

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

IN RE PEANUT FARMERS  
ANTITRUST LITIGATION

No. 2:19-cv-00463-RAJ-LRL

**CLASS ACTION SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND  
DEFENDANT OLAM PEANUT SHELLING COMPANY, INC.**

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of the Effective Date, by and between Olam Peanut Shelling Company, Inc. (“Olam” or “Settling Defendant”) and the Plaintiffs D&M Farms, Mark Hasty, Dustin Land, Rocky Creek Peanut Farms, LLC, Daniel Howell, and Lonnie Gilbert, on behalf of themselves and on behalf of the Settlement Class (“Plaintiffs”), by and through their respective counsel.

**RECITALS**

A. There is pending in the United States District Court for the Eastern District of Virginia an action captioned *In re Peanut Farmers Antitrust Litigation*, No. 2:19-cv-00463 (E.D.V.A.) (hereinafter, the “Action”), in which Plaintiffs have alleged, among other things, that Defendants, including Golden Peanut Company LLC, Birdsong Corporation, and Olam entered into a contract, combination or conspiracy in restraint of trade, the purpose and effect of which was to suppress competition and to pay depressed prices to the Settlement Class for runner peanut farmerstock during the Class Period, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (the “Claims”).

B. Olam has denied and continues to deny each and all of the claims and contentions alleged in the Action, or that could have been alleged in the Action, and would assert numerous defenses to Plaintiffs’ claims if required to do so.

C. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of a violation of any statute, law, rule, or regulation or of any liability or wrongdoing by Olam or of the truth of any of Plaintiffs' Claims or allegations, nor shall it be deemed or construed to be an admission nor evidence of Olam's defenses.

D. Co-Lead Counsel have conducted an investigation into the facts and law regarding the Action and the possible legal and factual defenses thereto and have concluded that a settlement with Olam according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of, the Settlement Class, given the uncertainties, risks, and costs of continued litigation, given the fact that if approved, the proposed settlement will be the initial settlement in a case with two remaining Defendants, and given Plaintiffs' belief as to the availability of joint and several liability against the remaining Defendants, and Olam's obligation to cooperate with Plaintiffs in their continued prosecution of the Action against the remaining Defendants.

E. Olam, despite its belief that it is not liable for, and has strong defenses to, the Claims asserted by Plaintiffs, has concluded that further litigation of the Action would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and according to the terms and conditions set forth in this Agreement to avoid further expense, inconvenience, and disruption, and to dispose of the burden of protracted litigation, taking into account, among other things, the uncertainty and risks inherent in any litigation, especially in complex cases such as this.

F. Arm's-length settlement negotiations have taken place between Co-Lead Counsel and Olam's Counsel over a couple of months, and this Agreement has been reached because of those negotiations.

G. The Parties to this Agreement desire to fully and finally settle all actual and potential Claims arising from or relating to the Action, the factual allegations underlying the Action, and each of them, and avoid the costs and risks of protracted litigation and trial.

**NOW, THEREFORE, IT IS HEREBY AGREED**, by and among the undersigned on behalf of the Settling Parties, that this Action and all Released Claims are finally and fully settled and compromised and that this Action shall be dismissed in its entirety on the merits and with prejudice as to the Released Parties, and without costs to Plaintiffs or Olam, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

**I. DEFINITIONS**

**A. Settlement Class Definition**

Plaintiffs shall seek, and Settling Defendant shall take no position with respect to, appointment of Plaintiffs' Co-Lead Counsel as Settlement Class Counsel for purposes of this Settlement and certification in the Action of a class for settlement purposes only, referred to herein as the "Settlement Class":

All persons or entities in the United States who sold raw, harvested runner peanuts to any of the Defendants, including their subsidiaries or joint-ventures, from January 1, 2014 through December 31, 2019 (the "Class Period"). Specifically excluded from this Class are the Defendants; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded from this Class are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, any juror assigned to this action, and any co-conspirator identified in this action

**B. General Definitions**

1. "Class Notice" means the notice to the Settlement Class that is approved by the Court, in accordance with Section II(F)(3) below.

