compensation paid to each Grower. Thus, Plaintiffs will show through this predominantly if not exclusively class-wide evidence and analysis that when Defendants' scheme suppressed the base pay for Growers, the net pay for all Class members was suppressed, including Growers in all geographic regions and irrespective of whether a Grower was a high or low performer under the "tournament system."

The underpayment is the injury here. *See*, *e.g.*, *In re High-Tech Emp. Antitrust Litig.*, 856 F. Supp. 2d 1103, 1123 (N.D. Cal. 2012) (plaintiffs suffered antitrust injury when anticompetitive conduct resulted in suppression of compensation); *Doe v. Ariz. Hosp. & Healthcare Ass'n*, No. 07–cv-1292, 2009 WL 1423378, at *5 (D. Ariz. Mar. 19, 2009) (same). Because impact is a legal and factual issue common to the Class, and because it can be shown through proof that it is common to the Class, Plaintiffs will show that Rule 23(b)(3)'s predominance requirement is satisfied for litigation purposes, and thus is certainly satisfied for settlement purposes—where even the theoretical possibility of individualized issues of proof are not present.

The question of whether Defendants participated in the alleged conspiracy—including the numerous questions of law and fact that that entails—is common to all members of the Class and will be answered with evidence that is common to the Class as a whole. CCAC ¶ 163. That alone is sufficient to find Rule 23(b)(3)'s predominance requirement satisfied.

Similarly, the question of whether the challenged conduct artificially suppressed Grower compensation generally, such that all or virtually all Growers would be impacted by that suppression, CCAC ¶¶ 74, 134, 137, 141-43, 144, 150, is also common to all members of the proposed Class and will be answered with evidence that is common to the proposed Class as a whole. Plaintiffs will make this showing through economic, documentary, testimonial, and econometric evidence that is common to the Class as a whole. Thus, both the question of whether the

Defendants conspired and whether Class members were impacted, and the answer to those questions, are common, and they satisfy Rule 23(b)(3)'s predominance requirement.

This Court's inquiry in the context of settlement class certification is even easier. As the Supreme Court has observed, even in a litigation class context, "[p]redominance is a test readily met in certain cases alleging . . . violations of the antitrust laws," *Amchem*, 521 U.S. at 625, because they present issues that are capable of proof by generalized evidence that "are more substantial than the issues subject only to individualized proof," *Roach v. T.L. Cannon Corp.*, 778 F.3d 401, 405 (2d Cir. 2015) (quotation omitted). Plaintiffs' and the Settlement Class members' claims all focus on the same operative set of facts and legal theories. They were all harmed by the same conduct by Defendants and their Co-Conspirators, and the evidence of conspiracy would be entirely common if presented in a litigation posture—which, again, is not at issue here, because the proposal is there would be no trial, and in turn, no evidence. In sum, the predominance requirement for a settlement class is met here as "[a]ll claims arise out of the same course of defendants' conduct; [and] all share a common nucleus of operative fact, supplying the necessary cohesion." *In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 240 (2d Cir. 2012) (quotation omitted).

As the Settlement Class members' claims and damages arise out of the same alleged anticompetitive conduct, the issues relating to settlement satisfy the predominance requirement.

F. The Superiority Requirement is Satisfied

Class treatment is superior to other methods of adjudication here. In considering class certification, the Court must balance the advantages of a class action with other available methods of adjudication, considering (a) class members' interests in individual litigation, (b) the extent of ongoing individual litigation, (c) the desirability of centralizing the claims in one forum, and (d) difficulties in managing a class action trial. Fed. R. Civ. P. 23(b)(3)(A)-(D).

In most antitrust class actions, although the conduct at issue generates widespread harm, individual recoveries are relatively modest, at least compared to the millions of dollars in attorney time and litigation expenses required to recover them. *In re Vitamin C Antitrust Litig.*, 279 F.R.D. 90, 109 (E.D.N.Y. 2012) (recognizing that in antitrust litigation it can be "prohibitively expensive for class members with small claims to proceed individually" as litigation "require[s] significant fees toward expert analysis and testimony"). For this reason, the first superiority factor favors certifying the Settlement Class. And likely because of that same reason, there are no individual Sherman Act actions being prosecuted outside of this MDL, such that the second superiority factor favors

certification too.

As to the third superiority factor, individual suits would be "grossly inefficient, costly, and time consuming because the parties, witnesses, and courts would be forced to endure unnecessarily duplicative litigation" while a "class action is by far the more superior method." *Universal Serv.*, 219 F.R.D. at 679. And as to the fourth superiority factor, in a settlement-only class certification, the Court "need not inquire whether the case, if tried, would present intractable management problems." *Amchem*, 521 U.S. at 620.

Consequently, all four superiority factors favor certification here.

V. Interim Co-Lead Class Counsel Should Be Appointed Settlement Counsel

Under Rule 23(g), a court that certifies a class must appoint class counsel, who is charged with fairly and adequately representing the interests of the class. *See* Fed. R. Civ. P. 23(g)(1). In determining class counsel, the Court must consider (1) the work undertaken by counsel in identifying or investigating the potential claims; (2) counsel's experience in handling class actions, other complex litigation, and similar claims; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. *See* Fed. R. Civ. P. 23(g)(1)(A).

Interim Co-Lead Class Counsel readily meet these requirements and should be appointed as counsel for the Settlement Class. As discussed above, Interim Co-Lead Class Counsel undertook significant effort in identifying and asserting the claims in this action. They have significant experience litigating antitrust class actions, as this Court implicitly recognized when it appointed Interim Co-Lead Class Counsel to represent the proposed Class pursuing claims against all Defendants. *See* MDL Pre-Trial Order No. 2, ECF No. 56 (Feb. 12, 2021). Interim Co-Lead Class Counsel have vigorously prosecuted this case and committed the substantial resources necessary to effectively litigate this case, including significant out of pocket litigation expenses and thousands of hours of attorney time, with no guarantees of remuneration. For these reasons, the Court should appoint Interim Co-Lead Class Counsel as Settlement Class Counsel.

VI. Plaintiffs Will Bring a Separate Motion to Approve the Form and Manner of Dissemination of Notice to the Settlement Class

Plaintiffs move under Rule 23(e) to determine whether the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2) and (ii) certify the class for purposes of judgment on the proposal," such that "giving notice [to the Settlement Class] is justified." Fed. R. Civ. P. 23(e)(1)(B). Plaintiffs are contemporaneously filing a separate motion to approve the form and manner of dissemination of notice to the Settlement Class, which will include deadlines for members of the

Settlement Class to object to, or opt out of, the Settlement, as well as claims administration deadlines, and a proposed final approval hearing date for the Court's consideration.

VII. Conclusion

Plaintiffs respectfully submit that their Motion for Preliminary Approval of Settlement with Sanderson should be granted, the Settlement Class certified under Rules 23(a) and 23(b)(3), and Interim Co-Lead Class Counsel appointed Settlement Class counsel under Rule 23(g).

Dated: March 3, 2023

Respectfully submitted,

/s/ Gary I. Smith, Jr.

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* admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2023 I electronically transmitted a true and correct copy of the foregoing document to the Clerk of Court for filing using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Gary I. Smith, Jr.

Gary I. Smith, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE: BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO. II)	MDL No. 6:20-2977-RJS-CMR Hon. Chief Judge Robert J. Shelby Hon. Cecilia M. Romero

DECLARATION OF GARY I. SMITH, JR. IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH SANDERSON AND FOR CERTIFICATION OF THE SETTLEMENT CLASS

I, Gary I. Smith, Jr., declare and state as follows:

1. I am a Partner of the law firm Hausfeld LLP, one of the two Court-appointed Interim Co-Lead Counsel ("Class Counsel") for Plaintiffs in the above-captioned action. I am a member in good standing of the State Bars of California, Pennsylvania, and Arizona, and have been admitted *pro hac vice* in this Court. I am over 18 years of age and have personal knowledge of the facts stated in this Declaration. If called as a witness, I could and would testify competently to them.

2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Settlement with Sanderson and for Certification of the Settlement Class, which is being filed concurrently herewith. Attached as Exhibit A is a true and correct copy of the Settlement Agreement (the "Settlement") between Plaintiffs Haff Poultry, Inc., Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles B. Weaver, Melissa Weaver, Marc McEntire, Karen McEntire, Mitchell Mason, and Anna Mason[1] (collectively, "Plaintiffs") and Defendant "Sanderson," meaning collectively, Sanderson Farms, Inc., Sanderson Farms, Inc. (Food Division), Sanderson Farms, Inc. (Processing Division), Sanderson Farms, Inc. (Production Division), and any and all past, present, and future parents, owners, subsidiaries, divisions, and/or departments, including but not limited to Sanderson Farms, LLC, Sanderson Farms, LLC (Food Division), Sanderson Farms, LLC (Processing Division), Sanderson Farms, LLC (Production Division), and Wayne Farms, LLC. (together with Plaintiffs, the "Parties").

Plaintiffs' Litigation Efforts to Date

3. Plaintiffs have briefed numerous pre-trial motions in four district courts and one federal bankruptcy court,[2] including, *inter alia*, a motion to stay discovery,[3] a motion to compel

[1] Anna Mason is an individual plaintiff in a case that is part of this multi-district litigation and is not a proposed class representative.

[2] *In re: Broiler Chicken Grower Antitrust Litigation (No. II)*, No. 6:20-md-2977-RJS-CMR (Dec. 17, 2020) ("*Growers II*"); *Mason v. Tyson Foods, Inc*., 5:20-cv-07049-BLF (N.D. Cal. Oct. 8, 2020) ("*Mason*"); *Colvin v. Tyson Foods, Inc.*, 2:20-cvb-2464 (D. Kan. Sept. 18, 2020) ("*Colvin*"); *McEntire v. Tyson Foods, Inc.*, No. 1:20-cv-2764-PAB-NYW (D. Colo. Sept. 11, 2020) ("*McEntire*"); *In re: Sanderson & Sanderson Broiler Chicken Grower Litig*., No. 7:18-cv-00031-D (E.D.N.C. Feb. 21, 2018) ("*Sanderson*"); *In re: Pilgrim's Pride Corp.*, No. 08-45664 (Bankr. N.D. Tex. Oct. 12, 2017) ("*Pilgrims*"); *In re: Broiler Chicken Grower Litigation*, No. 17-cv-0033-RJS (E.D. Okla. Jan. 27, 2017) ("*Growers*").

