

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

IN RE BROILER CHICKEN ANTITRUST LITIGATION	No. 1:16-cv-08637-TMD-JG
This Document Relates To:	Hon. Judge Thomas M. Durkin
<i>All End-User Consumer Plaintiff Actions</i>	Magistrate Judge Jeffrey T. Gilbert

**LONG-FORM SETTLEMENT AGREEMENT BETWEEN END-USER
CONSUMER INDIRECT PURCHASER CLASS PLAINTIFFS
AND KOCH FOODS INCORPORATED, JCG FOODS OF ALABAMA LLC, JCG
FOODS OF GEORGIA LLC AND KOCH MEAT CO., INC.**

THIS SETTLEMENT AGREEMENT (“Settlement Agreement”) is made and entered into as of the 10th day of September, 2024 (“Execution Date”) by and between the End User Consumer Plaintiffs (“EUCPs,” as defined below), on behalf of themselves and members of the proposed Settlement Class (collectively, EUCPs and members of the proposed Settlement Class are sometimes referred to as “Plaintiffs”) through Co-Lead Counsel (as defined below) for the proposed Settlement Class, and Koch Foods Incorporated, JCG Foods of Alabama LLC, JCG Foods of Georgia LLC, and Koch Meat Co., Inc. (collectively referred to as “Settling Defendant” or “Koch”) in the above captioned action (the “Action”).

WHEREAS, on December 16, 2016, EUCPs filed a consolidated amended class action complaint in the United States District Court for the Northern District of Illinois, alleging that various chicken producers participated in a conspiracy to fix, raise, maintain, and stabilize the price of Broilers;

WHEREAS, on October 30, 2020, EUCPs filed a motion for class certification;

WHEREAS, on May 27, 2022, the Court granted EUCPs' motion for class certification and certified a class consisting of:

All persons and entities who indirectly purchased the following types of raw chicken, whether fresh or frozen: whole birds (with or without giblets), whole cut-up birds purchased within a package, breast cuts or tenderloin cuts, but excluding chicken that is marketed as halal, kosher, free range, organic, diced, minced, ground, seasoned, flavored or breaded—from defendants or co-conspirators for personal consumption in the Repealer Jurisdictions from January 1, 2012 to July 31, 2019.¹

WHEREAS, the Court appointed Lead Counsel to represent the certified class;

WHEREAS, the Parties wish to resolve all claims asserted and all claims that could have been asserted against Koch in any way arising out of or relating in any way to the indirect purchase of chicken products by the Settlement Class that were produced, processed or sold by Koch or any of the Defendants, their alleged co-conspirators or other Agri Stats participants;

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

WHEREAS, EUCPs 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 Koch to avoid the uncertainties of further complex litigation, and to obtain the benefits described herein for the Settlement Class, and, further, that this Settlement

¹ Any terms in the quoted class definition have the meaning ascribed in the Court's order granting class certification in Docket Number 5644. For the avoidance of doubt, the "Repealer Jurisdictions" are: California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, and Wisconsin.

Agreement is fair, reasonable, adequate, and in the best interests of EUCPs and the Settlement Class;

WHEREAS, Koch, notwithstanding that it asserts that it did nothing wrong or illegal, that it has legitimate defenses to any claims that were asserted or could have been asserted against it, and that it would prevail at trial, enters into this Settlement Agreement to avoid the costs, expenses, and uncertainties of this complex litigation, to avoid the risks inherent in litigation and trial, and to put this controversy to rest;

NOW THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the Parties that the claims of the EUCPs be settled and compromised, and dismissed on the merits with prejudice as to Koch subject to Court approval and that Koch and the other Koch Released Parties (as defined below) 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. “Koch Released Parties” shall mean Koch (as defined above) together with any and all of Koch’s past, present, and future direct and indirect corporate parents (including holding companies), subsidiaries, related entities, Affiliates (including without limitation, any Affiliates named as alleged co-conspirators), joint ventures, predecessors, successors, and assigns, and each of their respective past, present, and future direct and indirect divisions, departments, officers, directors, employees, trustees, partners,

managing directors, shareholders, managers, members, attorneys, equity holders, agents, beneficiaries, executors, insurers, advisors, heirs, and legal or other representatives, including but not limited to, Joe Grendys, Mark Kaminsky and Lance Buckert. Notwithstanding the foregoing, “Koch Released Parties” does not include any Defendant other than Koch named by EUCPs in the Action, either explicitly or as a third-party beneficiary.

