

CONCILIATION AGREEMENT

Between

THE U.S. DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE
PROGRAMS

And

BIRDS EYE FOODS LLC
399 JEFFERSON ROAD
PARSIPPANY, NJ 07054

PART I: PRELIMINARY STATEMENT

The Office of Federal Contract Compliance Programs (“OFCCP”) evaluated the Birds Eye Foods LLC facility located at W8880 County Road X, Darien, WI 53114, (“Birds Eye”) and found that Birds Eye was not in compliance with Executive Order 11246, as amended (“E.O. 11246”), and its implementing regulations at 41 C.F.R. Section 60-1, 60-2, 60-3 and 60-300. OFCCP notified Birds Eye of the specific violations found and the corrective actions required in a Revised Notice of Violations issued on August 15, 2016. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Birds Eye enter this contract (“Conciliation Agreement” or “Agreement”) and agree to all the terms stated below.

The use of the term “Birds Eye” throughout this Agreement is limited to the Darien, Wisconsin facility referenced above.

PART II: GENERAL TERMS AND CONDITIONS

1. In exchange for Birds Eye’s fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III if Birds Eye violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.

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2. Birds Eye agrees that OFCCP may review its compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Birds Eye will permit access to its premises during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.
3. Birds Eye understands that nothing in this Agreement relieves Birds Eye of its obligation to fully comply with the requirements of E.O. 11246, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans Reemployment Adjustment Act, as amended, VEVRAA, their implementing regulations, and other applicable equal employment laws.
4. Birds Eye promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual benefits from this Agreement, files a complaint or participates in any investigations or proceedings under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 C.F.R. § 60-1.32(a).
5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing and signed by all parties.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full effect.
8. This Agreement becomes effective on the day it is signed by the Regional Director of the Midwest Region (the "Effective Date") unless the Director of OFCCP indicates otherwise within 45 days of the date the Regional Director signs the Agreement.
9. In computing any time period specified in this Agreement, every calendar day shall be counted unless otherwise specified herein.
10. This Agreement will expire sixty (60) days after Birds Eye submits the final progress report required in Part IV 1(D) below, unless OFCCP notifies Birds Eye in writing prior to the expiration date that Birds Eye has not fulfilled its obligations under this Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Birds Eye has met all of its obligations under this Agreement.
11. If Birds Eye violates this Conciliation Agreement:

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- A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
- 1) If OFCCP believes that Birds Eye violated any term of the Agreement while it was in effect, OFCCP will send Birds Eye a written notice to the Office of General Counsel, Birds Eye Foods LLC, 399 Jefferson Road, Parsippany, NJ 07054, stating the alleged violation(s) and summarizing any supporting evidence.
 - 2) Birds Eye will have 15 days from receipt of such notice to demonstrate in writing that it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
 - 3) If Birds Eye is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceedings through any other requirement.
 - 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
- B. Birds Eye may be subject to the sanctions set forth in Section 209 of E. O. 11246 and /or other appropriate relief for violation(s) of this Agreement.
12. This Agreement does not constitute an admission by Birds Eye of any violation of E.O. 11246, Section 503, VEVRAA, or other laws, nor has there been an adjudicated finding that Birds Eye violated any laws.

PART III: SPECIFIC VIOLATIONS AND REMEDIES

1. HIRING DISCRIMINATION

- A. STATEMENT OF VIOLATION. OFCCP alleges that Birds Eye discriminated against 404 qualified female applicants (Violation 1 Class Members) based on sex in full time and seasonal laborer positions, at the Darien, Wisconsin establishment. The alleged discrimination occurred during the period of September 24, 2010 through September 24, 2012. OFCCP contends that Birds Eye's failure to afford female applicants equal employment opportunities in hiring constitutes a violation of Section 202, Paragraph 1 of Executive Order 11246, as amended, and 41 CFR 60-1.4(a)(1). OFCCP asserts that there were statistically significant disparities in the hiring of full-time and seasonal laborer positions based on sex.

Specifically, OFCCP alleges that personnel activity data provided by Birds Eye for the period September 24, 2010 through September 24, 2012 revealed that from a qualified pool of (b) (7)(E) female applicants, Birds Eye hired only (b) (7)(E) females (b) (7)(E) into full time laborer positions. From the same qualified applicant pool, Birds Eye hired only (b) (7)(E) females (b) (7)(E) into seasonal¹ laborer positions. During this same period, from a qualified pool of (b) (7)(E) male applicants, Birds Eye hired (b) (7)(E) males (b) (7)(E) into full time laborer positions. From the same qualified applicant pool, Birds Eye hired (b) (7)(E) males (b) (7)(E) into seasonal laborer positions. This disproportionate hiring pattern is statistically significant at the level of (b) (7)(E) standard deviations with a shortfall of 7 female hires into full time (non- seasonal) laborer positions and (b) (7)(E) standard deviations with a shortfall of 16 female hires into seasonal Laborer positions.

- B. OFCCP’S SPECIFIC FINDINGS. To further investigate the issue, OFCCP requested data from Birds Eye for each step in the selection process, to include copies of all documents (applicant listings, employee listings, applications, interview notes, self-ID forms, etc.) used in the selection process. Although required by 41 CFR § 60-1.12(a), OFCCP asserts that Birds Eye did not maintain complete documentation or information on applicants at each step in the employment process.
- C. REMEDY FOR AFFECTED CLASS:
- 1) Birds Eye agrees to review its selection procedures and to provide training to all personnel involved in selection decisions to ensure that non-discriminatory policies are carried out as required by 41 C.F.R. Part 60-2.17(d). Such review and training shall be completed within 120 days after the Effective Date of this Agreement.
 - 2) For purposes of this Agreement, the affected violation 1 class members are female applicants who applied for open laborer positions from September 24, 2010 to September 24, 2012, and were not hired. In addition to the statistical analysis, OFCCP asserts that it found inconsistencies in the selection process that support OFCCP’s statistical finding. Accordingly, OFCCP determined that Birds Eye engaged in a pattern or practice of discrimination against women who applied for laborer positions during the review period. The 404 affected Class Members for Violation 1 are identified on Attachment A, appended hereto.

¹ “Seasonal” and “Full Time” are terms used by Birds Eye and throughout this document. The terms refer to positions in Birds Eye’s workforce and have no other meaning with respect to duration or work-hours or for any other purpose.

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- 3) For purposes of administration of the terms in this Agreement as the same relate to notice required to be provided to Class Members, receipt of information from Class Members, payments to Class Members, and tracking of all communications and payments with Class Members, Birds Eye shall utilize the services of Rust Consulting, Inc. (“Rust”). For purposes of communicating directly with Rust whenever necessary according to the terms of this Agreement, Birds Eye or the OFCCP may use the following address/information: Sara Schwermer-Sween, Project Manager, Rust Consulting, 625 Marquette Avenue, Suite 900, Minneapolis, MN 55402, (612) 359-2077, (b) (7)(C), (b) (7)(E)@rustconsulting.com. Birds Eye shall be responsible for and pay all fees for services provided by Rust.
- 4) Rust shall notify the Violation 1 Class Members listed on Attachment A of the terms of this Agreement within 30 days of the Effective Date of this Agreement by mailing the Notice to each Violation 1 Class Member (Attachment B, hereinafter “Notice”) to inform the Violation 1 Class Member of the settlement, and shall include the Claim Form (Attachment C, hereinafter “Claim Form”) and a Release of Claims (Attachment D, hereinafter “Release”). Rust shall mail the Notice, Claim Form and Release (Attachments B, C, and D) to each Violation 1 Class Member, as identified on Attachment A in English and Spanish.
- 5) Each Violation 1 Class Member (or her legal representative in the event she is deceased) shall be given 175 days after the Effective Date of the Agreement to respond. Those individuals for whom Rust receives a notice from the U.S. Postal Service that the mailed items were undeliverable within 30 days after the date Rust mails the Notice to Violation 1 Class Members, shall be recorded by Rust in a Microsoft Excel spreadsheet, which shall include such Class Member’s name, address used for mailing, and Social Security (if known). This spreadsheet shall be emailed by Rust to Timothy Roark, the Assistant District Director of the OFCCP, Milwaukee District Office, at (b) (7)(C), (b) (7)(E)@dol.gov within 75 days of the Effective Date of this Agreement. OFCCP shall have 45 days from receipt of the spreadsheet to provide Rust with updated address information for those Class Members identified in the spreadsheet. Within 15 days of receipt of any new address information, Rust shall mail the Notice, Claims Form and Release (Attachments B, C, and D) to those Class Members for whom the new address information was provided. The Class Members to whom this second mailing had been sent, shall be given 175 days from the Effective Date of the Agreement to respond. The total number of Violation 1 Class Members to receive payment and/or future employment consideration shall consist of those individuals from Attachment A who return executed copies of the Claims Form and Release (Attachments C and D) within 175 days (postmarked by the 175th day) from the Effective Date of the Agreement. These individuals shall be deemed “Eligible Class

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Members.” The Eligible Class Members shall share equally in the Violation 1 Settlement Fund. Rust shall identify all Eligible Class Members, as defined above, within 190 days from the Effective Date of the Agreement, and shall deliver a list of Eligible Class Members to Birds Eye and the OFCCP (such list shall include each Eligible Class Member’s name, address as identified on the Claims Form, and the date on which the Claims Form and Release were received by Rust) within 200 days of the Effective Date of the Agreement. Any Class Member identified on Attachment A who has failed to respond within 175 days from the Effective Date of the Agreement, shall receive no portion of the Violation 1 Settlement Fund and shall not be entitled to any employment consideration under this Agreement.

- 6) Monetary Settlement. In settlement of all claims for back pay, interest and other monetary relief to the Violation 1 Eligible Class Members, Birds Eye agrees to pay the amount of \$269,000.00. This amount shall be referred to hereafter as the “Violation 1 Settlement Fund.” The monetary settlement is a negotiated amount that represents back pay and interest less interim earnings, and takes into account the tenure of those persons hired into laborer positions during the review period.
- 7) Rust shall establish a federally-insured, interest-bearing account at the prevailing interest rate for purposes of complying with this Agreement, and Birds Eye shall provide the amount identified in Paragraph 6 immediately above to Rust to fund this account within 30 days of the Effective Date of this Agreement. Rust shall notify OFCCP within 15 days of the date on which this account has been funded. OFCCP shall be permitted to contact Rust in order to obtain account balance and interest information.
- 8) The interest that accrues on the Violation 1 Settlement Fund will be included in the distribution to Eligible Class Members.
- 9) Rust shall distribute the Violation 1 Settlement Fund equally among the Eligible Class Members. This monetary relief is not contingent upon accepting any job offer. Within 215 days from the Effective Date of the Agreement, Rust shall mail a check to each Eligible Class Member, representing each person’s pro rata share of the total amount in the Violation 1 Settlement Fund.
- 10) Rust shall ensure that all legal deductions required by law (i.e., normal federal, state, and or local taxes and FICA) are withheld from the payments provided to the Eligible Class Members, and Birds Eye shall be responsible for the employer’s share of social security withholding attributable to the back pay portion of the Violation 1 Settlement Fund.