2. “Class Period” means the period from and including January 1, 2014 through December 31, 2019.

3. “Co-Conspirator” means those entities named as co-conspirators in the Operative Complaint.

4. “Co-Lead Counsel” and “Settlement Class Counsel” mean collectively Brian D. Clark of Lockridge Grindal Nauen PLLP and Kimberly A. Justice of Freed Kanner London & Millen LLC

5. “Complaint” or “Operative Complaint” means the Plaintiffs’ Second Amended Class Action Complaint in the Action, ECF No. 148.

6. “Court” or “District Court” means the United States District Court for the Eastern District of Virginia and the Honorable Raymond A. Jackson or his successor, or any other Court in which the Action is proceeding.

7. “Date the Settlement Becomes Final” means the date on which all rights of appeal have expired after the Court enters an order granting final approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(F)(6) below. If any appeal is taken from the Court’s final approval of this Settlement Agreement, then the “Date the Settlement Becomes Final” means the date upon which any such appeal is resolved in favor of the Settlement Agreement and no further appellate rights exist.

8. “Date of Preliminary Approval” means the date on which the Court enters an order granting preliminary approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(F)(2) below.

9. “Defendant” or “Defendants” means any or all the Defendants named in the Action, now or in the future.

**10.** “Documents” means (a) all papers, electronically stored information (“ESI”), statements, transcripts, or other materials within the scope of Rule 34(a)(1)(A) of the Federal Rules of Civil Procedure; and (b) any copies or reproductions of the foregoing, including microfilm copies or computer images.

**11.** “Effective Date” means the latest date on which this Settlement Agreement is entered into and executed by all Parties.

**12.** “Escrow Account” means the account with the Escrow Agent that holds the Settlement Fund.

**13.** “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Section II(C) of this Agreement.

**14.** “Fairness Hearing” means a hearing on the settlement proposed in this Settlement Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

**15.** “Named Plaintiffs” means any or all the Plaintiffs named in the Action, now or in the future.

**16.** “Net Settlement Fund” means the Settlement Fund, plus accrued interest, less any award of attorneys’ fees or reimbursement of expenses and less applicable taxes, tax preparation expenses, and costs of notice and administration, that may be awarded or approved by the Court.

**17.** “Opt-Out” or “Opt-Outs” means one or more Person(s), otherwise qualifying as member(s) of the Settlement Class, that has (or have) validly and timely excluded

himself (or itself or themselves) from the Settlement Class as contemplated by Sections II(F)(2) and (3) of this Settlement Agreement.

**18.** “Order and Final Judgment” means the order and final judgment of the Court approving the Settlement Agreement, as described in Section II(F)(6) below.

**19.** “Parties” or “Settling Parties” means Settling Defendant and the Settlement Class, as represented by Plaintiffs.

**20.** “Person(s)” includes an individual and an entity.

**21.** “Potential Settlement Class Member” means each person or entity who qualifies as a potential member of the Settlement Class.

**22.** “Released Claims” means any and all existing or potential causes of action, claims, suits, actions, contentions, allegations, assertions of wrongdoing, demands, whether class, individual, or otherwise in nature (whether or not any Potential Settlement Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity), damages whenever incurred whether compensatory or exemplary, liabilities of any nature or under any theory whatsoever, as well as costs, losses, expenses, penalties, attorneys’ fees, in law or equity arising out of, relating to, or referred to, or in any way based upon, directly or indirectly, the conduct alleged in the Action, including but not limited to all of Plaintiffs’ Claims, that Releasing Parties (defined below), or each of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of or relating to, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated, claims, causes of action, injuries, or damages arising from or relating to any act or omission during the Class Period complained of, relating to, or referred to in the Action. Notwithstanding the above, “Released Claims” do not

include (a) claims asserted against any Defendant other than the Released Parties nor (b) any claims unrelated to the Action that are based on breach of contract. The reservation of claims set forth in (a) and (b) of this Paragraph does not impair or diminish the right of the Released Parties to assert any and all defenses to such claims.