- b. “Affiliate” means with respect to any person, entity or company, any person, entity or company that, directly or indirectly, controls, is controlled by or is under common control with such person, entity or company.
- c. “Broilers” shall mean the following types of raw chicken, whether fresh or frozen: whole birds (with or without giblets), whole cut-up birds purchased within a package, breast cuts or tenderloin cuts, but excluding chicken that is marketed as halal, kosher, free range, organic, diced, minced, ground, seasoned, flavored or breaded.
- d. “Complaint” shall mean the EUCPs’ Fifth Consolidated Amended Class Action Complaint, Aug. 7, 2020 (ECF Nos. 3747 (Redacted) and 3748 (Sealed)).
- e. “Court” shall mean the United States District Court for the Northern District of Illinois.
- f. “Defendants” shall mean those defendants named in the Complaint.
- g. “Escrow Account” shall mean the escrow account established with the escrow agent to receive and maintain funds contributed by Koch for the benefit of the Settlement Class.

- h. “Escrow Agreement” shall mean that certain agreement between the escrow agent that holds the Settlement Fund and EUCPs (by and through Lead Counsel) pursuant to which the Escrow Account is established and funded for the benefit of the Settlement Class, as set forth in Paragraphs 10 and 11 below.
- i. “EUCPs” shall mean Ian Adams, Angela Ashby, Linda Cheslow, Kenneth Cote, Kristin Davis, Abraham Drucker, James Flasch, Jr., Christina Hall, Matthew Hayward, Richard Heftel, Stephen Holt, Joshua Madsen, William David Marino, Dorothy Monahan, Dina Morris, Alison Pauk, Daniel Percy, Catherine Senkle, Diane Spell, Margaret (“Margo”) Stack, Marilyn Stangeland, Eric Thomas, David & Leslie Weidner, Natalie Wilbur, and Michael Perry.
- j. “Final Approval” shall mean an order and judgment by the Court which finally approves this Settlement Agreement and the settlement pursuant to Federal Rule of Civil Procedure 23 and dismisses Koch with prejudice from the Action.
- k. “Final Judgment” shall mean the first date upon which both of the following conditions shall have been satisfied: (a) Final Approval; and (b) either (1) thirty days have passed from the date of Final Approval with no notice of appeal having been filed with the Court; or (2) Final Approval has been affirmed by a mandate issued by any reviewing court to which any appeal has been taken, and any further petition for review (including certiorari) has

been denied, and the time for any further appeal or review of Final Approval has expired.

- l. “Lead Counsel” or “Co-Lead Counsel” shall mean the respective attorneys of record for EUCPs in the Action from Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll, PLLC.
- m. “Parties” shall mean Plaintiffs and Koch.
- n. “Preliminary Approval” shall mean an order by the Court to preliminarily approve this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23.
- o. “Released Claims” shall have the meaning set forth in Paragraph 15 of this Settlement Agreement.
- p. “Releasing Party” or “Releasing Parties” shall refer individually and collectively to the Settlement Class and all members of the Settlement Class (i.e., Plaintiffs), including: the EUCPs, each on behalf of themselves and their respective predecessors and successors; their present and former direct and indirect parents, subsidiaries and Affiliates; their present and former shareholders, partners, directors, officers, owners of any kind, principals, members, agents, employees, contractors, attorneys, insurers, heirs, executors, administrators, devisees, and representatives; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and any of their past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments,

commissions and divisions; 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, whether or not any of them participate in this Settlement Agreement.

