UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA, *Plaintiff*, v. CARGILL MEAT SOLUTIONS CORPORATION, *et al.*, *Defendants*.	Civil Action No.: 22-cv-1821

MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION TO MODIFY FINAL JUDGMENT AND ENTER MODIFIED FINAL JUDGMENT

Pursuant to Federal Rule of Civil Procedure 60(b)(5) and Section XII of the Final Judgment entered in this matter on June 5, 2023 (ECF 59) (the "Final Judgment"), Plaintiff United States of America ("United States") and Defendants Cargill Meat Solutions Corp., Cargill, Inc., Sanderson Farms, Inc., and Wayne Farms, LLC (collectively, "Settling Defendants") respectfully move this Court to modify the Final Judgment and enter the Modified Final Judgment.[1] The proposed modifications, which are only to Sections X and XIV, are not intended to change the substance of the Final Judgment. They are intended merely to simplify administrative compliance with the Final Judgment while effectuating the remedies provided by the restitution provisions of the Final Judgment, and therefore further the interests of justice. For these reasons, and those set forth more fully below, the United States and Settling Defendants

[1] This motion requests the same modifications as the forthcoming motion to modify the George's, Inc. and George's Foods, LLC final judgment (ECF 77). No modification is sought as to the final judgment with Defendants Webber, Meng, Sahl and Co., Inc., d/b/a WMS & Company, Inc. and WMS President G. Jonathan Meng (ECF 60). Defendants WMS & Company, Jonathan Meng, George's, Inc., and George's Foods, LLC have reviewed the proposed Modified Final Judgment and do not oppose this motion or the proposed modifications.

request that the Court grant their Joint Motion to Modify Final Judgment and Enter Modified Final Judgment.

I. BACKGROUND

On July 25, 2022, the United States filed a civil complaint against Cargill Meat Solutions Corporation, Cargill, Inc., Wayne Farms, LLC, Sanderson Farms, Inc., Webber, Meng, Sahl and Company, Inc., d/b/a WMS & Co., Inc., and WMS President G. Jonathan Meng, seeking to enjoin them from collaborating on decisions about poultry plant worker compensation. ECF 1. On May 17, 2023, the Court granted the United States's unopposed motion to file an amended complaint adding two additional named defendants, George's, Inc. and George's Foods, LLC. ECF 47, 48.[2]

The Complaint alleges that the poultry-processor defendants exchanged compensation information and collaborated on decisions about poultry plant worker compensation in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. ECF 48 at 1. The Complaint alleges that the poultry-processor defendants' conduct harmed competition in the nationwide and local labor markets for poultry processing—and therefore suppressed poultry plant worker compensation. *Id*. Along with the Complaint, the United States filed proposed Final Judgments, Competitive Impact Statements, and Stipulations and Orders. After the United States complied with the procedures of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), and certified its compliance,[3] the Court entered the poultry-processor final judgments on June 5, 2023 and August 22, 2023. ECF 59, 77 (the "Final Judgments").

[2] All "Complaint" references hereinafter are to the Amended Complaint, ECF 48.
[3] Certificates of Compliance with Provisions of the Antitrust Procedures and Penalties Act were filed on June 2, 2023 and August 15, 2023. ECF 58-4 (Cargill Meat Solutions Corp. and Cargill, Inc.; Wayne Farms, LLC; and Sanderson Farms, Inc.), 76-3 (George's, Inc. and George's Foods, LLC).

Section X of the Final Judgments sets forth how the Settling Defendants must satisfy their restitution obligations. Under Section X.A of the Final Judgments, within 60 days of the Court's entry of final judgment, each Settling Defendant must deposit into an escrow account 10% of the amount for which it has agreed to settle antitrust claims brought by a class of nation-wide poultry processing workers in this Court, *Jien v. Perdue Farms, Inc.*, No. 1:19-cv-2521 (D. Md.), which involves allegations and claims similar to those in the United States' Complaint (collectively, the "*Jien* settlements"). Collectively, the Settling Defendants, George's, Inc., and George's Foods, LLC have agreed to settle those claims for approximately $90 million. Settling Defendants represent that they have entered into a settlement agreement with the plaintiffs in *Jien* and have deposited the full amount of their respective Restitution Amounts into an escrow account identified by counsel to the *Jien* plaintiffs.