[3] Pls' Opp. To [144] Defs' Mot. to Stay Discovery, *Growers*, ECF 151 (Aug 7, 2017).

arbitration or to stay,[4] motions to dismiss for failure to state a claim,[5] motions to dismiss for improper venue,[6] motions to dismiss for lack of personal jurisdiction,[7] a motion to enforce a bankruptcy discharge,[8] seriatim motions to dismiss under the "first to file" doctrine,[9] three motions to compel the production of documents (one involving certain defendants, and two involving third parties) resulting in the production of hundreds of thousands of additional documents (comprising millions of additional pages),[10] a motion to compel production of purportedly privileged documents resulting in the supplemental production of thousands of previously withheld documents,[11] opposed motions to quash certain third party subpoenas,[12] and opposed a motion for

[4] Pls' Mem. of Law in Opp. to [192] Perdue's Mot. to Compel Arbitration & Dismiss or, in the Alternative, to Stay, *Growers*, ECF 201 (Oct. 23, 2017); Decl. of Gary I. Smith, Jr. in Opp. to [191], [192], [193], [194], Defs' Mots. to Dismiss, *Growers*, ECF 203 (Oct. 23, 2017).
[5] Pls' Resp. in Opp. to [193] J. Mot. to Dismiss Under Fed. R. Civ. P. 12(b), (3), & (6), *Growers*, ECF 200 (Oct. 23, 2017); Decl. of Gary I. Smith, Jr. in Opp. to [191], [192], [193], [194], Defs' Mots. to Dismiss, *Growers*, ECF 203 (Oct. 23, 2017); Plaintiffs' Resp. in Opp. to [193], [234] Defs' Corrected Suppl. Br. in Supp. of their Mot. to Dismiss, *Growers*, ECF 239 (E.D. Okla. June 1, 2018); Pls' Mem. of Law in Opp. to [52] Defs' J. Mot. to Dismiss Under Federal Rule of Civil Procedure 12(b)(6), Sanderson, ECF 55 (Aug. 13, 2018).
[6] Pls' Omnibus Mem. of Law in Opp. to Sanderson's Mots. to Dismiss [191 & 194] for Lack of Personal Jurisdiction & Improper Venue & Sanderson's Mot. to Dismiss for Lace of Personal Jurisdiction and Improper Venue, *Growers*, ECF 202 (Oct. 23, 2017); Decl. of Gary Smith in Opp. to Mots. to Dismiss [191 & 194], *Growers*, ECF 203 (Oct. 23, 2017); Pls' Mem. of Law in Opp. to [193] Defs' J. Mot. to Dismiss Under Fed. R. Civ. P. 12(b), (3), & (6), *Growers*, ECF 200 (Oct. 23, 2017); Plaintiffs' Resp. in Opp. to [193], [234] Defs' Corrected Suppl. Br. in Supp. of their Mot. to Dismiss, *Growers*, ECF 239 (E.D. Okla. June 1, 2018).
[7] *Id.*
[8] Opp. to Reorganized Debtor's Mot. To Enforce Confirmation Order Against Growers [7222], *Pilgrim's*, ECF 7227 (Sept. 22, 2017).
[9] Pls' Mem. of Law in Opp. to Sanderson's Mot. to Dismiss Under the First-to-File Rule, *Sanderson*, ECF 70 (June 17, 2020); Pls' Resp. in Opp. to Defs' Mot. to Dismiss Pursuant to the First-to-File Rule, *McEntire*, ECF 46 (Nov. 18, 2020).
[10] Pls' Mot. for an Order Compelling Non-Party House of Raeford Farms, Inc.'s Compliance with Subpoenas, *Growers II*, ECF 60 (Mar. 1, 2021); Pls' Mot. To Compel Non-Party Agri Stats, Inc.'s Compliance with Subpoena, *Growers II*, ECF 233 (Dec. 21, 2021); Pls' Mot. To Compel Non-Settling Defendants to Produce Expert Reports and Materials Relied Upon From the Downstream Litig., *Growers II*, ECF 237 (Dec. 23, 2021).
[11] Pls' Mot. for an Order Compelling Def. Pilgrim's Pride to Produce Certain Documents for Failure to Show that the Documents are Privileged & Mem. in Support, *Growers II*, ECF 97 (July 2, 2021).
[12] Omnibus Opp. To Non-Parties Penn's and Lovette's Motions to Stay Their Depositions, *Growers II*, ECF 107 (Sept. 24, 2021).

a protective order by Pilgrims concerning communications with a former employee.[13]

4. Plaintiffs made two petitions to the Judicial Panel on Multidistrict Litigation, through which they presented briefing and argument in favor of centralization and consolidation in this Court.

5. Plaintiffs have also appeared to present argument on motions before this Court,[14] on Pilgrim's motion to enforce its bankruptcy discharge in the bankruptcy court,[15] as well as making regular appearances at status conferences to keep the Court abreast of the litigation's status and any percolating disputes or recent developments.[16]

Plaintiffs' Discovery Efforts

6. Plaintiffs engaged in robust discovery efforts over several years. Plaintiffs served requests for production of documents with all Defendants and more than 50 subpoenas on non-parties. Protracted negotiations over appropriate initial (and supplemental) document custodians and electronic search methodologies, and complicated remote collections and productions in the midst of the Covid-19 pandemic, followed with the Defendants, fifteen alleged co-conspirators, and even more innocent non-party subpoena recipients.

7. Plaintiffs produced more than 10,000 pages of documents in response to Defendants' requests for production, which required complicated remote collection amid the Covid-19 pandemic.

8. Plaintiffs also propounded several rounds of interrogatories and requests for

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[13] Pls' Opp. To Defendant Pilgrim's Pride's Motion for a Protective Order, *Growers II*, ECF 226 (Dec. 8, 2021).

[14] *See, e.g.*, Mins. of Proceedings, Hearing, Mot. to Dismiss [191] for Lack of Jurisdiction (Personal) and Sanderson's Mot. to Dismiss [194] for Lack of Jurisdiction and Improper Venue, *Sanderson* (Jan. 19, 2018), ECF 216; Mot. Hearing, Defs' J. Mot. to Dismiss Under Federal Rules of Civil Procedure 12(b)(2), (3), and (6), [193], and Def. Perdue's Mot. to Compel Arbitration & Dismiss or, in the Alternative, to Stay [192], *Growers* (Apr. 20, 2018), ECF 228; Mot. Hearing, Defs' J. Mot. to Dismiss Under Federal Rules of Civil Procedure 12(b)(2), (3), and (6), [193], and Def. Perdue's Mot. to Compel Arbitration & Dismiss or, in the Alternative, to Stay [192], *Growers* (Jan. 6, 2020), ECF 266.

[15] Hearing, Reorganized Debtor's Mot. To Enforce Confirmation Order, *Pilgrim's* (Oct. 12, 2017).

[16] Mins. of Proceedings, Status Conferences, *Growers II,* Feb. 12, 2021 (ECF 55), May 21, 2021 (ECF 99), Aug. 13, 2021 (ECF 128), Aug. 23, 2021 (ECF 140) (before M.J. Romero), Nov. 5, 2021 (ECF 215), Feb. 3, 2022 (ECF 277), and May 6, 2022 (ECF 347); *Growers* Nov. 20, 2019 (ECF 263), Jan. 6, 2020 (ECF 266), Apr. 6, 2020 (ECF 306), July 17, 2020 (ECF 322) and Oct. 16, 2020 (ECF 328).

admissions on Defendants, and negotiated the sufficiency of the responses received. In addition, Plaintiffs responded to several rounds of interrogatories and requests for admissions served on Plaintiffs, and negotiating the scope of those responses.

9. Plaintiffs engaged in a strategic review of the more than 1.7 million documents produced by Defendants and non-parties, consisting of more than 10 million pages and structured transaction data for more than 650,000 Broiler flocks.

10. Plaintiffs reviewed and challenged the adequacy of certain of Defendants' privilege logs.

11. Plaintiffs took 73 depositions under Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6) and defending eight class representative depositions.

12. Plaintiffs' counsel participated in emergency conferences before Magistrate Judge Romero concerning scheduled depositions and the invocation of the Fifth Amendment by Pilgrim's William Lovette and Timothy Stiller.

13. And Plaintiffs' counsel have reviewed dozens of deposition transcripts from prior and ongoing litigation involving broiler growers and broiler production and sales.

Plaintiffs' Work with Expert Economist

14. Plaintiffs' counsel spent a significant amount of time working closely with Plaintiffs' expert economist Dr. Hal Singer to submit Plaintiffs' opening expert reports on class certification and merits issues.

15. Plaintiffs' counsel then worked with Dr. Singer in analyzing Defendants' three expert reports submitted in opposition, and took the depositions of all three of Defendants' experts.

16. Plaintiffs' counsel then worked extensively with Dr. Singer as he prepared his rebuttal report, and will defend Mr. Singer's deposition in February 2023.

The Settlement

17. Negotiation of the instant Settlement with Sanderson occurred directly between Class Counsel and counsel for Sanderson.

18. I was the primary point of contact with counsel for Sanderson on Plaintiffs' behalf during settlement negotiations.

19. The Settlement was negotiated at arm's length and the negotiations were rigorous and extensive and took place in earnest over the course of three months.

20. Ultimately, Plaintiffs and Sanderson were able to reach the Settlement, which culminated in a long form settlement agreement executed on February 28, 2023. *See* Exhibit A.

21. Class Counsel believe that this Settlement is fair, reasonable, and adequate.

Plaintiffs' Proposed Plan of Allocation

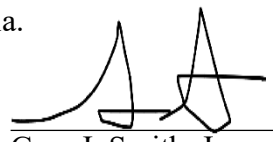
22. All members of the Settlement Class for whom Plaintiffs possess sufficient structured data will receive a pre-populated form that includes their total payments over the Class Period. Those members of the Settlement Class will have an opportunity to respond to that form by either accepting those calculations or contesting them with their own records. If Settlement Class members do not respond, the amounts on the pre-populated form will be deemed accepted. This ensures that Growers representing approximately 99% of Broiler production covered by the Settlement Class will receive a distribution from the common fund even if they do nothing—without having to participate in a formal claims process, and without having to submit their own documentation, unless they so choose.

23. All members of the Settlement Class for whom Plaintiffs do not presently possess sufficient structured data or for whom Plaintiffs have to date been unable to make a determination about the sufficiency of their data—Growers representing approximately 1% of Broiler production covered by the Settlement Class—will have the opportunity to either submit their own documentation to establish their *pro rata* share or to answer a series of simple questions, through which a reasonable estimate of their total Grower payments can be calculated using available data obtained from Agri Stats, Inc.[17] Currently, these include chiefly Growers for Claxton Poultry Farms: accounting for Growers representing approximately 1.1% of production volume. Claxton did not preserve structured data for the class period and such data will not be available to generate pre-populated claim forms.

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

Executed on DATE, in San Diego, California.

Dated: March 3, 2023



Gary I. Smith, Jr.

[17] These questions will include primarily (1) the alleged Co-Conspirator Broiler Grow-Out Services were performed for; (2) the years Broiler Grow-Out Services were performed, (3) the number of farms the Settlement Class member operated, and (4) for any partial years the Settlement Class member provided Broiler Grow-Out Services, the number of flocks raised during that partial year.

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

IN RE BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO. II)	MDL No. 6:20-2977-RJS-CMR Hon. Chief Judge Robert J. Shelby Hon. Cecilia M. Romero

LONG-FORM CLASS ACTION SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND SANDERSON

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is made and entered into as of February 28, 2023 ("Execution Date"), by and between the Plaintiffs ("Plaintiffs"),[1] through Interim Co-Lead Class Counsel for the proposed Settlement Class (defined below), and Sanderson Farms, Inc., Sanderson Farms, Inc. (Food Division), Sanderson Farms, Inc. (Processing Division), and Sanderson Farms, Inc. (Production Division), and all of its predecessors, successors, assigns, affiliates (including, without limitation, any affiliates named as alleged co-conspirators), and any and all past, present, and future parents, owners, subsidiaries, divisions, and/or departments (collectively referred to as "Sanderson"[2]), in the above-captioned action, including any actions currently or subsequently centralized into this action for coordinated pre-trial proceedings (the "Action").[3] Plaintiffs, on behalf of the proposed

[1] As used herein, "Plaintiffs" means Haff Poultry, Inc.; Nancy Butler; Johnny Upchurch; Jonathan Walters; Myles B. Weaver;; Marc McEntire; Karen McEntire; Mitchell Mason; and Anna Mason.

[2] This includes, but is not limited to, Sanderson Farms, LLC, Sanderson Farms, LLC (Food Division), Sanderson Farms, LLC (Processing Division), Sanderson Farms, LLC (Production Division), and Wayne Farms, LLC.