- q. “Settlement Administrator” shall mean 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.
- r. “Settlement Class” shall mean the class defined in Paragraph 7 below.
- s. “Settlement Fund” shall mean the \$5,000,000 (five million U.S. dollars) amount Koch shall pay or cause to be paid into an interest-bearing Escrow Account maintained by an escrow agent on behalf of the Settlement Class, pursuant to Paragraphs 10 and 11 below.

2. The Parties’ Efforts to Effectuate this Settlement Agreement. The Parties shall cooperate in good faith and use their reasonable best efforts to seek the Court’s Preliminary Approval and Final Approval of the Settlement Agreement, without modification to any of its material terms and conditions.

3. Cooperation: Koch agrees to comply with the Joint Stipulation Concerning Trial Documents as filed with the Court on July 15, 2024. (ECF 7333-1.) To the extent necessary, Koch agrees to use reasonable efforts to authenticate and provide foundation for admissibility of up to 50 documents and/or things produced in the Action where they can do so in good faith, whether by declaration or affidavits as may be necessary for the Action. The cooperation obligations set forth in this Paragraph regarding authentication and admissibility shall be the full extent of any

further obligations by Koch or any of its past or present officers, directors, employees, or agents to provide evidence in, or otherwise cooperate in connection with, the September 4, 2024 Trial (regardless of the date on which such trial proceeds or concludes). Among other things, and for avoidance of doubt, EUCPs waive their right to issue or enforce any trial subpoenas to Koch or any of its past or present officers, directors, employees or agents.

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

5. Litigation Standstill. Except as provided for in Section 3 (Cooperation) of this Settlement Agreement, the EUCPs shall immediately suspend all proceedings and activities with respect to Koch in the Action pending approval of the Settlement Agreement. Koch shall not take the position that Plaintiffs' references to Koch at any EUCP trial, including as unnamed co-conspirator or other Agri Stats Participant for purposes of that trial, violate this Settlement Agreement. Similarly, except as provided for in Section 3 (Cooperation) of this Settlement Agreement, Koch shall immediately cease all participation in pre-trial proceedings. Koch shall not provide any cooperation for the remaining Defendants in any EUCP trial, including voluntarily providing witness testimony, participating in or assisting in the preparation for, or trial of, any EUCP trial, or assisting in the analysis, negotiation, or briefing of evidentiary issues relating to any EUCP trial. Koch's individual expert shall not testify on behalf of Koch or any other Defendant at any EUCP trial. Nothing in this section will preclude Koch from defending against claims brought by the Track Two Parties. This Paragraph does not preclude an expert(s) jointly retained

before February 21, 2022 (i.e., the date Defendants served their merits reply reports) by Koch and a Defendant remaining in any EUCP trial, but neither Koch nor its outside counsel may assist the expert or remaining Defendants' counsel in any way whatsoever with preparing such expert(s) to testify. To the extent there is any ambiguity or disagreement about what that means, the Parties shall meet and confer and attempt to resolve that issue in good faith.

6. Motion for Preliminary Approval. No later than ninety (90) days after the Execution Date, EUCPs shall move the Court for Preliminary Approval of this settlement. A reasonable time in advance of submission to the Court, the papers in support of the motion for Preliminary Approval shall be provided by Lead Counsel to Koch for its review. To the extent that Koch objects to any aspect of the motion, it shall communicate such objection to Lead Counsel and the Parties shall meet and confer about any such objection. The Parties shall take all reasonable actions as may be necessary to obtain Preliminary Approval and certification of the Settlement Class. This deadline may be extended by agreement.

7. Certification of a Settlement Class. As part of the motion for Preliminary Approval of this settlement, EUCPs shall seek, and Koch shall take no position with respect to: (a) appointment of Lead Counsel as Settlement Class Counsel for purposes of this settlement and (b) certification in the Action of the following Settlement Class:

All persons and entities who indirectly purchased the following types of raw chicken, whether fresh or frozen: whole birds (with or without giblets), whole cutup birds purchased within a package, breast cuts or tenderloin cuts, but excluding chicken that is marketed as halal, kosher, free range, organic, diced, minced, ground, seasoned, flavored or breaded—from defendants or co-conspirators for personal consumption in the Repealer Jurisdictions from January 1, 2012 to July 31, 2019.