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- 11) For any checks mailed by Rust which are returned as undeliverable, Rust shall notify OFCCP, within 7 days, of this fact either via email or facsimile. Rust may use the following email address and facsimile number for this purpose: (b) (7)(C), (b) (7)(E) @dol.gov, 414- (b) (7)(C), (b) (7)(E). OFCCP shall attempt to locate updated address information for the Eligible Class Member whose check is returned and if OFCCP obtains an alternate address, it shall provide Rust with this information and Rust shall attempt a second mailing of the check. Any check that remains uncashed 60 days after the initial date the check was mailed to the Eligible Class Member shall become void. With respect to the uncashed funds, Rust shall make a second distribution to all Eligible Class Members who cashed their check if the amount of the uncashed funds would result in a payment of \$20 or more to each of those Eligible Class Members. If the total amount of the uncashed funds would result in a payment of less than \$20 to each of those Eligible Class Members, then Rust shall return the uncashed funds to Birds Eye who agrees to use these uncashed funds to provide training in equal employment opportunity to its personnel in addition to training it is otherwise obligated to provide under the Executive Order, Section 503 and VEVRAA.
- 12) Seventy-Five (75) days following the date on which all checks issued with funds from the Violation 1 Settlement Fund become void, the Violation 1 Settlement Fund shall be closed. Any balance remaining in the fund shall revert to Birds Eye to be used in accordance with Paragraph Part III.1.C.11 immediately above.
- 13) The parties may modify any time frame set forth in this Agreement by mutual agreement.
- 14) Employment. As laborer positions become available, Birds Eye agrees to make offers to fill these positions with 23 Eligible Class Members (seven into full-time positions, and 16 into seasonal positions) until 23 positions are filled or the Eligible Class Member list is exhausted, whichever comes first. Those Violation 1 Eligible Class Members that are hired, shall receive a pay rate and those paid/unpaid leave benefits consistent with an employee having a service date of August 1, 2015 as defined below in Part III.1.C.15.
 - (a) Birds Eye shall establish a priority employment list for the Eligible Class Members: for full time laborers and for seasonal laborers. The Eligible Class Members shall be ranked according to the date on which their Claims Form and Release (Attachments C and D) are received by Rust. For those Eligible Class Members whose Claims Form and Release are received on the same day, they shall be ranked between them by the date on which each originally sought employment with Birds Eye (if known) and by alphabetical order of the Eligible Class Members' surname where

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the original application date is not known. The priority employment list shall be completed within 220 days of the Effective Date of the Agreement.

- 15) Birds Eye shall extend job offers to Eligible Class Members until 7 Eligible Class Members from the priority employment list have been hired into full-time laborer positions and 16 Eligible Class Members have been hired into seasonal positions or until the priority employment list is exhausted, whichever occurs first.

If Birds Eye rejects any Eligible Class Member from the priority list for employment, it shall submit to OFCCP the reasons for such rejection, including any relevant supporting evidence. If OFCCP has questions or concerns with any such rejection, the parties will discuss same to seek a resolution, if necessary. Any class member from Attachment A who was hired at Birds Eye's Darien, Wisconsin facility during the period of September 24, 2010 through the date this Agreement is executed by the parties shall not be offered a job pursuant to this Conciliation Agreement. Birds Eye shall submit to OFCCP documentation of each such class member's hire date, start date, and job title at the Darien, Wisconsin facility, as well as termination date, if applicable. Birds Eye shall send the letter containing the written job offer by certified mail and also send a copy via regular first-class mail. The letter containing the job offer shall instruct the class member to respond, verbally or in writing, to the offer within ten (10) days after the receipt of the offer, or within fifteen (15) days after the mailing if the certified letter is returned unclaimed, or the offer will be withdrawn by Birds Eye. Birds Eye shall simultaneously mail to OFCCP a copy of the job offers made in accordance with this Agreement. Birds Eye's efforts to hire in accordance with this Paragraph 15 and Paragraph 14 (immediately preceding this Paragraph) shall be documented and reported to the OFCCP in accordance with this Paragraph until the earlier of the following: (i) the requisite number of hires has been made; (ii) the priority employment list has been exhausted; or (iii) twenty-four (24) months from the Effective Date of this Agreement has passed.

Birds Eye will deem the service date of each Eligible Class Member hired under this Agreement as August 1, 2015 for wages and paid and unpaid leave benefits only. For Eligible Class Members hired into full-time laborer positions, the starting wage rate shall be determined based on the wage rates listed in the Labor Agreement for Production and Maintenance Employees ("LAPME") with the United Food & Commercial Workers Union ("UFCW") Local 1473 that covers the period August 11, 2014 through December 31, 2018. For Eligible Class Members hired into seasonal laborer positions, the starting wage rate shall be determined based on the wage rates listed in the

Labor Agreement for Seasonal Production Employees (“LASPE”) with the UFCW Local 1473 that covers the period December 1, 2014 through November 30, 2019. The wage rates for full-time laborer positions are listed under Exhibit B and article 12.12(b)(1) of the LAPME and the wage rates for seasonal laborer positions are listed under Exhibit A for the LASPE. All other wage differentials and benefits remain consistent with the LAPME and LASPE. The paid and unpaid leave benefits at time of hire are only provided to each Eligible Class Member hired into full-time laborer positions covered by the LAPME. The Eligible Class Members hired into full-time laborer positions under the LAPME will receive the following paid and unpaid leave benefits upon hire: two weeks paid vacation (article 8.1(b)(2)); 10 paid holidays (two of which are floating holidays) (article 9.1); up to three days paid bereavement (article 10.1); and two weeks unpaid leave of absence for good and sufficient reason (article 10.4). The provision of benefits in the prior sentence shall be consistent with the terms for these benefits in the LAPME. There are NO paid or unpaid leave benefits provided to Eligible Class Members hired into seasonal laborer positions beyond what is included in the LASPE. For purposes of “Bump Hats,” seniority, job retention, recall rights, job bidding and promotion opportunities, Birds Eye will deem the seniority date of each Eligible Class Member hired under this Agreement into full-time and seasonal laborer positions as the date they actually begin employment.

- D. NON-MONETARY REMEDIES. Birds Eye will ensure that all applicants are afforded equal employment opportunities. Birds Eye agrees that it will not use any selection procedures, practices, and/or policies which negatively affect the hiring of Female applicants for laborer positions. Birds Eye agrees to implement the corrective actions detailed below.

1) Hiring and Placement Process

- (a) Eliminate Discriminatory Selection Procedures: Birds Eye agrees to comply with all OFCCP regulations concerning selection procedures, including 41 C.F.R Part 60-3. Birds Eye will not use any selection procedure that has an adverse impact, as defined in 41 C.F.R. § 60-3.4D, on female applicants unless it complies with these regulations which are referenced above.
- (b) Review and Revisions Required: Birds Eye will review the practices, policies and procedures it uses to select applicants for laborer positions. Specifically, Birds Eye agrees to:
- i. Provide training to all personnel involved in selection decisions to ensure that non-discriminatory polices are carried out as required by 41 C.F.R. Part 60-2.17(d). Such

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review and training shall be completed within 120 days after the Effective Date of this Agreement. The training will include instruction in: the proper implementation of the recruitment, tracking, and selection procedures; neutral application of the specified basic and preferred qualifications and criteria that will be used at each step in the hiring process; procedures to be used to document the decisions made at each step in the hiring process; and the procedures to be used to ensure that documents are retained in accordance with 41 C.F.R § 60-1.12(a) and Part 60-3. Birds Eye will meet with management and all individuals responsible for the selection process and review its equal employment obligations and nondiscrimination policies related to hiring. Specific attention will be directed to ensure that Female applicants who benefit from the provisions of this Agreement are not retaliated against;

- ii. Create written selection processes for full time and seasonal labor positions which describes the essential functions; the minimum qualifications including required skills; and the criteria used in each step of the hiring processes, including any application screens, interviews, reference checks, or other selection procedures;
 - iii. Develop written, specific, job-related qualification standards for full time and seasonal laborer positions that reflect the duties, functions, and competencies of the positions to minimize the potential for sex stereotyping or other unlawful discrimination. Such job-related qualification standards shall not be used to disqualify a current employee from his or her job as of the date of this agreement;
 - iv. Ensure policies and qualification standards are uniformly applied to all applicants; and
 - v. List clearly on its recruiting materials and job postings the minimum qualifications, including required skills and certifications.
- (c) Recordkeeping and Retention: Birds Eye will ensure that applicants are tracked and decisions are documented at each step in the hiring and placement process. Birds Eye will also ensure that records are retained in accordance with 41 C.F.R. § 60-

1.12(a) and Part 60-3.

- (d) Training: Within one hundred and twenty (120) calendar days of the Effective Date of this Agreement, Birds Eye must implement training for all individuals involved in recruiting, selecting, or tracking of applicants for Laborer positions in its Hiring Process.
- (e) Monitoring: Birds Eye agrees to monitor selection rates at each step of its selection process for the Laborer positions. Where it is determined that a selection procedure has an adverse impact, as defined in 41 C.F.R. §60-3.4D, on the hiring of applicants of a particular race or gender, Birds Eye will eliminate the procedure, choose an alternative procedure, or validate the procedure in accordance with the Uniform Guidelines on Employee Selection Procedures (UGESP) codified at 41 C.F.R. Part 60-3. Birds Eye agrees to maintain and, if requested by OFCCP during the term of this Agreement, to make available to OFCCP records concerning the impact of the selection process for the Laborer position at the Darien, Wisconsin facility. This includes the number of persons hired by sex, the number of applicants who applied by sex, and the selection procedures utilized. This information will be maintained until the expiration of this Agreement or as long as required by the regulations, whichever is later.

2. PLACEMENT DISCRIMINATION

- A. STATEMENT OF VIOLATION. OFCCP asserts that Birds Eye discriminated against 146 qualified Hispanic employees (Violation 2 Class Members) based on race in placement of full time and seasonal laborer positions, at the Darien, Wisconsin establishment. The discrimination occurred during the period of September 24, 2010 through September 24, 2012. OFCCP contends that Birds Eye's failure to afford Hispanic employees equal employment opportunities in placement constitutes a violation of Section 202, Paragraph 1 of Executive Order 11246, as amended, and 41 CFR 60-1.4(a)(1). OFCCP asserts that there were statistically significant disparities in the placement of full-time and seasonal laborer positions based on race.

