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11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

14 **IN RE: PACKAGED SEAFOOD
15 PRODUCTS ANTITRUST
16 LITIGATION**

17 Case No. 15-MD-2670 DMS (MSB)
18 MDL No. 2670

19 This document relates to:
20
21 End Payer Plaintiff Class

22 **SETTLEMENT AGREEMENT
23 BETWEEN END PAYER
24 PLAINTIFFS AND LION
25 CAPITAL LLP, LION CAPITAL
26 (AMERICAS), INC., AND BIG
27 CATCH CAYMAN LP**

28 **SETTLEMENT AGREEMENT BETWEEN END
PAYER PLAINTIFFS AND LION CAPITAL LLP,
LION CAPITAL (AMERICAS), INC., AND BIG
CATCH CAYMAN LP**

CASE No. 15-MD-2670-DMS (MSB)

1 This Settlement Agreement (“Settlement Agreement”), dated August 6, 2024
2 (“Execution Date”), is made and entered into by and among Defendant Lion Capital
3 (Americas), Inc. and Specially Appearing Defendants Lion Capital LLP and Big
4 Catch Cayman LP¹ (collectively “the Lion Companies”) and End Payer Plaintiffs
5 Plaintiffs Louise Adams, Nay Alidad, Jessica Bartling, Gay Birnbaum, Barbara
6 Blumstein, Melissa Bowman, Sally Bredberg, Barbara Buening, Michael Buff,
7 Scott Caldwell, Jade Canterbury, Laura Childs, Casey Christensen, Jody Cooper,
8 Kim Craig, Sundé Daniels, Elizabeth Davis-Berg, Brian Depperschmidt Vivek
9 Dravid, Gloria Emery, Robert Etten, Ana Gabriela Felix Garcia, John Frick, Kathleen
10 Garner, Stephanie Gipson, Kathy Durand (formerly Gore), Andrew Gorman, Tina
11 Grant, Edgardo Gutierrez, Lisa Hall, Mary Hudson, Tya Hughes, Amy Jackson,
12 Marissa Jacobus, Danielle Johnson, Zenda Johnston, Amy Joseph, Michael Juetten,
13 Steven Kratky, Kathy Lingnofski, Carla Lown, Katherine McMahon, Diana Mey,
14 Liza Milliner, Laura Montoya, Estate of Rick Musgrave, Jennifer A. Nelson, Corey
15 Norris, Barbara Olson, Kirsten Peck, John Pels, Elizabeth Perron, Valerie Peters,
16 John Peychal, Audra Rickman, Erica Rodriguez, Joelyna A. San Agustin, Amber
17 Sartori, Rebecca Lee Simoens, Robert Skaff, Greg Stearns, Nancy Stiller,
18 Christopher Todd, John Trent, Elizabeth Twitchell, Bonnie Vander Laan, Nigel
19 Warren, Julie Wiese, Thomas E. Willoughby III, and Daniel Zwirlein (collectively,
20 “Named Plaintiffs”), individually, on behalf of a certified litigation class of end payer
21 plaintiffs, and as representatives of the Settlement Class as defined herein.

22 WHEREAS, in the instant class action *In Re: Packaged Seafood Products*
23 *Antitrust Litigation*, No. 15-MD-2670 DMS (MSB), MDL No. 2670 (S.D. Cal.),
24 currently pending before the Honorable Dana M. Sabraw in the United States District
25 Court for the Southern District of California, End Payer Plaintiffs have alleged that

26 ¹ As noted herein, Big Catch Cayman LP was previously dismissed from the
27 Action by the Court with prejudice. (ECF No. 3103.)

1 the Lion Companies participated in an unlawful conspiracy to restrain trade in
2 violation of various state antitrust and consumer laws;

3 WHEREAS, the Lion Companies deny End Payer Plaintiffs' allegations and
4 have asserted a number of defenses to End Payer Plaintiffs' claims; the United States
5 District Court for the Southern District of California granted the Lion Companies'
6 motion for summary judgment as to claims against Big Catch Cayman LP pursuant
7 to ECF No. 3103; and Lion Capital LLP maintains that the United States District
8 Court for the Southern District of California lacks personal jurisdiction over the
9 claims Plaintiffs asserted against it;

10 WHEREAS, Lead Counsel for End Payer Plaintiffs have concluded after
11 carefully considering the claims made by End Payer Plaintiffs and the Settlement
12 Class, and the possible legal and factual defenses thereto, that it is in the best interests
13 of End Payer Plaintiffs and the Settlement Class to enter into this Settlement
14 Agreement with the Lion Companies to avoid the uncertainties and risks of further
15 litigation and trial, and that the settlement set forth herein is fair, reasonable, adequate
16 and in the best interests of the Settlement Class;

17 WHEREAS, the Lion Companies, having maintained that there is no legal or
18 factual basis for their liability in this matter and that they have valid defenses to the
19 claims alleged, have nevertheless agreed to enter into this Settlement Agreement to
20 avoid the expense, inconvenience, and uncertainty of trial and further protracted
21 litigation;

22 WHEREAS, End Payer Plaintiffs and the Lion Companies agree that neither
23 this Settlement Agreement nor any statement made in the negotiation thereof shall be
24 deemed or construed to be an admission by or evidence against the Lion Companies,
25 or evidence of the truth of any of End Payer Plaintiffs' allegations;

26 WHEREAS, End Payer Plaintiffs and the Lion Companies have engaged in
27 multiple arm's length settlement negotiations, first with the assistance of private

1 mediators, and subsequently assisted by Magistrate Judge Michael S. Berg, and have
2 reached this Settlement Agreement subject to approval of the Court; and

