

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO
EASTERN DIVISION**

IN RE: FRESH AND PROCESS)	
POTATOES ANTITRUST LITIGATION)	Case No. 4:10-MD-02186-BLW-CWD
)	
_____)	MDL No. 2186
)	
THIS DOCUMENT RELATES TO:)	SETTLEMENT AGREEMENT
)	BETWEEN DIRECT PURCHASER
<i>Direct Purchaser Plaintiff Actions</i>)	PLAINTIFFS AND DEFENDANTS

This Settlement Agreement (“Settlement”) is made and entered into this 10th day of April, 2015, by and between:

- a. Defendants Albert T. Wada; Wada Farms, Inc.; Wada Family, LLC; Wada Farms Potatoes, Inc.; Wada Farms Marketing Group, LLC; Wada-Van Orden Potatoes, Inc., Pro Fresh LLC; Cedar Farms, LLC, Blaine Larsen Farms, Inc.; Cornelison Farms, Inc.; Michael Cranney d/b/a/ Cranney Farms; Driscoll Potatoes, Inc.; Idahoan Foods LLC; Kim Wahlen; KCW Farms, Inc.; Lance Funk d/b/a Lance Funk Farms; Pleasant Valley Potato, Inc.; Potandon Produce L.L.C.; Raybould Brothers Farms, LLC; Ronald D. Offutt Jr.; RD Offutt, Co.; Rigby Produce, Inc.; Snake River Plains Potatoes, Inc.; United Potato Growers of America, Inc.; United Potato Growers of Idaho, Inc.; and United II Potato Growers of Idaho, Inc., together with their past and present parents, subsidiaries and affiliates (“Defendants”); and

- b. Direct Purchaser Plaintiff Class Representatives, individually and on behalf of the Classes (as defined herein at Paragraph 22) (“Plaintiffs”).

WHEREAS, Plaintiffs are prosecuting the above-captioned Direct Purchaser Plaintiff action currently pending and consolidated in the District of Idaho, and including all Direct Purchaser actions transferred for coordination (the “Action”) on their own behalf and on behalf of the Classes against Defendants;¹

WHEREAS, Plaintiffs allege that Defendants participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of Fresh Potatoes grown in the United States at artificially high levels in violation of Section 1 of the Sherman Act (15 U.S.C. § 1), and that such conduct was not protected or authorized under any federal or state statute;

WHEREAS, Plaintiffs have conducted extensive discovery and investigation into the facts and the law regarding the Action and have concluded that a settlement with Defendants according to the terms set forth below is fair, reasonable, adequate and beneficial to and in the best interests of Plaintiffs and the Classes;

WHEREAS, Defendants deny that they acted unlawfully or conspired at any time to raise, fix, or maintain prices of Fresh Potatoes and further, Defendants allege that all their conduct was protected and authorized by antitrust laws. However, despite their belief that they are not liable for, and have defenses to, the claims alleged in the Action, Defendants desire to settle the Action to avoid the expense, risk, exposure, inconvenience

¹ This Agreement does not include the action filed by Associated Wholesale Grocers, Inc.: *Associated Wholesale Grocers, Inc. v. United Potato Growers of America, Inc., et al.*, Case No. 13-cv-2182 (D. Kan.); No. 13-cv-251 (D. Idaho). See Paragraph 52 herein.

and distraction of continued litigation of the Action, or any action or proceeding relating to the matters being fully settled and finally put to rest in this Settlement;

WHEREAS, Class Counsel and Defendants' Counsel have engaged in extensive arm's-length settlement negotiations, and this Settlement has been reached as a result of these negotiations;

NOW, THERFORE, in consideration of the covenants, agreements and releases set forth herein, and for other good and valuable consideration, it is agreed by and among the undersigned that, subject to approval by the Court, all Released Claims (as defined below) shall be finally, fully and forever settled, compromised and released, and the Action be dismissed on the merits with prejudice as to Defendants, without costs as to Plaintiffs and the Classes, on the following terms and conditions:

A. Definitions

The following terms, as used in this Settlement, have the following meanings:

1. "Claims Administrator" refers to the entity, to be proposed by Plaintiffs in their Motion for Preliminary Approval of this Settlement and subject to approval by the Court, to provide Class Notice and administer claims filed in this Settlement.

2. "Lead Class Counsel" refers to the law firm Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006, Chair of the Direct Purchaser Plaintiffs'

Executive Committee. "Class Counsel" refers to Lead Class Counsel and to members of the Plaintiffs' Executive Committee listed below:

- a. Bernstein Liebhard LLP, 10 East 40th Street | New York, NY 10016;
- b. Freed Kanner London & Millen, 2201 Waukegan Road, Suite 130, Bannockburn, IL 60015;

- c. The Kralowec Law Group, 188 The Embarcadero, Suite 800, San Francisco, CA 94105;
 - d. Labaton Sucharow LLP, 140 Broadway, New York, NY 10005;
 - e. Pearson Simon Warshaw Penny, LLP, 15165 Ventura Boulevard, Suite 400, Sherman Oaks, CA 91403;
 - f. Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101;
 - g. Spector Roseman Kodroff & Willis, P.C., 1818 Market Street, Suite 2500, Philadelphia, Pennsylvania 19103;
 - h. Steyer Lowenthal Boodrookas Alvarez & Smith LLP, One California Street, Third Floor, San Francisco, CA 94111; and
 - i. Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103.
3. “Class Member” means each member of the Settlement Classes, as defined in Paragraph 22 of this Settlement, who does not timely elect to be excluded from the Classes, and includes, but is not limited to, Plaintiffs.
 4. “Counsel” means both Lead Class Counsel and Defendants’ Counsel, as defined herein.
 5. “Defendant(s)” means the parties listed as defendants in the Second Amended Complaint filed on January 31, 2012 (ECF No. 163).
 6. “Defendants’ Counsel” refers to:
 - a. The law firm of Andersen Banducci PLLC, 101 S. Capitol Blvd., Suite 1600, Boise, ID 83702, representing Defendants Albert T. Wada;