**23.** “Released Parties” means jointly and severally, individually and collectively, the Settling Defendant, its predecessors; successors; assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, and affiliates, and all of their past, present, and future heirs, executors, devisees, administrators, officers, executives, directors, stockholders, partners, members, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees. Notwithstanding the foregoing, “Released Parties” does not include any other Defendant that is named in the Operative Complaint as of the Effective Date, either explicitly or as a third-party beneficiary.

**24.** “Releasing Parties” means jointly and severally, individually and collectively, Plaintiffs, the Settlement Class, and each Settlement Class Member, on behalf of themselves and any person or entity claiming by or through them as, including without limitation, their respective predecessors; successors; assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, affiliates, heirs, executors, devisees, administrators, officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees.

**25.** “Settlement Class Member” means each member of the Settlement Class that does not timely and properly exclude itself from the Settlement Class.

**26.** “Settling Defendant” means Olam.

**27.** “Settling Defendant’s Counsel” means the law firms of Latham & Watkins

LLP and Stoel Rives LLP.

**28.** “Settlement Amount” means the cash payment of \$7,750,000.00 described in Section II(A)(1), below.

**29.** “Settlement Fund” means the funds described in Section II(A) of this Settlement Agreement, plus accrued interest, in the separate Escrow Account for the settlement contemplated by this Settlement Agreement established in accordance with Section II(C) below.

## **II. SETTLEMENT**

### **A. Performance By Settling Defendant**

**1. Settlement Payment.** Settling Defendant shall pay \$7.75 million (\$7,750,000.00) in United States dollars, all in cash, as the settlement amount in settlement of the Action, inclusive of Settlement Class recovery amounts, fees (including attorneys’ fees and any other fees), and costs. This Settlement Amount shall be paid by Settling Defendant into the Escrow Account described herein within thirty (30) days of receipt of the wiring instructions from Plaintiffs.

**a.** Settling Defendant’s payment to the Escrow Agent described herein shall be by wire transfer pursuant to instructions from the Escrow Agent or Co-Lead Counsel.

**b.** The payment described in Section II(A)(1) shall constitute the total Settlement Amount, and the obligations described in Section II(A) shall continue so long as this Settlement Agreement remains in effect.

**c.** The Releasing Parties shall look solely to the Settlement Amount for settlement and satisfaction, as provided herein, of all Released Claims for which the Released Parties are released by the Releasing Parties pursuant to this Agreement.



2. **Cooperation.** Settling Defendant shall cooperate in good faith with Plaintiffs and Settlement Class Counsel in accordance with the terms and provisions of this Agreement. Such cooperation shall be contained in a separately executed confidential letter agreement that will be provided to the Court for *in camera* review upon request, but is otherwise strictly confidential.

**B. Release of Claims.**

1. **Release.** Upon the occurrence of the Date the Settlement Becomes Final, and in consideration of the valuable consideration set forth in this Agreement, the Releasing Parties shall be deemed to, and by operation of the Order and Final Judgment shall have, hereby fully, finally, and forever released, relinquished, and discharged the Released Parties of all Released Claims.

2. **Covenant Not to Sue.** The Releasing Parties covenant not to sue or otherwise seek to establish liability against the 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.

3. **Full Release.** The Parties to this Agreement expressly agree and confirm that the Released Claims as set forth in Section I(B)(22) and the provisions of Section II(B) constitute a full and final release of the Released Parties by the Releasing Parties of the Released Claims.

4. **Waiver.** Upon the Date the Settlement Becomes Final, the Releasing Parties shall be deemed to have, and by operation of the Order and Final Judgment shall have, with respect

to the subject matter of the Released Claims, waived the provisions, rights, and benefits of Section 1542 of the California Civil Code and which provides:

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.