Specifically, OFCCP alleges personnel activity data provided by Birds Eye for the period September 24, 2010 through September 24, 2012 revealed that Birds Eye hired [REDACTED] of (b) (7)(E) Hispanic laborers into full time positions. During the same period, Birds Eye hired [REDACTED] of (b) (7)(E) White laborers into full time positions. This disproportionate placement pattern is statistically significant at the level of (b) (7)(E) standard deviations, with a shortfall of 38 Hispanic hires.

- B. OFCCP’S SPECIFIC FINDINGS. To further investigate the issue, OFCCP requested data from Birds Eye for each step in the selection process, to include copies of all documents (applicant listings, employee listings, applications, interview notes, self-ID forms, etc.) used in the selection process. Although required by 41 CFR § 60-1.12(a), OFCCP asserts that Birds Eye did not maintain complete documentation or information on applicants at each step in the employment process.
- C. REMEDY FOR AFFECTED CLASS:
- 1) Birds Eye agrees to review its selection procedures and to provide training to all personnel involved in selection decisions to ensure that non-discriminatory policies are carried out as required by 41 C.F.R. Part 60-2.17(d). Such review and training shall be completed within 120 days after the Effective Date of this Agreement.
 - 2) For purposes of this Agreement, the affected Violation 2 Class Members are Hispanic employees who were employed in seasonal laborer positions, at some point, between September 24, 2010 to September 24, 2012 and were not placed into full-time positions. In addition to the statistical analysis, OFCCP asserts that it found inconsistencies in the selection process that support OFCCP’s statistical finding. Accordingly, OFCCP determined that Birds Eye engaged in a pattern or practice of discrimination against Hispanic laborers during the review period. The 146 Violation 2 Class Members are identified on Attachment E, appended hereto.
 - 3) Rust² shall notify the Violation 2 Class Members listed on Attachment E of the terms of this Agreement within 30 days of the Effective Date of this Agreement mailing the Notice to each Violation 2 Class Member (Attachment F, hereinafter “Notice”) to inform the Violation 2 Class Member of the settlement, and shall include the Claim Form (Attachment G, hereinafter “Claim Form”) and a Release of Claims (Attachment H, hereinafter “Release”). Rust shall mail the Notice, Claim Form and Release (Attachments F, G and H) to each Violation 2 Class Member, as identified on Attachment E, in English and Spanish.
 - 4) Each Violation 2 Class Member (or his/her legal representative in the event he/she is deceased) shall be given 175 days after the Effective Date of the Agreement to respond. Those individuals for whom Rust receives a

² Rust Consulting, Inc. remains the settlement administrator for this Agreement. See Paragraph III.1.C.3, above.

notice from the U.S. Postal Service that the mailed items were undeliverable within 30 days after the date Rust mails the Notice to Violation 2 Class Members, shall be recorded by Rust in a Microsoft Excel spreadsheet, which shall include such Class Member's name, address used for mailing, and Social Security (if known). This spreadsheet shall be emailed by Rust to Timothy Roark, Assistant District Director of the OFCCP, Milwaukee District Office, within 75 days of the Effective Date of this Agreement. OFCCP shall have 45 days from receipt of the spreadsheet to provide Rust with updated address information for those Class Members identified in the spreadsheet. Within 15 days of receipt of any new address information, Rust shall mail the Notice, Claims Form and Release (Attachments F, G, and H) to those Class Members for whom the new address information was provided. The Class Members to whom this second mailing had been sent, shall be given 175 days from the Effective Date of the Agreement to respond. The total number of Violation 2 Class Members to receive payment shall consist of those individuals from Attachment E who return executed copies of the Claims Form and Release (Attachments G and H) within 175 days (postmarked by the 175th day) from the Effective Date of the Agreement. These individuals shall be deemed "Eligible Class Members." The Eligible Class Members shall share equally in the Violation 2 Settlement Fund. Rust shall identify all Eligible Class Members, as defined above, within 190 days from the Effective Date of the Agreement, and shall deliver a list of Eligible Class Members to Birds Eye and the OFCCP (such list shall include each Eligible Class Member's name, address as identified on the Claims Form, and the date on which the Claims Form and Release were received by Rust) within 200 days of the Effective Date of the Agreement. Eligible Class Members who had not been employed at any time in a full-time laborer position (as opposed to seasonal) or had not had their employment terminated at any time prior to the Effective Date of this Agreement shall also be eligible for consideration for future employment opportunities consistent with Paragraph 13 below. Any Class Member identified on Attachment E who has failed to respond within 175 days from the Effective Date of the Agreement, shall receive no portion of the Violation 2 Settlement Fund and shall not be entitled to any employment consideration under this Agreement.

- 5) Monetary Settlement. In settlement of all claims for back pay, interest and other monetary relief to the Violation 2 Eligible Class Members, Birds Eye agrees to pay the amount of \$700,768.00. This amount shall be referred to hereafter as the "Violation 2 Settlement Fund." The monetary settlement is a negotiated amount that represents back pay and interest less interim earnings, and takes into account the tenure of those persons hired into laborer positions during the review period.

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- 6) Rust shall establish a federally-insured, interest-bearing account at the prevailing interest rate for purposes of complying with this Agreement, and Birds Eye shall provide the amount identified in Paragraph 5 immediately above to Rust to fund this account within 30 days of the Effective Date of this Agreement. Rust shall notify OFCCP within 15 days of the date on which this account has been funded. OFCCP shall be permitted to contact Rust in order to obtain account balance and interest information.
- 7) The interest that accrues on the Violation 2 Settlement Fund will be included in the distribution to Eligible Class Members.
- 8) Rust shall distribute the Violation 2 Settlement Fund equally among the Eligible Class Members. This monetary relief is not contingent upon accepting any job offer. Within 215 days from the Effective Date of the Agreement, Rust shall mail a check to each Eligible Class Member, representing each person's pro rata share of the total amount in the Violation 2 Settlement Fund.
- 9) Rust shall ensure that all legal deductions required by law (i.e., normal federal, state, and or local taxes and FICA) are withheld from the payments provided to the Eligible Class Members, and Birds Eye shall be responsible for the employer's share of social security withholding attributable to the back pay portion of the Violation 2 Settlement Fund.
- 10) For any checks mailed by Rust which are returned as undeliverable, Rust shall notify OFCCP, within 7 days, of this fact either via email or facsimile. Rust may use the following email address and facsimile number for this purpose: (b) (7)(C), (b) (7)(E) @dol.gov, 414 (b) (7)(C), (b) (7)(E). OFCCP shall attempt to locate updated address information for the Eligible Class Member whose check is returned and if OFCCP obtains an alternate address, it shall provide Rust with this information and Rust shall attempt a second mailing of the check. Any check that remains uncashed 60 days after the initial date the check was mailed to the Eligible Class Member shall become void. With respect to the uncashed funds, Rust shall make a second distribution to all Eligible Class Members who cashed their check if the amount of the uncashed funds would result in a payment of \$20 or more to each of those Eligible Class Members. If the total amount of the uncashed funds would result in a payment of less than \$20 to each of those Eligible Class Members, then Rust shall return the uncashed funds to Birds Eye who agrees to use these uncashed funds to provide training in equal employment opportunity to its personnel in addition to training it is otherwise obligated to provide under the Executive Order, Section 503 and

VEVRAA.

- 11) Seventy-Five (75) days following the date on which all checks issued with funds from the Violation 2 Settlement Fund become void, the Violation 2 Settlement Fund shall be closed. Any balance remaining in the fund shall revert to Birds Eye to be used in accordance with Paragraph 10 immediately above.
- 12) The parties may modify any time frame set forth in this Agreement by mutual agreement.
- 13) Employment. As of the Effective Date of this Agreement, Birds Eye had already hired twenty-five (25) Eligible Class Members into full-time labor positions since September 24, 2012; accordingly, the shortfall for which Birds Eye remains responsible to attempt to fill in accordance with this Paragraph 13 and Paragraph 14 immediately below shall be thirteen (13). As full-time labor positions become available, Birds Eye agrees to make offers to fill these positions with 13 Violation 2 Eligible Class Members (who had not previously been employed in a full-time laborer position and/or had not previously had their employment terminated before the Effective Date of this Agreement) until 13 positions are filled or the Eligible Class Member list is exhausted, whichever comes first. Those Violation 2 Eligible Members that are hired/promoted, shall receive a pay rate and those paid/unpaid leave benefits consistent with an employee having a service date of August 1, 2015 as defined below in Part III.2.C.14.
 - (a) Birds Eye shall establish a priority employment list for these Violation 2 Eligible Class Members. Birds Eye shall rank individuals based upon earliest seasonal employment seniority.
- 14) Birds Eye shall extend job offers to Eligible Class Members who had not previously been employed in a full-time labor position or had their employment terminated until 13 Eligible Class Members have been hired into full-time laborer positions or until the priority employment list is exhausted, whichever occurs first.

If Birds Eye rejects any Eligible Class Member from the priority employment list for employment, it shall submit to OFCCP the reasons for such rejection, including any relevant supporting evidence. If OFCCP has questions or concerns with any such rejection, the parties will discuss same to seek a resolution, if necessary. Any class member from Attachment E who was hired at Birds Eye's Darien, Wisconsin facility as a full-time laborer

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during the period of September 24, 2012 through the date this Agreement is executed by the parties, or had had his/her employment at the Darien, Wisconsin facility terminated, shall not be offered a job pursuant to this Conciliation Agreement. Birds Eye shall submit to OFCCP documentation of each such class member's hire date, start date, and job title at the Darien, Wisconsin facility, as well as termination date, if applicable. Birds Eye shall send the letter containing the written job offer by certified mail and also send a copy via regular first-class mail. The letter containing the job offer shall instruct the class member to respond, verbally or in writing, to the offer within ten (10) days after the receipt of the offer, or within fifteen (15) days after the mailing if the certified letter is returned unclaimed, or the offer will be withdrawn by Birds Eye. Birds Eye shall simultaneously mail to OFCCP a copy of the job offers made in accordance with this Agreement. Birds Eye's efforts to hire in accordance with this Paragraph 14 and Paragraph 13 (immediately preceding this Paragraph) shall be documented and reported to the OFCCP in accordance with this Paragraph until the earlier of the following: (i) the requisite number of hires has been made; (ii) the priority employment list has been exhausted; or (iii) twenty-four (24) months from the Effective Date of this Agreement has passed.

Birds Eye will deem the service date of each Eligible Class Member hired under this Agreement as August 1, 2015 for wages and paid and unpaid leave benefits only. For Eligible Class Members hired into full-time laborer positions, the starting wage rate shall be determined based on the wage rates listed in the LAPME with the UFCW Local 1473 that covers the period August 11, 2014 through December 31, 2018. The wage rates for full-time laborer positions are listed under Exhibit B and article 12.12(b)(1) of the LAPME. All other wage differentials and benefits remain consistent with the LAPME. The Eligible Class Members hired into full-time laborer positions under the LAPME will receive the following paid and unpaid leave benefits upon hire: two weeks paid vacation (article 8.1(b)(2)); 10 paid holidays (two of which are floating holidays) (article 9.1); up to three days paid bereavement (article 10.1); and two weeks unpaid leave of absence for good and sufficient reason (article 10.4). The provision of benefits in the prior sentence shall be consistent with the terms for these benefits in the LAPME. For purposes of "Bump Hats," seniority, job retention, recall rights, job bidding and promotion opportunities, Birds Eye will deem the seniority date of each Eligible Class Member hired under this Agreement into full-time laborer positions as the date they actually begin employment.