Wada Farms, Inc.; Wada Family, LLC; Wada Farms Potatoes, Inc.; Wada Farms Marketing Group, LLC; Wada-Van Orden Potatoes, Inc., Pro Fresh LLC; Cedar Farms, LLC; Cornelison Farms, Inc.; Michael Cranney d/b/a/ Cranney Farms; Kim Wahlen; KCW Farms, Inc.; Lance Funk d/b/a Lance Funk Farms; Pleasant Valley Potato, Inc.; Raybould Brothers Farms, LLC; Snake River Plains Potatoes, Inc.; United Potato Growers of America, Inc.; United Potato Growers of Idaho, Inc.; and United II Potato Growers of Idaho, Inc.;

b. The law firm of Orrick Herrington & Sutcliffe LLP, The Orrick Building, 405 Howard Street, San Francisco, CA 94105, representing Defendants Blaine Larsen Farms, Inc.; Rigby Produce, Inc.; and Driscoll Potatoes, Inc.;

c. The law firms of McCarthy, Leonard & Kaemmerer, L.C., 825 Maryville Centre Drive, Suite 300, Town & Country, MO 63017 and Stinson Leonard Street LLP, 150 S Fifth St, Suite 2300, Minneapolis, MN 55402, representing Defendants R.D. Offutt Co. and Ronald D. Offutt, Jr.;

d. The law firm of Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street, P.O. Box 1008, Columbus, OH 43216-1008, representing Defendant Idahoan Foods, LLC; and

e. The law firm of Proskauer Rose LLP, 1001 Pennsylvania Ave NW, Suite 600 South, Washington, DC 20004, representing Defendant Potandon Produce L.L.C.

7. “Escrow Agent” means Citibank N.A. as set forth in the Escrow Agreement attached hereto as Exhibit A.
8. “Execution Date” means the date the Settlement is signed by all Settling Parties.
9. “Final Approval” means the definition given to that phrase in Paragraph 29 herein.
10. “Fresh Potatoes” means potatoes grown in the United States and sold for fresh consumption. Fresh Potatoes does not include Process Potatoes.
11. “Opt-Outs” means those potential Settlement Class Members that have exercised their right to request exclusion from the Classes prior to the Opt-Out Deadline.
12. “Opt-Out Deadline” means the deadline established by the Court and set forth in the Class Notice by which potential Class Members must request exclusion from the Settlement Classes.
13. “Plaintiffs” refers to each of Brigiotta’s Farmland Produce and Garden Center, Inc., and J.R. Mazzola, Inc.
14. “Process Potatoes” means potatoes grown in the United States and sold for Further Processing by a processor. “Further Processing” includes dehydrating, freezing, canning, chipping, dicing, slicing, chopping, and packaging by persons whose business it is to engage in such processing, excluding restaurants and food service entities, and that package such process potatoes for further sale, or the processing of potatoes into non-food products.
15. “Releasees” refers, individually and collectively, to: (a) each and every Defendant, and their parents, subsidiaries, and affiliated companies or businesses,

regardless of organizational form, including, without limitation, corporations, trusts, partnerships, sole proprietorships or limited liability companies and any LLC managers or LLC members thereof; (b) all past and present cooperative members of United Potato Growers of America, Inc. (“UPGA”), identified in Exhibit B; (c) all past and present members of the cooperative members of UPGA, identified in Exhibit C; (d) all past and present members of United Potato Growers of Idaho, Inc, identified in Exhibit D; (e) all past and present members of United II Potato Growers of Idaho, Inc., identified in Exhibit E; and (f) the past and present officers, directors, employees, agents, insurers, attorneys (excluding the Jones Waldo Law Firm and its past and present attorneys), shareholders, joint venturers, partners and representatives; and the predecessors, successors, heirs, executors, administrators, and assigns of each and every one of the foregoing Releasees.

16. “Releasors” refers, jointly and severally, and individually and collectively, to Plaintiffs, the Class Members, and each of their respective past and present officers, directors, employees, agents, attorneys, representatives, parents, subsidiaries, affiliates, partners, and insurers, and to the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.

17. “Settlement Amount” refers to nineteen million and five hundred thousand United States dollars (\$19,500,000).

18. “Settlement Class Period” means the period beginning June 18, 2006 and extending until and including the date on which the Court enters an order preliminarily approving the Settlement.

19. “Settlement Fund” refers to the Settlement Amount, paid in United States dollars, plus any accrued interest on said deposits once in escrow as set forth in Paragraphs 37 and 38 below.

20. “Settling Parties” shall mean Defendants and Plaintiffs, through their counsel.

21. “Specialty Potatoes” means organic, fingerling, blue, long white, and purple potatoes.

B. Settlement Class Certification

22. Plaintiffs and Defendants hereby stipulate for purposes of settlement only that the requirements of Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the following Classes shall be certified for settlement purposes as to all Defendants:

Direct Purchaser Plaintiff Monetary Relief Class:

All persons and entities who, between June 18, 2006 and the date on which the Court enters an order preliminarily approving the Settlement and certifying the Class for settlement purposes, directly purchased Fresh Potatoes grown in the United States, other than Specialty Potatoes, from: (1) any Defendant or any parent, subsidiary, or affiliate thereof; (2) any member of the cooperative members of United Potato Growers of America, or any parent, subsidiary, or affiliate thereof; any member of the United Potato Growers of Idaho, Inc., or any parent, subsidiary, or affiliate thereof; and (3) any entity that packed or marketed fresh potatoes grown by any Defendant, by any member of United Potato Growers of Idaho, Inc., or by any member of the cooperative members of United Potato Growers of America, Inc.