3 NOW, THEREFORE, in consideration of the promises, covenants,
4 agreements, and releases set forth herein and for other good and valuable
5 consideration, and incorporating the above recitals herein, subject to the approval of
6 the Court, it is agreed by the undersigned, on behalf of the Lion Companies, End
7 Payer Plaintiffs, and the Settlement Class, that the claims of End Payer Plaintiffs and
8 the Settlement Class that have been or could have been asserted in the Action be
9 settled, compromised, and dismissed on the merits and with prejudice as to the Lion
10 Companies, and, except as hereinafter provided, without costs as to End Payer
11 Plaintiffs, the Settlement Class, or the Lion Companies, subject to the approval of the
12 Court, on the following terms and conditions:

13 **1. Definitions**

14 1.1. "Action" means the class action captioned *In Re: Packaged Seafood*
15 *Products Antitrust Litigation*, No. 15-MD-2670 DMS (MSB), MDL No. 2670 (S.D.
16 Cal.), currently pending before the Honorable Dana M. Sabraw in the United States
17 District Court for the Southern District of California, all actions relating to the claims
18 alleged in the "Sixth Amended Consolidated Class Action Complaint of the Indirect
19 Purchaser End Payer Plaintiffs" and all actions that have been or are subsequently
20 filed in or transferred for consolidation and/or coordinated pretrial proceedings to the
21 Southern District of California by the Judicial Panel on Multidistrict Litigation as
part of MDL No. 2670.

22 1.2. "Claims" shall mean any and all actions, suits, claims, rights,
23 demands, assertions, allegations, causes of action, controversies, proceedings, losses,
24 damages, injuries, attorneys' fees, costs, expenses, debts, liabilities, judgments, or
25 remedies, whether equitable or legal.

1 1.3. "Claims Administrator" shall mean JND or any other third-party
2 class action settlement claims administrator mutually agreed upon by the Parties and
3 approved by the Court for the purposes of administering this settlement.

4 1.4. "Complaint" means the Sixth Amended Consolidated Class Action
5 Complaint of the Indirect Purchaser End Payer Plaintiffs [ECF No. 1461].

6 1.5. "Court" means the United States District Court for the Southern
7 District of California.

8 1.6. "Defendants" means the Lion Companies, as defined above,
9 Bumble Bee Foods LLC, StarKist Co. and Dongwon Industries Co., Ltd., and
10 Tri-Union Seafoods LLC d/b/a Chicken of the Sea and Thai Union Group PCL.

11 1.7. "Document" is defined to be synonymous in meaning and equal in
12 scope to the usage of this term in Federal Rule of Civil Procedure ("Federal Rule")
13 34(a). A draft or non-identical copy is a separate document within the meaning of
14 this term.

15 1.8. "Effective Date" means the earliest date on which all of the events
16 and conditions specified in Paragraph 7 herein have occurred or have been met.

17 1.9. "End Payer Plaintiffs" means the named class representatives
18 defined above and the unnamed members of the certified End Payer Plaintiff class,
19 defined in ECF No. 1931.

20 1.10. "Escrow Account" means an account to be established with
21 Huntington Bank for the purpose of holding the Settlement Funds.

22 1.11. "Escrow Agent" means the bank or trust company that agrees to
23 establish and maintain the Escrow Account pursuant to the Escrow Agreement.

24 1.12. "Escrow Agreement" means an escrow agreement in a form
25 mutually satisfactory to EPPs and the Lion Companies.

26 1.13. "Final Approval" means an order finally approving the End Payer
27 Plaintiffs' class settlement and dismissing the Action with prejudice as to the Lion

1 Companies without costs (other than those provided for in this Agreement), to be
2 rendered by the Court in the Action.

3 1.14. "Judgment" means a final order of judgment by the Court
4 dismissing the Action as to any Released Party and approving the Settlement
5 Agreement under Federal Rule 23(e), as described in Paragraph 6.1 herein.

6 1.15. "Packaged Tuna Products" means shelf-stable tuna sold for human
7 consumption and packaged in either cans or pouches, and excludes meal kits.

8 1.16. "Parties" means End Payer Plaintiffs, Settlement Class Members,
9 and the Lion Companies.

10 1.17. "Person" means an individual or an entity.

11 1.18. "Preliminary Approval" means an order preliminarily approving
12 the settlement to be rendered by the Court in the Action.

13 1.19. "Released Claims" means any and all Claims, whether class,
14 individual, or otherwise, that the Releasing Parties or any of them ever had, now has,
15 or hereafter can, shall, or may have, directly, representatively, derivatively, or in any
16 other capacity, against the Released Parties or any of them, whether such Claims are
17 based on federal, state, local, statutory, or common law, or any other law, code, rule,
18 or regulation of any country or other jurisdiction worldwide, whether such Claims
19 are known or unknown, suspected or unsuspected, asserted or unasserted, foreseen
20 or unforeseen, actual or contingent, liquidated or unliquidated, regardless of legal
21 theory, and regardless of the type or amount of relief or damages claimed, or Claims
22 that have been, could have been, or in the future might have been, claimed in law or
23 in equity, on account of, arising out of, resulting from, or in any way related to any
24 conduct regardless of legal theory, and regardless of the type or amount of relief or
25 damages claimed, or Claims that have been, could have been, or in the future might
26 have been, claimed in law or in equity, on account of, arising out of, resulting from,
27 or in any way related to any conduct concerning the pricing, selling, discounting,
28 manufacturing, distribution, promotion, or marketing of Packaged Tuna Products

1 during the period from June 1, 2011 to July 31, 2015 that could have been brought
2 based in whole or in part on the facts, occurrences, transactions, or other matters that
3 were alleged in the Complaint.