- D. **NON-MONETARY REMEDIES.** Birds Eye will ensure that all employees are afforded equal employment opportunities. Birds Eye agrees that it will not use any selection procedures, practices, and/or policies which negatively affect the

placement of Hispanic employees for laborer positions. Birds Eye agrees to implement the corrective actions detailed below.

1) Hiring and Placement Process

- (a) Eliminate Discriminatory Selection Procedures: Birds Eye agrees to comply with all OFCCP regulations concerning selection procedures, including 41 C.F.R Part 60-3. Birds Eye will not use any selection procedure that has an adverse impact, as defined in 41 C.F.R. § 60-3.4D, on Hispanic applicants unless it complies with these regulations which are referenced above.
- (b) Review and Revisions Required: Birds Eye will review the practices, policies and procedures it uses to place employees for full time laborer positions. Specifically, Birds Eye agrees to:
 - i. Provide training to all personnel involved in selection decisions to ensure that non-discriminatory policies are carried out as required by 41 C.F.R. Part 60-2.17(d). Such review and training shall be completed within 120 days after the Effective Date of this Agreement. The training will include instruction in: the proper implementation of the recruitment, tracking, and selection procedures; neutral application of the specified basic and preferred qualifications and criteria that will be used at each step in the hiring process; procedures to be used to document the decisions made at each step in the hiring process; and the procedures to be used to ensure that documents are retained in accordance with 41 C.F.R § 60-1.12(a) and Part 60-3. Birds Eye will meet with management and all individuals responsible for the selection process and review its equal employment obligations and nondiscrimination policies related to hiring. Specific attention will be directed to ensure that Hispanic employees who benefit from the provisions of this Agreement are not retaliated against;
 - ii. Create written selection processes for full time laborer positions which describes the essential functions; the minimum qualifications including required skills; and the criteria used in each step of the hiring processes, including any application screens, interviews, reference checks, or other selection procedures;

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- iii. Develop written, specific, job-related qualification standards for full time laborer positions that reflect the duties, functions, and competencies of the positions to minimize the potential for unlawful discrimination. Such job-related qualification standards shall not be used to disqualify a current employee from his or her job as of the date of this agreement;
 - iv. Ensure policies and qualification standards are uniformly applied to all applicants; and
 - v. List clearly on its recruiting materials and job postings the positions for which they are being considered and the minimum qualifications, including required skills and certifications.
- (c) Recordkeeping and Retention: Birds Eye will ensure that applicants are tracked and decisions are documented at each step in the hiring and placement process. Birds Eye will also ensure that records are retained in accordance with 41 C.F.R. § 60-1.12(a) and Part 60-3.
- (d) Training: Within one hundred and twenty (120) calendar days of the Effective Date of this Agreement, Birds Eye must implement training for all individuals involved in recruiting, selecting, or tracking of applicants for Laborer positions in its Hiring Process.
- (e) Monitoring: Birds Eye agrees to monitor selection rates at each step of its selection process for the Laborer positions. Where it is determined that a selection procedure has an adverse impact, as defined in 41 C.F.R. §60-3.4D, on the hiring of applicants of a particular race, Birds Eye will eliminate the procedure, choose an alternative procedure, or validate the procedure in accordance with the Uniform Guidelines on Employee Selection Procedures (UGESP) codified at 41 C.F.R. Part 60-3. Birds Eye agrees to maintain and, if requested by OFCCP during the term of this Agreement, to make available to OFCCP records concerning the impact of the selection process for the Laborer position at the Darien, Wisconsin facility. This includes the number of persons hired by race, the number of applicants who applied by race, and the selection procedures utilized. This information will be maintained until the expiration of this Agreement or as long as required by the regulations, whichever is later.

3. HOUSING DISCRIMINATION

- A. STATEMENT OF VIOLATION. OFCCP asserts that Birds Eye discriminated against 11 qualified female employees (Violation 3 Class Members) based on sex in denying the benefit of subsidized housing to females at the Darien, Wisconsin establishment. The discrimination occurred during the period of September 24, 2010 through September 24, 2012. OFCCP contends that Birds Eye's failure to afford female migrant seasonal applicants equal employment opportunities in housing constitutes a violation of Section 202, Paragraph 1 of Executive Order 11246, as amended, and 41 CFR 60-1.4(a)(1). OFCCP asserts that there were statistically significant disparities in the housing of migrant workers based on sex.

Specifically, OFCCP alleges personnel activity data for the period September 24, 2010 through September 24, 2012 revealed that Birds Eye provided barrack housing as a benefit of employment for male migrant workers (b) (7)(E) of (b) (7)(E) male migrants were provided barrack housing). However, Birds Eye failed to provide housing to any (0) of the female migrant workers. This denial of a benefit of employment to female migrant workers significantly limited employment opportunities for these workers, at a statistically significant level of (b) (7)(E) standard deviations, with a shortfall of 11 female migrants.

- B. OFCCP'S SPECIFIC FINDINGS. To further investigate the issue, OFCCP requested data from Birds Eye, to include copies of all documents (housing log, hire log, employment log, employment contracts, evidence of migrant-status, etc.) used in the housing and award of housing process. Although required by 41 CFR § 60-1.12(a), OFCCP asserts that Birds Eye did not maintain complete documentation or information on housing or migrant status.

C. REMEDY FOR AFFECTED CLASS:

- 1) (Intentionally left blank)
- 2) For purposes of this Agreement, the Violation 3 Class Members are female migrant employees who were employed in seasonal laborer positions, at some point, between September 24, 2010 to September 24, 2012. In addition to the statistical analysis, OFCCP asserts that it found inconsistencies in the selection process that support OFCCP's statistical finding. Accordingly, OFCCP determined that Birds Eye engaged in a pattern or practice of discrimination against female migrant seasonal laborers during the review period. The 11 Violation 3 Class Members are identified on Attachment I, appended hereto.

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- 3) Rust³ shall notify the Violation 3 Class Members listed on Attachment I of the terms of this Agreement within 30 days of the Effective Date of this Agreement. Rust shall mail the Notice to each Violation 3 Class Member (Attachment J, hereinafter “Notice”) to inform the Violation 3 Class Member of the settlement, and shall include the Claim Form (Attachment K, hereinafter “Claim Form”) and a Release of Claims (Attachment L, hereinafter “Release”). Rust shall mail the Notice, Claim Form and Release (Attachments J, K and L) to each Violation 3 Class Member, as identified on Attachment I, in English and Spanish.

- 4) Each Violation 3 Class Member (or her legal representative in the event he/she is deceased) shall be given 175 days after the Effective Date of the Agreement to respond. Those individuals for whom Rust receives a notice from the U.S. Postal Service that the mailed items were undeliverable within 30 days after the date Rust mails the Notice to Violation 3 Class Members, shall be recorded by Rust in a Microsoft Excel spreadsheet, which shall include such Class Member’s name, address used for mailing, and Social Security (if known). This spreadsheet shall be emailed by Rust to Timothy Roark, Assistant District Director of the OFCCP, Milwaukee District Office, within 75 days of the Effective Date of this Agreement. OFCCP shall have 45 days from receipt of the spreadsheet to provide Rust with updated address information for those Class Members identified in the spreadsheet. Within 15 days of receipt of any new address information, Rust shall mail the Notice, Claims Form and Release (Attachments J, K, and L) to those Class Members for whom the new address information was provided. The Class Members to whom this second mailing had been sent, shall be given 175 days from the Effective Date of the Agreement to respond. The total number of Violation 3 Class Members to receive payment shall consist of those individuals from Attachment I who return executed copies of the Claims Form and Release (Attachments K and L) within 175 days (postmarked by the 175th day) from the Effective Date of the Agreement. These individuals shall be deemed “Eligible Class Members.” The Eligible Class Members shall share equally in the Violation 3 Settlement Fund. Rust shall identify all Eligible Class Members, as defined above, within 190 days from the Effective Date of the Agreement, and shall deliver a list of Eligible Class Members to Birds Eye and the OFCCP (such list shall include each Eligible Class Member’s name, address as identified on the Claims Form, and the date on which the Claims Form and Release were received by Rust) within 200 days of the Effective Date of the Agreement. Any Class Member identified on Attachment I who has

³Rust Consulting, Inc. remains the settlement administrator for this Agreement. See Paragraph III.1.C.3, above.

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failed to respond within 175 days from the Effective Date of the Agreement, shall receive no portion of the Violation 3 Settlement Fund.

- 5) Monetary Settlement. In settlement of all claims for back pay, interest and other monetary relief to the Violation 3 Eligible Class Members, Birds Eye agrees to pay the amount of \$39,110.00. This amount shall be referred to hereafter as the “Violation 3 Settlement Fund.” The monetary settlement is a negotiated amount that represents the subsidy value of housing and interest, and takes into account the period of time migrant employees reside in housing during the review period.
- 6) Rust shall establish a federally-insured, interest-bearing account at the prevailing interest rate for purposes of complying with this Agreement, and Birds Eye shall provide the amount identified in Paragraph 5 immediately above to Rust to fund this account within 30 days of the Effective Date of this Agreement. Rust shall notify OFCCP within 15 days of the date on which this account has been funded. OFCCP shall be permitted to contact Rust in order to obtain account balance and interest information.
- 7) The interest that accrues on the Violation 2 Settlement Fund will be included in the distribution to Eligible Class Members.
- 8) Rust shall distribute the Violation 3 Settlement Fund equally among the Eligible Class Members. This monetary relief is not contingent upon accepting any job offer. Within 215 days from the Effective Date of the Agreement, Rust shall mail a check to each Eligible Class Member, representing each person’s pro rata share of the total amount in the Violation 3 Settlement Fund.
- 9) Rust shall ensure that all legal deductions required by law (i.e., normal federal, state, and or local taxes and FICA) are withheld from the payments provided to the Eligible Class Members, and Birds Eye shall be responsible for the employer’s share of social security withholding attributable to the back pay portion of the Violation 3 Settlement Fund.
- 10) For any checks mailed by Rust which are returned as undeliverable, Rust shall notify OFCCP, within 7 days, of this fact either via email or facsimile. Rust may use the following email address and facsimile number for this purpose: (b) (7)(C), (b) (7)(E) @dol.gov, 414- (b) (7)(C), (b) (7)(E). OFCCP shall attempt to locate updated address information for the Eligible Class Member whose check is returned and if OFCCP obtains an alternate address, it shall provide Rust with this information and Rust shall attempt a second mailing of the check. Any check that remains uncashed 60 days after the initial date

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the check was mailed to the Eligible Class Member shall become void. With respect to the uncashed funds, Rust shall make a second distribution to all Eligible Class Members who cashed their check if the amount of the uncashed funds would result in a payment of \$20 or more to each of those Eligible Class Members. If the total amount of the uncashed funds would result in a payment of less than \$20 to each of those Eligible Class Members, then Rust shall return the uncashed funds to Birds Eye who agrees to use these uncashed funds to provide training in equal employment opportunity to its personnel in addition to training it is otherwise obligated to provide under the Executive Order, Section 503 and VEVRAA.