Direct Purchaser Plaintiff Injunctive Relief Class:

All persons and entities who, between June 18, 2006 and the date on which the Court enters an order preliminarily approving the Settlement and certifying the Class for settlement purposes, directly purchased Fresh Potatoes grown in the United States, other than Specialty Potatoes, from: (1) any Defendant or any parent, subsidiary, or affiliate thereof; (2) any member of the cooperative members of United Potato Growers of America, or any parent, subsidiary, or affiliate thereof; any member of the United Potato Growers of Idaho, Inc., or any

parent, subsidiary, or affiliate thereof; and (3) any entity that packed or marketed fresh potatoes grown by any Defendant, by any member of United Potato Growers of Idaho, Inc., or by any member of the cooperative members of United Potato Growers of America, Inc.

Excluded from the Classes are Defendants and their Co-Conspirators, including, but not limited to, any member of United Potato Growers of Idaho, Inc. and United II, the members of the United Potato Growers of America, Inc., and any member of the cooperative members of United Potato Growers of America, Inc., and their respective subsidiaries, affiliates and members; any entity that packed or marketed fresh potatoes grown by any Defendant, by any member of United Potato Growers of Idaho, Inc., any member of United II Potato Growers of Idaho, Inc., and by any member of the cooperative members of United Potato Growers of America, Inc., and their respective parents, subsidiaries, affiliates and members; and any governmental entities.

C. Approval of this Settlement and Dismissal of Claims

23. Plaintiffs and Defendants shall recommend approval of this Settlement by the United States District Court for the District of Idaho. Plaintiffs and Defendants shall use their best efforts to effectuate this Settlement, including cooperating in promptly seeking Court approval of this Settlement and securing both the Court's certification of the Settlement Classes and the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)), to secure the prompt, complete, and final dismissal with prejudice of the Action.

24. Within thirty (30) days after the Execution Date, Defendants, their parents, affiliates and subsidiaries (whether owned in whole or part by Defendants) shall, at Defendants' expense, transmit to the Claims Administrator and in electronic, comma- and tab- delimited text format the names and addresses of potential Class Members as they have available. The customer information transmitted by Defendants to the Claims Administrator shall be treated as Confidential, and shall be used only by the Claims

Administrator for purposes of creating and maintaining a customer database and for disseminating notice.

25. Within a reasonable time after the Execution Date, Plaintiffs shall file with the Court a motion (the “Motion”), which Defendants shall not oppose, for: (a) entry of an order preliminarily approving the Settlement and certifying the Classes for settlement purposes (together, “Preliminary Approval”); and (b) authorization to disseminate notice of Class certification and the Settlement. The Motion shall include: (a) the proposed definitions of the Settlement Classes for settlement purposes as set forth in Paragraph 22 of this Settlement; (b) a proposed form of, plan for, and date of dissemination of notice to the class of the Settlement (“Class Notice”); (c) a proposed schedule for the filing of Plaintiffs’ Motion for Fees and Expenses and incentive awards, the filing of a Motion to approve finally the Settlement, the date by which any Settlement Class Member must seek exclusion from the Settlement Class and/or object to the Settlement or to Plaintiffs’ Motion for Fees and Expenses and incentive awards, and a final Fairness Hearing; and (d) a proposed form of order preliminarily approving the Settlement and certifying the Classes for settlement purposes. The Motion shall recite and ask the Court to find that the proposed forms and methods for dissemination of Class Notice are valid, due and sufficient notice of the Classes, constitute the best notice practicable under the circumstances and comply fully with the requirements of the Rule 23 of the Federal Rules of Civil Procedure.

Lead Class Counsel shall, prior to filing the Motion with the Court, share with Defendants a draft of the Motion and supporting papers, and, prior to filing shall consider, in good faith, any comments Defendants may collectively have; provided,

however, that Defendants shall submit to Lead Class Counsel one collective set of comments to the Motion and supporting papers within three (3) calendar days of receipt from Lead Class Counsel. If the Court sets a deadline by which Class Counsel must file the Motion, Lead Class Counsel shall share with Defendants a draft of the Motion and supporting papers five (5) calendar days prior to the filing deadline, and Defendants shall submit to Lead Class Counsel one collective set of comments on such papers three (3) calendar days after receipt of from Lead Class Counsel, which Lead Class Counsel shall consider in good faith.

26. After Preliminary Approval, and subject to approval by the Court of the means for dissemination of notice, individual notice of the Settlement shall be mailed to persons and entities who are located in the United States and who purchased Fresh Potatoes directly from Defendants, from the parents, affiliates or subsidiaries thereof, or from any entity that packed or marketed fresh potatoes that is owned in whole or part by any Defendant during the Class Period that: (a) are identified by Defendants pursuant to Paragraph 24 herein; and (b) are identified by Plaintiffs and Class Counsel. In addition, after Preliminary Approval, and subject to Court approval of the means for dissemination of notice, Lead Class Counsel shall also cause Class Notice of the Settlement to be published in print and/or online publications, as proposed by Lead Class Counsel and ordered by the Court, to provide notice to Class Members who may not be capable of being identified for purposes of individual notice.

27. Within twenty (20) days after expiration of the Opt-Out Deadline, Plaintiffs shall provide Defendants, through Defendants' Counsel, notice of all Opt-Outs by providing a written list of the same ("Opt-Out Notice").

28. Plaintiffs and Defendants shall, in accordance with the schedule set forth in the Preliminary Approval Order, jointly seek entry of the Consent Order (attached as Exhibit F) and an order and final judgment. The terms of such order shall be proposed by Plaintiffs subject to the agreement of Defendants, which agreement shall not be unreasonably withheld, and shall include, as appropriate and necessary:

- a. Finding that the notices given constitute adequate, due and sufficient notice, and meet the requirements of due process, and Federal Rules of Civil Procedure, and any applicable state laws;
- b. As to the Action, approving finally this Settlement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and applicable state law, and directing its consummation according to its terms;
- c. Directing that the Action be dismissed with prejudice and, except as explicitly provided for in this Settlement, without costs, and entering the Consent Order;
- d. Reserving to the United States District Court for the District of Idaho exclusive jurisdiction over the Settlement, including the administration and consummation of this Settlement and Consent Order;
- e. Determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay, and directing that the Consent Order and final judgment of dismissal of the Action shall be entered; and
- f. Requiring Lead Class Counsel to file with the Clerk of the Court a record of potential Class Members that timely excluded themselves from the Class, and to provide a copy of the record to Counsel for Defendants.

