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Attorneys for Defendants SIMMONS FOODS, INC. AND SIMMONS PREPARED FOODS, INC.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

STATE OF ALASKA,)	
)	
Plaintiff,)	
vs.)	
)	Case No.: 3AN-21-04632CI
AGRI STATS, INC., <i>et al.</i> ,)	
)	
Defendants.)	
)	

**STIPULATION AND CONSENT DECREE AGAINST
SIMMONS FOODS, INC. AND SIMMONS PREPARED FOODS, INC.**

I. SETTLEMENT SUMMARY

- 1.1 Plaintiff: State of Alaska
- 1.2 Defendants: Simmons Foods, Inc. and Simmons Prepared Foods, Inc.
("Simmons")
- 1.3 Settlement Amount: \$290,000.00
- 1.4 Attorneys for Plaintiff: Jeff Pickett, Senior Assistant Attorney General
Jeff Angelovich
Drew Pate
Cody Hill
Jim Fosler
- 1.5 Attorneys for Defendants: Vicki Bronson

II. INTRODUCTION

2.1 Plaintiff, State of Alaska, by and through its Attorney General, in its law enforcement capacity and as *parens patriae* on behalf of persons in the State of Alaska, commenced an antitrust action on February 22, 2021, for the following relief against the Defendants,¹ including Simmons

¹ The original "Defendants" were: Agri Stats, Inc.; Amick Farms, LLC; Case Foods, Inc., Case Farms, LLC, and Case Farms Processing, Inc.; Norman W. Fries, Inc. d/b/a Claxton Poultry Farms, Inc.; Fieldale Farms Corp.; Foster Farms, LLC and Foster Poultry Farms; George's Inc. and George's Farms, Inc.; Harrison Poultry, Inc.; House of Raeford Farms, Inc.; Keystone Foods, LLC; Koch Foods, Inc., JCG Foods of Alabama, LLC, JCG Foods of Georgia, LLC, and Koch Meat Co. Inc.; Mar-Jac Poultry, Inc.; Mar-Jac Poultry MS, LLC, Mar-Jac Poultry AL, LLC, Mar-Jac AL/MS, Inc., Mar-Jac Poultry, LLC, and Mar-Jac Holdings, Inc.; Mountaire Farms Inc., Mountaire Farms, LLC, and Mountaire Farms of Delaware, Inc.; O.K. Foods, Inc., O.K. Farms, Inc., and O.K. Industries, Inc.; Peco Foods, Inc. ("Peco"); Perdue Farms, Inc. and Perdue Foods LLC; Pilgrim's Pride Corporation; Sanderson Farms, Inc., Sanderson Farms, Inc. (Foods Division), Sanderson Farms, Inc. (Production Division), and Sanderson Farms, Inc. (Processing Division); Simmons Foods, Inc. and Simmons Prepared Foods, Inc.; Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Breeders, Inc., and Tyson Poultry, Inc.; and Wayne Farms LLC.

Foods, Inc. and Simmons Prepared Foods, Inc. (“Simmons”): a declaration that Defendants entered into and engaged in a combination or conspiracy in unreasonable restraint of trade in violation of AS § 45.50.562, *et seq.*; monetary relief for the State and its agencies injured either directly or indirectly by reason of any violation as set forth in AS § 45.50.577(a); monetary relief on behalf of persons doing business or residing in the State of Alaska for injuries directly or indirectly sustained by these persons by reason of any violation as set forth in AS § 45.50.577(b); treble damages as required by law, attorney’s fees, civil penalties, and injunctive relief, including as set forth in AS § 45.50.580; relief under the UTPA, including injunctive relief, restitution, treble damages, civil penalties, punitive damages, and all other relief deemed just.

2.2 Plaintiff alleged price-fixing and other anticompetitive conduct by various entities, including Simmons, in its Complaint filed in the Action. The Complaint alleged Defendants conspired to restrain production and exchange highly sensitive competitive information with one another, and that certain Defendants conspired to rig bids and manipulate price indices in violation of AS § 45.50.562, *et seq.* and the UTPA. The Complaint alleged that, through both unlawful agreements and unfair methods of competition, Defendants fixed, raised, stabilized, and maintained prices of broiler chicken throughout the United States, including in Alaska. Simmons denies these allegations and specifically denies that it engaged in any wrongdoing.

2.3 On May 6, 2021, the State entered into a Tolling Agreement with Simmons to avoid potentially unnecessary litigation costs and expenses and, in exchange therefor, the State voluntarily dismissed Simmons from the Action without prejudice to reasserting the State’s claims during the agreed-upon Tolling Period or Subsequent Tolling Periods set forth in the Tolling Agreement.