The Releasing Parties shall further be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived all similar provisions, statutes, regulations, rules, or principles of law or equity of any other state or applicable jurisdiction, or principle of common law. In connection with the waiver and relinquishment set forth in this Paragraph, the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Released Claims, but that it is their intention to release fully, finally, and forever all Released Claims against the Released Parties, and, upon the Date the Settlement Becomes Final, shall be deemed to have, and by operation of the Order and Final Judgment, shall have, fully, finally, and forever settled and released any and all Released Claims against the Released Parties, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, notwithstanding the discovery or existence of any such additional or different facts. The Releasing Parties intend and, by operation of the Order and Final Judgment, shall be deemed to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement Agreement of which this waiver and release is a part.

**C. Settlement Fund Administration.** The Settlement Fund shall be administered pursuant to the provisions of this Settlement Agreement and subject to the Court's continuing supervision and control, until the funds in the Settlement Fund are fully distributed, as follows:

1. The Settlement Fund shall be established within an Escrow Account and administered by an Escrow Agent at a bank designated by Co-Lead Counsel and administered by an Escrow Agent designated by Co-Lead Counsel. Co-Lead Counsel, Settling Defendant, and Settling Defendant's Counsel agree to cooperate in good faith to prepare an appropriate escrow agreement in conformance with this Agreement.

2. Upon the Court's Preliminary Approval Order, Co-Lead Counsel may, without prior order of the Court, withdraw from the Settlement Fund up to \$250,000 to pay for expenses associated with providing notice of the settlement to the Settlement Class, expenses for maintaining and administering the Settlement Fund, and taxes and expenses incurred in connection with taxation matters. For purposes of clarification, such costs, fees and expenses related to providing notice to the Class shall be paid exclusively from the Settlement Fund. Plaintiffs will make reasonable efforts to notice multiple settlements with multiple Defendants in a single notice to the extent possible. Any expenses associated with providing notice of the settlement to the Settlement Class, expenses for maintaining and administering the Settlement Fund, and taxes and expenses incurred in connection with taxation matters paid or incurred shall be nonrefundable if, for any reason, the Settlement Agreement is not finally approved, or is rescinded or otherwise fails to become effective.

3. Under no circumstances will Settling Defendant be required to pay more or less than the Settlement Amount pursuant to this Agreement and the settlement set forth herein.

4. No other funds shall be paid, or disbursements made from the Settlement Fund without an order of the Court.

5. All payments into the Escrow Account shall, at the direction of Settlement Class Counsel, be invested in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Funds or a bank account insured by the Federal Deposit Insurance Corporation (“FDIC”) up to the guaranteed FDIC limit. Any interest earned on any of the foregoing shall become part of the Settlement Fund. Olam shall have no responsibility for, or liability in connection with, the Settlement Fund or Escrow Account, including without limitation, the investment, administration, maintenance, or distribution thereof.

6. The Parties agree that the Settlement Fund and the Net Settlement Fund are each intended to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agent, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes, as defined below, owed with respect to the Escrow Account. Neither the Settling Defendant nor the Settling Defendant’s Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any Taxes (as defined below) with respect to the Escrow Account.

7. All: (i) taxes on the income of the Settlement Fund (“Taxes”), and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) shall timely be paid by the Escrow Agent out of the Settlement Fund. The Settlement Class Members shall be responsible for paying

any and all federal, state, and local income taxes due on any distribution made to them pursuant to the Settlement Agreement provided herein.

**8.** After the Date the Settlement Becomes Final, the Net Settlement Fund shall be disbursed in accordance with a plan of distribution to be approved by the Court. The Settlement Class Members shall look solely to the Net Settlement Fund for settlement and satisfaction of any and all Released Claims from the Released Parties. The timing of a motion to approve a plan of distribution of the Net Settlement Fund created by this Settlement Agreement shall be in the discretion of Co-Lead Counsel, and may be combined with a plan to distribute proceeds from other settlements in this Action.