29. This Settlement shall become final upon the occurrence of all of the following: (a) the Court has entered an order finally approving this Settlement under Rule 23(e) of the Federal Rules of Civil Procedure; (b) the Court has entered final judgment dismissing the Action on the merits with prejudice as to all Class Members and without costs and has entered the Consent Order, attached hereto as Exhibit F ; and (c) the time

for appeal or to seek permission to appeal from the Court's approval of this Settlement and entry of a final judgment as described in clause (b) above has expired or, if appealed, approval of this Settlement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review ("Final Approval"). Neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining if the conditions for Final Approval have been satisfied. On the Execution Date, Plaintiffs and Defendants shall be bound by the terms of this Settlement, and the Settlement shall not be rescinded except in accordance with Paragraphs 34 through 36 of this Settlement.

D. Release and Discharge

30. In addition to and not in lieu of the effect of any final judgment entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, resulting from any actions or conduct alleged in the Plaintiffs' Second Amended Class Action Complaint (ECF No. 163, filed on January 31, 2012) (the "Complaint") including without limitation any conduct by any Releasee relating to planting, growing, supplying, producing, selling, marketing, or distributing of Fresh Potatoes produced in the United States (including any

conduct, whether or not concealed or hidden, alleged, and causes of action asserted, or that could have been alleged or asserted, in the Complaint) that may have occurred or did occur from the beginning of time through the Execution Date, and which in whole or in part arise from the facts or actions described in the Complaint, including any claims, demands, actions, suits and causes of action under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. (the “Released Claims”).

Notwithstanding anything in this Paragraph, Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge, claims based solely on purchases of Process Potatoes, Specialty Potatoes, or Fresh Potatoes outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases. This Release is made without regard to the possibility of subsequent discovery or existence of different or additional facts.

31. Each Releasor waives California Civil Code Section 1542 and similar or comparable present or future law or principle of law of any jurisdiction. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 (“Section 1542”):

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable

present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of this Settlement, but each Releasor hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, claim whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts.

32. In addition to the provisions of Paragraphs 30 and 31, each Releasor hereby expressly and irrevocably waives and releases, upon this Settlement becoming finally approved by the Court, any and all defenses, rights, and benefits that each Releasor may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in Paragraphs 30 and 31 herein. Each Releasor also expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

33. The release and discharge set forth in Paragraphs 30 through 32 herein do not include claims relating to payment disputes, physical harm, defective product, or bodily injury (the “Excepted Claims”).

E. Rescission

34. If the Court refuses to approve this Settlement or any part hereof or refuses to enter the Consent Order, or if such approval modifies materially the Agreement, including the Consent Order, or if approval is set aside on appeal, or if the Court does not enter the final judgment and the Consent Order as provided in Paragraph 28 of this Settlement, or if the Court enters the final judgment and the Consent Order and appellate review is sought, and on such review, such final judgment and entry of the Consent Order is not affirmed, then Defendants, acting collectively, and Plaintiffs, shall have the right and option to rescind this Settlement in its entirety within ten (10) days of the action giving rise to such option. If Defendants, collectively, or Plaintiffs elect to rescind this Settlement under this Paragraph, the rescinding party shall provide written notice of such election to all other Settling Parties. If this Settlement is rescinded, within ten (10) days of both the notice of rescission by a party to this Settlement and to the Escrow Agent and Defendants’ written instructions to the Escrow Agent, all amounts in the escrow account created pursuant to Paragraph 38 hereof, less any expenses authorized pursuant to this Settlement, shall be wire transferred to Defendants, pursuant to their instructions; provided, however, that simultaneous with their written instructions to the Escrow Agent, Defendants shall provide to Lead Class Counsel notice of such instructions, and Lead Class Counsel shall, within five (5) days of receipt of such notice, notify the Escrow Agent of any objections to Defendants’ instructions and funds shall not

be wired until expiration of that objection deadline. If Lead Class Counsel object, the provisions of Article I, subsection (h) the Escrow Agreement shall govern.

35. If Defendants determine that potential Class Members identified in the Settling Parties' Supplemental Agreement, which is incorporated into this Settlement by reference, whose combined market share of gross domestic grocery sales, as determined by the terms of that Supplemental Agreement, exceeds the percentage set forth in a Supplemental Agreement ("the Opt-Out Threshold") have timely elected to exclude themselves from the Settlement, Defendants, pursuant to the terms of Paragraph 2 of the Supplemental Agreement, shall have the right and option to rescind the Settlement, subject to the dispute provisions of the Supplemental Agreement. Defendants shall, within twenty-one (21) days of the Opt-Out Deadline or the provision of the Opt-Out Notice, as provided in paragraph 27, whichever is later, give written notice to Lead Class Counsel to invoke their rights under this Paragraph to rescind the Settlement. The Settling Parties intend that the Supplemental Agreement shall be specifically disclosed to the Court and offered for *in camera* inspection by the Court at the time of or prior to entry of the Preliminary Approval Order, but, subject to the Court's approval, it shall not be filed with the Court before the expiration of the Opt-Out Deadline unless ordered otherwise by the Court. The Settling Parties shall seek to keep the Supplemental Agreement and Opt-Out Threshold confidential before the Opt-Out Deadline. In the event that the Court directs that the Supplemental Agreement be filed prior to the Opt-Out Deadline, no party shall have any right to any relief by reason of such disclosure.

