No. 25-1110

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

IN RE: BROILER CHICKEN ANTITRUST LITIGATION

CARINA VENTURES LLC,
Plaintiff-Appellant,

v.

PILGRIM'S PRIDE CORPORATION,
Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, No. 1:16-cv-08637
Hon. Thomas M. Durkin

OPENING BRIEF OF APPELLANT CARINA VENTURES LLC AND REQUIRED SHORT APPENDIX

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March 31, 2025

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 25-1110

Short Caption: Carina Ventures LLC v. Pilgrim's Pride Corp. [revised -- amended caption]

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☑ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):

Carina Ventures LLC ("Carina")

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Kellogg, Hansen, Todd, Figel & Frederick, PLLC; Seeger Weiss LLP; Boies Schiller Flexner LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

Carina is not a subsidiary of any parent corporation. Carina is indirectly owned by Burford Capital Limited.

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

No publicly held corporation owns 10% or more of Carina's stock.

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Derek T. Ho Date: 3/31/2025

Attorney's Printed Name: Derek T. Ho

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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N/A

Attorney's Signature: /s/ Mark Hirschboeck Date: 3/31/2025

Attorney's Printed Name: Mark Hirschboeck

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Jared Stehle Date: 3/31/2025

Attorney's Printed Name: Jared Stehle

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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INTRODUCTION

This case was previously before this Court when the district court—without discovery or a hearing—issued an order enforcing the alleged settlement at issue here. This Court found the district court's order to be "fatally flawed." When the case returned to the district court, it rapidly repackaged its prior order into a summary judgment decision, again without discovery or a hearing. This latest decision contravenes both the summary judgment standard and substantive Illinois law regarding formation of settlement agreements. Contrary to the opinion below, the record at the very least supports a reasonable jury finding that a one-line email exchange between in-house lawyers at Pilgrim's Pride Corporation ("Pilgrim's") and Sysco Corporation ("Sysco") was not enough to bind the parties to a complex $50 million settlement of three different cases pending in different courts.

Instead, a reasonable jury could clearly find that this was merely an agreement in principle on the monetary component of a potential settlement but was not itself a definitive and binding settlement agreement. This is true because: (1) the email exchange itself, and the parties' communications and conduct over many months before and

after, made clear that any binding settlement required the execution of formal, written agreements; (2) the parties subsequently failed to agree on other material terms that they consistently, and repeatedly, said were essential to a definitive settlement; and (3) Pilgrim's tried unsuccessfully for months afterward to cajole Sysco into signing definitive agreements and continued thereafter to litigate aggressively, waiting a year before suggesting that the parties had in fact settled—and only after losing their summary judgment motion in the underlying case. A reasonable jury certainly could conclude that there was no settlement.

The record actually shows a long and careful process, commensurate with the stakes and complexity of the deal the parties sought to strike. Sysco and Pilgrim's, two sophisticated commercial parties, negotiated for months over the monetary amount of an eight-figure settlement of Sysco's antitrust claims in three cases (*Broilers*, *Pork*, and *Beef*), repeatedly reaffirming along the way that any deal would be subject to additional factual disclosures, negotiation of other material terms, and execution of a signed agreement. In September 2022, the parties reached agreement on the global monetary amount via

a two-sentence email exchange between mid-level in-house counsel. But that email exchange did not address the other material terms of the forthcoming agreement, including, even, the question of what release Pilgrim's would get in exchange for its $50 million. That was not a simple question, inasmuch as Pilgrim's knew that Sysco had assigned away some (unknown) portion of its claims to its customers.

Other material terms remained unresolved, too. Pilgrim's needed Sysco to agree to specific language making the settlement a "qualified" settlement so Pilgrim's could get the benefit of a judgment sharing agreement it had reached with other *Broilers* defendants. And Pilgrim's needed to carefully allocate the $50 million to the three specific cases so as not to trigger a true-up payment under a most-favored-nation clause, either in the anticipated contract with Sysco or in its settlements with other parties. Absent agreement on each of these points, there was no settlement. That is why the very emails in which the parties agreed in principle on a $50 million price tag also reiterated—yet again—the need for a definitive agreement.

Sysco and Pilgrim's continued to negotiate, sending drafts showing a robust back and forth on these clearly material terms. Those

drafts also said—again—that execution of the agreement was necessary for a binding agreement. Two more months passed, and Sysco sent an execution-ready draft, but neither party ever signed. Pilgrim's continued to chase Sysco for a signature, and even threatened to walk away if Sysco didn't sign. Pilgrim's also continued to litigate against Sysco. Then, after six more months, and after its summary judgment motion was denied, Pilgrim's opportunistically claimed that the email exchange was actually binding all along.

The law to be applied to these facts cuts strongly against the district court's conclusion that the parties are bound by their informal and incomplete email exchange. When parties (repeatedly) express an intention to be bound only by a signed writing, Illinois law gives effect to that intent, protecting them against exactly the trap that the district court set. Parties can and do reach agreement in stages; this facilitates settlement negotiations by permitting each side to focus on one or two terms at a time without being inadvertently bound to each term as they go. And Illinois likewise requires that the terms of a contract be sufficiently definite, and include agreement on all terms the parties deem material.