4 1.20. "Released Parties" means, jointly and severally, individually and
5 collectively: the Lion Companies, their present and former parents, subsidiaries,
6 divisions, affiliates, and departments, their respective past and present officers,
7 directors, members, employees, agents, attorneys, servants, insurers, and
8 representatives of each of the aforesaid entities, and the predecessors, successors,
9 heirs, executors, administrators, and assigns of each of the foregoing. As used in this
10 definition, "affiliates" means entities controlling, controlled by, or under common
11 control with any of the Released Parties.

12 1.21. "Releasing Parties" means, jointly and severally, and individually
13 and collectively: End Payer Plaintiffs and all Settlement Class Members, their
14 predecessors, successors, present and former parents, subsidiaries, divisions,
15 affiliates, and departments, each of their respective past and present officers,
16 directors, employees, agents, attorneys, servants, and representatives, and the
17 predecessors, successors, heirs, executors, administrators, and assigns of each of the
18 foregoing.

19 1.22. "Settlement Amount" means Six Million Dollars (\$6,000,000.00)
20 in United States currency. The Lion Companies will deposit Three Million Dollars
21 (\$3,000,000.00) in United States currency into the Escrow Account within thirty (30)
22 days after Preliminary Approval by the Court and Three Million Dollars
23 (\$3,000,000.00) in United States currency into the Escrow Account within forty-five
24 (45) days after Final Approval by the Court. Up to Two Hundred Thousand Dollars
25 (\$200,000) in United States currency of the Three Million Dollars (\$3,000,000) in
26 United States currency to be deposited into the Escrow Account within thirty (30)
27 days after Preliminary Approval by the Court shall be used for notice and
28 administration of claims.

1 1.23. "Settlement Class" means the End Payer Plaintiffs, including the
2 Named Plaintiffs and all unnamed members of the certified End Payer Plaintiff Class
3 that did not timely request exclusion from the End Payer Plaintiff Class. The certified
4 End Payer Plaintiff Class consists of a multistate Cartwright Act class ("Cartwright
5 Class") and multiple individual State Law Classes for 32 States, Districts, and
6 Territories ("State Classes"). The Cartwright Class consists of 31 State Classes,
7 including the District of Columbia. ECF 1931 at 46 (certifying Cartwright Class with
8 32 states, including the District of Columbia); ECF 2925 at 10:9-17 (excising the
9 South Carolina claimants from the Cartwright Class). For avoidance of doubt, the
10 Settlement Class is the Named Plaintiffs and certified End Payer Plaintiff Class, less
11 any Persons that timely opted out of the End Payer Plaintiff Class. *See* ECF No. 3120,
12 which incorporates the list of Persons at Ex. F of ECF No. 3115.

13 1.24. "Settlement Class Counsel" means Wolf Haldenstein Adler
14 Freeman & Herz LLP, the undersigned counsel for the Named Plaintiffs and the End
15 Payer Plaintiff Class.

16 1.25. "Settlement Class Member" means each member of the Settlement
17 Class as defined in Paragraph 1.23 and referred to in Paragraph 3 herein.

18 1.26. "Settlement Fund" shall mean those monies representing the
19 consideration to be paid the Lion Companies to End Payer Plaintiffs and the
20 Settlement Class Members, including the Settlement Amount and any income earned
21 on that amount while such monies are held in the Escrow Account.

22 **2. Cooperation and Effectuation of this Settlement Agreement**

23 End Payer Plaintiffs and the Lion Companies shall use all reasonable efforts
24 to effectuate this Settlement Agreement, including cooperating in End Payer
25 Plaintiffs' efforts to obtain the Court's approval of procedures (including the giving
26 of class notice under Federal Rules 23(c) and 23(e)) and to secure certification of the
27 Settlement Class for settlement purposes and the complete and final dismissal with

1 prejudice of the Action as to the Lion Companies. Prior to the filing of any motions
2 or other papers in connection with the settlement, including, without limitation, the
3 motion for Preliminary Approval of the settlement (as contemplated in Paragraph 4.1
4 of this Settlement Agreement) and for Final Approval of the settlement (as
5 contemplated in Paragraph 6.1 of this Settlement Agreement), End Payer Plaintiffs
6 will send those papers to the Lion Companies at least seven (7) days prior to their
7 filing, with the exception of the motion for Preliminary Approval of the settlement
8 and related papers which shall be sent to the Lion Companies a reasonable amount
9 of time prior to filing, and will use reasonable best efforts to incorporate the Lion
10 Companies' comments into any draft. The text of any proposed form of order
11 approving this Settlement Agreement shall be agreed upon by End Payer Plaintiffs
12 and the Lion Companies before it is submitted to the Court.

12 **3. Settlement Class Certification**

13 On July 30, 2019, the Court granted End Payer Plaintiffs' motion to certify a
14 class pursuant to Federal Rule 23(b)(3). The Settlement Class, as defined above in
15 paragraph 1.23, is almost identical to the Court's order certifying the litigation class
16 in the Action at ECF No. 1931, except that the Settlement Class also includes the
17 Named Plaintiffs from Illinois and excludes parties later excluded from the litigation
18 class by the Court's Order in this Action at ECF No. 3120, which incorporates the
19 list of Persons at Ex. F of ECF No. 3115. The parties to this Settlement Agreement
20 hereby stipulate for purposes of this settlement only that the requirements of Rule
21 23(a) and 23(b)(3) of the Federal Rules are satisfied, and, subject to Court approval,
22 the Settlement Class shall be certified for settlement purposes.