The period from and including January 1, 2012 until July 31, 2019 refers to and shall mean the “Settlement Class Period.” Settlement Class members will be given an opportunity after

Preliminary Approval of this Settlement Agreement to be excluded from the Settlement Class, pursuant to Federal Rule of Civil Procedure 23(e)(4).

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

- a. To the extent reasonably practicable, individual notice of this settlement shall be mailed, emailed, or otherwise sent and/or published by the Settlement Administrator, at the direction of Lead Counsel, to potential members of the Settlement Class, in conformance with a notice plan to be approved by the Court.
- b. Neither the Settlement Class, Lead Counsel, nor Koch shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Settlement Class or obtaining approval of the settlement or administering the settlement. Such fees, costs, or expenses shall be paid solely from the Settlement Fund, subject to any necessary Court approval.
- c. Koch shall not object to Lead Counsel withdrawing from the Settlement Fund, subject to any necessary Court approval, up to \$300,000 (three hundred thousand U.S. dollars) to pay the costs for notice and for Preliminary Approval and Final Approval of this Settlement Agreement.
- d. Lead Counsel shall use best efforts to send out notice to the Settlement Class within a reasonable period after Preliminary Approval by the Court of the Settlement Agreement. However, Lead Counsel may choose to delay the sending of notice to the class so that notice need only be sent to the class

once for multiple settlements and that notice costs are kept as low as possible. Any costs of notice that Lead Counsel are permitted to withdraw from the Settlement Fund and that already have expended for notices, either pursuant to the Parties' Settlement Agreement or order of the Court, shall be nonrefundable if, for any reason, the Settlement Agreement is terminated according to its terms or is not finally approved by the Court.

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

- a. Finally approving the Settlement Agreement as being a fair, reasonable, and adequate settlement for the Settlement Class within the meaning of Federal 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 Class Notice constituted the best notice practicable under the circumstances of this Settlement Agreement and the Fairness

Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;

- c. Dismissing the Action with prejudice as to Koch in all class action complaints asserted by EUCPs, without further costs or fees;
- d. Discharging and releasing the Koch Released Parties from all Released Claims;
- e. Enjoining Plaintiffs and members of the Settlement Class from suing any of the Koch Released Parties for any of the Released Claims;
- f. Confirming that Koch has provided the appropriate notice pursuant to the Class Action Fairness Act, 28 U.S.C. 5171 1, *et seq.*
- 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 Koch shall be final and appealable and entered forthwith.

10. Escrow Account. The Escrow Account shall be administered by Lead Counsel for the EUCPs and the Settlement Class under the Court's continuing supervision and control pursuant to the Escrow Agreement.

11. Settlement Consideration. In consideration for the release of Released Claims and the dismissal of the Action with prejudice, and the other material terms and conditions herein, within 30 days of the Court's grant of Preliminary Approval, or after Lead Counsel have provided wire instructions to Koch, whichever occurs later, Koch shall pay or cause to be paid \$5,000,000 (five million U.S. dollars) into the Escrow Account.

12. 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, Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 12, 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 Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Settlement Funds being a “Qualified Settlement Fund” within the meaning of Treas. Reg. 1.4688-1. Lead 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. § 468B-2(k), (l)). 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. Koch shall not be responsible for the filing or payment of any taxes or expenses connected to the Settlement Fund.

13. Distribution of Settlement Fund to Settlement Class. EUCPs, members of the Settlement Class and their counsel 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 Koch Released Parties and shall not be entitled to any other payment or relief from the Koch 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. EUCPs,

members of the Settlement Class, and their counsel will be reimbursed and indemnified 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. The Koch Released Parties shall not be liable for any costs, fees, or expenses of any of Plaintiffs' and Lead Counsel's attorneys, experts, advisors, or representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Fund.