[3] Actions centralized currently include *McEntire, et al. v. Tyson Foods, Inc., et al.*, C.A. No. 1:20-02764 (D. Colo.); *Colvin v. Tyson Foods, Inc., et al.*, C.A. No. 2:20-02464 (D. Kan.); *Mason, et al., v. Tyson Foods, Inc., et al.*, C.A. No. 5:20-cv-7049 (N.D. Cal.); *In re: Sanderson*

Settlement Class, together with Sanderson are referred to herein collectively as the "Parties" or individually as a "Party."

WHEREAS, Plaintiffs on behalf of themselves and as representatives of a proposed class of similarly situated persons or entities allege in the Action, among other things, that Sanderson participated in a conspiracy to artificially suppress, fix, maintain, and/or stabilize compensation paid to Plaintiffs and a proposed class of Growers (defined below);

WHEREAS, Sanderson denies all allegations of wrongdoing in the Action;

WHEREAS, Interim Co-Lead Class Counsel have been appointed by the Court to represent, on an interim basis, the proposed class of Growers;

WHEREAS, the Parties wish to resolve all claims (including any Sherman Act, Clayton Act, Packers and Stockyards Act, and/or federal, state, or common law unfair competition or anticompetitive conduct claims) arising from or in connection with any act or omission through the date of Preliminary Approval relating to the Action and/or arising from the factual predicates of the Action;

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

WHEREAS, Plaintiffs have concluded, after investigation of the facts and after considering the circumstances and the applicable law, that it is in the best interests of Plaintiffs to enter into this Settlement Agreement with Sanderson to avoid the uncertainties of further complex litigation, and to obtain the benefits described herein for the proposed Settlement Class,

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and Sanderson Broiler Chicken Grower Litig., C.A. No. 7:18-00031 (E.D.N.C.); and *Haff Poultry, Inc., et al. v. Tyson Foods, Inc., et al.*, C.A. No. 6:17-00033 (E.D. Okla.).

and, further, that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the proposed Settlement Class;

WHEREAS, Plaintiffs and Interim Co-Lead Class Counsel believe that the Settlement Fund and cooperation to be provided by Sanderson as part of this Settlement Agreement reflect fair, reasonable, and adequate compensation for the proposed Settlement Class to release, settle, and discharge their claims that they were harmed by the alleged anticompetitive conduct of which Sanderson is accused in this Action;

WHEREAS, Sanderson, notwithstanding defenses to any claims that could be asserted by Plaintiffs against it, enters into this Settlement Agreement to avoid the costs, expenses, and uncertainties of this complex litigation, and thereby put a rest to this controversy; and

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

NOW THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, the terms of the Confidential Supplement, and other good and valuable consideration, it is agreed by and among the Parties that the claims of the Plaintiffs be settled, compromised, and dismissed on the merits with prejudice as to Sanderson only, subject to Court approval, and that Sanderson 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. "Action" means the above-captioned proceeding, including any actions currently or subsequently centralized into this action for coordinated pre-trial proceedings.

b. "Affiliate" means with respect to any person, entity, or company, a person, entity, or company that, directly or indirectly, controls, is controlled by, or is under common control with such person, entity, or company.

c. "Broiler Grow-Out Services" means Broiler chicken growing services.

d. "Broilers" means young chickens bred for meat. "Broilers" as used herein excludes specialty chicken that is grown, processed, and sold according to halal, kosher, free range, pasture-raised, or organic standards. Specialty chicken does not include chicken raised without antibiotics, such as No Antibiotics Ever ("NAE") or Antibiotic Free ("ABF") standards. "Broilers" as used herein includes NAE and ABF chicken.

e. "Co-Conspirator" means the alleged co-conspirators referred to in the Complaint, that is: Agri Stats, Inc., Foster Farms, Mountaire Farms, Wayne Farms, George's, Inc., Peco Foods, Inc., House of Raeford Farms, Simmons Foods, Keystone Foods, Inc., Fieldale Farms Corp., O.K. Industries, Case Foods, Marshall Durbin Companies, Amick Farms, Inc., Mar-Jac Poultry, Inc., Harrison Poultry, Inc., Claxton Poultry Farms, and Norman W. Fries, Inc., including each of their past, present, and future, direct and indirect, corporate parents (including holding companies), owners, subsidiaries, related entities, Affiliates, divisions, and/or departments, joint ventures, predecessors, and/or successors.

f. "Complaint" means the Consolidated Class Action Complaint filed on February 19, 2021 (ECF No. 59).

g. "Confidential Supplement" means the confidential agreement containing certain confidential terms providing for rescission of the Settlement Agreement should certain contingencies occur.

h. "Court" means the United States District Court for the Eastern District of Oklahoma, or any other court in which the Action is proceeding.

i. "Defendants" means those defendants named in the Complaint, including each of their past, present, and future, direct and indirect, corporate parents (including holding companies), owners, subsidiaries, related entities, Affiliates, divisions, and/or departments, joint ventures, predecessors, and/or successors.

j. "Escrow Account" means the interest-bearing escrow account established with the escrow agent to receive and maintain funds contributed by Sanderson for the benefit of the Settlement Class.

k. "Escrow Agreement" means that certain agreement between the escrow agent that holds the Settlement Fund and Plaintiffs (by and through Interim Co-Lead Counsel) pursuant to which the Escrow Account is established and funded for the benefit of the Settlement Class, as set forth in Paragraphs 8 and 9 below.

l. "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.

m. "Final Approval" means an order and judgment by the Court that finally approves this Settlement Agreement, including all of its material terms and conditions without modification, pursuant to Federal Rule of Civil Procedure 23 and dismisses Sanderson with prejudice from the Action.

n. "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 Final Approval has been made within the time for filing or noticing any appeal under the Federal Rules of Appellate Procedure; or (2) if any timely appeal(s) 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 Approval is finally affirmed on appeal and affirmance is no longer subject to further appeal or review.

o. "Growers" means Broiler chicken growers.

p. "Interim Co-Lead Class Counsel" or "Interim Co-Lead Counsel" mean Hausfeld LLP and Berger Montague PC as appointed by the Court on an interim basis to represent the proposed class of Growers.

q. "Sanderson Released Party" or "Sanderson Released Parties" means Sanderson (as defined above) together with any and all of Sanderson's past, current, and future, direct and indirect, corporate parents (including holding companies), owners, subsidiaries, related entities, Affiliates, associates, departments, divisions, joint ventures, predecessors, successors, and each of their respective past, current, and future, direct or indirect, officers, directors,

trustees, partners, managing directors, shareholders, managers, members, employees, attorneys, equity holders, agents, beneficiaries, executors, insurers, advisors, assigns, heirs, legal or other representatives. Notwithstanding the above, and for avoidance of doubt, "Sanderson Released Parties" shall not include any Defendant or alleged Co-Conspirator in the Action other than Sanderson as defined above and per fn. 2.

r. "Preliminary Approval" means an order by the Court to preliminarily approve this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23.

s. "Released Claims" shall have the meaning set forth in Paragraph 14 of this Settlement Agreement.

t. "Releasing Party" or "Releasing Parties" shall refer individually and collectively to the following persons and entities, whether or not any of them participate in the Settlement Agreement: Plaintiffs, the Settlement Class, and all members of the Settlement Class (including the Plaintiffs), each on behalf of themselves and their respective predecessors, successors, and all of their respective past, present, and future, direct and indirect, (i) parents (including holding companies), 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, representatives; the assigns of all such persons or entities referred to above, as well as any person or entity acting on behalf of or through any of them in any

capacity whatsoever, jointly and severally; and also means, to the full extent of the power of the signatories hereto to release past, present, and future claims, persons or entities acting in a private attorney general, qui tam, taxpayer, or any other capacity.

u. "Settlement Administrator" means the firm retained to disseminate the Settlement Class Notice and to administer the payment of settlement funds to the Settlement Class, subject to approval of the Court.

v. "Settlement Class" means the class defined in Paragraph 5 below excluding all persons who file a valid and timely request for exclusion from the Settlement Agreement.

w. "Settlement Class Counsel" means the attorneys appointed by the Court to represent the Settlement Class.

x. "Settlement Class Notice" means notice sent to members of the Settlement Class pursuant to Preliminary Approval, or otherwise approved by the Court pursuant to Federal Rule of Civil Procedure 23.

y. "Settlement Class Period" means January 27, 2013 through December 31, 2019.

z. "Settlement Fund" means $17,750,000 (seventeen million seven hundred fifty thousand U.S. dollars), the amount Sanderson shall pay or cause to be paid into an Escrow Account maintained by an escrow agent on behalf of the Settlement Class, pursuant to Paragraphs 8 and 9 below, as well as any interest accruing within such Escrow Account.

2. The Parties' Efforts to Effectuate this Settlement Agreement. The Parties shall cooperate in good faith and use their best efforts to effectuate this Settlement Agreement, including using their best efforts in seeking the Court's Preliminary Approval and Final Approval of the Settlement Agreement.

3. Litigation Standstill. Plaintiffs shall cease all litigation activities against Sanderson in the Action except to the extent expressly authorized in this Settlement Agreement. Sanderson shall cease all litigation activities against Plaintiffs in the Action, except in connection with the terms of Paragraph 10 below. For the avoidance of doubt, this litigation standstill provision shall not prohibit Sanderson from defending itself against litigation by Opt-Out Growers, as defined in the Confidential Supplement hereto.

4. Motion for Preliminary Approval, including for Settlement Class Notice. No later than seven (7) days after the Execution Date, Plaintiffs shall move the Court for Preliminary Approval of this Settlement Agreement, including to approve Settlement Class Notice. A reasonable time in advance of submission to the Court, the papers in support of the motion shall be provided by Interim Co-Lead Counsel to Sanderson for its review. To the extent that Sanderson objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Counsel, and the Parties shall meet and confer to resolve any such objection in good faith. The Parties shall take all reasonable actions as may be necessary to obtain Preliminary Approval and certification of the Settlement Class for purposes of effectuating this Settlement Agreement.

5. Certification of a Settlement Class. As part of the motion for Preliminary Approval of this Settlement Agreement, Plaintiffs shall seek, and Sanderson shall take no

position with respect to,[4] appointment of Interim Co-Lead Counsel as Settlement Class Counsel for purposes of this Settlement Agreement and certification in the Action of the following Settlement Class for settlement purposes only, which shall include Plaintiffs:

> All individuals and entities in the United States and its territories that were compensated for Broiler Grow-Out Services by a Defendant or Co-Conspirator, or by a division, subsidiary, predecessor, or Affiliate of a Defendant or Co-Conspirator, at any time during the period of January 27, 2013 through December 31, 2019.[5]

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

a. Individual Settlement Class Notice of this Settlement Agreement shall be mailed, emailed, or otherwise communicated by the Settlement Administrator, at the direction of Interim Co-Lead Class Counsel, to as many potential members of the Settlement Class as is practicable, in conformance with a notice plan to be approved by the Court.

b. All fees, costs, or expenses related to providing Settlement Class Notice, obtaining Preliminary Approval and Final Approval, and administering the settlement, shall be paid solely from the Settlement Fund, subject to any

[4] By agreeing not to object to the proposed Settlement Class and appointment of Interim Co-Lead Counsel as Settlement Class Counsel, Sanderson shall not waive any rights, arguments, or defenses, and Sanderson 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. In no way shall Sanderson have waived any right, defense, argument, or position with respect to any other class (including any litigation class in the event the Settlement Agreement is not approved) in this Action or any other, and Plaintiffs shall not use this Settlement Agreement or any part of the Settlement Agreement in any way to support an argument that Sanderson has waived any defense, argument, or position with respect to any other class in this Action or any other.