If the *Jien* Court grants final approval to the Settling Defendants' *Jien* settlements, the disbursement process approved by the *Jien* Court for the *Jien* settlements satisfies the Settling Defendants' restitution obligation under Section X of the Final Judgments, and the 10% deposit would be returned to the Settling Defendants. Under Sections X.C and X.D of the Final Judgments, in the event the *Jien* settlements are not approved, each Settling Defendant must transfer to its escrow account the entire amount of its *Jien* settlement, in addition to the 10% deposit. The funds would then be disbursed to provide restitution to the poultry processing plant workers, and Settling Defendants' initial 10% payments would be used towards any costs associated with claims administration, including the cost of distributing restitution.

The parties subsequently reached agreement on the proposed modification leading to this joint request to modify, as described further below.

II. LEGAL STANDARD AND JURISDICTION

The Final Judgments in this matter were entered after the United States certified its compliance with the APPA and a determination by this Court that they were "in the public interest."[4] 15 U.S.C. § 16(e)(1). This Court has jurisdiction to modify the Final Judgments pursuant to its inherent authority,[5] Federal Rule of Civil Procedure 60(b)(5), and Section XII of the Final Judgments.[6] Where, as here, the parties have consented to a proposed modification of a judgment, the issue before the Court is whether the modification is in the public interest. *See, e.g.*, *United States v. W. Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir. 1993).[7] A district court may reject an uncontested modification "only if it has exceptional confidence that adverse antitrust consequences will result." *Id.* at 1577.

III. THE PROPOSED MODIFICATIONS TO SECTIONS X AND XIV OF THE FINAL JUDGMENT ARE IN THE PUBLIC INTEREST

The proposed modifications, as set forth in the attached redline, would make minor revisions to Sections X and XIV of the Final Judgment. The modifications to Section X would require each Settling Defendant to maintain the funds equal to 10% of their restitution amounts in a segregated interest-bearing bank account, rather than requiring transfer of these funds into an escrow account selected by the United States. The proposed modifications would require Settling Defendants to pay these funds and any accrued interest to the third-party claims administrator in

[4] Final Judgments § XVII ("Entry of this Final Judgment is in the public interest.").
[5] *See, e.g.*, *Thompson v. U.S. Dep't of Hous. & Urb. Dev.*, 404 F.3d 821, 825 (4th Cir. 2005) ("It has long been recognized that courts are vested with the inherent power to modify injunctions they have issued.").
[6] Final Judgments Section XII ("The Court retains jurisdiction . . . to modify any of its provisions . . . .").
[7] *See also United States v. W. Elec. Co.*, 900 F.2d 283, 305 (D.C. Cir. 1990) (per curiam). This is the same standard that a federal district court applies in reviewing an initial consent judgment in a government antitrust case. *See* 15 U.S.C. § 16(e); *W. Elec.*, 900 F.2d at 295; *United States v. AT&T Co.*, 552 F. Supp. 131, 147 n.67 (D.D.C. 1982), *aff'd sub nom Maryland v. United States*, 460 U.S. 1001 (1983).

the event of a contingency specified in Section X.C, rather than releasing the funds to the United States.

The Modified Final Judgments are in the public interest because they serve to effectuate the restitution provisions of the Final Judgments in an administratively simplified way, without materially changing the nature of the remedy or the purpose of the Final Judgments' provisions. The proposed modifications maintain a set-aside for future claims administration costs in the event it is triggered under Section X.C of the Final Judgments. Accordingly, the proposed modification of the decree, as requested jointly by the United States and Settling Defendants, will effectuate the remedy originally intended in the Final Judgments and does not adversely impact that remedy.

IV. ADDITIONAL PUBLIC NOTICE OF THE MODIFIED FINAL JUDGMENT IS UNNECESSARY

Prior to the entry of the Final Judgment, the United States complied with the procedures of the APPA and certified its compliance with the Court. The proposed Modified Final Judgment does not materially change the purpose or effect of the Final Judgment. As stated above, the proposed modification administratively simplifies compliance with the restitution provisions. It does not release Settling Defendants from any of their obligations under the Final Judgments, and the United States retains the ability to enforce the Final Judgments.