If, pursuant to this Paragraph, Defendants exercise their right and option to rescind the Settlement, subject to the terms of the Supplemental Agreement, all amounts

in the escrow created pursuant to Paragraph 38 herein, less any expenses, fees, or taxes authorized pursuant to this Settlement, will be wire transferred by the Escrow Agent to Defendants fifteen (15) days after receipt by the Escrow Agent of Defendants' joint written instructions to the Escrow Agent. Simultaneous with their written instructions to the Escrow Agent, Defendants will provide to Lead Class Counsel notice and a copy of such instructions, and Lead Class Counsel shall, within ten (10) days of receipt of such notice, notify the Escrow Agent of any objections to Defendants' instructions. If Lead Class Counsel object, the provisions of Article I, subsection h of the Escrow Agreement shall govern.

36. In the event of rescission, if Final Approval of this Settlement is not obtained, or if the Court does not enter the final judgment and the Consent Order provided for in Paragraph 28 of this Settlement, Lead Class Counsel and Defendants agree that this Settlement, including its exhibits, and any and all negotiations, documents, information, and discussions associated with it shall be without prejudice to the rights of Defendants or Plaintiffs. This Settlement, regardless of whether rescinded or not, shall not be deemed or construed to be an admission or denial, or evidence or lack of evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity of any of the claims or allegations made in this Action in any pleading. This Settlement, regardless of whether rescinded or not, shall not be used directly or indirectly, in any way, whether in this Action or in any other proceeding, unless such documents and/or information is otherwise obtainable by separate and independent discovery permissible under the Federal Rules of Civil Procedure.

F. Settlement Consideration

Payment

37. Defendants shall pay or cause to be paid the Settlement Amount in settlement of the Action.

Within thirty (30) days after the Execution Date of this Agreement, the Settlement Amount shall be wire transferred by Defendants or their designee into the Settlement Fund, which shall be established as an escrow account with the Escrow Agent, and administered in accordance with the Escrow Agreement attached hereto as Exhibit A. No Motion for Preliminary Approval shall be filed until all such funds are wired into the escrow account.

38. The Settling Parties will cooperate to ensure that, within five (5) days after the Execution Date, the Escrow Account has been established. The Settling Parties will cooperate to ensure that appropriate wiring instructions have been provided to Defendants within three (3) days prior to the deadline on which Defendants must wire transfer the Settlement Amount. Defendants shall not be liable for wire transfer fees or bank fees charged by the receiving bank, for interest, notice costs, administrative costs, or attorney's fees associated with the maintenance of any account(s) holding these funds or with the allocation or distribution of these funds.

39. After this Settlement becomes final within the meaning of Paragraph 29, the Settlement Fund shall be distributed in accordance with the plan for distribution of the Settlement Fund to be submitted at the appropriate time by Lead Class Counsel, subject to approval by the Court.

40. Each Class Member shall look solely to the Settlement Amount for settlement and satisfaction, as provided herein, of all claims released by the Releasers pursuant to this Settlement.

41. Class Counsel may petition the Court for an award of attorneys' fees of up to forty percent of the Settlement Payment, reasonable litigation expenses, and incentive awards for class representatives. Such awards will be paid out of the Settlement Amount after the Final Approval of the Settlement. Defendants agree not to object to Class Counsels' petition(s) to the Court for payment of attorneys' fees, costs, expenses, and incentive awards for class representatives from the Settlement Amount.

42. Upon entry of an order by the Court approving the request for an award of attorneys' fees and expenses and incentive awards for class representatives ("Attorneys' Fees Order") made pursuant to Paragraph 41 herein, attorneys' fees and expenses and incentive awards may be distributed from the Settlement Fund pursuant to the terms of the Attorneys' Fees Order, provided however that if Class Counsel seek to draw down their share of the attorneys' fees prior to Final Approval and the Attorneys' Fees Order becoming final shall secure the repayment of the amount drawn down by a letter of credit. The Attorneys' Fees Order becomes final when the time for appeal or to seek permission to appeal from the Attorneys' Fees Order has expired or, if appealed, has been affirmed by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

43. In order to receive distribution of funds pursuant to Paragraph 42 prior to Final Approval and the Attorneys' Fees Order becoming final, any Class Counsel electing to draw down their share of attorneys' fees shall be required to reimburse the

Settlement Fund within thirty (30) days all or the pertinent portion of the draw-down with interest, calculated as the rate of interest published in the *Wall Street Journal* for 3-month U.S. Treasury Bills as of the close on the date that the draw-down was distributed, if Final Approval is not granted or if the award of attorneys' fees is reduced or overturned on appeal.

44. Disbursements for any payments and expenses incurred in connection with taxation matters relating to this Settlement shall be made from the Settlement Amount upon written notice to the Escrow Agent by Class Counsel of such payments and expenses, and such amounts shall not be refundable to Defendants in the event that this Settlement is disapproved, rescinded, or otherwise fails to become effective.

Indemnification of Plaintiffs

45. Separate from the payment of the Settlement Amount, Defendants (excluding Potandon Produce L.L.C.) shall, jointly and severally, hold harmless and indemnify the Direct Purchaser Plaintiffs² and Indirect Purchaser Plaintiffs³ against any monetary losses and liabilities suffered by the Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs arising out of any award by the Court to the Jones Waldo Law Firm or Randon Wilson and payable by Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs or their counsel, or any other monetary sanction imposed on the Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs or their counsel, related to the Motion to Award Jones Waldo Its Costs In Responding To The Subpoena of Randon

² "Direct Purchaser Plaintiffs" refers collectively to Plaintiffs, as defined in Paragraph 13 of this Settlement, and "Class Counsel," as defined in Paragraph 2 of this Settlement.

³ "Indirect Purchaser Plaintiffs" means the plaintiffs whose complaints have been consolidated for pre-trial purposes in No. 10-md-2186 (D. Idaho), and who, through their counsel, are party to the separate "Settlement Agreement Between Indirect Purchaser Plaintiffs and Defendants."