[5] Capitalized terms are defined herein.

necessary Court approval. Sanderson shall have no responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing Settlement Class Notice; obtaining Preliminary Approval or Final Approval; or administering the settlement; other than for Sanderson's own attorneys' fees.

c. Sanderson shall not object to Interim Co-Lead Class Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to $250,000 to pay the costs for Settlement Class Notice.

d. Interim Co-Lead Class Counsel shall use their best efforts to send out Settlement Class Notice within 30 days of Preliminary Approval (unless otherwise agreed between the Parties) to the extent consistent with the Court's directions and contingent upon the availability of sufficient name and address information from Defendants and alleged Co-Conspirators. If the Settlement Agreement is rescinded, cancelled, or terminated, or Final Judgment is not obtained, then whatever portion of the Settlement Fund that remains after payment of Settlement Class Notice costs (including payment of taxes) incurred up through the date of such election shall be returned to Sanderson.

7. Motion for Final Approval and Entry of Final Judgment. If the Court grants Preliminary Approval, preliminarily certifies the Settlement Class, and approves the form and manner of Settlement Class Notice, then Plaintiffs, through Interim Co-Lead Class Counsel shall, in accordance with the schedule set forth in the Court's Preliminary Approval, 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 Interim Co-Lead Counsel to Sanderson for its review. To the extent that Sanderson objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Class Counsel and the Parties shall meet and confer to resolve any such objection in good faith. 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 Rules 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 Class Notice constituted the best notice practicable under the circumstances of this Settlement Agreement;

c. Dismissing the Action with prejudice as to Sanderson in all complaints asserted by Plaintiffs without further costs or fees;

d. Discharging and releasing Sanderson Released Parties from all Released Claims;

e. Enjoining the Releasing Parties from asserting, directly or indirectly, any of the Released Claims against any of the Sanderson Released Parties in any forum;

f. Confirming that Sanderson 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 Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Sanderson shall be final and appealable and entered forthwith.

The Parties shall use all best efforts 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 Interim Co-Lead Counsel for the Plaintiffs and Settlement 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 with prejudice of the Action, and the other material terms and conditions herein, within thirty (30) calendar days of either the Court's grant of Preliminary Approval or Interim Co-Lead Counsel having provided wire instructions to Sanderson, whichever occurs later, Sanderson shall pay or cause to be paid the Settlement Fund of $17,750,000 (seventeen million seven hundred fifty thousand U.S. dollars) into the Escrow Account. Sanderson shall have no reversionary interest whatsoever in the Settlement Fund should the Settlement Agreement be finally approved by the Court and all appeals from such approval have expired.

10. Cooperation. Cooperation by Sanderson is a material term of the Settlement Agreement and shall include the following categories of cooperation:

a. Cooperation Available After Preliminary Approval of Sanderson Settlement: Plaintiffs shall be entitled to begin receiving all remaining cooperation following Preliminary Approval of the Sanderson Settlement. Plaintiffs and Sanderson shall agree on reasonable timeframes for Sanderson to provide the remaining cooperation, cognizant of Plaintiffs' need to obtain cooperation at

an early enough juncture to be useful in deposition practice, expert discovery, class certification proceedings, summary judgment, and trial. Cooperation shall include the following categories: (a) Sanderson will use reasonable efforts to assist Plaintiffs in authenticating documents and/or things produced in the Action for purposes of summary judgment and/or trial where the facts indicate that the documents and/or things at issue are authentic, whether by declarations or affidavits, or, if declarations or affidavits are not reasonably sufficient, depositions, hearings, and/or at trial(s) as may be necessary for the Action;; and (b) Sanderson will consider reasonable requests for additional relevant information about Plaintiffs' claims in the Action from Interim Co-Lead Counsel, taking into account the information it has or will produce in discovery, and whether providing the requested information will be burdensome.

b. Admissibility and Privilege: Any statements made by Sanderson's counsel in connection with cooperation, including the cooperation envisioned by Paragraph 10(a), shall be deemed to be "conduct or statements made during compromise negotiations about the claims" and shall be inadmissible in evidence as provided under Federal Rule of Evidence 408 and state-law equivalents. In the event, for whatever reason, this Settlement Agreement is rescinded, canceled, or terminated or the Settlement Agreement is not approved by the Court, such inadmissibility shall survive. Further, no cooperation shall require Sanderson to provide information protected by the attorney-client privilege, attorney work-product doctrine, or similar

privileges, and Sanderson shall not waive any protections, immunities, or privileges.

c. Confidentiality: All non-public data, documents, information, testimony, and/or communications provided to Interim Co-Lead Counsel as part of cooperation, if so designated by Sanderson, shall be treated as "Confidential" or "Highly Confidential" under the protective order in the Action.

d. Arbitration Non-Enforcement: For a period of five (5) years after the Court enters Final Judgment in this Action, Sanderson agrees not to (a) require that any member of the Settlement Class ("Class Member") arbitrate any claims against Sanderson or against any alleged co-conspirator or co-defendant, (b) argue that any Class Member or Class Members are required to arbitrate claims against Sanderson or against any alleged co-conspirator or codefendant based on principles of estoppel, and (c) enforce any provisions in any agreements with one or more Class Member purporting to ban collective or class actions against Sanderson.

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, Interim Co-Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 11, 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 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. § 1.468B-1. Interim 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. Sanderson and the other Sanderson Released Parties 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 Settlement Class. Members of the Settlement Class shall be entitled to look solely to the Settlement Fund for settlement and satisfaction of the Settlement Agreement or in connection with any of the Released Claims against the Sanderson Released Parties, and shall not be entitled to any other payment or relief from the Sanderson Released Parties. 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. Plaintiffs, members of the Settlement Class, and their counsel shall 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 Settlement Class. Sanderson and the other Sanderson Released Parties shall not be liable for any costs, fees, or expenses of any of Plaintiffs' counsel, including Interim Co-Lead Class Counsel and Settlement Class Counsel,

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 Plaintiffs. Consistent with any schedule approved by the Court, Interim Co-Lead Class Counsel may apply to the Court for a fee award, plus expenses, and costs incurred, and incentive payments to the Plaintiffs to be paid from the proceeds of the Settlement Fund. The Sanderson Released Parties shall have no responsibility, financial obligation, or liability for any such fees, costs, expenses, or incentive payments beyond the Settlement Fund.

14. Release. Upon final approval of the Settlement Agreement and the passing of the time to appeal such final approval, and consistent with the terms of the Settlement Agreement, Plaintiffs shall grant to the Sanderson Released Parties a release of all claims covered by the Settlement Agreement. The release shall be nationwide in scope and release all claims (including but not limited to any Sherman Act, Clayton Act, Packers and Stockyards Act, and/or federal, state, or common law unfair competition or anticompetitive conduct claims) any member of the Settlement Class ever had, now has, or hereinafter, can, shall, or may ever have, on account of, or any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected and unsuspected, actual or contingent, liquidated or unliquidated claims, causes of action, injuries, losses (including, without limitation, all costs, expenses, and attorney's fees), 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, including but not limited to Defendants' and Co-Conspirators' alleged overarching scheme, combination, understanding, and/or conspiracy to fix, maintain, stabilize, and/or suppress the compensation paid to Broiler Growers for their provision of Broiler Grow-Out

Services (the "Released Claims"). Notwithstanding the above, "Released Claims" do not include (i) claims asserted against any Defendant or alleged Co-Conspirator other than the Sanderson Released Parties, nor (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, a securities claim, or breach of warranty. This reservation of claims set forth in (i) and (ii) of this paragraph does not impair or diminish the right of the Sanderson 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. During the period after the expiration of the deadline for submitting an opt-out notice, as determined by the Court, and prior to Final Judgment, all Releasing Parties who have not submitted a valid request to be excluded from the Settlement Class shall be preliminarily enjoined and barred from asserting any and all Released Claims against Sanderson Released Parties. The release of the Released Claims shall become effective as to all Releasing Parties upon Final Judgment. Upon Final Judgment, the Releasing Parties further agree that they shall not assert any claim, directly or indirectly, against Sanderson Released Parties arising out of or relating to the Released Claims.

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 entry of Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

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

AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law 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 which he, she, or it knows or believes to be true with respect to the claims which 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 entry of Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties have agreed to release pursuant to 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. Covenant Not to Sue. Plaintiffs and each Releasing Party covenant not to sue, directly or indirectly, in any forum any of the Sanderson Released Parties for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of 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.

17. Full Release. The Parties expressly agree that they intend for Paragraphs 14-16 to be interpreted as broadly as possible and to the fullest extent permitted by law.

18. No Admission of Wrongdoing or Liability. Neither this Settlement Agreement (regardless of whether it receives Preliminary Approval or Final Approval), nor the Final Judgment or any order for Preliminary Approval, nor any and all negotiations, documents, or discussions associated with them, nor any proceedings undertaken in accordance with the terms set forth herein, shall be deemed or construed as (i) an admission as to the merits of the allegations made in the Action, (ii) a presumption, admission or concession of fault, liability, wrongdoing, or violation of any statute or law, or (iii) used as evidence of fault, liability, wrongdoing, or violation of any statute or law, for any purpose in any legal proceeding in any forum, claim, regulatory or administrative investigation or proceeding, or government investigation or proceeding.

19. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein when executed and approved by the Court.

20. Sanderson's Right to Rescind. Sanderson shall have the right to rescind and withdraw from the Settlement Agreement under the terms of the Confidential Supplement.

21. Effect of Disapproval or Rescission. If the Court does not certify the Settlement Class as defined in this Settlement Agreement, or 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 order approving this Settlement Agreement is materially modified or set aside on appeal, or if Sanderson exercises its rescission rights pursuant to Paragraph 20, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 1.n of this Settlement Agreement, then this Settlement Agreement may be rescinded, canceled, or

terminated by Sanderson or Plaintiffs on behalf of the Settlement Class. If rescinded, canceled, 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.b, the Settlement Fund, including any interest accrued thereto, and any attorneys' fees, costs, and incentive payments that may have been disbursed pursuant to Court approval, shall be returned to Sanderson and the Parties' position shall be returned to the status quo ante. In no way shall Plaintiffs have the right to rescind, cancel, or terminate this Settlement Agreement if the Court fails or refuses to grant any requested attorneys' fees, costs, expenses, or awards to Plaintiffs.

22. Choice of Law. All terms of this Settlement Agreement and the Confidential Supplement, including any related disputes, shall be governed by and interpreted according to the substantive laws of the State of New York without regard to its choice-of-law or conflicts-of-law principles.

23. Consent to Jurisdiction. The Parties and any 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 Confidential Supplement, or the applicability of this Settlement Agreement or the Confidential Supplement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of Paragraphs 14-16, including but not limited to, any suit, action, or proceeding in which the provisions of Paragraphs 14-16 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 14-16 are asserted by any Sanderson 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 Sanderson Released Party shall be entitled to a stay of that suit, action, or proceeding until 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 or the Confidential Supplement.

24. Class Action Fairness Act. Within ten (10) days of filing of this Settlement Agreement in Court with the motion for Preliminary Approval referenced in Paragraph 4, Sanderson, at its sole expense, shall (i) serve upon appropriate Federal and State officials all materials required pursuant to CAFA and (ii) confirm to Plaintiffs' Interim Co-Lead Counsel that such notices have been served.

25. Costs Relating to Administration. The Sanderson 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. Each and every covenant and agreement in this Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, members of the Settlement Class, the Releasing Parties, and the Sanderson Released Parties. 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 Plaintiffs 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.