The APPA does not apply expressly to the modification of entered final judgments.[8] Courts routinely make non-material modifications of final judgments without requiring a period

[8] The procedures mandated by the APPA govern federal district courts' consideration of "[a]ny proposal for a consent judgment submitted by the United States," 15 U.S.C. § 16(b), and are designed to facilitate a public interest determination "[b]efore entering any consent judgment proposed by the United States," 15 U.S.C. § 16(e). Some courts have further held that the APPA is not applicable to judgment termination proceedings. *See, e.g.*, *United States v. Am. Cyanamid Co.*, 719 F.2d 558, 565 n.7 (2d Cir. 1983); *United States v. Gen. Motors Corp.*, No. CV-2177, 1983 WL 1870, at *1 (N.D. Ill. Aug. 15, 1983).

for additional public notice and comment.[9]

Here, the proposed modifications are intended only to simplify the administrative process for setting aside funds amounting to an additional 10% of the *Jien* settlement amount for potential future claims administration, as set forth in Section X of the Final Judgments. The modifications are non-material and serve only to effectuate the intent of the Final Judgments, which the Court previously found to be in the public interest. Accordingly, additional public notice in this matter is not required and would delay the fulfillment of the 10% set-aside mandated by the Final Judgments. Thus, additional notice or public comment period is neither necessary nor beneficial for a determination that the proposed modification is in the public interest.

V. CONCLUSION

For the foregoing reasons, the United States and Settling Defendants respectfully request that the Court grant the motion seeking leave to modify the Final Judgment and enter the Modified Final Judgment.

[9] *See, e.g.*, *United States v. Entercom Commc'ns Corp.*, No. 17-cv-2268 (D.D.C. Aug. 14, 2020), ECF 21; *United States v. Star Atl. Waste Holdings*, No. 12-cv-01847 (D.D.C. June 13, 2013), ECF 18; *United States v. Verizon Commc'ns, Inc.*, No. 08-cv-1878 (D.D.C. Apr. 8, 2011), ECF 32. *But see United States v. Motor Vehicle Mfrs. Ass'n of the United States, Inc.*, No. 69-cv-0075, 1981 WL 2519, at *1 (C.D. Cal. Nov. 18, 1981) (requiring APPA compliance after granting motion to intervene to challenge settlement). The United States and some courts have concluded that additional notice to the public and an additional opportunity for comment are appropriate when *significant* decree modifications are proposed. *See, e.g.*, *AT&T*, 552 F. Supp. at 144–45 (proposal in part required AT&T to divest local telephone services).

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Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/

Jessica J. Taticchi
Jeremy C. Keeney
U.S. Department of Justice
Antitrust Division
Civil Conduct Task Force
450 Fifth Street NW, Suite 8600
Washington, DC 20530
Tel: 202-353-3100
Fax: 202-616-2441
Email: Jessica.Taticchi@usdoj.gov

Erek L. Barron
United States Attorney

Ariana Wright Arnold
Assistant United States Attorney
Md. Federal Bar No. 23000
United States Attorney's Office
District of Maryland
36 South Charles Street, Fourth Floor
Baltimore, Maryland, 21201
Telephone: (410) 209-4813
Email: ariana.arnold@usdoj.gov

FOR DEFENDANTS

/s/

Christopher E. Ondeck*
Stephen Chuk
Marlynda Romero
Proskauer Rose LLP
1001 Pennsylvania Avenue, NW
Suite 600 South
Washington, DC 20004
Tel: 202-416-5865
Fax: 202-416-6899
Email: Condeck@proskauer.com

*signed by Jessica J. Taticchi with permission from Christopher E. Ondeck

Attorneys for Wayne Farms, LLC and Sanderson Farms, Inc.

/s/

Heather S. Nyong'o*
Cleary Gottlieb Steen & Hamilton LLP
650 California St. #2000
San Francisco, CA 94108
Tel: 415 796 4480
Email: hnyongo@cgsh.com

*signed by Jessica J. Taticchi with permission from Heather S. Nyong'o

Attorneys for Cargill Meat Solutions Corp. and Cargill Inc.