**D. No Reversion**

Except as provided in Section II(F)(9)(b), Settling Defendant shall have no rights to reversion in the event that Potential Settlement Class Members request exclusion or opt out of the Class, and any Opt-Outs shall have no effect on this Settlement Agreement.

**E. Settlements with Other Defendants.**

If Plaintiffs settle with Golden Peanut, LLC or Birdsong Corporation for an amount that is less on a pro rata basis than the Settlement with Olam, then there will be a pro rata reduction of the Olam Settlement by the same pro rata amount. For purposes of this paragraph only, the Parties agree that the method of calculating the pro-rata portion of Olam as opposed to Golden Peanut, LLC or Birdsong Corporation's pro-rata settlement or judgment is based upon the alleged damages figures in Dr. William's September 3, 2020 report, which finds that among the three Defendants, Olam is responsible for 21.2% of Defendant purchases, Golden Peanut, LLC for 31.0% of Defendant purchases, and Birdsong Corporation for 47.8% of Defendant purchases. This provision will only be valid regarding a settlement that occurs prior to a decision denying

Plaintiffs' motion for class certification, granting Defendants' motion for summary judgment dismissing all claims in the Complaint, or the start of trial, whichever is soonest.

**F. Approval of Settlement Agreement and Dismissal of Claims.**

**1. Cooperation.** Plaintiffs and Settling Defendant shall use their best efforts to effectuate this Settlement Agreement, including obtaining all necessary approvals of the Court required by this Agreement.

**2. Preliminary Approval.** Plaintiffs shall submit to the District Court a motion, as soon as practicable at such time deemed appropriate in the discretion of Co-Lead Counsel, requesting entry of an order preliminarily approving the settlement ("Preliminary Approval Order"). Settling Defendant shall take no position with respect to such motion. Plaintiffs have advised Settling Defendant that the proposed Preliminary Approval Order shall provide that,

*inter alia:*

- a. the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;
- b. the proposed Class Notice meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances for settlement purposes;
- c. after Class Notice has been carried out, a hearing on the settlement proposed in this Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court;
- d. Potential Settlement Class Members who wish to exclude themselves must submit a valid and timely request for exclusion;
- e. Potential Settlement Class Members who wish to object to this Agreement must submit a valid and timely written statement of the grounds for objection; and

- f. Potential Settlement Class Members who wish to appear in person to object to this Agreement may do so at the Fairness Hearing pursuant to directions by the Court.

3. **Class Notice.** The Class Notice shall provide for a right of exclusion, as set forth in Section II(F)(2). The Class Notice shall also provide for a right to object to the proposed Settlement. Individual notice of the Settlement Agreement to all Potential Settlement Class Members who can be identified through reasonable effort shall be mailed or emailed to the Settlement Class in conformance with a notice plan to be approved by the Court. Plaintiffs shall move to approve notice to the Settlement Class of this Settlement Agreement as soon as practicable, at such time deemed appropriate in the discretion of Co-Lead Counsel. Such motion may be combined with notice of other settlements in this Action.

4. **Cost of Class Notice.** The costs of providing Class Notice to Potential Settlement Class Members shall be paid by the Escrow Agent from the Settlement Fund pursuant to Sections II(C)(2) and (3).

5. **CAFA Notice.** Within ten (10) days of filing of this Settlement Agreement in court with the abovementioned motion for preliminary approval, Settling Defendant will provide to the appropriate state officials and the appropriate federal officials the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (“CAFA”).