- 11) Seventy-Five (75) days following the date on which all checks issued with funds from the Violation 3 Settlement Fund become void, the Violation 3 Settlement Fund shall be closed. Any balance remaining in the fund shall revert to Birds Eye to be used in accordance with Paragraph 10 immediately above.
- 12) The parties may modify any time frame set forth in this Agreement by mutual agreement.
- 13) Housing. Birds Eye agrees to offer female migrant seasonal Laborer employees equal access to comparable barrack housing that is offered to male migrant seasonal Laborer employees. As of March, 2015, Birds Eye had completed construction and began offering female migrant seasonal Laborer employees equal access to comparable barrack housing that is offered to male migrant seasonal Laborer employees. The total cost of materials and labor to construct the barrack housing was approximately four hundred thousand dollars (\$400,000).

D. NON-MONETARY REMEDIES. Birds Eye will ensure that all employees are afforded equal housing opportunities. Birds Eye agrees that it will not use any selection procedures, practices, and/or policies which negatively affect the ability of female migrant seasonal employees to have equal access to housing that is comparable to that offered to male migrant seasonal employees. Birds Eye agrees to implement the corrective actions detailed below.

- 1) Housing Process
 - (a) Eliminate Discriminatory Housing: Birds Eye agrees to comply with all OFCCP regulations concerning benefits of employment, including 41 C.F.R Part 60-3. Birds Eye will not offer any benefit of employment in a discriminatory manner as defined in 41 C.F.R. § 60-1.4(a)(1).

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- (b) Review and Revisions Required: Birds Eye will review the practices, policies and procedures it uses to provide benefits, including subsidized housing, to employees. Specifically, Birds Eye agrees to:
- i. Provide training to all personnel involved in selection decisions to ensure that non-discriminatory policies are carried out as required by 41 C.F.R. Part 60-2.17(d). Such review and training shall be completed within 120 days after the Effective Date of this Agreement. The training will include instruction in criteria that will be used at each step in the selection process for barrack housing and the procedures to be used to ensure that documents are retained in accordance with 41 C.F.R § 60-1.12(a) and Part 60-3. Birds Eye will meet with management to review its equal employment obligations and nondiscrimination policies related to the provision of benefits of employment, including subsidized housing. Specific attention will be directed to ensure that female employees who benefit from the provisions of this Agreement are not retaliated against;
 - ii. Create written processes which describes the qualifications and criteria used in determining housing eligibility, priority and availability, including any application screens, interviews, reference checks, or other selection procedures;
 - iii. Ensure policies and qualification standards that are uniformly applied to all applicants and employees for barrack housing; and
 - iv. List clearly on its recruiting materials and job postings the availability of conditions of employment, including subsidized housing.
- (c) Recordkeeping and Retention: Birds Eye will ensure that applicants are tracked and decisions are documented at each step in the placement process for barrack housing. Birds Eye will also ensure that records are retained in accordance with 41 C.F.R. § 60-1.12(a) and Part 60-3.
- (d) Training: Within one hundred and twenty (120) calendar days of the Effective Date of this Agreement, Birds Eye must implement training for all individuals involved in tracking of barrack housing

for migrant seasonal employees for Laborer positions.

- (e) Monitoring: Birds Eye agrees to make available to OFCCP records concerning the impact of the selection process for barrack housing at the Darien, Wisconsin facility. This information will be maintained until the expiration of this Agreement or as long as required by the regulations, whichever is later.

4. RECORDKEEPING VIOLATION

- A. **STATEMENT OF VIOLATION.** OFCCP alleges that Birds Eye failed to preserve all personnel records for a period of not less than two years from the date of the making of the record or the taking of the personnel action involved, whichever occurred later. Additionally, OFCCP contends that where the total selection process for a job had an adverse impact on gender, race or ethnic groups, Birds Eye failed to maintain and have available records or other information showing which components had an adverse impact in violation of 41 CFR 60-1.12(a), 41 CFR 60-3.4 and 41 CFR 60-3.15A(2).
- B. **OFCCP'S SPECIFIC FINDINGS.** Specifically, OFCCP asserts that Birds Eye failed to preserve all applications, test records, housing contracts, termination records, adverse impact analysis and interview records.
- C. **REMEDY.** Birds Eye will preserve any and all personnel or employment record it makes (whether in electronic or hard copy format) and any and all personnel or employment records it maintains (whether in electronic or hard copy format) for all job groups, including all applications, test documentation and interview records, for a period of not less than two years from the date of the making of the record or the taking of the personnel action involved, whichever occurs later. Further, where the total selection process for a job has an adverse impact on race or gender, Birds Eye will maintain records or other information showing which components of the selection process are involved; and will have these records available for inspection for a period of not less than two years from the date the record was created or two years from the date the adverse impact was eliminated, whichever occurs later. Where a compliance evaluation has been initiated by OFCCP, Birds Eye will preserve all personnel and employment records, regardless of the time period involved, until OFCCP makes a final disposition in the evaluation.

5. ORGANIZATIONAL PROFILE VIOLATION

- A. **STATEMENT OF VIOLATION.** OFCCP alleges that Birds Eye's Organizational Profile (Workforce Analysis) did not list each job title as it appears in the

applicable collective bargaining agreements or payroll records ranked from the lowest paid to the highest within each department or other similar organizational unit including departmental or unit supervision in violation of 41 CFR 60-2.11(c)(1).

- B. OFCCP'S SPECIFIC FINDINGS. Specifically, OFCCP asserts that supervisors were excluded from departments and positions were not in order of progression or wage rate.
- C. REMEDY. Birds Eye will list each job title as it appears in the applicable collective bargaining agreements or payroll records ranked from the lowest paid to the highest within each department.

6. JOB GROUP ANALYSIS VIOLATION

- A. STATEMENT OF VIOLATION. OFCCP alleges that Birds Eye's Job Group Analysis did not contain all jobs located at the establishment, except as provided in 60-2.1(d).
- B. OFCCP'S SPECIFIC FINDINGS. Specifically, OFCCP asserts that Seasonal employees were excluded from the Job Group Analysis.
- C. REMEDY. Birds Eye will report all jobs located at the establishment, except as provided in 60-2.1(d). For purposes of this conciliation agreement only, OFCCP agrees Birds Eye will submit a separate job group analysis for Seasonal Employers, Inc. related to the seasonal laborer employees.

7. AVAILABILITY ANALYSIS VIOLATION 1

- A. STATEMENT OF VIOLATION. OFCCP alleges that Birds Eye's Availability Analysis did not consider the percentage of minorities or women with requisite skills in the reasonable recruitment area, defined as the geographical area from which the contractor usually seeks or reasonably could seek workers to fill the positions in violation of 41 CFR 60-2.14(c)(1).
- B. OFCCP'S SPECIFIC FINDINGS. Specifically, OFCCP asserts that (a) Seasonal employees were excluded from the Availability Analysis and (b) "Darien_1" was used as the reasonable recruitment area for all jobs.
- C. REMEDY. Birds Eye will consider the percentage of minorities or women with requisite skills in the reasonable recruitment area, defined as the geographical area from which the contractor usually seeks or reasonably could seek workers to

fill the positions. For purposes of this conciliation agreement only, OFCCP agrees Birds Eye will submit a separate availability analysis for Seasonal Employers, Inc. related to the reasonable recruitment area for the seasonal laborer employees.

8. AVAILABILITY ANALYSIS VIOLATION 2

- A. STATEMENT OF VIOLATION. OFCCP alleges that Birds Eye's Availability Analysis did not consider the percentage of minorities or women among those promotable, transferrable, and trainable within the contractor's organization in violation of 41 CFR 60-2.14(c)(2).
- B. OFCCP'S SPECIFIC FINDINGS. Specifically, OFCCP asserts that Seasonal employees were excluded from the Availability Analysis.
- C. REMEDY. Birds Eye will consider the percentage of minorities or women among those promotable, transferrable, and trainable within the contractor's organization. For purposes of this conciliation agreement only, OFCCP agrees Birds Eye will submit a separate availability analysis for Seasonal Employers, Inc. related to the percentage of minorities or women among those promotable, transferrable, and trainable within the its organization.

9. AVAILABILITY ANALYSIS VIOLATION 3

- A. STATEMENT OF VIOLATION. OFCCP alleges that Birds Eye defined its reasonable recruitment area in such a way as to have the effect of excluding minorities and/or women in violation of 41 CFR 60-2.14(c)(2)(e).
- B. OFCCP'S SPECIFIC FINDINGS. Specifically, OFCCP asserts that Birds Eye defined the reasonable recruitment area for seasonal and full-time laborer positions in such a way as to have the effect of excluding women and minorities.
- C. REMEDY. Birds Eye will define its reasonable recruitment area in a way that does not have the effect of excluding minorities or women. For purposes of this conciliation agreement only, OFCCP agrees Birds Eye will submit a separate availability analysis for Seasonal Employers, Inc. related to defining its reasonable recruitment area in a way that does not have the effect of excluding minorities or women from the seasonal laborer positions.

10. EQUAL OPPORTUNITY VIOLATION

- A. STATEMENT OF VIOLATION. OFCCP alleges that during the period September

26, 2010 through September 26, 2012, Birds Eye failed to immediately list all employment openings with either the state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred in violation of 41 CFR 60-300.5(a)2-6.

- B. OFCCP'S SPECIFIC FINDINGS. Specifically, OFCCP asserts that during the period September 26, 2010 through September 26, 2012, Birds Eye failed to immediately list employment openings for seasonal and non-seasonal laborer positions with either the state workforce agency job bank or a local employment service delivery system serving the location where the openings occurred
- C. REMEDY. Birds Eye will list all employment openings as they occur with an appropriate employment service delivery system (ESDS) (either the state workforce agency job bank or a local ESDS) where the openings occur, in a manner and format that will allow the ESDS to provide priority referrals of protected veterans to Birds Eye, as required by 41 CFR 60-300.5(a)2-6 (2014). With its initial listing, and as subsequently needed to update the information, Birds Eye must also advise the employment service delivery system that it is a federal contractor that desires priority referrals of protected veterans for job openings at all locations within the state, and provide the employment service delivery system with the name and address of each of its hiring locations within the state and the contact information for the contractor official responsible for hiring at each location, in accordance with 41 CFR 60-300.5(a)4. Should any of the information in the disclosures change since it was last reported to the ESDS, Birds Eye shall provide updated information simultaneously with its next job listing.