2.4 Plaintiff and Simmons have now negotiated at arms' length and reached an agreement to settle all of Plaintiff's claims against Simmons in the Action and to the entry of this Consent Decree ("Consent Decree") without trial or adjudication on any issues of fact or law.

2.5 Plaintiff and Simmons have determined that this Consent Decree and the amount of the Settlement Fund, as defined *infra*, are reasonable in light of Plaintiff's claims, Simmons' defenses, the risk and expense of litigation, and the extent of each party's investigation, discovery, and preparation for trial.

2.6 Simmons denies the allegations contained in the Complaint and any liability or violation of law. Simmons believes it has valid defenses to all claims that have been or could be asserted by Plaintiff against it. Notwithstanding its defenses, Simmons agrees to entry of this Consent Decree to: (a) avoid the expense, inconvenience, and distraction of burdensome and protracted litigation; (b) obtain the releases, orders, and final judgment contemplated by this Consent Decree; and (c) put to rest and terminate with finality all claims Plaintiff has or could have asserted against Simmons that relate in any way to or arise out of the allegations in the Complaint, as more particularly set forth below. Neither the Complaint nor anything in this Consent Decree constitutes evidence of or admission of wrongdoing by Simmons regarding the existence or non-existence of any issue, fact, liability, wrongdoing, or violation of any law alleged by Plaintiff.

2.7 Simmons recognizes and states that it enters into this Consent Decree voluntarily and that, other than the promises contained herein, no promises or threats have been made by the Attorney General's Office or any member, officer, agent or representative thereof to induce Simmons to enter into this Consent Decree.

2.8 Plaintiff and Simmons waive any right they may have to appeal from this Consent

Decree and from any Order adopting it, provided that no substantive changes are made to the Consent Decree after it has been presented by the parties to the Court for approval.

2.9 Plaintiff and Simmons acknowledge they have not completed full discovery in this matter and may hereafter discover facts different from, or in addition to, those that they knew or believed to be true at the time they entered into this Consent Decree. Nevertheless, Plaintiff and Simmons agree that this Consent Decree shall be effective and remain effective notwithstanding such different or additional facts, and they also waive any right they may have to seek modification of this Consent Decree or any Order adopting it based upon discovery of such different or additional facts.

III. JURISDICTION AND SCOPE

3.1 Jurisdiction: Solely for the limited purpose of effectuating this Consent Decree, the Court has jurisdiction over the parties and the subject matter herein, as well as the implementation, enforcement, and performance of the terms included in this Consent Decree. The Attorney General has authority to bring this Action under AS 45.50.562, *et seq.*, and the UTPA.

3.2 Review: Plaintiff and Simmons have read and understand this Consent Decree and enter into it voluntarily, each having been advised by their undersigned counsel of the meaning and effect of each provision of this Consent Decree.

3.3 Signatures: This Consent Decree may be executed in counterparts by Plaintiff and Simmons, and a signature page sent via electronic mail shall be deemed an original signature for purposes of executing this Consent Decree.

IV. DEFINITIONS

THE COURT ORDERS that the following definitions shall be used in interpreting the terms of this Consent Decree:

4.1 “Broiler Chicken” shall refer to chickens raised for meat consumption to be slaughtered before the age of 13 weeks, and which may be sold in a variety of forms, including fresh or frozen, raw or cooked, whole or in parts, or as a meat ingredient in a value-added product. This term excludes chicken grown, processed and sold according to halal, kosher, free-range, or organic standards.

4.2 “Illinois litigation” refers to *In re Broiler Chicken Antitrust Litigation*, No. 1:16-cv-06837 (N.D. Ill.).

4.3 “Simmons” shall refer to Simmons Foods, Inc. and Simmons Prepared Foods, Inc.

4.4 “Effective Date” means the date this Consent Decree is entered by the Court.

4.5 “Person” or “Persons” shall be interpreted and defined consistent with its use in AS § 45.50.562, *et seq.*

4.6 “Plaintiff” means the State of Alaska (“State”), acting as *parens patriae* on behalf of Persons residing in the State, and the Attorney General acting on behalf of the State.

4.7 “The Settlement Fund” shall be \$290,000.00 to be paid in accordance with Paragraph 6.1.

4.8 “This Action” refers to *State of Alaska v. Agri Stats, Inc., et al*, Case No. 3AN-21-04632CI.