Wilson (ECF No. 607) or any similar motion refiled by the Jones Waldo Firm or Randon Wilson pursuant to the Court's Order dated March 30, 2015 (ECF No. 809) ("Jones Waldo Motion"), up to two-hundred thousand United States dollars (\$200,000). If the Court grants the Jones Waldo Motion in whole or in part, or imposes any monetary sanction on Direct Purchaser Plaintiffs or Indirect Purchaser Plaintiffs related to the Jones Waldo Motion, Defendants (excluding Potandon Produce L.L.C.) shall wire transfer to the Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs, pursuant to the Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs' joint written instructions, in one amount, the full amount of any award granted to Jones Waldo, and any other monetary amount or sanction the Court may impose, up to \$200,000, no later than five (5) days after either: (a) the magistrate or district court judge in the Action grants in whole or part the Jones Waldo Motion and awards fees and/or costs payable to Jones Waldo or otherwise imposes monetary sanctions on the Direct Purchaser Plaintiffs or Indirect Purchaser Plaintiffs related to the Jones Waldo Motion; or, (b) in the event that objections to an order of the magistrate judge denying or granting the Jones Waldo Motion in whole or in part are filed or an appeal of the district court's ruling is filed, after disposition of such objections or appeal. Any indemnification payment made to Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs pursuant to this Section shall be allocated between them in a manner decided solely by the those Plaintiffs.

46. At the election of the Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs, Defendants' Counsel shall, at their own cost, which costs shall not be reimbursable by the Direct Purchaser Plaintiffs or Indirect Purchaser Plaintiffs, and under the direction and supervision of the Direct Purchaser Plaintiffs and Indirect Purchaser

Plaintiffs: (a) conduct all factual and legal research and all analysis necessary for the Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs to oppose the Jones Waldo Motion; (b) draft and finalize all legal memoranda in opposition to the Jones Waldo Motion and prepare or cause to be prepared all supporting exhibits, declarations, and affidavits; (c) conduct all factual and legal research and all analysis necessary for any motion by the Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs seeking sanctions against Jones Waldo related to the subpoena served on third-party Randon Wilson and the Jones Waldo Motion that the Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs may elect to file; and (d) draft and finalize all legal memoranda in support of Plaintiffs' motion for sanctions and prepare or cause to be prepared all supporting exhibits, declarations, and affidavits. The Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs will be responsible for arguing the Jones Waldo Motion. If the Court grants in whole or part any motion for sanctions filed by Direct Purchaser Plaintiffs or Indirect Purchaser Plaintiffs, any monetary award resulting therefrom is payable solely to Direct Purchaser Plaintiffs and Indirect Purchaser Plaintiffs.

Injunctive Relief

47. The Settling Parties have stipulated and agreed to the Consent Order attached hereto as Exhibit F, incorporated into this Settlement by reference, enjoining certain conduct by Defendants and Releasees. Within ten (10) days of the Execution Date, the Settling Parties shall file a joint motion for entry of the Consent Order. The Settling Parties agree to issuance of the Consent Order and the Court's continuing exercise of jurisdiction over enforcement of its terms for the period contained therein.

G. Notice of Settlement to Class Members

48. Class Counsel shall take all necessary and appropriate steps to ensure that Class Notice and the date of the hearing scheduled by the Court to consider the fairness, adequacy, and reasonableness of this Settlement is provided in accordance with the Federal Rules of Civil Procedure and any Court orders. Class Notice will be issued after Preliminary Approval by the Court and subject to any Court orders regarding the means of dissemination of notice.

49. Subject to Court approval, disbursements for any payments and expenses incurred in connection with the costs of Class Notice and administration of the Settlement by the Claims Administrator shall be made from the Settlement Amount upon written notice to the Escrow Agent by Lead Class Counsel of such payments and expenses, which shall not be refundable to Defendants in the event that this Settlement is disapproved, rescinded, or otherwise fails to become effective.

H. Taxes

50. Lead Class Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Amount. Further, Lead Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Escrow Funds (“Tax Expenses”). Lead Class Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including reasonable professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable Escrow Fund by

notifying the Escrow Agent in writing and as provided in paragraph 45 herein.

Defendants shall have no responsibility to make any tax filings relating to this Settlement.

51. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “Administrator” of the Settlement Amount shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Settlement Amount (including, without limitation, all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B 2(1)).

52. The Settling Parties and their Counsel shall treat, and shall cause the Claims Administrator to treat, the Settlement Amount as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1. In addition, the Claims Administrator and, as required, the Settling Parties, shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B 1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Settlement shall be interpreted in a manner that is consistent with the Settlement Amount being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B

53. The Settlement Fund shall be used for the payment of all monetary relief claims of the Class Members, subject first to the payment of attorneys’ fees and

reimbursement of litigation expenses and costs in the Action, including costs of Class Notice and settlement administration. All other funds shall be used for payment of claims of the members of the Classes, as defined herein.

54. In the event monies remain as residue in the Settlement Fund following all distribution efforts approved by the Court, Counsel shall move the Court for an order disposing of all such funds.

J. Conduct During The Pendency Of This Settlement

55. Defendants need not respond to formal discovery from Plaintiffs and shall not otherwise participate in the Action during the pendency of this Settlement commencing upon execution of this Agreement. Neither Defendants nor Plaintiffs shall file motions against the other in the Action during the pendency of the Settlement.

K. Miscellaneous

56. This Settlement does not effect in any way, settle or compromise any claim by Associated Wholesale Grocers (“AWG”) asserted in its action against Defendants (or any cross claims asserted against AWG), or any of them, nor is the Settlement contingent on any resolution of the claims asserted by AWG against Defendants. All rights of AWG against Defendants are specifically reserved by AWG.