14. Fee Awards Costs and Expenses and Incentive Payments to EUCPs: Subject to Lead Counsel's sole discretion as to timing, Lead Counsel will apply to the Court for a fee award, plus expenses, and costs incurred, and incentive payments to the EUCPs to be paid from the Settlement Fund. Koch shall have no responsibility, financial obligation, or liability for any such fees, costs, or expenses beyond the Settlement Fund. Within 15 days after any order by the Court awarding attorneys' fees, expenses, or class representative service awards, the Escrow Agent shall pay the approved attorneys' fees, expenses, and service awards via wire transfer from the Settlement Fund as directed by Settlement Class Counsel (as referenced in Paragraph 7 above) in accordance with and attaching the Court's order. In the event the Settlement Agreement is not preliminary or finally approved by the Court, Settlement Class Counsel will cause all funds in the Escrow Account including any interest accrued to be returned to Koch, except for any funds used for notice purposes, and the Parties' position shall be returned to the status quo ante.

15. Release. Upon Final Judgment, the Releasing Parties shall completely release, acquit, and forever discharge the Koch Released Parties from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature (whether or not any member of the Settlement Class has objected to the Settlement Agreement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any

other capacity) that the Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, demands, actions, causes of action, injuries, losses, damages (including but not limited to treble or punitive damages, interest, and attorney's or professional's fees, costs and expenses), and whether in tort, in contract, or otherwise, and the consequences thereof, including any claims of third parties that have been assigned to a Releasing Party and (to the extent the Releasing Party has the legal and contractual right to do so) any claims previously assigned by the Releasing Party to a third party, that have been asserted, or could have been asserted, under federal or state law, in any way arising out of acts or omissions through the date of Preliminary Approval relating to or referred to in the Action, or the subject matter of the Action, or arising from or related to the factual predicate of the Action (the "Released Claims"). For the avoidance of doubt, "Released Claims" includes all claims that have been asserted, or could have been asserted, in the Action against the Koch Released Parties, including all claims in any way arising out of or relating to the indirect purchase of chicken products produced, processed or sold by Koch, or any of the other Defendants, or alleged co-conspirators or other Agri Stats participants. Notwithstanding the above, "Released Claims" do not include (i) claims asserted against any Defendant other than the Koch Released Parties; or (ii) any claims wholly unrelated to the allegations in the Action that are based on breach of contract (except such breaches relating to anticompetitive actions and/or unfair or inflated pricing), any negligence, personal injury, bailment, failure to deliver lost goods, damaged or delayed goods, or product defect. This reservation of claims set forth in (i) or (ii) of this Paragraph does not impair or diminish the right of the Koch Released Parties to assert any and all defenses to such claims. 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 Released Claims against the Koch Released Parties. The release of the Released Claims will become effective as to all Releasing Parties upon Final Judgment. Upon Final Judgment, the Releasing Parties further agree that they will not file any other suit against the Koch Released Parties arising out of or relating to the Released Claims.

16. Further Release. In addition to the provisions of Paragraph 15, the Releasing Parties hereby expressly waive and release, solely with respect to the Released Claims, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code (providing, “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”) and Section 20-7-11 of the South Dakota Codified Laws (providing, “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”) 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 or Section 20-7-11 of the South Dakota Codified Laws. 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 15, but each Releasing Party hereby

expressly waives and fully, finally, and forever settles and releases, upon Final Judgment, any known or unknown, foreseen or unforeseen, suspected or unsuspected, actual, contingent or non-contingent, or liquidated or unliquidated, claim that the Releasing Parties have agreed to release pursuant to Paragraph 15, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The foregoing release of (without limitation) unknown, unanticipated, unsuspected, unforeseen, contingent, unliquidated and unaccrued losses or claims is contractual, and not a mere recital.

17. Full Release. The Released Claims and the provisions of Paragraphs 15 and 16 shall be interpreted as broadly as possible and to the fullest extent permitted by law and constitute a full and final release by the Releasing Parties of the Koch Released Parties for the Released Claims.

18. Binding Agreement. This Settlement Agreement shall constitute a binding, enforceable agreement as to the terms contained herein when executed.

