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

STATE OF ALASKA,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	Case No.: 3AN-21-07791 Civil
AGRI STATS, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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**STIPULATION AND CONSENT DECREE AGAINST  
SMITHFIELD FOODS, INC**

**I. SETTLEMENT SUMMARY**

- 1.1 Plaintiff: State of Alaska
- 1.2 Defendant: Smithfield Foods, Inc. (“Smithfield”)
- 1.3 Settlement Amount: \$6,500,000.00
- 1.4 Attorneys for Plaintiff: Jeff Picket, Senior Assistant Attorney General  
Jeff Angelovich  
Drew Pate  
Cody Hill  
Jim Fosler
- 1.5 Attorneys for Defendants: Jennifer M. Coughlin  
Brian Robison

**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 September 23, 2021, for the following relief against the Defendants,<sup>1</sup> including Smithfield: 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

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<sup>1</sup> The “Defendants” are: Agri Stats, Inc., Clemens Food Group LLC, the Clemens Family Corp., Hormel Foods Corp., JBS USA Food Company, Seaboard Foods, LLC, Seaboard Corporation, Smithfield Foods, Inc., Triumph Foods, LLC, Tyson Foods, Inc., Tyson Prepared Foods, Inc., and Tyson Fresh Meats, Inc.

relief, including as set forth in AS §§ 45.50.577(d), 45.50.578(b), and 45.50.580; relief under the UTPA, including injunctive relief, restitution, treble damages, civil penalties, punitive damages, and attorney's fees and costs; restitution and/or disgorgement under the common-law theory of unjust enrichment; punitive damages; and all other relief deemed just.

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

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

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

2.5 Smithfield denies the allegations contained in the Complaint and any liability or violation of law. Smithfield believes it has valid defenses to all claims that have been or could be asserted by Plaintiff against it. Notwithstanding its defenses, Smithfield 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 Smithfield 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 Smithfield regarding the existence or non-existence of any issue, fact, liability, wrongdoing, or violation of any law alleged by the Plaintiff.

2.6 Smithfield 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 Smithfield to enter into this Consent Decree.

2.7 Plaintiff and Smithfield 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.

2.8 Plaintiff and Smithfield acknowledge that 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 Smithfield 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. Plaintiff understands and acknowledges that it is assuming the risk that its damages may be different from what it currently believes them to be, and Plaintiff's understanding of Plaintiff's damages is not a

basic assumption on which this Consent Decree depends.

2.9 Plaintiff specifically releases any right it may now or hereafter have to reform, rescind, modify, or set aside this Consent Decree or its release through mutual or unilateral mistake or otherwise. The risk of such uncertainty and mistake is expressly assumed by Plaintiff in consideration of the settlement payment herein mentioned and in consideration of this being a full and final settlement.

### **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 Smithfield have read and understand this Consent Decree and enter into it voluntarily, each having been advised by its 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 Smithfield, 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 “Pork” means porcine or swine products processed, produced or sold by Smithfield, or by any of the Defendants or their co-conspirators, including but not limited to: primals (including but

not limited to loins, shoulders, picnics, butts, ribs, bellies, hams, or legs), trim or sub-primal products (including but not limited to back loins, tenderloins, back ribs, boneless loins, boneless sirloins, riblets, chef's prime, prime ribs, brisket, skirt, cushion, ground meats, sirloin tip roast, or hocks), further processed and value added porcine products (including, but not limited to bacon, sausage, lunch meats, further processed ham, or jerky products), offal or variety products (including, but not limited to hearts, tongues, livers, head products, spleens, kidneys, feet, stomach, bladder, uterus, snoot, ears, tail, brisket bone, intestines, jowls, neck bones or other bones, skin, lungs, glands, hair, or pet food ingredients), rendered product and byproducts (including, but not limited to, lard, grease, meat meal, bone meal, blood meal, or blood plasma), casings (including, but not limited to, mucosa), and carcasses.

4.2 "Minnesota litigation" refers to *In re Pork Antitrust Litigation*, No. 18-cv-01776 (D. Minn.).

4.3 "Smithfield" shall refer to Smithfield 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 in its law-enforcement, sovereign, and *parens patriae* capacity on behalf of Persons residing in the State, and the Attorney General for the State of Alaska acting on behalf of the State.

4.7 "The Settlement Fund" shall be \$6,500,000.00 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-

07791CI.

**V. INJUNCTION AND CERTIFICATION**

5.1 For a period of two (2) years from the Effective Date, Smithfield agrees that it will continue to comply with the federal antitrust laws, and Smithfield will not engage in any conduct, including price-fixing, market allocation, coordinating output or supply, or manipulating pricing indices, with other Pork producers in the United States with respect to the sale of any Pork products in Alaska or that has an effect in Alaska, which constitute horizontal conduct that Plaintiff alleges 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 Smithfield shall certify to Plaintiff on or around February 28, 2025 and February 27, 2026, that, in the twelve (12) months prior to the certification, one or more attorneys who work within Smithfield's legal department took a combined total of at least six (6) hours of continuing legal education programs focused on compliance with federal and/or state antitrust laws, including the Sherman Act. Acceptable programs include, but are not limited to, antitrust programming offered by the Practising Law Institute.