27. Sole Remedy. This Settlement Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any Sanderson 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 Sanderson 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. Admissibility. It is agreed that this Settlement Agreement shall be admissible in any proceeding for establishing the terms of the Parties' agreement or for any other purpose with respect to implementing or enforcing this Settlement Agreement.

30. Notices. All notices or communications by any Party intended for any other Party related to this Settlement Agreement shall be in writing. Each such notice or communication shall be given either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; (c) Federal Express or similar overnight courier; or (d) electronic mail, and, in the case of either (a), (b), (c) or (d) shall be addressed as follows:

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

Eric L. Cramer
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
ecramer@bm.net

Melinda R. Coolidge
HAUSFELD LLP
888 16th Street, NW, Suite 300
Washington, DC 20006
mcoolidge@hausfeld.com

Gary I. Smith, Jr.
Hausfeld LLP
600 Montgomery St, Ste 3200
San Francisco, CA 94111
gsmith@hausfeld.com

If directed to Sanderson, to:

Christopher E. Ondeck
PROSKAUER ROSE LLP
1001 Pennsylvania Avenue, NW, Suite 600 South
Washington, DC 20004-2533
condeck@proskauer.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 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 Sanderson Released Party.

32. No Unstated Third-Party Beneficiaries. No provision of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Sanderson Released Party, Plaintiff, member of the Settlement Class, Interim Co-Lead Counsel, or Settlement 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 thereof.

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 Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

35. Breach. This Settlement Agreement does not waive or otherwise limit the Parties' rights and remedies for any breach of this Settlement Agreement. Any breach of this Settlement 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.

36. 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 .pdf signatures shall be considered as valid signatures as of the date hereof and may thereafter be appended to this Settlement Agreement and filed with the Court.

37. Integrated and Final 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. As set forth in Paragraph 34, the Parties agree that this Settlement Agreement may be modified only by a written instrument

signed by the Parties. The Parties further agree that no Party shall 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.

38. Voluntary Settlement. The Parties agree that this Settlement Agreement was negotiated at arm's length and 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.

39. Confidentiality. The Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation. However, following execution of this agreement, Sanderson and Plaintiffs can each inform other parties to this Action that they have reached a settlement agreement, the amount of the Settlement Fund, and the cooperation and other relief provided for in Paragraph 10 of this agreement.

[SIGNATURE PAGES FOLLOW]

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

PLAINTIFFS' SIGNATURE PAGE

Dated: 2/28/2023

By: _____

Eric L. Cramer
Patrick F. Madden
David A. Langer
Ellen T. Noteware
Michaela L. Wallin
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Co-Lead Counsel For The Proposed Settlement Class

Dated: February 28, 2023

By: _____

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Co-Lead Counsel For The Proposed Settlement Class

SANDERSON SIGNATURE PAGE

Dated: 23 February 2023

By: DocuSigned by: 6D3200608607487...

Jeremy V. Kilburn
Chief Legal & Compliance Officer
WAYNE SANDERSON FARMS
Corporate Headquarters
4110 Continental Drive | Oakwood, GA 30566
jeremy.kilburn@waynefarms.com

Dated: 22 February 2023

By: DocuSigned by: C299428E90A14C6...

Christopher E. Ondeck
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Washington, DC 2004-2533
condeck@proskauer.com

Attorneys for Defendants Sanderson Farms, Inc., Sanderson Farms, Inc. (Food Division), Sanderson Farms, Inc. (Processing Division), and Sanderson Farms, Inc. (Production Division)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE: BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO. II)	MDL No. 6:20-2977-RJS-CMR Hon. Chief Judge Robert J. Shelby Hon. Cecilia M. Romero

DECLARATION OF GARY I. SMITH, JR. IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH SANDERSON AND FOR CERTIFICATION OF THE SETTLEMENT CLASS

I, Gary I. Smith, Jr., declare and state as follows:

1. I am a Partner of the law firm Hausfeld LLP, one of the two Court-appointed Interim Co-Lead Counsel ("Class Counsel") for Plaintiffs in the above-captioned action. I am a member in good standing of the State Bars of California, Pennsylvania, and Arizona, and have been admitted *pro hac vice* in this Court. I am over 18 years of age and have personal knowledge of the facts stated in this Declaration. If called as a witness, I could and would testify competently to them.

2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of Settlement with Sanderson and for Certification of the Settlement Class, which is being filed concurrently herewith. Attached as Exhibit A is a true and correct copy of the Settlement Agreement (the "Settlement") between Plaintiffs Haff Poultry, Inc., Nancy Butler, Johnny Upchurch, Jonathan Walters, Myles B. Weaver, Melissa Weaver, Marc McEntire, Karen McEntire, Mitchell Mason, and Anna Mason[1] (collectively, "Plaintiffs") and Defendant "Sanderson," meaning collectively, Sanderson Farms, Inc., Sanderson Farms, Inc. (Food Division), Sanderson Farms, Inc. (Processing Division), Sanderson Farms, Inc. (Production Division), and any and all past, present, and future parents, owners, subsidiaries, divisions, and/or departments, including but not limited to Sanderson Farms, LLC, Sanderson Farms, LLC (Food Division), Sanderson Farms, LLC (Processing Division), Sanderson Farms, LLC (Production Division), and Wayne Farms, LLC. (together with Plaintiffs, the "Parties").

Plaintiffs' Litigation Efforts to Date

3. Plaintiffs have briefed numerous pre-trial motions in four district courts and one federal bankruptcy court,[2] including, *inter alia*, a motion to stay discovery,[3] a motion to compel

[1] Anna Mason is an individual plaintiff in a case that is part of this multi-district litigation and is not a proposed class representative.

[2] *In re: Broiler Chicken Grower Antitrust Litigation (No. II)*, No. 6:20-md-2977-RJS-CMR (Dec. 17, 2020) ("*Growers II*"); *Mason v. Tyson Foods, Inc*., 5:20-cv-07049-BLF (N.D. Cal. Oct. 8, 2020) ("*Mason*"); *Colvin v. Tyson Foods, Inc.*, 2:20-cvb-2464 (D. Kan. Sept. 18, 2020) ("*Colvin*"); *McEntire v. Tyson Foods, Inc.*, No. 1:20-cv-2764-PAB-NYW (D. Colo. Sept. 11, 2020) ("*McEntire*"); *In re: Sanderson & Sanderson Broiler Chicken Grower Litig*., No. 7:18-cv-00031-D (E.D.N.C. Feb. 21, 2018) ("*Sanderson*"); *In re: Pilgrim's Pride Corp.*, No. 08-45664 (Bankr. N.D. Tex. Oct. 12, 2017) ("*Pilgrims*"); *In re: Broiler Chicken Grower Litigation*, No. 17-cv-0033-RJS (E.D. Okla. Jan. 27, 2017) ("*Growers*").

[3] Pls' Opp. To [144] Defs' Mot. to Stay Discovery, *Growers*, ECF 151 (Aug 7, 2017).

arbitration or to stay,[4] motions to dismiss for failure to state a claim,[5] motions to dismiss for improper venue,[6] motions to dismiss for lack of personal jurisdiction,[7] a motion to enforce a bankruptcy discharge,[8] seriatim motions to dismiss under the "first to file" doctrine,[9] three motions to compel the production of documents (one involving certain defendants, and two involving third parties) resulting in the production of hundreds of thousands of additional documents (comprising millions of additional pages),[10] a motion to compel production of purportedly privileged documents resulting in the supplemental production of thousands of previously withheld documents,[11] opposed motions to quash certain third party subpoenas,[12] and opposed a motion for

[4] Pls' Mem. of Law in Opp. to [192] Perdue's Mot. to Compel Arbitration & Dismiss or, in the Alternative, to Stay, *Growers*, ECF 201 (Oct. 23, 2017); Decl. of Gary I. Smith, Jr. in Opp. to [191], [192], [193], [194], Defs' Mots. to Dismiss, *Growers*, ECF 203 (Oct. 23, 2017).
[5] Pls' Resp. in Opp. to [193] J. Mot. to Dismiss Under Fed. R. Civ. P. 12(b), (3), & (6), *Growers*, ECF 200 (Oct. 23, 2017); Decl. of Gary I. Smith, Jr. in Opp. to [191], [192], [193], [194], Defs' Mots. to Dismiss, *Growers*, ECF 203 (Oct. 23, 2017); Plaintiffs' Resp. in Opp. to [193], [234] Defs' Corrected Suppl. Br. in Supp. of their Mot. to Dismiss, *Growers*, ECF 239 (E.D. Okla. June 1, 2018); Pls' Mem. of Law in Opp. to [52] Defs' J. Mot. to Dismiss Under Federal Rule of Civil Procedure 12(b)(6), Sanderson, ECF 55 (Aug. 13, 2018).
[6] Pls' Omnibus Mem. of Law in Opp. to Sanderson's Mots. to Dismiss [191 & 194] for Lack of Personal Jurisdiction & Improper Venue & Sanderson's Mot. to Dismiss for Lace of Personal Jurisdiction and Improper Venue, *Growers*, ECF 202 (Oct. 23, 2017); Decl. of Gary Smith in Opp. to Mots. to Dismiss [191 & 194], *Growers*, ECF 203 (Oct. 23, 2017); Pls' Mem. of Law in Opp. to [193] Defs' J. Mot. to Dismiss Under Fed. R. Civ. P. 12(b), (3), & (6), *Growers*, ECF 200 (Oct. 23, 2017); Plaintiffs' Resp. in Opp. to [193], [234] Defs' Corrected Suppl. Br. in Supp. of their Mot. to Dismiss, *Growers*, ECF 239 (E.D. Okla. June 1, 2018).
[7] *Id.*
[8] Opp. to Reorganized Debtor's Mot. To Enforce Confirmation Order Against Growers [7222], *Pilgrim's*, ECF 7227 (Sept. 22, 2017).
[9] Pls' Mem. of Law in Opp. to Sanderson's Mot. to Dismiss Under the First-to-File Rule, *Sanderson*, ECF 70 (June 17, 2020); Pls' Resp. in Opp. to Defs' Mot. to Dismiss Pursuant to the First-to-File Rule, *McEntire*, ECF 46 (Nov. 18, 2020).
[10] Pls' Mot. for an Order Compelling Non-Party House of Raeford Farms, Inc.'s Compliance with Subpoenas, *Growers II*, ECF 60 (Mar. 1, 2021); Pls' Mot. To Compel Non-Party Agri Stats, Inc.'s Compliance with Subpoena, *Growers II*, ECF 233 (Dec. 21, 2021); Pls' Mot. To Compel Non-Settling Defendants to Produce Expert Reports and Materials Relied Upon From the Downstream Litig., *Growers II*, ECF 237 (Dec. 23, 2021).
[11] Pls' Mot. for an Order Compelling Def. Pilgrim's Pride to Produce Certain Documents for Failure to Show that the Documents are Privileged & Mem. in Support, *Growers II*, ECF 97 (July 2, 2021).
[12] Omnibus Opp. To Non-Parties Penn's and Lovette's Motions to Stay Their Depositions, *Growers II*, ECF 107 (Sept. 24, 2021).

a protective order by Pilgrims concerning communications with a former employee.[13]

4. Plaintiffs made two petitions to the Judicial Panel on Multidistrict Litigation, through which they presented briefing and argument in favor of centralization and consolidation in this Court.