6. **Final Approval.** If this Settlement Agreement is preliminarily approved by the Court, the Settlement Class shall seek entry of an Order and Final Judgment as soon as practicable at such time deemed appropriate in the discretion of Co-Lead Counsel. Settling Defendant shall take no position with respect to such motion. Plaintiffs have advised Settling Defendant that they shall seek entry of an Order and Final Judgment that, *inter alia*:

- a. finally approves this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of

Civil Procedure and directing its consummation according to its terms and conditions;

- b.** determines that the Class Notice constituted, under the circumstances, the most effective and practicable notice of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Potential Settlement Class Members who were entitled to receive notice;
- c.** orders that all claims made against the Settling Defendant in the Action be dismissed with prejudice and, except as provided for in this Settlement Agreement, without further costs or fees;
- d.** incorporates the release set forth in this Agreement such that the Releasing Parties release the Released Parties of the Released Claims as of the date of the Order and Final Judgment;
- e.** reserves to the Court exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this Agreement;
- f.** determines under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to the Released Parties shall be final and entered forthwith; and
- g.** orders that settlement funds may be disbursed as provided in the Final Approval Order or other order of the Court.

**7. Class Counsel Fees and Expenses; No Other Costs.**

**a.** Except as otherwise provided in this Settlement Agreement, Settling Defendant shall have no responsibility for any other costs, including Co-Lead Counsel's attorneys' fees, costs, and expenses or the fees, costs, or expenses of any Plaintiff's or Settlement Class Member's respective attorneys, experts, advisors, or representatives, provided, however, that with respect to the Action, including this Settlement Agreement, Settling Defendant shall bear its own costs and attorneys' fees.

**b.** At their discretion and after proper notice to the Settlement Class and opportunity to object, Co-Lead Counsel may seek a court order granting attorneys' fees and expenses from the Settlement Fund, separately or in conjunction with other settlements.



c. At their discretion and after proper notice to the Settlement Class and opportunity to object, Class Counsel may seek from the Settlement Fund, separately or in conjunction with other settlements, a court order granting reimbursement of costs, service awards for the work Named Plaintiffs performed on behalf of the Settlement Class, and to compensate for the time and expense they have incurred in bringing this Action.

d. The procedure for and the allowance or disallowance by the Court of any applications by Co-Lead Counsel for attorneys' fees and expenses or the expenses of or service awards to Plaintiffs to be paid out of the Settlement Fund are not part of or a condition to the settlement set forth herein, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement set forth in this Agreement, and any order or proceeding relating to any application for attorneys' fees or expenses shall not operate to terminate or cancel this Agreement or the releases set forth herein, or affect or delay the finality of the judgment approving this settlement.

e. Within 15 calendar days after any order by the Court awarding attorneys' fees, expenses, class representative service awards or expenses, the Escrow Agent shall pay the approved attorneys' fees, costs, and service award via wire transfer from the Settlement Fund as directed by Co-Lead Counsel. In the event the settlement is reversed on appeal, or the amount of any distributions pursuant to Court orders (including but not limited to orders with respect to attorneys' fees, costs, or service awards) is reduced on appeal, class counsel shall, within 30 days of such appellate order, cause the difference in the amount paid and the amount awarded on appeal to be returned to the Settlement Fund.

**8. When Settlement Becomes Final.** The settlement contemplated by this Settlement Agreement shall become final on the date that: (a) the Court has entered the Order and

Final Judgment approving this Settlement Agreement, and all of its material terms and conditions, in accordance with Section II(F)(6), above, under Rule 23(e) of the Federal Rules of Civil Procedure and dismissing the Action as against the Settling Defendant with prejudice as to all Settlement Class Members and without costs; and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement and entry of the order of Final Judgment, as described in Section II(F)(6) above, has expired with no appeal having been filed or, if appealed, approval of this Settlement Agreement and the Order and Final Judgment has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance is no longer subject to further appeal or review. The Parties agree that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure, nor the All Writs Act, 28 U.S.C. § 1651, nor any extensions of time in petitioning for a writ of certiorari under Rule 13 of the Rules of the Supreme Court of the United States, shall be taken into account in determining the above-stated times.