V. INJUNCTION AND CERTIFICATION

5.1 For a period of five (5) years, Simmons will not engage in any conduct, including price-fixing, bid-rigging, market allocation, coordinating output or supply, or manipulating pricing indices, with other Broiler Chicken producers in the United States with respect to the sale of any Broiler Chicken products in Alaska or that has an effect in Alaska, which constitute horizontal conduct that are *per se* violations of Section 1 of the Sherman Act (which for purposes of this Action,

the parties understand to be the same standard as that under AS § 45.50.562, *et seq.*)

5.2 Simmons shall certify to Plaintiff on or around January 12, 2025, January 12, 2026, January 12, 2027, January 12, 2028 and January 12, 2029, that it has established an antitrust compliance program for the purpose of compliance with federal and state antitrust laws, including the Sherman Act and AS § 45.50.562, *et seq.* Such program shall provide relevant compliance education regarding the legal standards imposed by the antitrust laws, the remedies that might be applied in the event of violations, and its employees' obligations in the event it observes violations of the antitrust laws.

5.3 Nothing in this Consent Decree shall be interpreted as limiting in any way Simmons' obligations to comply in the fullest with federal and state antitrust laws as they currently exist or may be amended in the future.

VI. MONETARY RELIEF

6.1 Within ten (10) business days of the Effective Date, Simmons shall pay to the State of Alaska \$290,000.00 ("Settlement Amount") by wire transfer to the State or to such other recipient as Plaintiff shall designate. Plaintiff will provide bank account information to Simmons sufficient to facilitate the wire transfer no less than twenty (20) business days prior to the deadline for payment.

6.2 Pursuant to AS § 45.50.577, the Attorney General shall use the funds for recovery of the costs and attorneys' fees incurred in pursuing this matter, future monitoring and enforcement of the Consent Decree and AS § 45.50.562, *et seq.*, and/or for purposes of antitrust and consumer protection education, investigation and enforcement, at the sole discretion of the Attorney General.

6.3 Plaintiff shall look solely to the Settlement Fund for settlement and satisfaction of its claims against Simmons, and shall have no other recovery of costs, fees, attorney's fees, damages,

restitution, fines, penalties, or other relief against Simmons.

6.4 No part of the Settlement Amount paid by Simmons shall constitute, nor shall it be construed as, or treated as constituting, payment for treble or multiple damages, fines, penalties, forfeitures, or punitive recoveries.

6.5 Plaintiff shall be solely responsible for the maintenance and administration of the Settlement Fund, including any related fees, costs, and expenses. Simmons shall have no responsibility or liability for, and no rights in, nor authority over, the allocation of the Settlement Fund. In no circumstances shall this Consent Decree be construed to require Simmons to pay more or less than the Settlement Amount set forth in Paragraph 6.1 above.

6.6 The parties shall be responsible for all of their own fees and costs incurred in connection with the investigation, prosecution, defense, and settlement of this Action prior to entry of this Consent Decree.

6.7 Plaintiff is in possession of a copy of the agreement dated February 25, 2020 (the “Defendants’ Agreement”) entered into by certain defendants in one or more putative class action or direct action lawsuits which have been consolidated for pretrial purposes in the Illinois litigation. Plaintiff is not a party to Defendants’ Agreement. Both Plaintiff and Simmons acknowledge and agree that the Consent Decree does not constitute a “Qualified Settlement” as defined in the Defendants’ Agreement. If, however, at any time Plaintiff enters into a Qualified Settlement with any party to Defendants’ Agreement, then this settlement with Simmons will be converted into, deemed, and construed to be a Qualified Settlement and the provisions of paragraphs 6.D and 6.E of the Defendants’ Agreement shall be deemed to be incorporated into and expressly provided in this Consent Decree. Plaintiff and Simmons reserve all rights to challenge the validity and applicability

of the Defendants' Agreement at any time, for any reason, and in any forum, including during the course of this Action. Nothing in this Consent Decree is or shall be construed as an admission that the Defendants' Agreement applies to this Consent Decree or the claims released by this Consent Decree. This Paragraph 6.7 is intended to protect Simmons in the event Plaintiff enters into a Qualified Settlement with any party to the Defendants' Agreement.

VII. COOPERATION PROVISIONS

7.1 Simmons will use reasonable efforts to cooperate with Plaintiff by upon request:

7.1.1. Producing to Plaintiff unredacted copies of all non-privileged documents produced by Simmons in discovery or under court orders in the Illinois litigation, including any future productions in that litigation.

7.1.2. Producing to Plaintiff unredacted copies of all transcripts of depositions taken, and its exhibits, of Simmons or its employees in the Illinois litigation to the extent not already provided, including any future depositions in that litigation, provided that the production of depositions and/or exhibits are not prohibited under a governing protective order. To the extent that such depositions and exhibits are subject to a governing protective order and require the consent of additional parties, Simmons will use its best efforts to obtain such consent from necessary parties.