Together with that law, the agreed facts in the case establish there was no settlement. In the district court, Pilgrim's never disputed that the emails "expressly acknowledged that agreement on the $50 million figure would not mean the parties had reached a global settlement." ECF No. 7438-01 at 3. Nor that any final agreement "was subject to negotiation of other material terms and execution of a finalized agreement." *Id.* at 5. Pilgrim's also concedes that "Sysco viewed as material" the "MFN provision," and that Pilgrim's itself considered the qualified settlement term material. *Id.* at 8. Last—Pilgrim's never disputed that "Sysco did not execute the drafts." *Id.* at 12.

A reasonable jury considering these facts alone could easily conclude that the email exchange on which the district court relied was not binding. Indeed, the record all but forecloses any other conclusion. But even if the Court were to decide that these facts do not conclusively resolve the question, at a minimum there are factual disputes (including the competing affidavits of the Sysco and Pilgrim's in-house lawyers) that make it impossible to affirm summary judgment in Pilgrim's favor. As a result, this Court should reverse the district

court's award of summary judgment against Plaintiff-Appellant Carina Ventures LLC ("Carina"), which is the assignee of Sysco's claims.

JURISDICTIONAL STATEMENT

Carina's action in these consolidated cases (referred to as the *Broilers* litigation) alleges that Defendant-Appellee Pilgrim's Pride Corporation ("Pilgrim's") conspired with other suppliers of broiler chicken products to fix prices in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The district court has jurisdiction over Carina's Sherman Act claim under 28 U.S.C. §§ 1331, 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a), 26.

This Court's jurisdiction arises under 28 U.S.C. § 1291. This appeal is taken from the final judgment of the district court entered under Rule 54(b) in favor of Pilgrim's and against Carina on December 31, 2024. *See* App. 14. Carina timely filed a notice of appeal on January 22, 2025. *See* ECF No. 7483.

STATEMENT OF THE ISSUES

1. Whether the district court erred in finding there were no genuine disputes of material fact over whether Sysco entered into a binding settlement agreement with Pilgrim's.

2. Whether the district court erred in finding that Pilgrim's was not barred by laches from enforcing the purported settlement with Sysco.

STATEMENT OF THE CASE

I. Factual Statement

A. Background

Sysco buys protein products from Pilgrim's, its parent company (JBS S.A.), and other JBS subsidiaries (collectively, "JBS"). Pilgrim's produces broiler chickens, and other arms of JBS produce beef and pork. Sysco, one of the nation's largest food distributors, buys all three in huge quantities from the combined company. In May 2016, plaintiffs began bringing complaints against chicken producers, including Pilgrim's, in what would become *In re Broiler Chicken Antitrust Litig.* ("*Broilers*"), No. 1:16-cv-08637 (N.D. Ill.). *See* ECF No. 1. Sysco naturally took an interest in these litigations and filed its first antitrust suit against Pilgrim's, alleging price-fixing in the chicken market, on January 30, 2018. *See Sysco Corp. v. Tyson Foods, Inc. et al.*, No. 18-cv-00700 (N.D. Ill. Jan. 30, 2018).

The *Broilers* defendants subsequently entered into a "Judgment Sharing Agreement" ("JSA"), which Pilgrim's later joined, as amended. ECF No. 5164. Defendants use judgment sharing agreements to contract around the antitrust laws' provisions for joint and several liability. *See* Christopher R. Leslie, *Judgment-Sharing Agreements*, 58 Duke L.J. 747, 748 (2009). The *Broilers* JSA defines a "Qualified Settlement" as one where "the Settling Plaintiff(s) agrees to reduce the dollar amount collectable from non-Settling parties pursuant to any Final Judgment by a percentage equal to the Settling Party's Sharing Percentage." ECF No. 5164 at 11. Said differently, a JSA-compliant settlement requires a settling plaintiff like Sysco to *contractually* release its right to pursue other, non-settling defendants for a portion of their joint and several liability. The JSA provides exact language that signatories can include in a settlement in order to be assured it is a "Qualified Settlement." *See id.* at 11-12.

The JSA treats "Non-Qualified Settlements" harshly, sometimes even forcing a settling defendant to pay *more* than its fair share of a potential final judgment (*in addition* to its payment under the settlement). One illustrative example in the JSA shows a party

entering a Non-Qualified Settlement and ending up shouldering a larger percentage of co-conspirators' damages, with its "Base Percentage of 40%" winding up at a total 50% share because of its dispreferred settlement. *Id.* at A-4.

In March 2021, the month after this amended *Broilers* Judgment Sharing Agreement was executed, Sysco sued JBS for its role in price-fixing in the pork market. *See Sysco Corp. v. Agri Stats, Inc. et al.*, No. 21-cv-00773 (S.D. Tex. Mar. 8, 2021).