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

20. Ownership of Claims. Each of the EUCPs represents and warrants that he, she or it is the sole owner of any and all claims that he, she or it has or ever had against any of the Koch Released Parties and that he, she or it has not sold, assigned, or in any way encumbered any such claims, in whole or in part, to any person or party.

21. Covenant Not to Sue. Plaintiffs covenant not to sue any of the Koch Released Parties for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of or relating to the Released Claims, including, without limitation, seeking to

recover damages relating to any of the Released Claims. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

22. Option to Terminate. Lead Counsel shall provide a list of those Persons, if any, who have filed a request to opt out of the Settlement Class (the “Opt Outs”) to counsel for Koch within twenty (20) calendar days after the deadline set by the Court for opting out of the Settlement Class. Koch will have sole discretion to rescind the Settlement Agreement if the requests to opt out of the Settlement Agreement exceed 1,000 claimants.

23. 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 9 herein, or if any judgment approving this Settlement Agreement is materially modified or set aside on appeal, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 1(k) of this Settlement Agreement, or if this Settlement Agreement is terminated pursuant to Paragraph 22, then this Settlement Agreement may be rescinded, cancelled or terminated:

- a. with respect to Paragraph 22, solely by Koch, or
- b. otherwise, by Koch or EUCPs on behalf of the Settlement Class.

If rescinded, cancelled or terminated, this Settlement Agreement shall become null and void, and, with the exception of any Settlement Funds used for notice purposes pursuant to Paragraph 8(c), in the event the settlement is not preliminarily or finally approved by the Court, all other funds in the Escrow Account shall be returned to Koch and the Parties’ position shall be returned to the status quo ante. In no way shall EUCPs have the right to rescind, cancel or terminate this

Settlement Agreement if (without limitation) the Court fails or refuses to grant the requested attorneys' fees, any costs or any awards to EUCPs.

24. Choice of Law and Dispute Resolution. Any disputes relating to the Settlement Agreement shall be governed by Illinois law without regard to its conflicts of law provisions. Subject to Court approval, the United States District Court for the Northern District of Illinois shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

25. 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 applicability of this Settlement Agreement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of Paragraph 15 or 16, including but not limited to, any suit, action, or proceeding in which the provisions of Paragraph 15 or 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 Paragraph 15 or 16 are asserted by any Koch 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 Koch 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.

26. Class Action Fairness Act. Within ten (10) days of filing of this Settlement Agreement in court with the abovementioned motion for Preliminary Approval, Koch, at its sole expense, shall serve upon appropriate Federal and State officials all materials required pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, and shall confirm to EUCPs' Lead Counsel that such notices have been served. Lead Counsel shall provide to Koch such assistance as is reasonably necessary and such information as is reasonably available to comply with 28 U.S.C. § 1715(b)(7)(A).

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

28. Binding Effect. This Settlement Agreement constitutes a binding, enforceable agreement as to the terms contained herein. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Parties, Settlement Class Members, the Releasing Parties, and the Koch Released Parties. Without limiting the generality of the foregoing, upon certification of the Settlement Class and Final Approval, each and every covenant, representation, warranty, and agreement herein by the EUCPs (except their representations and warranties in Paragraph 20) 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.

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

30. 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.

31. Admissible in Case of Dispute: 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, including as evidence of the Release granted herein.

32. Notices. All notices under this Settlement Agreement shall be in writing. Each such notice shall be given (1) by email and (2) either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier, and, in the case of either (2) (a), (b) or (c) shall be addressed:

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

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, Washington 98101
steve@hbsslaw.com

Shana E. Scarlett
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shanas@hbsslaw.com

Brent W. Johnson
COHEN MILSTEIN SELLERS & TOLL, PLLC
1100 New York Avenue NW
Suite 500, West Tower
Washington, DC 20005
bjohnson@cohenmilstein.com

If directed to Koch, to:

Stephen Novack
Stephen J. Siegel
Elizabeth C. Wolicki
ARMSTRONG TEASDALE LLP
100 North Riverside Plaza
Chicago, IL 60606
snovack@atllp.com
ssiegel@atllp.com
ewolicki@atllp.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.