23 **4. Motion for Preliminary Approval**

24 4.1. At an appropriate time after the Execution Date of this Settlement
25 Agreement, and after consultation as to timing with counsel for the Lion Companies,
26 End Payer Plaintiffs shall file with the Court a motion requesting entry of Preliminary
27 Approval, *inter alia*:

28 SETTLEMENT AGREEMENT BETWEEN END
PAYER PLAINTIFFS, LION CAPITAL LLP, LION
CAPITAL (AMERICAS), INC., AND BIG CATCH
CAYMAN LP

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- 1 (a) finding the proposed settlement in the Settlement
2 Agreement has been negotiated at arm's length, and
3 preliminarily approving the proposed settlement as fair,
4 reasonable, and adequate, and in the best interests of the
5 Settlement Class; scheduling a hearing to consider (i)
6 whether the proposed settlement should be approved as fair,
7 reasonable, and adequate to Settlement Class Members, and
8 whether the Judgment should be entered dismissing the
9 Claims of End Payer Plaintiffs and all Settlement Class
10 Members against the Lion Companies on the merits and
11 with prejudice; and (ii) whether to approve any application
12 by Settlement Class Counsel for an award of attorneys' fees
13 and payment of costs and expenses ("Fairness Hearing");
- 14 (b) certifying the Settlement Class for settlement purposes,
15 designating class representatives and Settlement Class
16 Counsel as defined herein, and finding that each element for
17 certification of the Settlement Class pursuant to Federal
18 Rule 23 is met;
- 19 (c) enjoining initiation, commencement, or prosecution of any
20 action or proceeding asserting any Released Claims
21 described in Paragraph 8 by any Releasing Party.

22 4.2. End Payer Plaintiffs shall seek, and the Lion Companies shall not
23 oppose, certification of the Settlement Class and appointment of Settlement Class
24 Counsel as lead counsel for purposes of this settlement.

24 5. Notice to Settlement Class Members

25 5.1. After Preliminary Approval of this Settlement Agreement and
26 submission to the Court and approval of a program to provide notice to the Settlement
27 Class in accordance with the requirements of the Federal Rules of Civil Procedure

1 and due process, Settlement Class Counsel shall provide those Settlement Class
2 Members identified with notice of the settlement and the date of the Fairness Hearing
3 in a manner to be approved by the Court.

4 5.2. Upon approval by the Court of a program to provide notice to the
5 Class, Settlement Class Counsel shall cause a summary notice of the settlement to be
6 published in such manner and scope as is reasonable and consistent with the
7 requirements of Federal Rule 23.

8 5.3. Except as provided herein, the costs and expenses associated with
9 providing notice of the settlement to members of the Settlement Class pursuant to the
10 Court-approved notification plan shall be paid from the Settlement Fund, and the
11 Lion Companies shall have no obligation to pay for the costs and expenses of
12 providing notice of the settlement to members of the Settlement Class. The Lion
13 Companies agree that Settlement Class Counsel may withdraw funds as necessary
14 from the Settlement Fund after Preliminary Approval for the purpose of providing
15 notice to the class of the settlement as described herein, which shall be non-
16 refundable. If the costs and expenses associated with providing notice of this
17 Settlement with Lion Companies exceeds \$200,000, Settlement Class Counsel shall
18 seek prior Court approval for good cause shown to withdraw such additional funds.
19 If the settlement is not finally approved, the Lion Companies shall not be entitled to
20 any sums spent or owing for purposes of disseminating notice and/or administering
the notice program as approved by the Court.

21 6. Fairness Hearing

22 6.1. At the Fairness Hearing, End Payer Plaintiffs shall seek entry of
23 Judgments:

- 24 (a) approving the Settlement Agreement and its terms as being
25 fair, reasonable, and adequate as to the Settlement Class,
26 within the meaning of Federal Rule 23, and directing its
consummation according to its terms;

- 1 (b) determining that the notices to Settlement Class Members
2 constituted, under the circumstances, the best practicable
3 notice of this Settlement Agreement and the Fairness
4 Hearing, and constituted due and sufficient notice for all
5 other purposes to all Persons entitled to receive notice;
- 6 (c) dismissing the Claims against the Lion Companies with
7 prejudice, without costs;
- 8 (d) permanently barring and enjoining the institution,
9 commencement, or prosecution, by any of the Releasing
10 Parties, of any action asserting any Released Claim against
11 any Released Party, in any local, state, federal, or other court
12 of any nation, or in any agency or other authority or arbitral
13 or other forum wherever located;
- 14 (e) providing that any Settlement Class Member who fails to
15 object in the manner prescribed in the Settlement
16 Agreement shall be deemed to have waived any objections
17 to the settlement and the Settlement Agreement and will
18 forever be barred from making any such objections to the
19 settlement or the Settlement Agreement;
- 20 (f) retaining exclusive jurisdiction over the settlement and this
21 Settlement Agreement, including the administration and
22 consummation of the settlement; and
- 23 (g) determining under Federal Rule 54(b) that there is no just
24 reason for delay and directing that the Judgment of
25 dismissal as to the Lion Companies shall be final and
26 entered forthwith.

26 6.2. Any Settlement Class Member who objects to the settlement may
27 appear, at that Person's own expense, at the Fairness Hearing in person or through

1 counsel, to present any evidence or argument with respect to the settlement, to the
2 extent permitted by the Court. However, no such Person shall be heard, and no
3 papers, briefs, pleadings, or other documents shall be received and considered by the
4 Court unless such Person properly submits a written objection that includes: (a)
5 notice of intention to appear, (b) proof of membership in the Settlement Class, and
6 (c) the specific grounds for the objection and any reasons why such Person desires to
7 appear and be heard, as well as all documents or writings that such Person desires the
8 Court to consider. Such a written objection must be both filed with the Court no later
9 than thirty-five (35) days prior to the date set for the Fairness Hearing, and mailed to
10 Settlement Class Counsel and the Lion Companies' counsel at the addresses provided
11 in the notices to the Settlement Class, postmarked (or mailed by overnight delivery)
12 no later than thirty-five (35) days prior to the date of the Fairness Hearing. Any
13 Person who fails to object in the manner prescribed herein shall be deemed to have
14 waived any objections to the Settlement Agreement and will forever be barred from
15 making any such objections to this Settlement Agreement in the Action or in any
16 other action or proceeding, unless otherwise permitted for good cause shown as
determined by the Court.