7.1.3. Producing to Plaintiff unredacted copies of all Simmons' written discovery responses, including its Initial Disclosures, Responses to Requests for Production, Interrogatories, and Requests for Admission from the Illinois litigation to the extent not already provided, including any future responses served in that litigation.

7.1.4. Using reasonable efforts to produce an officer or employee to testify at trial—either in

person (including remote testimony if permitted), by deposition, or affidavit, as reasonably practicable—as are reasonably requested by the Plaintiff, provided that the Plaintiff provides notice to Simmons of its intent to call such witnesses at least sixty (60) days before trial.

7.1.5. Using reasonable efforts to provide affidavits as requested by Plaintiff for the purpose of authenticating a reasonable number of documents (not to exceed fifty (50) documents) produced by Simmons, when it is reasonably practicable to do so in good faith, no later than sixty (60) days before trial. Simmons also agrees that it will provide Plaintiff a list of all documents for which Simmons has provided testimony (whether by live testimony or affidavit) authenticating the documents in the Illinois litigation and, at Plaintiff's request, to provide similar affidavits authenticating any such documents for use in this Action.

7.2 Plaintiff shall only seek Simmons' cooperation as provided in Paragraph 7.1 and its sub-paragraphs after making a good faith effort to review and utilize evidence and testimony already available to Plaintiff.

7.3 Material produced by Simmons under this Consent Decree shall be treated in accordance with any protective order in this Action. To the extent that any document to be produced pursuant to this Consent Decree is subject to a protective order in the Illinois litigation, such production will be subject to the provisions of the Illinois protective order.

7.4 Plaintiff will not provide any non-public information or records to any Person, political subdivision of the State, or any other party in connection with the Action, to support any suit, action, complaint, arbitration, mediation, or other grievance against Simmons, based on, or

relating in any way to, the allegations or claims of the Complaint. Nothing in this Paragraph shall be construed to inhibit Plaintiff's ability to communicate with other states' attorneys general, except with respect to the exchange of non-public records provided by Simmons pursuant to Paragraph 7.1.

7.5 Plaintiff and Simmons shall use reasonable efforts to effectuate this Consent Decree, including cooperating in seeking any court approvals. Plaintiff and Simmons mutually agree that neither party will publicly disparage, malign, or damage the other party.

VIII. RELEASE, DISCHARGE, AND COVENANT NOT TO SUE

8.1 Upon the entry of this Consent Decree by the Court, and in consideration of payment of the Settlement Fund, and for other good and valuable consideration, Simmons, and all of its respective past and present, direct and indirect, wholly and partially owned, parent companies, subsidiaries, and affiliates; the predecessors, successors and assigns of any of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing (the "Simmons Released Parties") shall be and hereby are completely released and forever discharged from any and all claims, damages, fines, penalties, liabilities, restitution, expenses (including costs, attorneys' fees, and interest), demands, actions, judgments, suits, and causes of action arising from, or relating in any way in whole or in part to, the allegations or claims of the Complaint and any amendments thereto, that Plaintiff, whether acting on its own behalf or as *parens patriae*, ever had, now has, or hereafter can, shall, or may have.

8.2 Plaintiff covenants that it will not hereafter commence, assert, or solicit any claims against the Simmons Released Parties on behalf of the State, or any Person, state agency, or other party, in any suit, action, complaint, arbitration, mediation, litigation or other grievance based on, or

relating to, the allegations or claims in this Action, with the exception that Plaintiff may enforce this Consent Decree as provided in Section 10.3.

8.3 The release, discharge, and covenant not to sue set forth in Paragraphs 8.1 and 8.2, above, include only the claims pled in the Complaint, any amendments thereto, and any claims relating to or arising from the acts, omissions, or conduct at issue in the Complaint, whether expressly pled or not. The release, discharge, and covenant not to sue does not include any claims solely arising out of product liability or breach of contract claims in the ordinary course of business (except to the extent any alleged breach of contract arises from or relates to an alleged antitrust violation), or any other claims not related to the underlying Complaint. The release, discharge, and covenant not to sue does not include any claims against any Defendants or co-conspirators in this Action other than Simmons or Simmons Released Parties referenced in Paragraph 8.1.

IX. NO EFFECT IF THIS CONSENT DECREE IS NOT ENTERED

9.1 If this Consent Decree is not approved and entered by the Court, then this Consent Decree shall be of no force or effect. Simmons and Plaintiff expressly reserve all of their rights and defenses, including, but not limited to personal jurisdiction and venue defenses, if this Consent Decree does not become final.