57. Subject to Court approval, the United States District Court for the District of Idaho shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Settlement or the applicability of this Settlement that cannot be resolved by negotiation and agreement by Plaintiffs and Defendants. This Settlement shall be governed by and interpreted according to the

substantive laws of the State of Idaho without regard to its choice of law or conflict of laws principles. Defendants submit to the jurisdiction in the District of Idaho only for the purposes of this Settlement and the implementation, enforcement, and performance thereof. Defendants otherwise retain all defenses to the Court's exercise of personal jurisdiction over Defendants.

58. This Settlement, together with the Supplemental Agreement described in Paragraph 35 and incorporated by reference herein, the Consent Order described in paragraph 47 and incorporated by reference herein, and all Exhibits hereto, constitute the entire agreement among Plaintiffs (and the other Releasors) and Defendants (and the other Releasees) pertaining to the settlement of the Action against Defendants, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Defendants in connection therewith. In entering into this Settlement, Plaintiffs and Defendants have not relied upon any representation or promise made by Plaintiffs or Defendants not contained in this Settlement. This Settlement may be modified or amended only by a writing executed by Plaintiffs and Defendants and approved by the Court.

59. This Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Releasees. Without limiting the generality of the foregoing: (a) each and every covenant and agreement made herein by Plaintiffs, Class Counsel, or Plaintiffs' Counsel shall be binding upon all Class Members and Releasors; and (b) each and every covenant and agreement made herein by Releasees shall be binding upon all Releasees, subject to the Court's approval of the Consent Order.

60. This Settlement may be executed in counterparts by Lead Class Counsel and Defendants' Counsel, and an electronically-scanned (in either .pdf or .tiff format) signature will be considered an original signature for purposes of execution of this Settlement.

61. The headings in this Settlement are included for convenience only and shall not be deemed to constitute part of this Settlement or to affect its construction.

62. In the event this Settlement is not approved or is terminated, or in the event that the order and final judgment approving the settlement is entered but is substantially reversed, modified, or vacated, the pre-settlement status of the litigation (including, without limitation, any applicable tolling of all statutes of limitations) shall be restored, and the Settlement shall have no effect on the rights of Defendants or Plaintiffs to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to Class certification, raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by Defendants.

63. Neither Defendants nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Settlement 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 Settlement.

64. Nothing expressed or implied in this Settlement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasers, Defendants, and Releasees any right or remedy under or by reason of this Settlement.

65. Any putative Class Member that does not opt out of the Class created pursuant to the Settlement may remain in the Class without prejudice to the right of such putative Class Member to opt out of any other past, present, or future settlement class or certified litigation class in the Action.

66. Where this Settlement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail, receipt confirmed, or overnight delivery to:

James J. Pizzirusso
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006
jpizzirusso@hausfeldllp.com

- For the Direct Purchaser Plaintiff Class

Robert Rosenfeld
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 Howard Street
San Francisco, CA 94105
rrosenfeld@orrick.com

- *For Defendants Blaine Larsen Farms, Inc.; Rigby Produce, Inc.; and Driscoll Potatoes, Inc.*

Steven B. Andersen
ANDERSEN BANDUCCI PLLC
101 S. Capitol Blvd., Suite 1600,
Boise, ID 83702
sba@andersenbanducci.com

- *For Defendants Albert T. Wada; Wada Farms, Inc.; Wada Family, LLC; Wada Farms Potatoes, Inc.; Wada Farms Marketing Group, LLC; Wada-Van Orden Potatoes, Inc., Pro Fresh LLC; Cedar Farms, LLC; Cornelison Farms, Inc.; Michael Cranney d/b/a/ Cranney Farms; Kim Wahlen; KCW Farms, Inc.; Lance Funk d/b/a Lance Funk Farms; Pleasant Valley Potato, Inc.; Raybould Brothers Farms, LLC; Snake River Plains Potatoes, Inc.; United Potato Growers of America, Inc.; United Potato Growers of Idaho, Inc.; and United II Potato Growers of Idaho, Inc.*

Brian McGovern
MCCARTHY, LEONARD & KAEMMERER, L.C.,
825 Maryville Centre Drive, Suite 300
Town & Country, MO 63017
bmcgovern@mlklaw.com
- *For Defendants R.D. Offutt Co. and Ronald D. Offutt, Jr.*

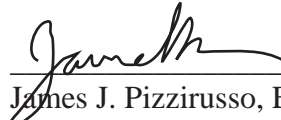
James Wilson
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street, P.O. Box 1008,
Columbus, OH 43216-1008
jawilson@vorys.com
- *For Defendant Idahoan Foods, LLC*

Christopher Ondeck
PROSKAUER ROSE LLP
1001 Pennsylvania Ave NW, Suite 600 South
Washington, DC 20004
condeck@proskauer.com
- *For Defendant Potandon Produce L.L.C.*

67. Each of the undersigned attorneys represents that he is fully authorized on behalf of the parties he or she represents in this Action to enter into the terms and conditions of, and to execute, this Settlement, subject to Court approval.

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Dated: April 10, 2015



James J. Pizzirusso, Esq.
HAUSFELD LLP
1700 K Street, N.W, Suite 650
Washington, DC 20006
Tel: (202) 540-7200
Fax: (202) 540-7201
jpizzirusso@hausfeldllp.com

*Chair of the Plaintiffs' Executive
Committee on behalf of all Counsel
for Direct Purchaser Plaintiffs and
the Proposed DPP Class*

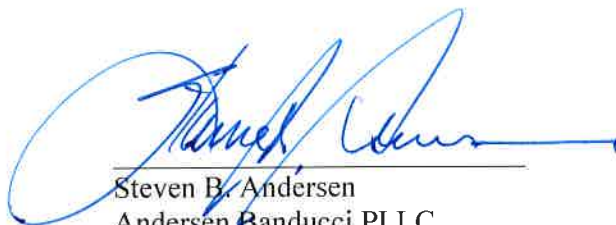
Steven B. Andersen
Andersen Banducci PLLC
101 S. Capital Blvd., Suite 1600
Boise, ID 83702
Tel: (208) 342-4411
Fax: (208) 342-4455
sba@andersenbanducci.com