PART IV: REPORTING

- 1. Birds Eye must submit the documents and reports described below to: Timothy Roark, Assistant District Director of OFCCP, 310 W. Wisconsin Ave., Suite 1115W, Milwaukee, Wisconsin, 53203.
 - A. No later than 120 days after the Effective Date of this Agreement, Birds Eye must submit a copy of the written Revised Processes described in Parts III.1.D.1, III.2.D.1, and III.3.D.1 to include copies of all items in Part III.1.D.1(i-v), III.2.D.1(i-v), and III.3.D.1(i-v).
 - B. No later than 120 days after the Effective Date of this Agreement, Birds Eye must submit documentation that all managers, supervisors and other personnel involved in recruiting, selecting, or tracking applicants for laborer positions at the Darien, Wisconsin establishment have been trained on the Revised Processes as described in Parts III.1.D.1, III.2.D.1, and III.3.D.1. The documentation must

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include the dates of the training, the names and job titles of all attendees, an outline of the topics discussed in the training, and the name and job title of each person who conducted the training.

- C. Within the prescribed timeframes, Birds Eye must comply with all obligations as set forth in Parts III.1.C, III.2.C, and III.3.C.
- D. Unless extended per Parts III.1.C.13., III.2.C.12, or III.3.C.12, Birds Eye must submit progress reports consistent with the following table:

Progress Report Submission Date	Period Covered By Report
September 1, 2018	January 1 thru June 30, 2018
March 1, 2019	July 1 thru December 31, 2019
September 1, 2019	January 1 thru June 30, 2019

Birds Eye will submit the following in each progress report. And for purposes of this Conciliation Agreement only, OFCCP agrees Birds Eye will submit separate materials and information from Seasonal Employers, Inc. as it relates to the seasonal laborer positions and activities, if necessary to comply with the below.

- 1) Documentation of specific hiring activity for Eligible Class Members who were hired in full-time and seasonal laborer positions at the Darien, Wisconsin establishment in accordance with this Agreement, including name, date of hire, job title hired into, rate of pay, and proof of retroactive service date for pay and paid/unpaid leave benefits purposes;
- 2) For Violation Part III.3, a listing of the male and female migrant seasonal laborer employees who accepted barrack housing. The listing will include the name, gender and date placed into barrack housing;
- 3) A list of class members terminated during the life of this Agreement and the reasons for the termination;
- 4) Copies of applicant flow and hire log for applicants and employees who applied for or were hired into a seasonal or full-time laborer position to include name; gender; race and national origin of applicants and hires, position applied to (seasonal and/or full-time), position hired into (seasonal or full-time);
- 5) For full-time and seasonal laborer positions at the Darien, Wisconsin establishment, the results of analyses as to whether the selection processes have adverse impact, as defined in 41 CFR 60-3.4D (for

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purposes of the adverse impact analysis, hires made of Eligible Class Members pursuant to this Agreement should not be included in that analysis); and when submitting the reports in March, 2019, the data should cover and analyze the full 12-month period ending December 31, 2018;

- 6) For each case where the total selection process has an adverse impact, as defined in 41 CFR 60-3.4D, the results of evaluation of the individual components of the selection process for adverse impact;
 - 7) The actions taken upon determining that any component of the selection process for laborer positions at the Darien, Wisconsin establishment has an adverse impact as set forth immediately above; and
 - 8) A Wisconsin Job Center employer report list demonstrating that all employment openings for seasonal and non-seasonal laborer positions were listed with the appropriate ESDS. Provide a listing of any hires that were referred by the ESDS and whether they are a veteran.
- E. In addition, no later than March 1, 2018, Birds Eye will submit a progress report with the following information (and for purposes of this Conciliation Agreement only, OFCCP agrees Birds Eye will submit separate materials and information from Seasonal Employers, Inc. as it relates to the seasonal laborer positions and activities, if necessary to comply with the below):
- 1) An organizational profile prepared according to 41 CFR § 60- 2.11;
 - 2) The formation of job groups (covering all jobs) consistent with criteria given in 41 CFR § 60-2.12;
 - 3) For each job group, a statement of the percentage of minority and female incumbents as described in 41 CFR § 60-2.13;
 - 4) For each job group, a determination of minority and female availability that considers the factors given in 41 CFR § 60- 2.14(c)(1) and (c)(2);
 - 5) For each job group, the comparison of incumbency to availability as explained in 41 CFR § 60-2.15;
 - 6) Placement goals for each job group in which the percentage of minorities or women employed is less than would be reasonably expected given their availability as described in 41 CFR § 60- 2.16;
 - 7) A copy of your collective bargaining agreement(s), including sections that

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verify rates of pay referenced in Parts III.1.C.14 and III.1.C.13.

2. Birds Eye will retain all records and data pertinent to the violations resolved by this Agreement and/or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later (or "whichever time period is longer").

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Birds Eye Foods LLC

PART V: Signatures

The person signing the Conciliation Agreement on behalf of Birds Eye Foods LLC personally warrants he is fully authorized to do so, that Birds Eye Foods LLC has entered into this Conciliation Agreement voluntarily and with full knowledge of the effect thereof, and that execution of this Agreement is fully binding on Birds Eye Foods LLC. This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Birds Eye Foods LLC. Further, the parties understand and agree that this Conciliation Agreement may be executed by them, and their representatives listed below, in counter-parts, and that facsimile, copy or PDF copy signatures shall be treated just as effective as original signatures.

(b) (7)(C), (b) (6)

John F. Kroeger
Vice President
Birds Eye Foods LLC
Darien, Wisconsin

Date: 12/19/17

(b) (7)(C), (b) (6)

Bradley A. Anderson
Regional Director
Midwest Region, OFCCP

Date: 12/20/2017

(b) (7)(E), (b) (7)(C)

Compliance Officer
Milwaukee District Office
Midwest Region, OFCCP

Date: 12/19/17

Conciliation Agreement
Birds Eye Foods LLC

Violation 1

- (Attachments A) List of Class Members
- (Attachment B, hereinafter “Notice”) Notice to inform members of the settlement
- (Attachment C, hereinafter “Claim Form”) Claim Form
- (Attachment D, hereinafter “Release”) Release of Claims

Violation 2

- (Attachments E) List of Class Members
- (Attachment F, hereinafter “Notice”) Notice to inform members of the settlement
- (Attachment G, hereinafter “Claim Form”) Claim Form
- (Attachment H, hereinafter “Release”) Release of Claims

Violation 3

- (Attachments I) List of Class Members
- (Attachment J, hereinafter “Notice”) Notice to inform members of the settlement
- (Attachment K, hereinafter “Claim Form”) Claim Form
- (Attachment L, hereinafter “Release”) Release of Claims

Attachment A

LIST OF CLASS MEMBERS FOR VIOLATION 1- HIRING

1	(b) (6), (b) (7)(C)	136	(b) (6), (b) (7)(C)	271	(b) (6), (b) (7)(C)
2		137		272	
3		138		273	
4		139		274	
5		140		275	
6		141		276	
7		142		277	
8		143		278	
9		144		279	
10		145		280	
11		146		281	
12		147		282	
13		148		283	
14		149		284	
15		150		285	
16		151		286	
17		152		287	
18		153		288	
19		154		289	
20		155		290	
21		156		291	
22		157		292	
23		158		293	
24		159		294	
25		160		295	
26		161		296	
27		162		297	
28		163		298	
29		164		299	
30		165		300	
31		166		301	
32		167		302	
33		168		303	
34		169		304	
35		170		305	
36		171		306	
37		172		307	
38		173		308	
39		174		309	

Attachment A

LIST OF CLASS MEMBERS FOR VIOLATION 1- HIRING

40	(b) (6), (b) (7)(C)	175	(b) (6), (b) (7)(C)	310	(b) (6), (b) (7)(C)
41		176		311	
42		177		312	
43		178		313	
44		179		314	
45		180		315	
46		181		316	
47		182		317	
48		183		318	
49		184		319	
50		185		320	
51		186		321	
52		187		322	
53		188		323	
54		189		324	
55		190		325	
56		191		326	
57		192		327	
58		193		328	
59		194		329	
60		195		330	
61		196		331	
62		197		332	
63		198		333	
64		199		334	
65		200		335	
66		201		336	
67		202		337	
68		203		338	
69		204		339	
70		205		340	
71		206		341	
72		207		342	
73		208		343	
74		209		344	
75		210		345	
76		211		346	
77		212		347	
78		213		348	

Attachment A

LIST OF CLASS MEMBERS FOR VIOLATION 1- HIRING

79	(b) (6), (b) (7)(C)	214	(b) (6), (b) (7)(C)	349	(b) (6), (b) (7)(C)
80		215		350	
81		216		351	
82		217		352	
83		218		353	
84		219		354	
85		220		355	
86		221		356	
87		222		357	
88		223		358	
89		224		359	
90		225		360	
91		226		361	
92		227		362	
93		228		363	
94		229		364	
95		230		365	
96		231		366	
97		232		367	
98		233		368	
99		234		369	
100		235		370	
101		236		371	
102		237		372	
103		238		373	
104		239		374	
105		240		375	
106		241		376	
107		242		377	
108		243		378	
109		244		379	
110		245		380	
111		246		381	
112		247		382	
113		248		383	
114		249		384	
115		250		385	
116		251		386	
117		252		387	

Attachment A

LIST OF CLASS MEMBERS FOR VIOLATION 1- HIRING

118	(b) (6), (b) (7)(C)	253	(b) (6), (b) (7)(C)	388	(b) (6), (b) (7)(C)
119		254		389	
120		255		390	
121		256		391	
122		257		392	
123		258		393	
124		259		394	
125		260		395	
126		261		396	
127		262		397	
128		263		398	
129		264		399	
130		265		400	
131		266		401	
132		267		402	
133		268		403	
134		269		404	
135		270			

Attachment B

You may be eligible to get money and a job because of a legal settlement between Birds Eye Foods LLC and the U.S. Department of Labor

We are writing to provide information about a legal settlement between the U.S. Department of Labor and Birds Eye Foods LLC that may benefit you. This settlement involves claims of discrimination in hiring, and our records show that you may be one of the applicants covered by the settlement. If you take the steps described in this Notice by the deadline below, you may be eligible for a payment of back wages and/or a job with Birds Eye Foods LLC.

ARE YOU AFFECTED?

Females who applied and were not hired for seasonal and non-seasonal laborer positions at the Birds Eye Foods LLC facility in Darien, Wisconsin between September 24, 2010 and September 24, 2012 are covered by this settlement.

WHAT IS THIS SETTLEMENT ABOUT?