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

34. No Third-Party Beneficiaries. Except as provided in Paragraph 43, no provision of this Settlement Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Koch Released Party, EUCP, member of the Settlement Class, or Lead Counsel.

35. No Party is the Drafter. None of the Parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case

law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

36. Amendment and Waiver. This Settlement Agreement, including but not limited to this Paragraph, 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. 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.

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

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

be modified only by a written instrument signed by the Parties and that no Party will assert any claim against another Party based on any alleged agreement affecting or relating to the terms of this Settlement Agreement not in writing and signed by the Parties.

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

40. Voluntary Settlement. The Parties agree that this Settlement Agreement was negotiated in good faith by the Parties and reflects a settlement that was reached voluntarily after consultation with competent counsel, and no Party has entered this Settlement Agreement as the result of any coercion or duress.

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

42. Confidentiality. The Parties agree to continue to maintain the confidentiality of all settlement discussions, and materials exchanged during the settlement negotiation. However, Koch and EUCPs can inform other parties to this Action that they have reached a settlement agreement, the amount of the settlement, and the cooperation terms provided for in this Settlement Agreement. The Parties agree that they will confine their public comments, if any, concerning this settlement to no more than essentially the following: “The Parties have agreed to resolve and have settled this matter.” Koch may also provide a copy of this Settlement Agreement to all parties to the Defendants’ Judgment Sharing Agreement (defined below) and to Koch’s lenders, accountants and financial advisors.

43. Qualified Settlement: EUCPs have been provided with a copy of the agreement entered into by defendants dated February 25, 2020 (hereinafter referred to as “Defendants’ Judgment Sharing Agreement”). The defined terms in Defendants’ Judgment Sharing Agreement shall have the same meaning when used in this Settlement Agreement. EUCPs agree that notwithstanding anything to the contrary contained in this Settlement Agreement, EUCPs shall reduce the dollar amount collectable from the parties to the Defendants’ Judgment Sharing Agreement pursuant to any Final Judgment by a percentage equal to the Sharing Percentage of Koch, calculated pursuant to Section 4 and Exhibits A and B of Defendants’ Judgment Sharing Agreement (as illustrated by the Appendix to Defendants’ Judgment Sharing Agreement) as if Koch had not settled, had been found liable on the claim, and was a Sharing Party with respect to the Final Judgment. EUCPs agree that this undertaking is also for the benefit of any Defendant that is a party to the Defendants’ Judgment Sharing Agreement and that this undertaking may be enforced by any or all of such Defendants as third party beneficiaries hereof. Any ambiguity in this Paragraph 43 or inconsistency between this Settlement Agreement and the Defendants’ Judgment Sharing Agreement shall be resolved in favor of the Defendants’ Judgment Sharing Agreement, including, without limitation, Sections 6.D.1 and 6.D.2 thereof. EUCPs further represent and warrant that they have not reached any agreement to provide any portion of the settlement proceeds provided hereunder to any person or entity that is not explicitly identified as a releasor in this Settlement Agreement, except for proceeds received by EUCPs’ attorneys for payment of attorneys’ fees. EUCPs shall use their best efforts to ensure that the Settlement Agreement constitutes a Qualified Settlement under Defendants’ Judgment Sharing Agreement and to effectuate the intent of the parties to the Defendants’ Judgment Sharing Agreement to treat the Settlement Agreement as a Qualified Settlement, including (as may be necessary) to make any

amendments to the long-form settlement agreement to reflect the intent to treat the Settlement Agreement as a Qualified Settlement.

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IN WITNESS WHEREOF, the Parties, individually or through their duly authorized representatives, enter into this Settlement Agreement on the date first above written.

DATED: September 10, 2024

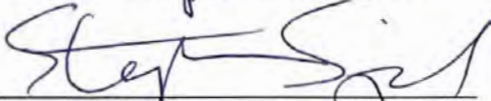


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*Co-Lead Counsel for the End-User Consumer
Indirect Purchaser Plaintiff Class*

DATED: September 10, 2024



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