B. Pilgrim's Efforts To Settle

Settlement discussions began the next month, in April 2021, when JBS's General Counsel requested a call with Sysco's General Counsel to discuss settling Sysco's *Broilers* and *Pork* claims. ECF No. 7438 Ex. 1. This resulted in a May 2021 offer from Pilgrim's, which would have required Sysco to "execute the DPP releases" reached with the Direct Purchaser Plaintiffs ("DPPs") in these cases. *Id.* Ex. 2. Sysco rejected Pilgrim's proposal in May 2021, *id.*, so Pilgrim's made a new offer in November 2021, which it explicitly conditioned "on a full settlement & release," and on Sysco agreeing to release Pilgrim's share of liability in *Broilers* under the JSA, *id.* Ex. 3; *see also* ECF No. 5163. Recognizing

that the different JBS entities had distinct interests, the offer allocated the funds between *Broilers* and *Pork* and offered specific rebate terms in *Pork*, but not *Broilers*. *Id.*

Twice in early 2022 the parties engaged in mediation. Among other points, the parties discussed a most-favored-nation clause in the *Broilers* settlement, so that Sysco could be entitled to future settlement payments if other plaintiffs later settled on better terms with Pilgrim's. In these early settlement talks, Pilgrim's also made clear that settlement negotiations were "subject to" Pilgrim's satisfaction with Sysco's disclosures of any assignments to its customers—in fact Sysco *had* assigned claims representing billions in purchases, as Pilgrim's came to learn. ECF No. 7438 Ex. 5; ECF No. 6504 at 3. Sysco, after all, lacked the power to release any claims it had assigned. By the time of the parties' mediation discussions, therefore, negotiations involved at least four material terms besides the total dollar amount: compliance with the JSA, the allocations, the most-favored-nation clause, and Sysco's assignments.

Coming out of the mediation in June 2022, negotiations began to include Sysco's newly filed claims in *Beef*. *See Sysco Corp. v. Cargill,*

Inc. et al., No. 22-cv-02049 (S.D. Tex. June 24, 2022).[1] One of Sysco's in-house lawyers, Barrett Flynn, made a global monetary demand to settle its *Broilers*, *Pork*, and *Beef* claims: $70.8 million. ECF No. 7438 Ex. 8. Flynn's email explicitly "contemplate[d]" "a full and final settlement release to be drafted in the coming weeks." *Id.* This early offer was also "bucketed by the various cases" in a specific way—Sysco, too, had preferences about allocations. *Id.*

Flynn's point of contact at Pilgrim's, Theodore Sangalis, countered on June 16, 2022, with an offer of $40.8 million for the three cases in the same global settlement format. Once again, the offer was conditional on resolution of outstanding questions about Sysco's assignments and was explicitly "subject to full disclosure and representations" on that front. *Id.* Ex. 9. In addition to the assignment question, Pilgrim's also made clear the importance of the allocations: where Sysco wanted to assign nearly half the settlement fund to *Beef*, Pilgrim's would assign no more than a quarter of its offer to the same case. The allocations among the cases were key to the parties'

[1] Both Sysco's *Pork* and *Beef* claims were later consolidated in the District of Minnesota. *See In re Pork Antitrust Litig.*, No. 0:18-cv-01776 (D. Minn.) ("*Pork*"); *In re Cattle & Beef Antitrust Litig.*, No. 0:22-md-03031 (D. Minn.) ("*Beef*").

negotiations. Indeed, Sangalis had to "ascertain an amount that each protein business unit is willing to pay" before putting together a settlement offer. *Id.*

For two months the parties' negotiations remained at impasse. Then, during a phone call on August 24, 2022, Pilgrim's made a new offer to settle all three cases for $50 million. As Flynn testified in his declaration, Sangalis's oral offer was "subject to negotiation of other material terms and execution of a finalized agreement." *Id.* Ex. 10 ¶ 8. Sangalis, on behalf of Pilgrim's, apparently believed that Flynn had accepted $50 million on the call, as he followed up with an email stating that "[w]e have a deal at $50M for settlement of Broilers, Pork, and Beef antitrust cases." *Id.* Ex. 11. Flynn disputes that account. *Id.* Ex. 10 ¶¶ 8-9. That dispute aside, Sangalis's email made clear yet again that the agreement on $50 million was only the first step in getting to a binding agreement. The next step, as Sangalis wrote, was for Flynn to provide "the assignments in each case" to help "figure out the allocation" so the parties could "draw up the agreements." *Id.* Ex. 11.

Yet another email came the next day, August 25, 2022. Contradicting his August 24 email, which said "we have a deal," this

time Sangalis said he was "confirming that [Pilgrim's and JBS] are *offering* $50M for a global settlement of Broilers, Pork, and Beef antitrust cases." *Id.* Ex. 12 (emphasis added).

On September 9, 2022, Flynn responded to Sangalis's email by saying: "We accept." As he explained in his sworn declaration, his email reflected an agreement in principle to the settlement amount, subject (as the parties had repeatedly said) to execution of a written agreement. *Id.* Ex. 10 ¶¶ 7-9. That is why he then pivoted right away to the next steps of the negotiation. *Id.* Ex. 17. Despite the parties' long emphasis on the JSA, the most-favored-nation-clause, its assignments, and the settlement allocation, these emails omit all those terms. Nor were any of these issues resolved on the call or in prior correspondence. *Id.* Flynn thus started coordinating contact between Sysco and Pilgrim's outside counsel to begin "work[ing] on the release." *Id.* In other words, at the very moment of Flynn's supposed "acceptance," he (and Sysco) reaffirmed that essential details of the agreement remained open and would need to be negotiated and then reduced to writing.