5.3 Nothing in this Consent Decree shall be interpreted as limiting in any way Smithfield's 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, Smithfield shall pay to the State of Alaska \$6,500,000.00 ("Settlement Amount") by wire transfer to the State or to such other recipient as Plaintiff shall designate. Plaintiff will provide bank account information to Smithfield 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 and future monitoring and enforcement of the Consent Decree and AS § 45.50.562, *et seq.* The Attorney General shall then deposit the remaining amounts in the general fund, which may be appropriated to the Alaska permanent fund (AS § 37.13.010(a)), for any other public purpose, or for any other lawful purpose in the discharge of the Attorney General's duties at the sole discretion of the Attorney General. If the State of Alaska distributes or allocates the funds from the Settlement Fund in a manner that varies from the manner contemplated in this paragraph, such variance shall not: (a) limit, alter, or otherwise affect the enforceability of the Consent Decree; (b) limit, alter, or otherwise affect Smithfield's rights or obligations under this Consent Decree; or (c) constitute or serve as a basis for any challenge, appeal, modification, or objection to this Consent Decree.

6.3 Plaintiff shall look solely to the Settlement Fund for settlement and satisfaction of its claims against Smithfield, and shall have no other recovery of costs, fees, attorney's fees, damages, restitution, fines, penalties, or other relief against Smithfield.

6.4 No part of the Settlement Fund paid by Smithfield 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. Smithfield 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 Smithfield to pay more

or less than the Settlement Fund 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.

## **VII. COOPERATION PROVISIONS**

7.1 Smithfield will use reasonable efforts to cooperate with Plaintiff by:

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

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

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

7.1.4. Making available to testify live at a single trial (a) one then-current Smithfield employee who can authenticate a specific set of documents (all of which Plaintiff will provide to Smithfield at least forty-five (45) days before jury selection starts), and (b) one

then-current Smithfield employee who can serve as a fact witness on material fact issues about which the employee has personal knowledge to the extent such fact issues are in dispute at the time of trial.

7.1.5. Good-faith efforts to assist Plaintiff in obtaining the authentication and admissibility of Smithfield's documents for purposes of summary judgment and/or trial.

7.2 Plaintiff shall only seek Smithfield's 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 Smithfield 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 Minnesota litigation, such production will be subject to the provisions of the Minnesota 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 Smithfield, 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 Smithfield pursuant to Paragraph 7.1.

7.5 Plaintiff and Smithfield shall use reasonable efforts to effectuate this Consent Decree.

### **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, Smithfield, 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 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 Smithfield 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 allegation 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 Smithfield or Smithfield-related entities 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. Smithfield and Plaintiff expressly reserve all of their rights and defenses if this Consent Decree does not become final.

**X. ENFORCEMENT AND RETENTION OF JURISDICTION**

10.1 Jurisdiction is retained by this Court for two (2) 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 Smithfield 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 Smithfield 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 Smithfield or evidence of any wrongdoing or violation of law by Smithfield, 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 Smithfield 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 6.3.

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 Smithfield 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 Smithfield's agents or employees in connection with the promotion of any product or service or an endorsement or approval of Smithfield's 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 Smithfield agree that this Consent Decree constitutes the entire, complete, and integrated agreement between Plaintiff and Smithfield pertaining to the settlement of the Action against Smithfield, and supersedes all prior and contemporaneous undertakings of Plaintiff and Smithfield in connection therewith. This Consent Decree may not be modified or amended except in writing executed by Plaintiff and Smithfield, and, if required by law, approved by the Court.

10.9 Each party represents and warrants to the other party that, in entering into this Consent

Decree, it has not relied on any statement, advice, counsel, disclosure, or representations of any other party or such other party's counsel other than as expressly set forth in this Consent Decree. Each party acknowledges that it is relying upon only the representations and warranties set forth in this Consent Decree, and each party expressly disclaims any claims based on fraudulent concealment, fraudulent inducement, or prior or contemporaneous extracontractual representations and warranties.

10.10 Neither Plaintiff nor Smithfield 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 or construction that would or might cause any provision to be construed against the drafter of this Consent Decree.

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

10.12 This Consent Decree shall expire two (2) 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 Smithfield.

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

10.14 This Consent Decree shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiff and Smithfield. 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 Smithfield, by their respective counsel, stipulate to the entry of this Consent Decree.

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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 Smithfield, 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 Smithfield without award of fees, costs, or expenses to any party.

DATED this \_\_\_\_ of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Josie Garton  
SUPERIOR COURT JUDGE