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) conducted a review of Birds Eye Foods LLC's hiring practices during September 24, 2010 through September 24, 2012. OFCCP is the government agency responsible for enforcing the equal employment opportunity and affirmative action requirements that apply to federal contractors. OFCCP issued a Notice of Violations alleging that Birds Eye Foods LLC discriminated against Females in hiring for seasonal and non-seasonal laborer positions during September 24, 2010 through September 24, 2012. Birds Eye Foods LLC denies those claims. Ultimately, although Birds Eye Foods LLC disagreed with OFCCP's findings, Birds Eye Foods LLC has agreed to resolve the claims through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement to settle a Notice of Violations issued by OFCCP.

WHAT DOES THIS MEAN FOR YOU?

Because you applied for a laborer position during the relevant time frame, and were not hired, this settlement may provide you with some specific benefits:

- (1) **You may be eligible to receive a payment of at least \$665.00** (before taxes). This payment represents your share of back wages and other payments Birds Eye Foods LLC is making to settle the lawsuit. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions.
- (2) Birds Eye Foods LLC will make job offers for seasonal and non-seasonal laborer positions to some of the individuals receiving this notification. It is not

Attachment B

guaranteed that you will receive a job offer. If you are interested in a job with Birds Eye Foods LLC, please express your interest on the enclosed Claim Form.

To get these benefits, you will need to release (give up) certain legal claims, and sign the enclosed Claim and Release forms.

WHAT IS YOUR NEXT STEP?

You should read this Notice, the Claim and Release forms, and any other information you received from the U.S. Department of Labor or the Settlement Administrator, Rust Consulting, Inc.

Please do not ignore these documents or throw them away. Otherwise, you could miss an opportunity to receive money and job with Birds Eye Foods LLC.

To be eligible for a payment and job, you must complete, sign, and return **both** the following enclosed documents, (1) Claim Form and (2) Release of Claims Form by [X date] to: _____

Rust Consulting, Inc.

XXX
Address
Address

The documents must be received by [insert actual date].

You may receive some or all of these benefits only if these forms confirm that you are one of the individuals covered by the settlement. After correct completion and submission of these documents, a final decision will be made about your eligibility.

If you fail to return both of the required documents by the deadline or if your documents do not verify your eligibility you will not be eligible to receive any money, consideration for job opportunities or any other relief provided to you by the settlement.

HOW CAN YOU GET MORE INFORMATION?

If you have any questions, you may contact (b) (7)(C), (b) (7)(E) at (b) (7)(C), (b) (7)(E) or via e-mail at (b) (7)(C), (b) (7)(E). You can also visit the U.S. Department of Labor website about this case at <https://www.dol.gov/ofccp/cml/index.htm>.

Attachment C

Claim Form – Affected Applicants

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS CLAIM FORM.

INSTRUCTIONS FOR FILING A CLAIM TO BE CONSIDERED FOR
MONEY (BACK WAGES) AND/OR A JOB OFFER FROM THE SETTLEMENT

DEADLINE TO RESPOND IS XX DAY, XX MONTH, XXXX YEAR

If you complete this Claim Form, you may be eligible for a money payment from the settlement and you can express interest in a job offer. You can receive a money payment even if you do not express interest in a job.

To receive an award such as money or a job offer, you must complete and return this Claim Form and Release Form postmarked or hand-delivered on or before [Deadline above], to

Rust Consulting, Inc.

XXX

Address

Address

If you do not submit a properly completed Claim Form and Release Form on or before [Deadline above], then your claim will not be on time and **you will not receive any money from this settlement and you cannot be considered for a job offer.**

Enclosed is a stamped, pre-addressed envelope you can use.

Attachment C

This Claim Form will only be used for the following purposes:

- (1) To confirm important information we need in order to make sure you are eligible to receive money under this settlement and process your payment, and
- (2) To allow you to express interest in the jobs being offered as a result of the settlement.

Step 1: Please confirm [or provide] the following contact information to process your payment (print legibly).

Name: _____

Home Phone: _____

Cell Phone: _____

Email Address: _____

- I confirm that the address on the cover letter is correct.
- The address on the cover letter is not correct. My correct address is:

Address: _____

Please provide your social security number ____ _

Your Social Security Number is required in order to process your payment for tax purposes. Your Social Security Number will not be used for any other purpose.

Notify us at the address below if your address changes within the next three months, or contact us if you have any questions about this claim form, the notice, or the settlement.

Rust Consulting, Inc.

XXX

Address

Address

Attachment C

Step 2: Inform us if you are interested in a position:

- Yes, I am still interested in the Laborer position with Birds Eye Foods LLC at Darien, WI.
If YES, please select from the following:
 - I am interested in BOTH a Seasonal AND Non-Seasonal Laborer position
 - I am interested ONLY in a Seasonal Laborer position
 - I am interested ONLY in a Non-seasonal Laborer position

- No, I am not currently interested in the Laborer position with Birds Eye Foods LLC at Darien, WI.

- I am currently employed by Birds Eye Foods LLC.

Step 3: Sign and return along with the Release Form

I certify the above as true and correct.

Signature

Date

Attachment D

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY AND/OR A POTENTIAL JOB OFFER FROM THE SETTLEMENT

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for Birds Eye Foods LLC ("Birds Eye") providing you with money and/or a potential job offer, you agree that you will not file any lawsuit against Birds Eye for allegedly violating Executive Order 11246 in connection with its selection procedures for applicants for seasonal and non-seasonal laborer positions. It also says that Birds Eye does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money and/or a potential job offer.

In consideration of the payment of at least \$665.00 (less deductions required by law) and/or a potential job offer for seasonal and/or non-seasonal laborer positions by Birds Eye to me, which I agree is acceptable, I agree to the following:

I.

I hereby waive, release and forever discharge Birds Eye, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, owners, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to its selection procedures for applicants for seasonal and non-seasonal laborer positions during the period of September 24, 2010 through September 24, 2012.

II.

I understand that Birds Eye denies that it treated me unlawfully or unfairly in any way and that Birds Eye entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment and/or a potential job offer described above to resolve without further legal proceedings all issues related to OFCCP's compliance review of Birds Eye initiated on September 21, 2012. I further agree that the payment of the aforesaid sum and/or a potential job offer by Birds Eye to me is not to be construed as an admission of any liability by Birds Eye.

Attachment D

III.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

I understand that if I do not sign this Release and return it to Settlement Administrator, Rust Consulting, Inc. such that it is received by [DATE], I will not be entitled to receive any *payment (less deductions required by law) and/or a potential job offer for seasonal or non-seasonal laborer positions.*

IN WITNESS WHEREOF, I have signed this document of my own free will.

Signature: _____ Date: _____

Printed Name: _____

Attachment E

LIST OF CLASS MEMBERS FOR VIOLATION 2- PLACEMENT

1	(b) (6), (b) (7)(C)	50	(b) (6), (b) (7)(C)	99	(b) (6), (b) (7)(C)
2		51		100	
3		52		101	
4		53		102	
5		54		103	
6		55		104	
7		56		105	
8		57		106	
9		58		107	
10		59		108	
11		60		109	
12		61		110	
13		62		111	
14		63		112	
15		64		113	
16		65		114	
17		66		115	
18		67		116	
19		68		117	
20		69		118	
21		70		119	
22		71		120	
23		72		121	
24		73		122	
25		74		123	
26		75		124	
27		76		125	
28		77		126	
29		78		127	
30		79		128	
31		80		129	
32		81		130	
33		82		131	
34		83		132	
35		84		133	
36		85		134	
37		86		135	
38		87		136	
39		88		137	
40		89		138	

Attachment E

LIST OF CLASS MEMBERS FOR VIOLATION 2- PLACEMENT

41	(b) (6), (b) (7)(C)	90	(b) (6), (b) (7)(C)	139	(b) (6), (b) (7)(C)
42		91		140	
43		92		141	
44		93		142	
45		94		143	
46		95		144	
47		96		145	
48		97		146	
49		98			

Attachment F

You may be eligible to get money and a job because of a legal settlement between Birds Eye Foods LLC and the U.S. Department of Labor

We are writing to provide information about a legal settlement between the U.S. Department of Labor and Birds Eye Foods LLC that may benefit you. This settlement involves claims of discrimination in job placement, and our records show that you may be one of the applicants covered by the settlement. If you take the steps described in this Notice by the deadline below, you may be eligible for a payment of back wages and/or a non-seasonal job with Birds Eye Foods LLC.

ARE YOU AFFECTED?

Hispanic employees who worked in seasonal laborer positions at the Birds Eye Foods LLC facility in Darien, Wisconsin between September 24, 2010 and September 24, 2012 are covered by this settlement.

WHAT IS THIS SETTLEMENT ABOUT?

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) conducted a review of Birds Eye Foods LLC's job placement practices during September 24, 2010 through September 24, 2012. OFCCP is the government agency responsible for enforcing the equal employment opportunity and affirmative action requirements that apply to federal contractors. OFCCP issued a Notice of Violations alleging that Birds Eye Foods LLC discriminated against Hispanic employees in job placement for seasonal and non-seasonal laborer positions during September 24, 2010 through September 24, 2012. Birds Eye Foods LLC denies those claims. Ultimately, although Birds Eye Foods LLC disagreed with OFCCP's findings, Birds Eye Foods LLC has agreed to resolve the claims through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement to settle a Notice of Violations issued by OFCCP.

WHAT DOES THIS MEAN FOR YOU?

Because you worked in seasonal laborer position during the relevant time frame, and were not hired, this settlement may provide you with some specific benefits:

- (1) **You may be eligible to receive a payment of at least \$4,799.00** (before taxes). This payment represents your share of back wages and other payments Birds Eye Foods LLC is making to settle the lawsuit. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions.
- (2) Birds Eye Foods LLC will make job offers for non-seasonal laborer positions to some of the individuals receiving this notification. It is not guaranteed that you

Attachment F

will receive a job offer. If you are interested in a job with Birds Eye Foods LLC, please express your interest on the enclosed Claim Form.

To get these benefits, you will need to release (give up) certain legal claims, and sign the enclosed Claim and Release forms.

WHAT IS YOUR NEXT STEP?

You should read this Notice, the Claim and Release forms, and any other information you received from the U.S. Department of Labor or the Settlement Administrator, Rust Consulting, Inc.

Please do not ignore these documents or throw them away. Otherwise, you could miss an opportunity to receive money and job with Birds Eye Foods LLC.

To be eligible for a payment and job, you must complete, sign, and return **both** the following enclosed documents, (1) Claim Form and (2) Release of Claims Form by [X date] to: _____

Rust Consulting, Inc.

XXX
Address
Address

The documents must be received by [insert actual date].

You may receive some or all of these benefits only if these forms confirm that you are one of the individuals covered by the settlement. After correct completion and submission of these documents, a final decision will be made about your eligibility.

If you fail to return both of the required documents by the deadline or if your documents do not verify your eligibility you will not be eligible to receive any money, consideration for job opportunities or any other relief provided to you by the settlement.