Pilgrim's also did not think it had a settlement in hand based on Flynn's "We accept" email. It, too, recognized the need for a signed agreement. In response to Flynn's email, Sangalis asked Sysco to "confirm the assignments in Broilers" "[b]efore we draft the releases." *Id.* Sysco provided the Broilers assignment data on September 12, 2022. *Id.* Ex. 18. Still, more work remained—not even a draft was on the horizon. Pilgrim's next communication told Sysco that it was "finalizing internal conversations on the allocations before sending draft agreements" and requested information on Sysco's assignments in *Pork* and *Beef* to help determine those allocations. *Id.* Ex. 22 at 1-2. Sysco did not provide specific assignment data to Pilgrim's, *id.*, which led Pilgrim's to ask for that data again on October 6 to help put together a draft. As these exchanges show, the assignment data was so essential to the formal, signed written agreement that Pilgrim's long delayed the drafts until Sysco's disclosures about the assignments arrived. *Id.*

C. Exchanges of Settlement Drafts

Growing impatient to complete the deal, Sangalis "took the liberty," as he described it, of sending along drafts with no allocation of funds among the cases (because the assignments remained

outstanding). ECF No. 7438 Ex. 22. On October 7, 2022, Pilgrim's sent Sysco the first *Broilers* draft settlement. *Id.* Ex. 23. The draft required Sysco to release Pilgrim's share of liability under the JSA. *Id.* at 6. It (like all subsequent drafts) also included signature lines for Sysco and Pilgrim's and an integration clause stating that no party would "assert any claim against another based on any alleged agreement . . . not in writing and signed by the Parties." *Id.* The draft also conditioned the parties' obligations on execution, binding Pilgrim's to pay the (blank) settlement amount "within five (5) business days following the Execution Date" (also left blank). *Id.* at 2. The draft would have further required Sysco to file a stipulated dismissal one business day later (later revised to three). *Id.* at 2-3. This draft contained no most-favored-nation provision. Pilgrim's explained that the allocations remained open and subject to change, and again asked for "the assignment information in Pork and Beef" to help determine those allocations. *Id.* Ex. 22.

Irked by the missing most-favored-nation clause, Sysco requested that Pilgrim's add one to the *Broilers* draft. *Id.* Ex. 15. After further discussions, on October 25, 2022, Pilgrim's sent Sysco a new draft with

the most-favored-nation clause added. *Id.* Exs. 27, 28. The clause required Pilgrim's to issue Sysco a true-up payment if Pilgrim's ever settled on more favorable Settlement Ratio terms with any "Substantially Similar Direct Action Plaintiff," which included only plaintiffs with over $1 billion in purchases, excluding "quick serve restaurants." *Id.* Ex. 17 at 2-3.

When Sysco first sent edits, on November 1, 2022, Sysco deleted the JSA "Qualified Settlement" term (which, recall, sharply limited Sysco's ability to recover against non-settling defendants). *Id.* Ex. 30. Sysco's draft also substantially broadened the most-favored-nation clause, removing the key "quick serve restaurant" exclusion. *Id.*

In response, Pilgrim's sent a new draft reinstating the "Qualified Settlement" provision. *Id.* Ex. 31 at 2-3. Pilgrim's also modified the most-favored-nation provision to specifically exclude two plaintiffs. *Id.* Pilgrim's changes further added a new clause "certif[ying]" that it "ha[d] settled or reached binding agreements to settle with every Substantially Similar Direct Action Plaintiff and that all Qualifying Subsequent Settlements are at a Settlement Ratio below" the figure proposed, blunting the impact of the most-favored-nation provision. *Id.* at 3.

Seeing these "competing edits to the draft," Sysco scheduled a call for November 14, 2022, to discuss the parties' differences. *Id.* Ex. 32 at 2. Around that time, Pilgrim's stated that it "*will not accept* the settlement we have negotiated unless it is a qualified settlement under the JSA." *Id.* Ex. 33 (emphasis added). As the email reflects, Pilgrim's understood that (1) there was not a settlement and (2) the JSA "Qualified Settlement" term deleted by Sysco (and JSA-compliance more generally) was material.

Beginning in December 2022, Pilgrim's pressured Sysco for its signature. On December 6, Sangalis wrote to Flynn: "If the attached looks acceptable, please have it signed and returned. I will work to modify the pork and beef drafts in the meantime so we can get those finalized quickly as well." *Id.* Ex. 35 at 3. Just one day later, on December 7, Sangalis followed up: "If the attached looks OK, please go ahead and sign it. If you'd prefer, I can send you drafts of Pork and Beef so we can finalize those and get these all signed together." *Id.* at 2. Next, on December 9, Sysco too asked for written drafts of all three agreements to "execute" and "finalize" them together. ECF No. 6976 Ex. 23 at 2, 3; Ex. 25. At that time, Flynn did say "we are good here,"

and Sangalis responded "[t]hat's great," but rather than conclude, the parties' negotiations carried on. *Id.* On December 12, Flynn sent over drafts with yet more changes. Sangalis again pressed for a signature: "Barrett—those changes are fine for Pork and Beef. Do you want to get it signed on your end first?" *Id.*

Amid these negotiations, in September 2022, affiliates of Burford Capital LLC ("Burford"), a litigation funder that is Carina's indirect parent company, had initiated an arbitration proceeding to stop Sysco from entering into a settlement with Pilgrim's without Burford's consent, which was required under Burford and Sysco's funding arrangement.[2] *See* ECF No. 6504. Sysco told Burford on December 12 that it would enter into a settlement agreement by the end of the year, so Burford moved for a TRO, which the tribunal granted on December 14. ECF No. 6976 Ex. 25.