5. Plaintiffs have also appeared to present argument on motions before this Court,[14] on Pilgrim's motion to enforce its bankruptcy discharge in the bankruptcy court,[15] as well as making regular appearances at status conferences to keep the Court abreast of the litigation's status and any percolating disputes or recent developments.[16]

Plaintiffs' Discovery Efforts

6. Plaintiffs engaged in robust discovery efforts over several years. Plaintiffs served requests for production of documents with all Defendants and more than 50 subpoenas on non-parties. Protracted negotiations over appropriate initial (and supplemental) document custodians and electronic search methodologies, and complicated remote collections and productions in the midst of the Covid-19 pandemic, followed with the Defendants, fifteen alleged co-conspirators, and even more innocent non-party subpoena recipients.

7. Plaintiffs produced more than 10,000 pages of documents in response to Defendants' requests for production, which required complicated remote collection amid the Covid-19 pandemic.

8. Plaintiffs also propounded several rounds of interrogatories and requests for

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[13] Pls' Opp. To Defendant Pilgrim's Pride's Motion for a Protective Order, *Growers II*, ECF 226 (Dec. 8, 2021).

[14] *See, e.g.*, Mins. of Proceedings, Hearing, Mot. to Dismiss [191] for Lack of Jurisdiction (Personal) and Sanderson's Mot. to Dismiss [194] for Lack of Jurisdiction and Improper Venue, *Sanderson* (Jan. 19, 2018), ECF 216; Mot. Hearing, Defs' J. Mot. to Dismiss Under Federal Rules of Civil Procedure 12(b)(2), (3), and (6), [193], and Def. Perdue's Mot. to Compel Arbitration & Dismiss or, in the Alternative, to Stay [192], *Growers* (Apr. 20, 2018), ECF 228; Mot. Hearing, Defs' J. Mot. to Dismiss Under Federal Rules of Civil Procedure 12(b)(2), (3), and (6), [193], and Def. Perdue's Mot. to Compel Arbitration & Dismiss or, in the Alternative, to Stay [192], *Growers* (Jan. 6, 2020), ECF 266.

[15] Hearing, Reorganized Debtor's Mot. To Enforce Confirmation Order, *Pilgrim's* (Oct. 12, 2017).

[16] Mins. of Proceedings, Status Conferences, *Growers II,* Feb. 12, 2021 (ECF 55), May 21, 2021 (ECF 99), Aug. 13, 2021 (ECF 128), Aug. 23, 2021 (ECF 140) (before M.J. Romero), Nov. 5, 2021 (ECF 215), Feb. 3, 2022 (ECF 277), and May 6, 2022 (ECF 347); *Growers* Nov. 20, 2019 (ECF 263), Jan. 6, 2020 (ECF 266), Apr. 6, 2020 (ECF 306), July 17, 2020 (ECF 322) and Oct. 16, 2020 (ECF 328).

admissions on Defendants, and negotiated the sufficiency of the responses received. In addition, Plaintiffs responded to several rounds of interrogatories and requests for admissions served on Plaintiffs, and negotiating the scope of those responses.

9. Plaintiffs engaged in a strategic review of the more than 1.7 million documents produced by Defendants and non-parties, consisting of more than 10 million pages and structured transaction data for more than 650,000 Broiler flocks.

10. Plaintiffs reviewed and challenged the adequacy of certain of Defendants' privilege logs.

11. Plaintiffs took 73 depositions under Federal Rules of Civil Procedure 30(b)(1) and 30(b)(6) and defending eight class representative depositions.

12. Plaintiffs' counsel participated in emergency conferences before Magistrate Judge Romero concerning scheduled depositions and the invocation of the Fifth Amendment by Pilgrim's William Lovette and Timothy Stiller.

13. And Plaintiffs' counsel have reviewed dozens of deposition transcripts from prior and ongoing litigation involving broiler growers and broiler production and sales.

Plaintiffs' Work with Expert Economist

14. Plaintiffs' counsel spent a significant amount of time working closely with Plaintiffs' expert economist Dr. Hal Singer to submit Plaintiffs' opening expert reports on class certification and merits issues.

15. Plaintiffs' counsel then worked with Dr. Singer in analyzing Defendants' three expert reports submitted in opposition, and took the depositions of all three of Defendants' experts.

16. Plaintiffs' counsel then worked extensively with Dr. Singer as he prepared his rebuttal report, and will defend Mr. Singer's deposition in February 2023.

The Settlement

17. Negotiation of the instant Settlement with Sanderson occurred directly between Class Counsel and counsel for Sanderson.

18. I was the primary point of contact with counsel for Sanderson on Plaintiffs' behalf during settlement negotiations.

19. The Settlement was negotiated at arm's length and the negotiations were rigorous and extensive and took place in earnest over the course of three months.

20. Ultimately, Plaintiffs and Sanderson were able to reach the Settlement, which culminated in a long form settlement agreement executed on February 28, 2023. *See* Exhibit A.

21. Class Counsel believe that this Settlement is fair, reasonable, and adequate.

Plaintiffs' Proposed Plan of Allocation

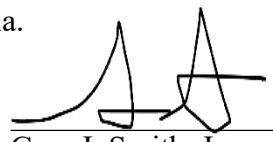
22. All members of the Settlement Class for whom Plaintiffs possess sufficient structured data will receive a pre-populated form that includes their total payments over the Class Period. Those members of the Settlement Class will have an opportunity to respond to that form by either accepting those calculations or contesting them with their own records. If Settlement Class members do not respond, the amounts on the pre-populated form will be deemed accepted. This ensures that Growers representing approximately 99% of Broiler production covered by the Settlement Class will receive a distribution from the common fund even if they do nothing—without having to participate in a formal claims process, and without having to submit their own documentation, unless they so choose.

23. All members of the Settlement Class for whom Plaintiffs do not presently possess sufficient structured data or for whom Plaintiffs have to date been unable to make a determination about the sufficiency of their data—Growers representing approximately 1% of Broiler production covered by the Settlement Class—will have the opportunity to either submit their own documentation to establish their *pro rata* share or to answer a series of simple questions, through which a reasonable estimate of their total Grower payments can be calculated using available data obtained from Agri Stats, Inc.[17] Currently, these include chiefly Growers for Claxton Poultry Farms: accounting for Growers representing approximately 1.1% of production volume. Claxton did not preserve structured data for the class period and such data will not be available to generate pre-populated claim forms.

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

Executed on DATE, in San Diego, California.

Dated: March 3, 2023



Gary I. Smith, Jr.

[17] These questions will include primarily (1) the alleged Co-Conspirator Broiler Grow-Out Services were performed for; (2) the years Broiler Grow-Out Services were performed, (3) the number of farms the Settlement Class member operated, and (4) for any partial years the Settlement Class member provided Broiler Grow-Out Services, the number of flocks raised during that partial year.

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

IN RE BROILER CHICKEN GROWER ANTITRUST LITIGATION (NO. II)	MDL No. 6:20-2977-RJS-CMR Hon. Chief Judge Robert J. Shelby Hon. Cecilia M. Romero

LONG-FORM CLASS ACTION SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND SANDERSON

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") is made and entered into as of February 28, 2023 ("Execution Date"), by and between the Plaintiffs ("Plaintiffs"),[1] through Interim Co-Lead Class Counsel for the proposed Settlement Class (defined below), and Sanderson Farms, Inc., Sanderson Farms, Inc. (Food Division), Sanderson Farms, Inc. (Processing Division), and Sanderson Farms, Inc. (Production Division), and all of its predecessors, successors, assigns, affiliates (including, without limitation, any affiliates named as alleged co-conspirators), and any and all past, present, and future parents, owners, subsidiaries, divisions, and/or departments (collectively referred to as "Sanderson"[2]), in the above-captioned action, including any actions currently or subsequently centralized into this action for coordinated pre-trial proceedings (the "Action").[3] Plaintiffs, on behalf of the proposed

[1] As used herein, "Plaintiffs" means Haff Poultry, Inc.; Nancy Butler; Johnny Upchurch; Jonathan Walters; Myles B. Weaver;; Marc McEntire; Karen McEntire; Mitchell Mason; and Anna Mason.

[2] This includes, but is not limited to, Sanderson Farms, LLC, Sanderson Farms, LLC (Food Division), Sanderson Farms, LLC (Processing Division), Sanderson Farms, LLC (Production Division), and Wayne Farms, LLC.

[3] Actions centralized currently include *McEntire, et al. v. Tyson Foods, Inc., et al.*, C.A. No. 1:20-02764 (D. Colo.); *Colvin v. Tyson Foods, Inc., et al.*, C.A. No. 2:20-02464 (D. Kan.); *Mason, et al., v. Tyson Foods, Inc., et al.*, C.A. No. 5:20-cv-7049 (N.D. Cal.); *In re: Sanderson*

Settlement Class, together with Sanderson are referred to herein collectively as the "Parties" or individually as a "Party."

WHEREAS, Plaintiffs on behalf of themselves and as representatives of a proposed class of similarly situated persons or entities allege in the Action, among other things, that Sanderson participated in a conspiracy to artificially suppress, fix, maintain, and/or stabilize compensation paid to Plaintiffs and a proposed class of Growers (defined below);

WHEREAS, Sanderson denies all allegations of wrongdoing in the Action;

WHEREAS, Interim Co-Lead Class Counsel have been appointed by the Court to represent, on an interim basis, the proposed class of Growers;

WHEREAS, the Parties wish to resolve all claims (including any Sherman Act, Clayton Act, Packers and Stockyards Act, and/or federal, state, or common law unfair competition or anticompetitive conduct claims) arising from or in connection with any act or omission through the date of Preliminary Approval relating to the Action and/or arising from the factual predicates of the Action;

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

WHEREAS, Plaintiffs have concluded, after investigation of the facts and after considering the circumstances and the applicable law, that it is in the best interests of Plaintiffs to enter into this Settlement Agreement with Sanderson to avoid the uncertainties of further complex litigation, and to obtain the benefits described herein for the proposed Settlement Class,

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and Sanderson Broiler Chicken Grower Litig., C.A. No. 7:18-00031 (E.D.N.C.); and *Haff Poultry, Inc., et al. v. Tyson Foods, Inc., et al.*, C.A. No. 6:17-00033 (E.D. Okla.).

and, further, that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the proposed Settlement Class;

WHEREAS, Plaintiffs and Interim Co-Lead Class Counsel believe that the Settlement Fund and cooperation to be provided by Sanderson as part of this Settlement Agreement reflect fair, reasonable, and adequate compensation for the proposed Settlement Class to release, settle, and discharge their claims that they were harmed by the alleged anticompetitive conduct of which Sanderson is accused in this Action;

WHEREAS, Sanderson, notwithstanding defenses to any claims that could be asserted by Plaintiffs against it, enters into this Settlement Agreement to avoid the costs, expenses, and uncertainties of this complex litigation, and thereby put a rest to this controversy; and

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

NOW THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, the terms of the Confidential Supplement, and other good and valuable consideration, it is agreed by and among the Parties that the claims of the Plaintiffs be settled, compromised, and dismissed on the merits with prejudice as to Sanderson only, subject to Court approval, and that Sanderson 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. "Action" means the above-captioned proceeding, including any actions currently or subsequently centralized into this action for coordinated pre-trial proceedings.

b. "Affiliate" means with respect to any person, entity, or company, a person, entity, or company that, directly or indirectly, controls, is controlled by, or is under common control with such person, entity, or company.

c. "Broiler Grow-Out Services" means Broiler chicken growing services.

d. "Broilers" means young chickens bred for meat. "Broilers" as used herein excludes specialty chicken that is grown, processed, and sold according to halal, kosher, free range, pasture-raised, or organic standards. Specialty chicken does not include chicken raised without antibiotics, such as No Antibiotics Ever ("NAE") or Antibiotic Free ("ABF") standards. "Broilers" as used herein includes NAE and ABF chicken.