17 **7. Effective Date of Agreement**

18 The Effective Date of this Settlement Agreement is the earliest date on which
19 all of the following events and conditions have occurred or have been met: (a) the
20 Court has entered a Judgment, following notice to the Settlement Class and the
21 Fairness Hearing, approving this Settlement Agreement under Federal Rule 23(e) and
22 dismissing the Action as against any Released Party who is named as a Defendant in
23 the Action, with prejudice as to all Settlement Class Members and without costs
24 except as specified herein; and, (b) the time for appeal or to seek permission to appeal
25 from the Court's approval of the Settlement Agreement and entry of the Judgment
26 has expired or, if appealed, approval of this Settlement Agreement and the Judgment
has been affirmed in its entirety by the court of last resort to which such appeal has

1 been taken and such affirmance has become no longer subject to further appeal or
2 review. Neither the provisions of Federal Rule 60 nor the All Writs Act, 28 U.S.C.
3 § 1651, shall be taken into account in determining the above-stated times.

4 **8. Release and Covenant Not to Sue**

5 8.1. Upon the occurrence of the Effective Date, and only after the
6 completion of all installment payments pursuant to the Settlement Amount due by
7 the Lion Companies as set forth in Paragraphs 1.22 and 10.1 herein, and in
8 consideration of the payment by the Lion Companies of the Settlement Amount set
9 forth in Paragraph 1.22 herein (the sufficiency of which is hereby again
10 acknowledged), each of the Releasing Parties shall be deemed to have, and by
11 operation of the Judgment shall have, fully, finally, and forever released,
12 relinquished, and discharged all Released Claims against the Released Parties, shall
13 have covenanted not to sue or otherwise seek to establish liability against any of the
14 Released Parties based, in whole or in part, upon any of the Released Claims, and
15 shall be permanently barred and enjoined from instituting, commencing, prosecuting,
16 or asserting any such Released Claim against any of the Released Parties.

17 8.2. With respect to any and all Released Claims, the Parties stipulate
18 and agree that, upon the Effective Date and the completion of all installment
19 payments pursuant to the Settlement Agreement as set forth Paragraphs 1.22 and 10.1
20 herein, End Payer Plaintiffs shall expressly waive and, upon the Effective Date and
21 the completion of all installment payments pursuant to the Settlement Agreement as
22 set forth Paragraphs 1.22 and 10.1 herein, each of the Releasing Parties shall be
23 deemed to have waived, and by operation of the Judgment shall have waived, the
24 provisions, rights, and benefits of California Civil Code Section 1542 and South
25 Dakota Codified Laws Section 20-7-11 (to the extent either or both of them apply to
26 the Action), each of which provides that, “[a] general release does not extend to
27 claims which the creditor does not know or suspect to exist in his favor at the time of
28 executing the release, which if known by him must have materially affected his

1 settlement with the debtor,” and of any similar provision, statute, regulation, rule, or
2 principle of law or equity of any other state or territory of the United States or any
3 other applicable jurisdiction. Releasing Parties expressly acknowledge that they may
4 hereafter discover facts in addition to or different from those facts that any of them
5 or their counsel now knows or believes to be true with respect to the subject matter
6 of the Settlement Agreement, but upon the completion of the installment payments
7 pursuant to the Settlement Agreement as set forth in Paragraphs 1.22 and 10.1 herein,
8 and retroactive to the Effective Date, each Plaintiff shall expressly have, and, upon
9 the Effective Date, each Releasing Party shall be deemed to have, and by operation
10 of the Judgment shall have, fully, finally, and forever settled and released any and all
11 Released Claims, known or unknown, suspected or unsuspected, contingent or non-
12 contingent, whether or not concealed or hidden, that now exist or heretofore have
13 existed, upon any theory of law or equity now existing or coming into existence in
14 the future, including, but not limited to, conduct that is negligent, reckless,
15 intentional, with or without malice, or a breach of any duty, law, or rule, without
16 regard to the subsequent discovery of existence of such different or additional facts.
17 End Payer Plaintiffs acknowledge, and the Releasing Parties shall be deemed to have
18 acknowledged, and by operation of the Judgment shall have acknowledged, that the
19 foregoing waiver was separately bargained for and a key element of the settlement
of which this release is a part.

20 **9. Reservation of Settlement Class Members’ Rights**

21 All rights of any Settlement Class Member against any alleged co-conspirator
22 or any other Person other than the Released Parties are specifically reserved by End
23 Payer Plaintiffs and the Settlement Class Members.

24 **10. Settlement Consideration**

25 10.1. The total monetary amount payable by the Lion Companies
26 (comprising class damages, costs of class notice and administration, and attorneys’
27 fees and costs) in settlement of all claims relating to the Action and all Released

1 Claims, is the Settlement Amount described above in Paragraph 1.22. The deposited
2 sums shall be held in the Escrow Account until there is an order from the District
3 Court concerning distribution or use of the Settlement Amount. The Escrow Agent
4 shall be subject to escrow instructions mutually acceptable to Settlement Class
5 Counsel and the Lion Companies, and such escrow is to be administered under the
6 Court's continuing supervision and control. The timing provisions herein are a
7 material part of this Settlement Agreement.