[2] In the initial capital provision agreement with Burford, Sysco agreed not to assign claims away without Burford's consent—because only litigation claims secured the capital Burford supplied. ECF No. 6504 at 3. Even so, Sysco assigned to customers claims for billions in purchases. *Id.* As part of a settlement relating to these material breaches of the capital provision agreement, Sysco agreed not to "accept a settlement offer without [Burford's] prior written consent, which shall not be unreasonably withheld." *Id.* at 4.

That same day, Sysco notified Pilgrim's of the TRO. Flynn explained to Sangalis in an email memorializing a just-finished call that "the Tribunal has temporarily restrained Sysco from finalizing the settlement," meaning that, until the injunction was lifted, Sysco could not proceed with an agreement. *Id.* Pilgrim's did not respond that an agreement had already been reached, but instead pressed forward with the negotiations, apparently in the hope that the TRO would be lifted. In another email just afterward, Flynn again sent updated drafts of the proposed settlements. *Id.*

Sangalis asked for further changes to those new drafts on December 19, 2022, asking to "discuss briefly" to nail down these new terms. ECF No. 7438 Ex. 39 at 2. Then, on December 20, Sangalis came up with the agreed-upon language and again pushed for a signature: "Attached is the proposed language. Let me know if that works, and I can drop it in Pork and Beef and prepare all for signatures." ECF No. 6976 Ex. 24 at 2. Even then the parties had not agreed. Instead, Flynn sent yet another draft with a "tweak t[o] the cooperation language" on December 21. *Id.* at 1. Finally, on December 22, Sangalis sent along "the final versions of the agreements" and

requested: "Please let me know if these are good to sign and I will work to get executed on my end tomorrow." ECF No. 7438 Ex. 39.

But the parties never did execute the draft agreements, despite Pilgrim's efforts in the following months to consummate the settlement (notwithstanding the TRO). Pilgrim's approach was to repeatedly threaten to *withdraw* its settlement *offer*. First, Pilgrim's said it was "willing to wait only until early February" and would otherwise go to trial. *Id.* Ex. 42 ¶ 59. Pilgrim's further warned that it would "not hold [its] *offer* open indefinitely" or "commit to hold the *offer* open in the face of any significant developments." *Id.* Ex. 43 ¶ 19 (emphases added). After the tribunal issued a preliminary injunction, on March 14, 2023, Pilgrim's indicated it was keeping the settlement *offer* open "only because they value their partnership with Sysco." ECF No. 6976 Ex. 26 at 2. As its own words reflect, Pilgrim's understood that the parties did not yet have a binding deal.

Ultimately, Burford and Sysco settled the arbitration. As part of that settlement, Sysco assigned to Carina its claims in the *Broilers*, *Pork*, and *Beef* cases. The district court then granted Carina's motion to

substitute itself for Sysco under Federal Rule of Civil Procedure 25. ECF No. 7184.

II. Procedural History

Pilgrim's took no action for more than a year to enforce the supposed settlement. Rather, it continued to litigate, including filing a motion for summary judgment, which the district court denied on June 30, 2023. *See* ECF No. 6641. Then, on September 6, 2023, the district court granted a motion to enforce an unrelated settlement between certain plaintiffs and Fieldale Farms. *See* ECF No. 6833. Two days later, Pilgrim's moved to enforce the purported settlement with Sysco. ECF No. 6851. Its motion cited the district court's *Fieldale* order, which held—without elaboration or citation to legal authority—that "[t]he only terms relevant to the parties' real-world relationship are the [] payment and dismissal of the claims." ECF No. 6852 at 10 (quoting ECF No. 6833 at 4).

Carina opposed the motion to enforce the settlement on jurisdictional, laches, and merits grounds, ECF No. 6976, but the district court granted Pilgrim's motion, *see* App. 1-8. In that opinion, which lacked any discussion of the applicable standard, the district

court held that "the emails and drafts exchanged" were "sufficient to establish an agreement from an objective perspective." App. 3. These, the district court held, embraced the "'heart' of the agreement," which "was to dismiss the claims in exchange for a total amount of money allocated across the three cases." *Id.* But then, presented with the argument that the terms of the agreement were uncertain, the court said the parties' "written draft agreements memorializ[ed] the terms in detail." *Id.* "The only issue [was] that those written agreements were never signed." *Id.* The lack of signature did not matter to the district court; it held "the parties indicated their agreement by email" months before. *Id.* Accordingly, the district court purported to enforce the global settlement, including as to Sysco's *Beef* and *Pork* claims pending in the District of Minnesota. *Id.* at 7 ("The Court has jurisdiction to enforce such an agreement, no matter the scope of the agreement's terms.").

Carina appealed from the district court's order enforcing the settlement agreement, *see* ECF No. 7287, on the ground that the *Broilers* settlement-enforcement order was injunctive in nature because it purported to require Carina to drop its claims in *Beef* and *Pork*. *See*

In re Broiler Chicken Antitrust Litig., 2024 WL 5153588, at *1 (7th Cir. Aug. 14, 2024); 28 U.S.C. § 1292(a)(1) (creating appellate jurisdiction over "[i]nterlocutory orders . . . granting . . . injunctions"). Pilgrim's agreed with that basis for jurisdiction. 2024 WL 5153588, at *1. This Court held, however, that jurisdiction under 28 U.S.C. § 1292(a)(1) was lacking because the district court's settlement-enforcement order was "fatally flawed, to the extent it is intended to be an injunction, in that it fails to provide any relief whatsoever." *Id.*