e. "Co-Conspirator" means the alleged co-conspirators referred to in the Complaint, that is: Agri Stats, Inc., Foster Farms, Mountaire Farms, Wayne Farms, George's, Inc., Peco Foods, Inc., House of Raeford Farms, Simmons Foods, Keystone Foods, Inc., Fieldale Farms Corp., O.K. Industries, Case Foods, Marshall Durbin Companies, Amick Farms, Inc., Mar-Jac Poultry, Inc., Harrison Poultry, Inc., Claxton Poultry Farms, and Norman W. Fries, Inc., including each of their past, present, and future, direct and indirect, corporate parents (including holding companies), owners, subsidiaries, related entities, Affiliates, divisions, and/or departments, joint ventures, predecessors, and/or successors.

f. "Complaint" means the Consolidated Class Action Complaint filed on February 19, 2021 (ECF No. 59).

g. "Confidential Supplement" means the confidential agreement containing certain confidential terms providing for rescission of the Settlement Agreement should certain contingencies occur.

h. "Court" means the United States District Court for the Eastern District of Oklahoma, or any other court in which the Action is proceeding.

i. "Defendants" means those defendants named in the Complaint, including each of their past, present, and future, direct and indirect, corporate parents (including holding companies), owners, subsidiaries, related entities, Affiliates, divisions, and/or departments, joint ventures, predecessors, and/or successors.

j. "Escrow Account" means the interest-bearing escrow account established with the escrow agent to receive and maintain funds contributed by Sanderson for the benefit of the Settlement Class.

k. "Escrow Agreement" means that certain agreement between the escrow agent that holds the Settlement Fund and Plaintiffs (by and through Interim Co-Lead Counsel) pursuant to which the Escrow Account is established and funded for the benefit of the Settlement Class, as set forth in Paragraphs 8 and 9 below.

l. "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.

m. "Final Approval" means an order and judgment by the Court that finally approves this Settlement Agreement, including all of its material terms and conditions without modification, pursuant to Federal Rule of Civil Procedure 23 and dismisses Sanderson with prejudice from the Action.

n. "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 Final Approval has been made within the time for filing or noticing any appeal under the Federal Rules of Appellate Procedure; or (2) if any timely appeal(s) 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 Approval is finally affirmed on appeal and affirmance is no longer subject to further appeal or review.

o. "Growers" means Broiler chicken growers.

p. "Interim Co-Lead Class Counsel" or "Interim Co-Lead Counsel" mean Hausfeld LLP and Berger Montague PC as appointed by the Court on an interim basis to represent the proposed class of Growers.

q. "Sanderson Released Party" or "Sanderson Released Parties" means Sanderson (as defined above) together with any and all of Sanderson's past, current, and future, direct and indirect, corporate parents (including holding companies), owners, subsidiaries, related entities, Affiliates, associates, departments, divisions, joint ventures, predecessors, successors, and each of their respective past, current, and future, direct or indirect, officers, directors,

trustees, partners, managing directors, shareholders, managers, members, employees, attorneys, equity holders, agents, beneficiaries, executors, insurers, advisors, assigns, heirs, legal or other representatives. Notwithstanding the above, and for avoidance of doubt, "Sanderson Released Parties" shall not include any Defendant or alleged Co-Conspirator in the Action other than Sanderson as defined above and per fn. 2.

r. "Preliminary Approval" means an order by the Court to preliminarily approve this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23.

s. "Released Claims" shall have the meaning set forth in Paragraph 14 of this Settlement Agreement.

t. "Releasing Party" or "Releasing Parties" shall refer individually and collectively to the following persons and entities, whether or not any of them participate in the Settlement Agreement: Plaintiffs, the Settlement Class, and all members of the Settlement Class (including the Plaintiffs), each on behalf of themselves and their respective predecessors, successors, and all of their respective past, present, and future, direct and indirect, (i) parents (including holding companies), 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, representatives; the assigns of all such persons or entities referred to above, as well as any person or entity acting on behalf of or through any of them in any

capacity whatsoever, jointly and severally; and also means, to the full extent of the power of the signatories hereto to release past, present, and future claims, persons or entities acting in a private attorney general, qui tam, taxpayer, or any other capacity.

u. "Settlement Administrator" means the firm retained to disseminate the Settlement Class Notice and to administer the payment of settlement funds to the Settlement Class, subject to approval of the Court.

v. "Settlement Class" means the class defined in Paragraph 5 below excluding all persons who file a valid and timely request for exclusion from the Settlement Agreement.

w. "Settlement Class Counsel" means the attorneys appointed by the Court to represent the Settlement Class.

x. "Settlement Class Notice" means notice sent to members of the Settlement Class pursuant to Preliminary Approval, or otherwise approved by the Court pursuant to Federal Rule of Civil Procedure 23.

y. "Settlement Class Period" means January 27, 2013 through December 31, 2019.

z. "Settlement Fund" means $17,750,000 (seventeen million seven hundred fifty thousand U.S. dollars), the amount Sanderson shall pay or cause to be paid into an Escrow Account maintained by an escrow agent on behalf of the Settlement Class, pursuant to Paragraphs 8 and 9 below, as well as any interest accruing within such Escrow Account.

2. The Parties' Efforts to Effectuate this Settlement Agreement. The Parties shall cooperate in good faith and use their best efforts to effectuate this Settlement Agreement, including using their best efforts in seeking the Court's Preliminary Approval and Final Approval of the Settlement Agreement.

3. Litigation Standstill. Plaintiffs shall cease all litigation activities against Sanderson in the Action except to the extent expressly authorized in this Settlement Agreement. Sanderson shall cease all litigation activities against Plaintiffs in the Action, except in connection with the terms of Paragraph 10 below. For the avoidance of doubt, this litigation standstill provision shall not prohibit Sanderson from defending itself against litigation by Opt-Out Growers, as defined in the Confidential Supplement hereto.

4. Motion for Preliminary Approval, including for Settlement Class Notice. No later than seven (7) days after the Execution Date, Plaintiffs shall move the Court for Preliminary Approval of this Settlement Agreement, including to approve Settlement Class Notice. A reasonable time in advance of submission to the Court, the papers in support of the motion shall be provided by Interim Co-Lead Counsel to Sanderson for its review. To the extent that Sanderson objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Counsel, and the Parties shall meet and confer to resolve any such objection in good faith. The Parties shall take all reasonable actions as may be necessary to obtain Preliminary Approval and certification of the Settlement Class for purposes of effectuating this Settlement Agreement.

5. Certification of a Settlement Class. As part of the motion for Preliminary Approval of this Settlement Agreement, Plaintiffs shall seek, and Sanderson shall take no

position with respect to,[4] appointment of Interim Co-Lead Counsel as Settlement Class Counsel for purposes of this Settlement Agreement and certification in the Action of the following Settlement Class for settlement purposes only, which shall include Plaintiffs:

> All individuals and entities in the United States and its territories that were compensated for Broiler Grow-Out Services by a Defendant or Co-Conspirator, or by a division, subsidiary, predecessor, or Affiliate of a Defendant or Co-Conspirator, at any time during the period of January 27, 2013 through December 31, 2019.[5]

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

a. Individual Settlement Class Notice of this Settlement Agreement shall be mailed, emailed, or otherwise communicated by the Settlement Administrator, at the direction of Interim Co-Lead Class Counsel, to as many potential members of the Settlement Class as is practicable, in conformance with a notice plan to be approved by the Court.

b. All fees, costs, or expenses related to providing Settlement Class Notice, obtaining Preliminary Approval and Final Approval, and administering the settlement, shall be paid solely from the Settlement Fund, subject to any

[4] By agreeing not to object to the proposed Settlement Class and appointment of Interim Co-Lead Counsel as Settlement Class Counsel, Sanderson shall not waive any rights, arguments, or defenses, and Sanderson 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. In no way shall Sanderson have waived any right, defense, argument, or position with respect to any other class (including any litigation class in the event the Settlement Agreement is not approved) in this Action or any other, and Plaintiffs shall not use this Settlement Agreement or any part of the Settlement Agreement in any way to support an argument that Sanderson has waived any defense, argument, or position with respect to any other class in this Action or any other.

[5] Capitalized terms are defined herein.

necessary Court approval. Sanderson shall have no responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing Settlement Class Notice; obtaining Preliminary Approval or Final Approval; or administering the settlement; other than for Sanderson's own attorneys' fees.

c. Sanderson shall not object to Interim Co-Lead Class Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to $250,000 to pay the costs for Settlement Class Notice.

d. Interim Co-Lead Class Counsel shall use their best efforts to send out Settlement Class Notice within 30 days of Preliminary Approval (unless otherwise agreed between the Parties) to the extent consistent with the Court's directions and contingent upon the availability of sufficient name and address information from Defendants and alleged Co-Conspirators. If the Settlement Agreement is rescinded, cancelled, or terminated, or Final Judgment is not obtained, then whatever portion of the Settlement Fund that remains after payment of Settlement Class Notice costs (including payment of taxes) incurred up through the date of such election shall be returned to Sanderson.

7. Motion for Final Approval and Entry of Final Judgment. If the Court grants Preliminary Approval, preliminarily certifies the Settlement Class, and approves the form and manner of Settlement Class Notice, then Plaintiffs, through Interim Co-Lead Class Counsel shall, in accordance with the schedule set forth in the Court's Preliminary Approval, 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 Interim Co-Lead Counsel to Sanderson for its review. To the extent that Sanderson objects to any aspect of the motion, it shall communicate such objection to Interim Co-Lead Class Counsel and the Parties shall meet and confer to resolve any such objection in good faith. 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 Rules 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 Class Notice constituted the best notice practicable under the circumstances of this Settlement Agreement;

c. Dismissing the Action with prejudice as to Sanderson in all complaints asserted by Plaintiffs without further costs or fees;

d. Discharging and releasing Sanderson Released Parties from all Released Claims;

e. Enjoining the Releasing Parties from asserting, directly or indirectly, any of the Released Claims against any of the Sanderson Released Parties in any forum;

f. Confirming that Sanderson 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 Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Sanderson shall be final and appealable and entered forthwith.

The Parties shall use all best efforts 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 Interim Co-Lead Counsel for the Plaintiffs and Settlement 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 with prejudice of the Action, and the other material terms and conditions herein, within thirty (30) calendar days of either the Court's grant of Preliminary Approval or Interim Co-Lead Counsel having provided wire instructions to Sanderson, whichever occurs later, Sanderson shall pay or cause to be paid the Settlement Fund of $17,750,000 (seventeen million seven hundred fifty thousand U.S. dollars) into the Escrow Account. Sanderson shall have no reversionary interest whatsoever in the Settlement Fund should the Settlement Agreement be finally approved by the Court and all appeals from such approval have expired.