8 10.2. The Escrow Agent shall cause the funds deposited in the Escrow
9 Account to be invested in instruments backed by the full faith and credit of the United
10 States Government or fully insured by the United States Government or an agency
11 thereof, or money market funds invested substantially in such instruments, and shall
12 reinvest any income from these instruments and the proceeds of these instruments as
13 they mature in similar instruments at their then-current market rates.

14 10.3. All funds held in the Escrow Account shall be deemed and
15 considered to be in *custodia legis* of the Court and shall remain subject to the
16 jurisdiction of the Court, until such time as such funds shall be distributed pursuant
17 to this Settlement Agreement and/or further order(s) of the Court.

18 10.4. End Payer Plaintiffs and the Lion Companies intend for the
19 Settlement Fund to be treated as being at all times a "qualified settlement fund"
20 within the meaning of Treas. Reg. § 1.468B-1. In addition, the Claims Administrator
21 shall timely make such elections as necessary or advisable to carry out the provisions
22 of Paragraph 10, including the "relation-back election" (as defined in Treas. Reg.
23 § 1.468B-1) so as to enable the Settlement Fund to be treated as a "qualified
24 settlement fund" from the earliest date possible. Such elections shall be made in
25 compliance with the procedures and requirements contained in such regulations. It
26 shall be the responsibility of the Claims Administrator to timely and properly prepare
27 and deliver the necessary documentation for signature by all necessary parties, and
28 thereafter to cause the appropriate filing to occur.

1 10.5. For the purpose of § 468B of the Internal Revenue Code of 1986,
2 as amended, and the regulations promulgated thereunder, the “administrator” shall
3 be the Claims Administrator. The Claims Administrator shall timely and properly file
4 all information and other tax returns necessary or advisable with respect to the
5 Settlement Fund (including without limitation the returns described in Treas. Reg. §
6 1.468B-2(k)(1)). Such returns (as well as the elections described in Paragraph 10.4)
7 shall be consistent with Paragraph 10.7.

8 10.6. All (i) taxes (including any estimated taxes, interest, or penalties)
9 arising with respect to the income earned by the Settlement Fund, including any taxes
10 or tax detriments that may be imposed upon the Lion Companies or any other
11 Released Party with respect to any income earned by the Settlement Fund for any
12 period during which the Settlement Fund does not qualify as a “qualified settlement
13 fund” for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs
14 incurred in connection with the operation and implementation of Paragraphs 10.4
15 through 10.8 (including, without limitation, expenses of tax attorneys and/or
16 accountants and mailing and distribution costs and expenses relating to filing (or
17 failing to file) the returns described in Paragraph 10.5 (“Tax Expenses”)), shall be
18 paid out of the Settlement Fund.

19 10.7. Neither the Lion Companies nor any other Released Party nor their
20 respective counsel shall have any liability or responsibility, including filing
21 responsibility, for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses
22 shall be treated as, and considered to be, a cost of administration of the Settlement
23 Fund and shall be timely paid by the Claims Administrator out of the Settlement
24 Fund. The Claims Administrator shall be obligated (notwithstanding anything herein
25 to the contrary) to withhold from distribution to any claimants authorized by the
26 Court any funds necessary to pay such amounts including the establishment of
27 adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may
28 be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). Neither the Lion

1 Companies nor any other Released Party are responsible, nor shall they have any
2 liability therefor. End Payer Plaintiffs and the Lion Companies agree to cooperate
3 with the Claims Administrator, each other, and their tax attorneys and accountants to
4 the extent reasonably necessary to carry out the provisions of Paragraphs 10.2
5 through 10.10. The Lion Companies make no representation to End Payer Plaintiffs
6 regarding the appropriate tax treatment of the Settlement Fund, income earned on the
7 Settlement Fund, or any distribution taken from the Settlement Fund.

8 10.8. If this Settlement Agreement does not receive Final Approval by
9 the Court, or if the Action is not certified as a class action for settlement purposes, or
10 if this Settlement Agreement is terminated or voided for any reason, then all amounts
11 paid by the Lion Companies into the Settlement Fund (other than costs that may
12 already have reasonably been incurred or expended in accordance with Paragraphs
13 5.3 and 10) shall be returned to the Lion Companies from the Escrow Account by the
14 Escrow Agent along with any interest accrued thereon, within ten (10) business days
15 after such order becomes final and non-appealable.

16 10.9. The Lion Companies shall not be liable for any costs, fees, or
17 expenses of any of End Payer Plaintiffs' respective attorneys, experts, advisors,
18 agents, or representatives, but all such costs, fees, and expenses as provided for in
19 Paragraphs 5.3 and 10 or otherwise approved by the Court may be paid out of the
20 Settlement Fund.

21 10.10. If, after all costs (including notice costs), attorneys' fees, and any
22 other expenses have been paid from the Settlement Fund, there are any remaining
23 funds, they shall be distributed to the Settlement Class, or in Settlement Class
24 Counsel's reasonable judgment, be made the subject of an application to the Court
25 by End Payer Plaintiffs for *cy pres* distribution in accordance with governing
26 standards in the Ninth Circuit.

27 **11. Administration of the Settlement Fund**

1 11.1. The costs and expenses of administration of the settlement
2 pursuant to the terms of this Settlement Agreement shall be paid out of the Settlement
3 Fund. The Claims Administrator(s) shall, on a monthly basis, submit invoices, with
4 appropriate supporting documentation, to Settlement Class Counsel for payment
5 from the Escrow Account. To the extent practicable, the administration of this
6 settlement shall be coordinated with the administration of other aspects of this
7 Action, including, but not limited to, any other settlement(s) entered into between
8 End Payer Plaintiffs and any other settling Defendant(s) and/or the administration of
9 any recovery obtained on behalf of the class by summary judgment or trial.