While that appeal was pending, Pilgrim's and other JBS entities took two actions. First, they sought to pay Sysco the $50 million owed under the purported settlement, even though they had been warned it would "not be a valid payment" because it was "not contemplated by any version of any settlement draft agreement or the settlement dialogue between [Pilgrim's] and Sysco." ECF No. 7408-13 at 2. Moreover, both Sysco and Carina told Pilgrim's and JBS: "[W]e don't accept that a unilateral payment will affect either our appellate rights or rights on remand." *Id.* Undeterred, the defendants forced through the payment by sending checks to Sysco's trade accounts for the respective proteins; Sysco's business personnel deposited those checks. As Carina indicated

to Pilgrim's and JBS, it stands ready to repay the funds upon this Court's reversal. ECF No. 7365-1 at 4. Second, the JBS entities moved for summary judgment based on the purported settlements in *Beef* and *Pork*. *See Beef* ECF No. 834; *Pork* ECF No. 2327. In those motions, it relied on issue preclusion, contending the question of the settlement's legitimacy had already been resolved in *Broilers*.

After this Court dismissed Carina's initial appeal, Pilgrim's set out to patch up the district court's "fatally flawed" order. It asked for summary judgment in an extremely brief motion, essentially pointing the district court back to its original order and to the checks Pilgrim's had sent to Sysco. ECF No. 7431. In opposition, Carina raised the difference between the Court's reasoning in its settlement-enforcement order and the applicable summary judgment standard. *See* ECF No. 7438 at 6-7. But once more, the district court sided with Pilgrim's, granting summary judgment without discovery or a hearing in an order that tracked the reasoning of its original order. App. 9-13. Indeed, the district court reasoned that it needed only to "determine the implications of the Court's" existing "finding that the agreement exists." App. 12. Once again, then, the district court uncovered an agreement in

the September 2022 emails, the terms of which could be found in subsequent December 2022 drafts. App. 11. This time, however, the district court confined itself jurisdictionally, enforcing the settlement only in its own courtroom. App. 12 ("Carina's claims against Pilgrim's in the District of Minnesota are not the subject of this motion for summary judgment[.]").

Carina timely moved for a final judgment under Federal Rule of Civil Procedure 54(b), which the district court granted on December 31, 2022. App. 14. Carina appealed.

In *Beef* and *Pork*, the Minnesota court has since issued summary judgment without a hearing after concluding, based on the decisions below, that Sysco settled its claims with Pilgrim's. *See Beef* ECF No. 1222 (finding issue preclusion and also agreeing with the decision below). However, the Minnesota court noted that, "if the Seventh Circuit reverses the *Broilers* judgment, Sysco may file a letter requesting to file a motion for reconsideration of this Order." *Id.* at 7 n.3.

SUMMARY OF ARGUMENT

In finding there was no genuine factual dispute over the existence of a binding settlement, the district court misapplied both the summary judgment standard and Illinois contract law. A movant like Pilgrim's, who "bears the burden of proof," must "demonstrate why the record is so one-sided as to rule out the prospect of a finding in favor of the non-movant on the claim." *Hotel 71 Mezz Lender LLC v. Nat'l Ret. Fund*, 778 F.3d 593, 601 (7th Cir. 2015). Pilgrim's must make that showing even as the court "consider[s] the facts and draw[s] all inferences in the light most favorable to the nonmoving party." *Henry v. Hulett*, 969 F.3d 769, 776 (7th Cir. 2020) (en banc).

Three related principles of substantive Illinois contract law govern here. First, "[u]nder Illinois law, courts focus on the parties' intentions to determine . . . whether some type of formalization of the agreement is required before it becomes binding." *A/S Apothekernes Laboratorium for Specialpraeparater v. I.M.C. Chem. Grp., Inc.*, 873 F.2d 155, 157 (7th Cir. 1989). Second, "Illinois . . . allows parties to approach agreement in stages, without fear that by reaching a preliminary understanding they have bargained away their privilege to disagree on the specifics."

Empro Mfg. Co. v. Ball-Co Mfg., Inc., 870 F.2d 423, 426 (7th Cir. 1989). Third, and relatedly, "[t]o be enforceable, the material terms of a contract must be definite and certain." *Kap Holdings, LLC v. Mar-Cone Appliance Parts Co.*, 55 F.4th 517, 522 (7th Cir. 2022) (cleaned up). A genuine issue of material fact on any of these points suffices to survive summary judgment.

I. The district court erred by ignoring evidence that the parties intended to be bound only by a signed written contract. From the very beginning of their negotiations, Sysco and Pilgrim's expressed exactly this intent. This shared understanding continued through the August and September 2022 emails, with both parties immediately anticipating a signed writing. Likewise, the parties' settlement drafts made clear that an executed written contract was a necessary precondition.
A reasonable jury could well conclude that Sysco and Pilgrim's objectively manifested that they would be bound only by an executed agreement that never came.

II. The district court further erred by overlooking evidence that the parties were "bargaining in stages": negotiating one deal term at a time with an understanding that no agreement on any deal term would

be binding until the complete settlement was finalized as to all material terms. That is precisely what Sysco's principal negotiator—Barrett Flynn—said he understood the parties to be doing. Based on that declaration, which must be credited on Pilgrim's summary judgment motion, a reasonable jury could conclude that his acceptance of the monetary term for the global settlement was not binding, but rather merely the conclusion of the first stage of negotiation.