X. ENFORCEMENT AND RETENTION OF JURISDICTION

10.1 Jurisdiction is retained by this Court for five (5) years for the purpose of enabling any of the parties to this Consent Decree to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the interpretation, construction or implementation of any of the provisions of this Consent Decree, for the enforcement of compliance, and for the punishment of any violations.

10.2 In any contempt of court proceeding initiated to enforce this Consent Decree due to a violation of its terms, Plaintiff and Simmons may seek, and the Court shall have the authority to grant, all remedies available in such a proceeding.

10.3 Nothing herein precludes Plaintiff from enforcing the provisions of this Consent Decree, or from pursuing any law enforcement action with respect to the acts or practices of Simmons not covered by this Consent Decree or any acts or practices conducted after the Effective Date.

10.4 Neither the existence of this Consent Decree nor anything contained herein shall be deemed or construed to be an admission by Simmons or evidence of any wrongdoing or violation of law by Simmons, or the truth of any of the claims or allegations contained in the Complaint. Pursuant to Alaska Rule of Evidence 408, neither this Consent Decree, nor any of its terms or provisions, nor any of the negotiations, documents, discussions, or proceedings connected with it, nor any other action taken to carry out this Consent Decree by Plaintiff or Simmons shall be used, directly or indirectly, referred to, or offered as evidence or received in evidence, in any pending or future civil, criminal, or administrative action or proceeding, except a proceeding to enforce this Consent Decree, or to defend against the assertion of a released claim, or as necessary to give effect to Paragraph 6.7.

10.5 This Consent Decree shall be construed and interpreted to effectuate the intent of the parties, which is to provide for a complete and final resolution of Plaintiff's claims that were asserted, or could have been asserted, with respect to Simmons as provided in this Consent Decree.

10.6 Under no circumstances shall this Consent Decree or the names of the State of Alaska or the Office of the Attorney General, or any of its employees or representatives be used by Simmons agents or employees in connection with the promotion of any product or service or an

endorsement or approval of Simmons' past or future practices.

10.7 This Consent Decree shall be governed by and interpreted according to the substantive laws of the State of Alaska without regard to its choice of law or conflict of laws principles.

10.8 Plaintiff and Simmons agree that this Consent Decree constitutes the entire, complete, and integrated agreement between Plaintiff and Simmons pertaining to the settlement of the Action against Simmons, and supersedes all prior and contemporaneous undertakings of Plaintiff and Simmons in connection therewith. This Consent Decree may not be modified or amended except in writing executed by Plaintiff and Simmons, and, if required by law, approved by the Court.

10.9 Neither Plaintiff nor Simmons shall be considered the drafter of this Consent Decree or any of its provisions for the purpose of any statute, case law or rule of interpretation of construction that would or might cause any provision to be construed against the drafter of this Consent Decree.

10.10 Solely for the purpose of determining or securing compliance with this Consent Decree, Simmons authorizes its attorneys to accept electronic service of a motion by Plaintiff to enforce or interpret this Consent Decree.

10.11 This Consent Decree shall expire five (5) years from the date it is entered by the Court. Such expiration shall in no way affect the validity of Plaintiff's release of claims against Simmons.

10.12 Plaintiff and Simmons agree and represent that any persons signing this Consent Decree are authorized to execute this Consent Decree on each party's respective behalf.

10.13 This Consent Decree shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiff and Simmons. Without limiting the generality of the foregoing,

each and every covenant and agreement made herein by Plaintiff shall be binding upon all Persons it represents.

XI. STIPULATION

Plaintiff and Simmons, by their respective counsel, stipulate to the entry of this Consent Order.

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XII. APPROVAL AND ORDER

NOW, THEREFORE, there being no just reason for delay for resolving the claims alleged in Plaintiff's Complaint against Simmons Foods, Inc. and Simmons Prepared Foods, Inc. ("Simmons"), and before the taking of any testimony, and with at least 60 days having passed since the filing of this Consent Decree in accordance with AS 45.50.584, and the Court having considered all matters of record pursuant to AS 45.50.584, and without trial or adjudication of any issue of any fact or law herein, and upon consent of the parties hereto, it is hereby **ORDERED, ADJUDGED, AND DECREED** that this Consent Decree is approved and hereby entered pursuant to AS § 45.50.584. This Action in all other respects is hereby dismissed with prejudice with respect to Simmons without award of fees, costs, or expenses to any party.

DATED this ____ of _____, 2024.

Thomas A. Matthews
SUPERIOR COURT JUDGE