10. Cooperation. Cooperation by Sanderson is a material term of the Settlement Agreement and shall include the following categories of cooperation:

a. Cooperation Available After Preliminary Approval of Sanderson Settlement: Plaintiffs shall be entitled to begin receiving all remaining cooperation following Preliminary Approval of the Sanderson Settlement. Plaintiffs and Sanderson shall agree on reasonable timeframes for Sanderson to provide the remaining cooperation, cognizant of Plaintiffs' need to obtain cooperation at

an early enough juncture to be useful in deposition practice, expert discovery, class certification proceedings, summary judgment, and trial. Cooperation shall include the following categories: (a) Sanderson will use reasonable efforts to assist Plaintiffs in authenticating documents and/or things produced in the Action for purposes of summary judgment and/or trial where the facts indicate that the documents and/or things at issue are authentic, whether by declarations or affidavits, or, if declarations or affidavits are not reasonably sufficient, depositions, hearings, and/or at trial(s) as may be necessary for the Action;; and (b) Sanderson will consider reasonable requests for additional relevant information about Plaintiffs' claims in the Action from Interim Co-Lead Counsel, taking into account the information it has or will produce in discovery, and whether providing the requested information will be burdensome.

b. Admissibility and Privilege: Any statements made by Sanderson's counsel in connection with cooperation, including the cooperation envisioned by Paragraph 10(a), shall be deemed to be "conduct or statements made during compromise negotiations about the claims" and shall be inadmissible in evidence as provided under Federal Rule of Evidence 408 and state-law equivalents. In the event, for whatever reason, this Settlement Agreement is rescinded, canceled, or terminated or the Settlement Agreement is not approved by the Court, such inadmissibility shall survive. Further, no cooperation shall require Sanderson to provide information protected by the attorney-client privilege, attorney work-product doctrine, or similar

privileges, and Sanderson shall not waive any protections, immunities, or privileges.

c. Confidentiality: All non-public data, documents, information, testimony, and/or communications provided to Interim Co-Lead Counsel as part of cooperation, if so designated by Sanderson, shall be treated as "Confidential" or "Highly Confidential" under the protective order in the Action.

d. Arbitration Non-Enforcement: For a period of five (5) years after the Court enters Final Judgment in this Action, Sanderson agrees not to (a) require that any member of the Settlement Class ("Class Member") arbitrate any claims against Sanderson or against any alleged co-conspirator or co-defendant, (b) argue that any Class Member or Class Members are required to arbitrate claims against Sanderson or against any alleged co-conspirator or codefendant based on principles of estoppel, and (c) enforce any provisions in any agreements with one or more Class Member purporting to ban collective or class actions against Sanderson.

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, Interim Co-Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 11, 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 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. § 1.468B-1. Interim 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. Sanderson and the other Sanderson Released Parties 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 Settlement Class. Members of the Settlement Class shall be entitled to look solely to the Settlement Fund for settlement and satisfaction of the Settlement Agreement or in connection with any of the Released Claims against the Sanderson Released Parties, and shall not be entitled to any other payment or relief from the Sanderson Released Parties. 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. Plaintiffs, members of the Settlement Class, and their counsel shall 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 Settlement Class. Sanderson and the other Sanderson Released Parties shall not be liable for any costs, fees, or expenses of any of Plaintiffs' counsel, including Interim Co-Lead Class Counsel and Settlement Class Counsel,

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 Plaintiffs. Consistent with any schedule approved by the Court, Interim Co-Lead Class Counsel may apply to the Court for a fee award, plus expenses, and costs incurred, and incentive payments to the Plaintiffs to be paid from the proceeds of the Settlement Fund. The Sanderson Released Parties shall have no responsibility, financial obligation, or liability for any such fees, costs, expenses, or incentive payments beyond the Settlement Fund.

14. Release. Upon final approval of the Settlement Agreement and the passing of the time to appeal such final approval, and consistent with the terms of the Settlement Agreement, Plaintiffs shall grant to the Sanderson Released Parties a release of all claims covered by the Settlement Agreement. The release shall be nationwide in scope and release all claims (including but not limited to any Sherman Act, Clayton Act, Packers and Stockyards Act, and/or federal, state, or common law unfair competition or anticompetitive conduct claims) any member of the Settlement Class ever had, now has, or hereinafter, can, shall, or may ever have, on account of, or any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected and unsuspected, actual or contingent, liquidated or unliquidated claims, causes of action, injuries, losses (including, without limitation, all costs, expenses, and attorney's fees), 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, including but not limited to Defendants' and Co-Conspirators' alleged overarching scheme, combination, understanding, and/or conspiracy to fix, maintain, stabilize, and/or suppress the compensation paid to Broiler Growers for their provision of Broiler Grow-Out

Services (the "Released Claims"). Notwithstanding the above, "Released Claims" do not include (i) claims asserted against any Defendant or alleged Co-Conspirator other than the Sanderson Released Parties, nor (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, a securities claim, or breach of warranty. This reservation of claims set forth in (i) and (ii) of this paragraph does not impair or diminish the right of the Sanderson 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. During the period after the expiration of the deadline for submitting an opt-out notice, as determined by the Court, and prior to Final Judgment, all Releasing Parties who have not submitted a valid request to be excluded from the Settlement Class shall be preliminarily enjoined and barred from asserting any and all Released Claims against Sanderson Released Parties. The release of the Released Claims shall become effective as to all Releasing Parties upon Final Judgment. Upon Final Judgment, the Releasing Parties further agree that they shall not assert any claim, directly or indirectly, against Sanderson Released Parties arising out of or relating to the Released Claims.

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 entry of Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

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

AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law 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 which he, she, or it knows or believes to be true with respect to the claims which 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 entry of Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the Releasing Parties have agreed to release pursuant to 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. Covenant Not to Sue. Plaintiffs and each Releasing Party covenant not to sue, directly or indirectly, in any forum any of the Sanderson Released Parties for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of 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.

17. Full Release. The Parties expressly agree that they intend for Paragraphs 14-16 to be interpreted as broadly as possible and to the fullest extent permitted by law.

18. No Admission of Wrongdoing or Liability. Neither this Settlement Agreement (regardless of whether it receives Preliminary Approval or Final Approval), nor the Final Judgment or any order for Preliminary Approval, nor any and all negotiations, documents, or discussions associated with them, nor any proceedings undertaken in accordance with the terms set forth herein, shall be deemed or construed as (i) an admission as to the merits of the allegations made in the Action, (ii) a presumption, admission or concession of fault, liability, wrongdoing, or violation of any statute or law, or (iii) used as evidence of fault, liability, wrongdoing, or violation of any statute or law, for any purpose in any legal proceeding in any forum, claim, regulatory or administrative investigation or proceeding, or government investigation or proceeding.

19. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein when executed and approved by the Court.

20. Sanderson's Right to Rescind. Sanderson shall have the right to rescind and withdraw from the Settlement Agreement under the terms of the Confidential Supplement.

21. Effect of Disapproval or Rescission. If the Court does not certify the Settlement Class as defined in this Settlement Agreement, or 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 order approving this Settlement Agreement is materially modified or set aside on appeal, or if Sanderson exercises its rescission rights pursuant to Paragraph 20, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 1.n of this Settlement Agreement, then this Settlement Agreement may be rescinded, canceled, or

terminated by Sanderson or Plaintiffs on behalf of the Settlement Class. If rescinded, canceled, 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.b, the Settlement Fund, including any interest accrued thereto, and any attorneys' fees, costs, and incentive payments that may have been disbursed pursuant to Court approval, shall be returned to Sanderson and the Parties' position shall be returned to the status quo ante. In no way shall Plaintiffs have the right to rescind, cancel, or terminate this Settlement Agreement if the Court fails or refuses to grant any requested attorneys' fees, costs, expenses, or awards to Plaintiffs.

22. Choice of Law. All terms of this Settlement Agreement and the Confidential Supplement, including any related disputes, shall be governed by and interpreted according to the substantive laws of the State of New York without regard to its choice-of-law or conflicts-of-law principles.

23. Consent to Jurisdiction. The Parties and any 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 Confidential Supplement, or the applicability of this Settlement Agreement or the Confidential Supplement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of Paragraphs 14-16, including but not limited to, any suit, action, or proceeding in which the provisions of Paragraphs 14-16 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 14-16 are asserted by any Sanderson 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 Sanderson Released Party shall be entitled to a stay of that suit, action, or proceeding until 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 or the Confidential Supplement.

24. Class Action Fairness Act. Within ten (10) days of filing of this Settlement Agreement in Court with the motion for Preliminary Approval referenced in Paragraph 4, Sanderson, at its sole expense, shall (i) serve upon appropriate Federal and State officials all materials required pursuant to CAFA and (ii) confirm to Plaintiffs' Interim Co-Lead Counsel that such notices have been served.

25. Costs Relating to Administration. The Sanderson 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. Each and every covenant and agreement in this Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, members of the Settlement Class, the Releasing Parties, and the Sanderson Released Parties. 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 Plaintiffs 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.

27. Sole Remedy. This Settlement Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any Sanderson 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 Sanderson 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. Admissibility. It is agreed that this Settlement Agreement shall be admissible in any proceeding for establishing the terms of the Parties' agreement or for any other purpose with respect to implementing or enforcing this Settlement Agreement.

30. Notices. All notices or communications by any Party intended for any other Party related to this Settlement Agreement shall be in writing. Each such notice or communication shall be given either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; (c) Federal Express or similar overnight courier; or (d) electronic mail, and, in the case of either (a), (b), (c) or (d) shall be addressed as follows:

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

Eric L. Cramer
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
ecramer@bm.net

Melinda R. Coolidge
HAUSFELD LLP
888 16th Street, NW, Suite 300
Washington, DC 20006
mcoolidge@hausfeld.com

Gary I. Smith, Jr.
Hausfeld LLP
600 Montgomery St, Ste 3200
San Francisco, CA 94111
gsmith@hausfeld.com

If directed to Sanderson, to:

Christopher E. Ondeck
PROSKAUER ROSE LLP
1001 Pennsylvania Avenue, NW, Suite 600 South
Washington, DC 20004-2533
condeck@proskauer.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 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 Sanderson Released Party.

32. No Unstated Third-Party Beneficiaries. No provision of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Sanderson Released Party, Plaintiff, member of the Settlement Class, Interim Co-Lead Counsel, or Settlement 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 thereof.

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 Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

35. Breach. This Settlement Agreement does not waive or otherwise limit the Parties' rights and remedies for any breach of this Settlement Agreement. Any breach of this Settlement 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.

36. 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 .pdf signatures shall be considered as valid signatures as of the date hereof and may thereafter be appended to this Settlement Agreement and filed with the Court.

37. Integrated and Final 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. As set forth in Paragraph 34, the Parties agree that this Settlement Agreement may be modified only by a written instrument

signed by the Parties. The Parties further agree that no Party shall 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.

38. Voluntary Settlement. The Parties agree that this Settlement Agreement was negotiated at arm's length and 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.

39. Confidentiality. The Parties agree to continue to maintain the confidentiality of all settlement discussions and materials exchanged during the settlement negotiation. However, following execution of this agreement, Sanderson and Plaintiffs can each inform other parties to this Action that they have reached a settlement agreement, the amount of the Settlement Fund, and the cooperation and other relief provided for in Paragraph 10 of this agreement.

[SIGNATURE PAGES FOLLOW]

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

PLAINTIFFS' SIGNATURE PAGE

Dated: 2/28/2023

By: _____

Eric L. Cramer
Patrick F. Madden
David A. Langer
Ellen T. Noteware
Michaela L. Wallin
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Co-Lead Counsel For The Proposed Settlement Class

Dated: February 28, 2023

By: _____

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Co-Lead Counsel For The Proposed Settlement Class

SANDERSON SIGNATURE PAGE

Dated: 23 February 2023

By: DocuSigned by: 6D3200608607487...

Jeremy V. Kilburn
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Corporate Headquarters
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jeremy.kilburn@waynefarms.com

Dated: 22 February 2023

By: DocuSigned by: C299428E90A14C6...

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Attorneys for Defendants Sanderson Farms, Inc., Sanderson Farms, Inc. (Food Division), Sanderson Farms, Inc. (Processing Division), and Sanderson Farms, Inc. (Production Division)