The district court also erred by discounting those remaining terms as immaterial. Even Pilgrim's has consistently argued that at least one of them—the qualified settlement under the JSA—was a material (indeed, an essential) term. And there were two other essential terms on which the parties failed to reach agreement: Pilgrim's needed to obtain comfort that Sysco had not assigned away too many of its claims to its customers, and the parties had to agree on the allocation of funds across three cases so as not to trigger a most-favored-nation clause that Pilgrim's had included in settlements with other *Broilers* plaintiffs. Much like the qualified settlement term, these wound up being the subjects of extensive negotiations between the parties, long after the

summer 2022 email exchange. A jury could conclude that any of the three terms is material, which would preclude summary judgment.

III. The district court also erroneously rejected Sysco's laches defense to the enforcement of the purported agreement with Pilgrim's. As explained above, Pilgrim's litigated actively against Sysco for more than a year before seeking enforcement of the supposed settlement—and then did so only after the district court denied its summary judgment motion. To the extent there was a settlement, Pilgrim's effectively gave itself a unilateral option to wait and see whether the district court granted its summary judgment motion before deciding whether to sue to enforce it. That is clearly inequitable.

The judgment below was erroneous. This Court should reverse.

STANDARD OF REVIEW

This Court "review[s] a grant of summary judgment de novo, construing the evidence and drawing all reasonable inferences in the non-moving party's favor." *Grinnell Mut. Reinsurance Co. v. S.B.C. Flood Waste Sols., Inc.*, 113 F.4th 768, 773 (7th Cir. 2024).

With respect to the defense of laches, the traditional summary judgment standard is "considered in light of the notion that a district

court enjoys considerable discretion in determining whether to apply the doctrine of laches to claims pending before it." *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 819 (7th Cir. 1999). "Therefore, while [this Court's] review of the record is *de novo* in determining whether there are any disputed issues of material fact, [its] review of whether the district court properly applied the doctrine of laches is under an abuse of discretion standard." *Id.*

ARGUMENT

I. THE DISTRICT COURT ERRONEOUSLY DISREGARDED THE PARTIES' INTENT TO BE BOUND ONLY BY A SIGNED WRITING

Sysco and Pilgrim's went back and forth about a potential settlement for nearly two years. In all that time, neither suggested a binding deal might be reached through an informal email exchange between subordinate in-house lawyers. Only after Pilgrim's lost summary judgment did it suggest otherwise. But Pilgrim's and Sysco had repeatedly acknowledged to one another that only a signed writing would bind them, which forecloses Pilgrim's about-face.

"Illinois is averse to enforcing tentative agreements that are expressly contingent on the signing of formal or final documents." *PFT*

Roberson, Inc. v. Volvo Trucks N. Am., Inc., 420 F.3d 728, 731 (7th Cir. 2005). "When negotiators say that agreement is subject to a more definitive document, Illinois treats this as demonstrating intent not to be bound until that document has been prepared and signed." *Id.*

That conclusion finds reinforcement in this Circuit's recognition (rooted in commercial reality) that "the magnitude of a deal requires careful scrutiny of any claim that informal letters in the course of freewheeling settlement negotiations constitute a binding agreement." *Abbott Lab'ys v. Alpha Therapeutic Corp.*, 164 F.3d 385, 389 (7th Cir. 1999). Summary judgment on this *$50 million* agreement across three different antitrust cases was appropriate only if preliminary writings "clearly manifest[ed] the desire of each party to be bound"—and did so beyond any genuine dispute of material fact. *Id.* Here, there is ample—indeed overwhelming—evidence from which a jury could conclude that the parties clearly manifested their intention *not* to be bound informally.

A. Initial negotiations made any agreement contingent on a final signed writing

The first stab at a deal between the parties came in May 2021, following a call the month before. When Pilgrim's general counsel

emailed her Sysco counterpart this first time, she asked Sysco to "execute the DPP releases" to take part in an existing class settlement. ECF No. 7438 Ex. 2 at 4. She set out a framework for a deal, leaving the details for a later executed writing.

That pattern repeated in every future negotiation. Pilgrim's made another attempt in November 2021, for example. Here, too, it made the offer "contingent on a full settlement & release of all claims." *Id.* Ex. 3. And then Sysco made its own offer to settle its claims in June 2022, asking $70 million in a "settlement demand contemplat[ing] . . . a full and final settlement release to be drafted in the coming weeks." *Id.* Ex. 8. Pilgrim's counteroffer weeks later similarly declared itself "subject to full disclosure and representations." *Id.* Ex. 9.

All this to say (and unsurprisingly, given the scope and complexity of a deal to settle multiple cases in multiple jurisdictions): "the negotiations indicate that a formal written document [was] contemplated." *Citadel Grp. Ltd. v. Wash. Reg'l Med. Ctr.*, 692 F.3d 580, 588 (7th Cir. 2012). Because there is ample evidence that both Sysco's and Pilgrim's "negotiators sa[id] that agreement is subject to a more definitive document," a reasonable jury could also conclude that

they shared an "intent not to be bound until that document has been prepared and signed." *PFT Roberson*, 420 F.3d at 731.

B. The parties' summer 2022 emails did not dispense with the requirement of a formal agreement

Despite all the weight Pilgrim's places on the August and September 2022 emails, nothing in them suggests the parties changed course and were suddenly content to bind themselves informally. To the contrary, they reaffirmed the need for execution of a formal agreement.