HOW CAN YOU GET MORE INFORMATION?

If you have any questions, you may contact (b) (7)(C), (b) (7)(E) at (b) (7)(C), (b) (7)(E) or via e-mail at (b) (7)(C), (b) (7)(E). You can also visit the U.S. Department of Labor website about this case at <https://www.dol.gov/ofccp/cml/index.htm>.

Attachment G

Claim Form – Affected Employees

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS CLAIM FORM.

INSTRUCTIONS FOR FILING A CLAIM TO BE CONSIDERED FOR
MONEY (BACK WAGES) AND/OR A JOB OFFER FROM THE SETTLEMENT

DEADLINE TO RESPOND IS XX DAY, XX MONTH, XXXX YEAR

If you complete this Claim Form, you may be eligible for a money payment from the settlement and you can express interest in a non-seasonal job offer. You can receive a money payment even if you do not express interest in a non-seasonal job.

To receive an award such as money or a non-seasonal job offer, you must complete and return this Claim Form and Release Form postmarked or hand-delivered on or before [*Deadline above*], to

Rust Consulting, Inc.

XXX

Address

Address

If you do not submit a properly completed Claim Form and Release Form on or before [**Deadline above**], then your claim will not be on time and **you will not receive any money from this settlement and you cannot be considered for a non-seasonal job offer under this agreement.**

Enclosed is a stamped, pre-addressed envelope you can use.

Attachment G

This Claim Form will only be used for the following purposes:

- (1) To confirm important information we need in order to make sure you are eligible to receive money under this settlement and process your payment, and
- (2) To allow you to express interest in the non-seasonal jobs being offered as a result of the settlement.

Step 1: Please confirm [or provide] the following contact information to process your payment (print legibly).

Name: _____

Home Phone: _____

Cell Phone: _____

Email Address: _____

- I confirm that the address on the cover letter is correct.
- The address on the cover letter is not correct. My correct address is:

Address: _____

Please provide your social security number ____ _

Your Social Security Number is required in order to process your payment for tax purposes. Your Social Security Number will not be used for any other purpose.

Notify us at the address below if your address changes within the next three months, or contact us if you have any questions about this claim form, the notice, or the settlement.

Rust Consulting, Inc.

XXX

Address

Address

Attachment G

Step 2: Inform us if you are interested in a position:

- Yes, I am still interested in a non-seasonal Laborer position with Birds Eye Foods LLC at Darien, WI.
- No, I am not currently interested in a non-seasonal Laborer position with Birds Eye Foods LLC at Darien, WI.
- I am currently employed in a non-seasonal position by Birds Eye Foods LLC.

Step 3: Sign and return along with the Release Form

I certify the above as true and correct.

Signature

Date

Attachment H

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY AND/OR A POTENTIAL JOB OFFER FROM THE SETTLEMENT

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for Birds Eye Foods LLC ("Birds Eye") providing you with money and/or a potential job offer, you agree that you will not file any lawsuit against Birds Eye for allegedly violating Executive Order 11246 in connection with its selection procedures for applicants for seasonal and non-seasonal laborer positions. It also says that Birds Eye does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money and/or a potential job offer.

In consideration of the payment of at least \$4,799.00 (less deductions required by law) and/or a potential job offer for a non-seasonal laborer position by Birds Eye to me, which I agree is acceptable, I agree to the following:

I.

I hereby waive, release and forever discharge Birds Eye, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, owners, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to its selection procedures for applicants for seasonal and non-seasonal laborer positions during the period of September 24, 2010 through September 24, 2012.

II.

I understand that Birds Eye denies that it treated me unlawfully or unfairly in any way and that Birds Eye entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment and/or a potential job offer described above to resolve without further legal proceedings all issues related to OFCCP's compliance review of Birds Eye initiated on September 21, 2012. I further agree that the payment of the aforesaid sum and/or a potential job offer by Birds Eye to me is not to be construed as an admission of any liability by Birds Eye.

Attachment H

III.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

I understand that if I do not sign this Release and return it to Settlement Administrator, Rust Consulting, Inc. such that it is received by [DATE], I will not be entitled to receive any *payment (less deductions required by law) and/or a potential job offer for a non-seasonal laborer position.*

IN WITNESS WHEREOF, I have signed this document of my own free will.

Signature: _____ Date: _____

Printed Name: _____

Attachment I

LIST OF CLASS MEMBERS FOR VIOLATION 3 - HOUSING

1. (b) (6), (b) (7)(C)
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.

Attachment J

You may be eligible to get money because of a legal settlement between Birds Eye Foods LLC and the U.S. Department of Labor

We are writing to provide information about a legal settlement between the U.S. Department of Labor and Birds Eye Foods LLC that may benefit you. This settlement involves claims of discrimination in equal access to subsidized housing, and our records show that you may be one of the seasonal employees covered by the settlement. If you take the steps described in this Notice by the deadline below, you may be eligible for a payment of back wages for access to subsidized housing from Birds Eye Foods LLC.

ARE YOU AFFECTED?

Female migrant seasonal laborers who worked at the Birds Eye Foods LLC facility in Darien, Wisconsin between September 24, 2010 and September 24, 2012 are covered by this settlement.

WHAT IS THIS SETTLEMENT ABOUT?

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) conducted a review of Birds Eye Foods LLC's employment practices during September 24, 2010 through September 24, 2012. OFCCP is the government agency responsible for enforcing the equal employment opportunity and affirmative action requirements that apply to federal contractors. OFCCP issued a Notice of Violations alleging that Birds Eye Foods LLC discriminated against Females by denying the benefit of subsidized housing during September 24, 2010 through September 24, 2012. Birds Eye Foods LLC denies those claims. Ultimately, although Birds Eye Foods LLC disagreed with OFCCP's findings, Birds Eye Foods LLC has agreed to resolve the claims through a Conciliation Agreement. A Conciliation Agreement is a legal document that explains the terms of an agreement to settle a Notice of Violations issued by OFCCP.

WHAT DOES THIS MEAN FOR YOU?

Because you worked as a migrant laborer during the relevant time frame, and were not offered subsidized housing, this settlement may provide you with a monetary benefit.

You may be eligible to receive a payment of at least \$3,555.00 (before taxes). This payment represents your share of back wages for subsidized housing and other payments Birds Eye Foods LLC is making to settle the lawsuit. The final amount you will receive will be reduced by deductions for items such as income tax withholding and Social Security contributions.

To get these benefits, you will need to release (give up) certain legal claims, and sign the enclosed Claim and Release forms.

Attachment J

WHAT IS YOUR NEXT STEP?

You should read this Notice, the Claim and Release forms, and any other information you received from the U.S. Department of Labor or the Settlement Administrator, Rust Consulting, Inc.

Please do not ignore these documents or throw them away. Otherwise, you could miss an opportunity to receive money and job with Birds Eye Foods LLC.

To be eligible for a payment and job, you must complete, sign, and return **both** the following enclosed documents, (1) Claim Form and (2) Release of Claims Form by [X date] to: _____

Rust Consulting, Inc.

XXX
Address
Address

The documents must be received by [insert actual date].

You may receive some or all of these benefits only if these forms confirm that you are one of the individuals covered by the settlement. After correct completion and submission of these documents, a final decision will be made about your eligibility.

If you fail to return both of the required documents by the deadline or if your documents do not verify your eligibility you will not be eligible to receive any money, consideration for job opportunities or any other relief provided to you by the settlement.

HOW CAN YOU GET MORE INFORMATION?

If you have any questions, you may contact (b) (7)(C), (b) (7)(E) at (b) (7)(C), (b) (7)(E) or via e-mail at (b) (7)(C), (b) (7)(E). You can also visit the U.S. Department of Labor website about this case at <https://www.dol.gov/ofccp/cml/index.htm>.

Attachment K

Claim Form – Affected Seasonal Employees

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS CLAIM FORM.

INSTRUCTIONS FOR FILING A CLAIM TO BE CONSIDERED FOR
MONEY (BACK WAGES) AND/OR A JOB OFFER FROM THE SETTLEMENT

DEADLINE TO RESPOND IS XX DAY, XX MONTH, XXXX YEAR

If you complete this Claim Form, you may be eligible for a money payment from the settlement.

To receive a monetary award, you must complete and return this Claim Form and Release Form postmarked or hand-delivered on or before [Deadline above], to

Rust Consulting, Inc.

XXX

Address

Address

If you do not submit a properly completed Claim Form and Release Form on or before [Deadline above], then your claim will not be on time and **you will not receive any money from this settlement.**

Enclosed is a stamped, pre-addressed envelope you can use.

Attachment K

This Claim Form will only be used to confirm important information we need in order to make sure you are eligible to receive money under this settlement and process your payment.

Step 1: Please confirm [or provide] the following contact information to process your payment (print legibly).

Name: _____

Home Phone: _____

Cell Phone: _____

Email Address: _____

- I confirm that the address on the cover letter is correct.
- The address on the cover letter is not correct. My correct address is:

Address: _____

Please provide your social security number ____ _

Your Social Security Number is required in order to process your payment for tax purposes. Your Social Security Number will not be used for any other purpose.

Notify us at the address below if your address changes within the next three months, or contact us if you have any questions about this claim form, the notice, or the settlement.

Rust Consulting, Inc.

XXX

Address

Address

Step 2: Sign and return along with the Release Form

I certify the above as true and correct.

Signature

Date

Attachment L

RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

PLEASE CAREFULLY READ THE ENCLOSED NOTICE BEFORE COMPLETING THIS RELEASE. YOU MUST RETURN A SIGNED RELEASE TO RECEIVE MONEY FROM THE SETTLEMENT

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for Birds Eye Foods LLC ("Birds Eye") providing you with money, you agree that you will not file any lawsuit against Birds Eye for allegedly violating Executive Order 11246 in connection with its housing procedures for migrant laborers. It also says that Birds Eye does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money.

In consideration of the payment of at least \$3,555.00 (less deductions required by law), which I agree is acceptable, I agree to the following:

I.

I hereby waive, release and forever discharge Birds Eye, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, owners, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to its housing procedures for migrant seasonal laborers during the period of September 24, 2010 through September 24, 2012.

II.

I understand that Birds Eye denies that it treated me unlawfully or unfairly in any way and that Birds Eye entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment described above to resolve without further legal proceedings all issues related to OFCCP's compliance review of Birds Eye initiated on September 21, 2012. I further agree that the payment of the aforesaid sum and/or a potential job offer by Birds Eye to me is not to be construed as an admission of any liability by Birds Eye.

Attachment L

III.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

I understand that if I do not sign this Release and return it to Settlement Administrator, Rust Consulting, Inc. such that it is received by [DATE], I will not be entitled to receive any *payment (less deductions required by law)*.

IN WITNESS WHEREOF, I have signed this document of my own free will.

Signature: _____ Date: _____

Printed Name: _____