10 11.2. The Lion Companies shall not have any responsibility, financial
11 obligation, or liability whatsoever with respect to the investment, distribution, or
12 administration of the Settlement Fund, including, but not limited to, the costs and
13 expenses of such investment, distribution, and administration, except as expressly
14 otherwise provided in the Settlement Agreement.

14 **12. Withdrawal From or Modification of the Settlement**

15 12.1. If the Court declines to approve this Settlement Agreement or any
16 material part hereof, or if such approval is materially modified or set aside on appeal,
17 or if the Court does not enter the Judgment, or if the Court enters the Judgment and
18 appellate review is sought and, on such review, such Judgment is not affirmed or is
19 materially modified, then the Lion Companies and End Payer Plaintiffs shall each, in
20 their respective sole discretion, have the option to rescind this Settlement Agreement
21 in its entirety.

22 12.2. If the Lion Companies choose to exercise the option to rescind
23 pursuant to Paragraph 12.1, any and all amounts then constituting the Settlement
24 Fund (including all income earned thereon and excluding any reasonable expenses
25 that have been paid or incurred associated with providing notice to the Settlement
26 Class, administering the Settlement Fund, incurred or paid under Paragraph 10.6 of
27 this Settlement Agreement, and/or any Taxes already paid on such income), together

1 with any amounts, including attorneys' fees, paid to Settlement Class Counsel
2 pursuant to Paragraph 14 below (including all income earned thereon), shall be
3 returned forthwith to the Lion Companies. A modification or reversal on appeal of
4 any amount of Settlement Class Counsel's fees and/or expenses awarded by the Court
5 or any plan of allocation or distribution of the Settlement Fund shall not be deemed
6 a modification of all or a part of the terms of this Settlement Agreement or the
7 Judgment.

8 12.3. The Lion Companies and End Payer Plaintiffs expressly reserve
9 all of their rights if this Settlement Agreement does not become effective or if it is
10 rescinded pursuant to Paragraph 12.1 of this Settlement Agreement. In addition, if
11 for any reason (including a party's exercise of a valid right to rescind this Settlement
12 Agreement), the Settlement Agreement does not receive Final Approval by the Court,
13 then the certification of the Settlement Class shall become null and void without
14 further Court action, and shall not be used or referred to for any further purpose in
15 the Action or in any other action or proceeding, and shall not prejudice any party in
16 arguing for or against contested class certification in this Action or in any other
17 proceeding. Further, this Agreement, whether or not it is finally approved and
18 whether or not the Lion Companies or End Payer Plaintiffs elect to rescind it under
19 Paragraph 12.1 of the Settlement Agreement, and any and all negotiations,
20 documents, and discussions associated with it, shall not be deemed or construed to
21 be an admission or evidence of any violation of any statute or law, or of any liability
22 or wrongdoing by the Lion Companies or any Defendant, or of the truth of any of the
23 claims or allegations contained in the Complaint or any other pleading filed by End
24 Payer Plaintiffs in the Action, or waiver or invalidity of any defense, and evidence
25 thereof shall neither be discoverable nor used directly or indirectly except in a
26 proceeding to enforce or interpret the Settlement Agreement.

26 13. No Admissions

1 The Parties intend the settlement as described herein to be a final and
2 complete resolution of all disputes between them with respect to the Released Claims,
3 and it shall not be deemed an admission by any party as to the jurisdiction of the
4 Court over the claims asserted against the Lion Companies, or as to the merits of any
5 claim or defense or any allegation made in the Action.

6 **14. Settlement Class Counsel’s Attorneys’ Fees and Expenses**

7 14.1. The procedure for, and the allowance or disallowance by the Court
8 of, any application by Settlement Class Counsel for attorneys’ fees and expenses are
9 not part of the Settlement Agreement and are to be considered by the Court separately
10 from the Court’s consideration of the fairness, reasonableness, and adequacy of the
11 settlement. Any order or proceeding relating to any application for, or approval of,
12 attorneys’ fees and expenses, the pendency of any such application, or any appeal or
13 review of an order relating thereto or reversal or modification thereof, shall not
14 operate to terminate or cancel this Settlement Agreement, or affect or delay the
15 finality of the Judgment. The Lion Companies agree that Settlement Class Counsel
16 may withdraw from the Settlement Fund any amount awarded by the Court for
17 attorneys’ fees and costs five (5) days following the Court’s award, subject to an
18 appropriate financial undertaking required by the Court in the event of an appeal of
19 the Court’s award of attorneys’ fees and expenses. Attorneys’ fees and expenses
20 authorized by the Court to be paid from the Settlement Fund shall be payable
21 notwithstanding the existence of any timely filed objections to the Settlement
22 Agreement, to any payment of fees, expenses, or incentives or potential for appeal
23 therefrom, or collateral attack on the Settlement Agreement or any part thereof,
24 subject to Settlement Class Counsel’s obligation to make appropriate refunds or
25 repayments to the Settlement Fund, if the Effective Date does not occur, or the
26 Settlement Agreement is subject to successful collateral attack, or the fee or cost
27 amount is reduced or reversed.

1 14.2. The Lion Companies shall have no responsibility for, and no
2 liability whatsoever with respect to, the division of attorneys' fees and expenses
3 among counsel representing the End Payer Plaintiffs, and any negotiation or dispute
4 among counsel representing the End Payer Plaintiffs in that regard shall not operate
5 to terminate or cancel this Settlement Agreement, or affect or delay the finality of the
6 Judgment.