*On behalf of Albert T. Wada; Wada
Farms, Inc.; Wada Farms Potatoes,
Inc.; Wada-Van Orden Potatoes,
Inc.; Wada Farms Marketing Group,
LLC; Wada Family LLC; Pro Fresh
LLC; Cedar Farms, Inc.; Michael
Cranney d/b/a Cranney Farms;
Cornelison Farms, Inc.; Snake River
Plains Potatoes, Inc.; Lance Funk
d/b/a Lance Funk Farms; Raybould
Brothers Farms LLC; Pleasant
Valley Potato, Inc.; KCW Farms,
Inc.; Kim Wahlen d/b/a Kim Wahlen
Farms; United Potato Growers of
Idaho, Inc.; United Potato Growers
of America, Inc.; and United II
Potato Growers of Idaho, Inc.*

Dated: April 10, 2015

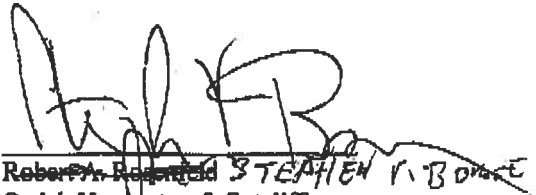
James J. Pizzirusso, Esq.
HAUSFELD LLP
1700 K Street, N.W, Suite 650
Washington, DC 20006
Tel: (202) 540-7200
Fax: (202) 540-7201
jpizzirusso@hausfeldllp.com

*Chair of the Plaintiffs' Executive
Committee on behalf of all Counsel
for Direct Purchaser Plaintiffs and
the Proposed DPP Class*



Steven B. Andersen
Andersen Banducci PLLC
101 S. Capital Blvd., Suite 1600
Boise, ID 83702
Tel: (208) 342-4411
Fax: (208) 342-4455
sba@andersenbanducci.com

*On behalf of Albert T. Wada; Wada
Farms, Inc.; Wada Farms Potatoes,
Inc.; Wada-Van Orden Potatoes,
Inc.; Wada Farms Marketing Group,
LLC; Wada Family LLC; Pro Fresh
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Valley Potato, Inc.; KCW Farms,
Inc.; Kim Wahlen d/b/a Kim Wahlen
Farms; United Potato Growers of
Idaho, Inc.; United Potato Growers
of America, Inc.; and United II
Potato Growers of Idaho, Inc.*



~~Robert A. Rosenfeld~~ STEPHEN T. BOWNE
Orrick Herrington & Sutcliffe
405 Howard Street
San Francisco, CA 94105-2669
Tel: (415) 773-4190
Fax: (415) 773-5759
rrosenfeld@orrick.com

*On behalf of Blaine Larsen Farms,
Inc.; Driscoll Potatoes, Inc.; and
Rigby Produce, Inc.*

James A. Wilson
VORYS SATER SEYMOUR
AND PEASE LLP
52 East Gay Street
Columbus, OH 43215
Tel: (614) 464-5606
Fax: (614) 719-5039
jawilson@vorys.com

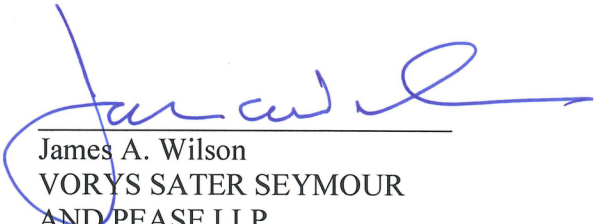
On behalf of Idahoan Foods LLC

Christopher E. Ondeck
PROSKAUER ROSE LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, DC 20004-2533
Tel: (202) 416-5865
Fax: (202) 416-6899
condeck@proskauer.com

*On behalf of Potandon Produce
L.L.C.*

Robert A. Rosenfeld
Orrick Herrington & Sutcliffe
405 Howard Street
San Francisco, CA 94105-2669
Tel: (415) 773-4190
Fax: (415) 773-5759
rosenfeld@orrick.com

*On behalf of Blaine Larsen Farms,
Inc.; Driscoll Potatoes, Inc.; and
Rigby Produce, Inc.*



James A. Wilson
VORYS SATER SEYMOUR
AND PEASE LLP
52 East Gay Street
Columbus, OH 43215
Tel: (614) 464-5606
Fax: (614) 719-5039
jawilson@vorys.com

On behalf of Idahoan Foods LLC

Christopher E. Ondeck
PROSKAUER ROSE LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, DC 20004-2533
Tel: (202) 416-5865
Fax: (202) 416-6899
condeck@proskauer.com

*On behalf of Potandon Produce
L.L.C.*

Robert A. Rosenfeld
Orrick Herrington & Sutcliffe
405 Howard Street
San Francisco, CA 94105-2669
Tel: (415) 773-4190
Fax: (415) 773-5759
rosenfeld@orrick.com

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James A. Wilson
VORYS SATER SEYMOUR
AND PEASE LLP
52 East Gay Street
Columbus, OH 43215
Tel: (614) 464-5606
Fax: (614) 719-5039
jawilson@vorys.com

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PROSKAUER ROSE LLP
1001 Pennsylvania Ave, N.W.
Suite 600 South
Washington, DC 20004-2533
Tel: (202) 416-5865
Fax: (202) 416-6899
condeck@proskauer.com

*On behalf of Potandon Produce
L.L.C.*

A handwritten signature in blue ink that reads "Brian M. McGovern / Ram". The signature is written in a cursive style and is positioned above a horizontal line.

Brian M. McGovern
MCCARTHY, LEONARD &
KAEMMERER, L.C.
825 Maryville Centre Drive, Ste. 300
Town and Country, MO 63017-5946
Tel: (314) 392-5200
Fax: (314) 392-5221
bmcgovern@mlklaw.com

*On behalf of R.D. Offutt Co. and
Ronald D. Offutt, Jr.*