**9. Termination and Rescission.**

**a. Rejection or Alteration of Settlement Terms.** If the Court declines to grant either preliminary or final approval to this Settlement Agreement or any material part hereof (as set forth in Sections II(F)(2) or (F)(6) above, respectively), or if the Court approves this Settlement Agreement in a materially modified form, or if after the Court's approval, such approval is materially modified or set aside on appeal, or if the Court does not enter the Final Order and Judgment, or if the Court enters the Final Order and Judgment and appellate review is sought and on such review such Final Order and Judgment is not affirmed (collectively, "Triggering Events"), then Settling Defendant and Plaintiffs shall each, in their respective sole discretion, have the option to rescind this Settlement Agreement in its entirety by providing written notice of their

election to do so (“Termination Notice”) to each other within thirty (30) calendar days of such Triggering Event. For purposes of this Section II(F)(9)(a), a material modification includes but is not limited to any modification to the settlement payment, the scope of the release pursuant to Section II(B), and the scope of the cooperation provisions in Section II(A)(2).

**b. Rescission Based on Opt-Outs.** Olam will have the sole discretion, but not the obligation, to rescind the Settlement Agreement if the Opt-Out Purchases by Class members for the period January 1, 2014 through December 31, 2019 total more than 20% of the total farmerstock purchases for the period January 1, 2014 through December 31, 2019. (The foregoing shall be referred to as the “Settlement Rescission”). If Olam elects to rescind the Settlement Agreement, then Olam agrees to make three witnesses who have been separately identified in the confidential side letter to this Agreement available for deposition at a mutually agreeable location in California, Georgia, or New York (or via video from those locations) within two weeks of the date it rescinds the Settlement Agreement.

**c. Termination of Settlement.** In the event this Settlement Agreement is rescinded or terminated pursuant to this Section II(F)(9), then: (i) within fifteen (15) business days, the Settlement Fund—including accrued interest, less taxes and tax expenses that have been paid or that have accrued and will be payable at some later date, and attorneys’ fees and costs that have been disbursed pursuant to Court Order, and less expenses and costs that have been disbursed pursuant to Section II(C)(2)—shall be refunded by the Escrow Agent to the Settling Defendant pursuant to written instructions from Settling Defendant’s Counsel to Co-Lead Counsel; (ii) the Parties shall be deemed to have reverted to their respective status in the Action as of the day before the Effective Date, and without waiver of any positions asserted in the Action as of the day before the Effective Date, and without having deemed adopted or accepted any part of this

Settlement Agreement for purposes of the Action, which shall then resume proceedings in the District Court, that Court having retained jurisdiction over the Settlement Agreement and related matters and, except as otherwise expressly provided in this Settlement Agreement, the Parties shall proceed in all respects as if this Settlement Agreement had not been executed.

**10. No Admission.**

**a.** Nothing in this Settlement Agreement constitutes an admission by Settling Defendant as to the merits of the allegations made in the Action, or an admission by Plaintiffs or the Settlement Class of the validity of any defenses that have been or could be asserted by Settling Defendant.

**b.** This Settlement Agreement, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any of the Settling Parties to be received in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of any of the Settling Defendant or other Released Parties; provided, however, that nothing contained in this Section II(F)(10)(b) shall prevent this Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto) or the Order and Final Judgment, or in which the reasonableness, fairness, or good faith of any Party participating in the Settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement Agreement or the Order and Final Judgment. This Settlement Agreement may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this Settlement Agreement, including but not limited to Settling Defendant filing

the Settlement Agreement and/or the Order and Final Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, waiver, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

#### **11. Reservation of Class Members' Rights Against Other Defendants**

Plaintiffs and the Settlement Class reserve all rights against any and all current or future Defendants other than the Released Parties. The purchases by Settling Defendant shall, to the extent permitted or authorized by law, remain in the Action against the other current or future Defendants in the Action as a potential basis for damage claims and, to the extent permitted or authorized by law, shall be part of any joint and several liability claims against such Defendants or other persons or entities other than the Released Parties.