7 14.3. Except as otherwise provided herein, End Payer Plaintiffs and the
8 Lion Companies shall each be responsible for bearing their own costs and fees
9 incurred in this Action.

10 **15. Miscellaneous Provisions**

11 15.1. The Lion Companies expressly represent that they have obtained
12 all required approvals from their management for this Settlement Agreement.

13 15.2. This Settlement Agreement shall constitute the entire agreement
14 between the Parties pertaining to the settlement of the Action against the Lion
15 Companies and supersedes any and all prior and contemporaneous undertakings of
16 the Parties in connection therewith. The terms of the Settlement Agreement are and
17 shall be binding upon each of the Parties hereto, their heirs, executors, administrators,
18 representatives, agents, attorneys, partners, successors, predecessors-in-interest, and
19 assigns, and upon all other Persons claiming any interest in the subject matter hereto
20 through any of the parties hereto including any Settlement Class Members.

21 15.3. This Settlement Agreement may be modified or amended only by
22 a writing executed by End Payer Plaintiffs and the Lion Companies, subject (if after
23 preliminary or final approval by any court) to approval by the Court. Amendments
24 and modifications may be made without notice to the Settlement Class unless notice
25 is required by law or by the Court.

26 15.4. None of the Parties hereto shall be considered to be the drafter of
27 this Settlement Agreement or any its provisions hereof for the purpose of any statute,

1 case law, or rule of interpretation or construction that would or might cause any
2 provision to be construed against the drafters of this Settlement Agreement.

3 15.5. This Settlement Agreement shall be construed and interpreted to
4 effectuate the intent of the parties which is to provide, through this Settlement
5 Agreement, for a complete resolution of the Released Claims with respect to the
6 Released Parties.

7 15.6. Nothing expressed or implied in this Settlement Agreement is
8 intended to or shall be construed to confer upon or give any person or entity other
9 than Settlement Class Members, Releasing Parties, and Released Parties any right or
10 remedy under or by reason of this Settlement Agreement.

11 15.7. This Settlement Agreement shall be binding upon, and inure to the
12 benefit of, the Releasing Parties and the Released Parties.

13 15.8. End Payer Plaintiffs and the Lion Companies acknowledge that
14 they have been represented by counsel and have made their own investigations of the
15 matters covered by this Settlement Agreement to the extent they have deemed it
16 necessary to do so. Therefore, End Payer Plaintiffs and the Lion Companies and their
17 respective counsel agree that they will not seek to set aside any part of the Settlement
18 Agreement on the grounds of mistake. Moreover, End Payer Plaintiffs and the Lion
19 Companies and their respective counsel understand, agree, and expressly assume the
20 risk that any fact may turn out hereinafter to be other than, different from, or contrary
21 to the facts now known to them or believed by them to be true, and further agree that
22 the Settlement Agreement shall be effective in all respects and shall not be subject to
23 termination, modification, or rescission by reason of any such difference in facts. If
24 any provision of this Settlement Agreement is found by a court of competent
25 jurisdiction to be illegal, invalid, or unenforceable for any reason, the remainder of
26 this Settlement Agreement will not be affected and, in lieu of each provision that is
27 found illegal, invalid, or unenforceable, a provision will be added as a part of this

1 Settlement Agreement that is as similar to the illegal, invalid, or unenforceable
2 provision as may be legal, valid, and enforceable.

3 15.9. All terms of this Settlement Agreement shall be governed by, and
4 interpreted according to, the substantive laws of the State of California without regard
5 to its choice of law or conflicts of laws principles.

6 15.10. The Lion Companies, End Payer Plaintiffs, and all Settlement
7 Class Members hereby irrevocably submit to the exclusive jurisdiction of the Court
8 for any suit, action, proceeding, or dispute arising out of or relating to this Settlement
9 Agreement or the applicability of this Settlement Agreement, including, without
10 limitation, any suit, action, proceeding, or dispute relating to the release provisions
11 herein. The Lion Companies do not, by way of this Settlement Agreement, submit to
12 the jurisdiction of the Court for any other purpose.

13 15.11. This Settlement Agreement may be executed in counterparts.
14 Facsimile or Portable Document Format signatures shall be considered as valid
15 signatures for purposes of execution of this Settlement Agreement, but original
16 signature pages shall thereafter be collated for filing of this Settlement Agreement
17 with the Court.

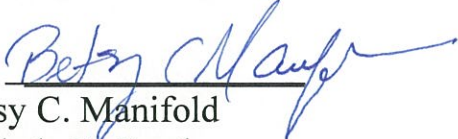
18 15.12. Each of the undersigned attorneys represents that he or she is
19 fully authorized to enter into the terms and conditions of, and execute, this Settlement
20 Agreement, subject to Court approval, and the undersigned Settlement Class Counsel
21 represent that they are authorized to execute this Settlement Agreement on behalf of
22 End Payer Plaintiffs and the Settlement Class.

23 IN WITNESS HEREOF, the Parties hereto through their fully authorized
24 representatives have agreed to this Settlement Agreement as of the date first written
25 above.

26 [signature page follows]

1 Dated: August 7, 2024
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FREEMAN & HERZ LLP

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23 *Class Counsel for the End Payer Plaintiffs*
24
25
26

1 Dated: August 7, 2024

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18 *(Americas), Inc. and Specially Appearing*
19 *Defendants Lion Capital LLP and Big Catch*
20 *Cayman LP*

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22
23
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25
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27 SETTLEMENT AGREEMENT BETWEEN END
28 PAYER PLAINTIFFS, LION CAPITAL LLP, LION
CAPITAL (AMERICAS), INC., AND BIG CATCH
CAYMAN LP

CASE No. 15-MD-2670-DMS (MSB)