### **III. MISCELLANEOUS**

**A. Entire Agreement.** This Settlement Agreement shall constitute the entire agreement between the Settlement Class and Settling Defendant pertaining to the settlement of the Action against Settling Defendant and supersedes any and all prior and contemporaneous undertakings of the Settlement Class and Settling Defendant in connection therewith. All terms of the Settlement Agreement are contractual and not mere recitals.

**B. Inurement.** The terms of the Settlement Agreement are and shall be binding upon, to the fullest extent possible, each of the Releasing Parties and the Released Parties, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties, Releasing Parties, or Released Parties, including any Settlement Class Members.

**C. Modification.** This Settlement Agreement may be modified or amended only by a writing executed by the Settlement Class and Settling Defendant, subject (if after preliminary or

final approval) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

**D. Drafted Mutually.** For the purpose of construing or interpreting this Settlement Agreement, the Settlement Class and Settling Defendant shall be deemed to have drafted it equally, and it shall not be construed strictly for or against any party.

**E. Governing Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of Virginia without regard to its choice-of-law or conflict-of-law principles.

**F. Jurisdiction.** This Settlement Agreement is subject to the continuing and 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, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. If for any reason this Settlement Agreement is rescinded, terminated or fails to become effective, then, in such event, nothing in this Settlement Agreement or with regard to any conduct of Settling Defendant or Settling Defendant's Counsel pursuant to any obligations Settling Defendant has pursuant to the Agreement shall constitute or are intended to be construed as any agreement to personal jurisdiction (general or specific) or subject matter jurisdiction so as to confer the jurisdiction of the District Court over Settling Defendant, nor shall it constitute any waiver of any defenses based on personal or subject matter jurisdiction.

**G. Counterparts.** This Settlement Agreement may be executed in counterparts by Co-Lead Counsel and Settling Defendant's Counsel, each of which shall be deemed an original and all of which taken together shall constitute the same Settlement Agreement. A facsimile or .pdf

signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

**H. Represented by Counsel.** Plaintiffs, the Settlement Class and Settling Defendant acknowledge that each have been represented by counsel, and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so and are not relying on any representation or warranty by the other party other than as set forth herein. Therefore, the Settling Parties and their respective counsel agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake.

**I. Authorization.** Each of the undersigned attorneys represents that he or she is fully authorized to enter into and execute this Settlement Agreement, subject to Court approval; the undersigned Co-Lead Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs and the Settlement Class; and the undersigned Settling Defendant's Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Settling Defendant.

**J. Privilege.** Nothing in this Settlement Agreement or the negotiations or proceedings relating to the foregoing is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the accountants' privilege, the attorney-client privilege, the joint defense privilege, or work product immunity.

**K. Notice.** Any notice required pursuant to or in connection with this Settlement Agreement shall be in writing and shall be given by: (1) hand delivery; (2) registered or certified mail, return receipt requested, postage prepaid; or (3) UPS or similar overnight courier, addressed, in the case of notice to any Plaintiff or Settlement Class Member, to Co-Lead Counsel at their addresses set forth below, and, in the case of notice to Settling Defendant, to their representative

at the address set forth below, or such other address as Settling Defendant or Co-Lead Counsel may designate, from time to time, by giving notice to all Parties in the manner described in this Section III(K).

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**L. Non-Disparagement:** The Parties agree they will not disparage this Lawsuit or one another, such as by making public statements that this Lawsuit was frivolous, and instead will confine their public comments to essentially the following: “The parties have agreed to resolve this matter. Olam continues to deny the allegations in Plaintiffs’ complaint, while Plaintiffs believe they would have prevailed.”



IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Effective Date.

Dated: October 22, 2020

Dated: October 23, 2020



\_\_\_\_\_  
Brian D. Clark

\_\_\_\_\_  
Niall E. Lynch

W. Joseph Bruckner  
Brian D. Clark  
Simeon A. Morbey  
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***Counsel for Plaintiffs and Interim Liaison Counsel  
for the Proposed Class***