First, it's doubtful whether the parties' emails, *even if* worded in terms of finality, could overcome the parties' earlier insistence on a formality requirement. The parties' earlier reservations—that any settlement was contingent on a final signed, written agreement—were intended to *avoid* such an outcome—i.e., prematurely committing to a deal before all the details were clearly worked out and memorialized.

Regardless, just like every time before, both parties' emails in summer 2022 reiterated the need for a future writing.

Start with the August 2022 phone call. As Sysco's lawyer described Pilgrim's oral counteroffer, it "was intended to achieve an agreement in principle as to the total amount and was subject to

negotiation of other material terms and execution of a finalized agreement." ECF No. 7438 Ex. 10 ¶ 8. Pilgrim's lawyer may recount the conversation differently, but that at most creates an issue of fact that should be resolved by a jury—and in any case would not constitute an agreement bearing the required formality.

Negotiations continued, with all the same care to require a writing, in Sangalis's August 24 email (which was the focus of the district court's analysis). There, he claimed to "have a deal" but simultaneously clarified that the parties had at most an agreement assuming the parties would "draw up the agreements," and even then, only after Sysco confirmed "the assignments in each case." *Id.* Ex. 11. In other words, the parties had agreed on a first term (the headline settlement amount), but more remained to be resolved in future exchanges. Pilgrim's did not contemplate an immediate writing—it expressly required more information before it was prepared to go so far as even to *approach* a binding, executed agreement. *Id.*

When Flynn finally responded (after two weeks), he did more than just to say "we accept." Right away he dove into logistics for the agreement the parties had always contemplated: an executed,

formalized written settlement. And so Flynn asked: "Can you have your outside counsel connect with ours . . . to work on the release?" *Id.* Ex. 17. Sysco knew a finished settlement was a long way off—as did Pilgrim's. After all, "[t]he settlement that [the parties] were trying to hammer out was a complicated, long-term arrangement involving huge sums of money." *Abbott Lab'ys*, 164 F.3d at 389. The communications between the parties make clear: No one thought two mid-level in-house counsel could or would resolve these three important cases with a couple of emails. That's why Sangalis responded, after thanking Flynn for "all of your work" in "getting us here," with another look toward the envisioned writing and one of the issues Pilgrim's needed resolved before it proceeded further: "Before we draft the releases," he asked, "can you confirm the assignments in Broilers?" ECF No. 7438 Ex. 17.

That the email correspondence between Sangalis and Flynn "does not contain a flat disclaimer . . . pronouncing that the [email] creates no obligations at all" is irrelevant. *Empro Mfg. Co. v. Ball-Co Mfg., Inc.*, 870 F.2d 423, 425 (7th Cir. 1989). "[N]either does the absence of a 'subject to' clause carry talismanic significance. The parties may through other means make clear that they do not intend to be bound

until a contract is executed." *Ocean Atl. Dev. Corp. v. Aurora Christian Schs., Inc.*, 322 F.3d 983, 999 (7th Cir. 2003). Just so here. The parties made their intent not to be bound abundantly clear through their months and months of interactions and a shared understanding that only an executed written agreement would bind them. That's why right in the selfsame emails Pilgrim's now says comprise a final agreement, the parties looked forward to "draw[ing] up the agreements," ECF No. 7438 Ex. 11, and "work[ing] on the releases," *id.* Ex. 18.

C. The parties' drafts are objective evidence of their understanding that only the written, signed agreement would bind them

After the summer 2022 email exchange, just as the parties had always envisioned, they rolled up their sleeves for the real in-the-weeds work of contract negotiations. This was slow going; the parties anticipated the first written draft for a month before it took shape. *See*, *e.g.*, ECF No. 7438 Ex. 20 (Sept. 21, 2022) (Flynn: "Believe the next step was for your outside counsel to send a draft to ours." Sangalis: "Yes, that is the next step."). And when the first draft agreement finally came, it yet again reaffirmed that only a formal, signed writing

would bind the parties—certainly it creates a genuine issue of material fact from which a jury could rule for Carina.

To start, a signed, executed writing is necessary when "key obligations and events" in the contract "were to be triggered by the execution of the anticipated contract." *Ocean Atl.*, 322 F.3d at 997. That was the case here: starting with the first draft sent on October 7, 2022, the drafts make clear that they would only take effect after formal execution. For example, payment was to be due "within five (5) business days following the Execution Date." ECF No. 7438 Ex. 23 at 2. Sysco was to provide finalized assignments "[w]ithin two (2) business days of the execution of this Settlement agreement." *Id.* The draft would also have obligated Sysco to drop its claims "[w]ithin one (1) business day of Pilgrim's payment of the Settlement Payment," which is to say within six business days of execution. *Id.* In short—as the parties foresaw things playing out, absolutely no obligations kicked in without execution. "It was, therefore, the execution of the contract that would initiate the sequence of events by which" the parties would effect the settlement. *Ocean Atl.*, 322 F.3d at 998-99. That domino never fell.

The contract also centers on execution by extracting affirmative representations that the signing parties—though in the end there were none—enjoyed "full and express authority to enter into all of the terms reflected herein." ECF No. 7438 Ex. 23 at 4. Not content with any ambiguity at all, Pilgrim's included a clear rule in its opening draft: the settlement took effect when, and only when, authorized parties signed finished agreements.

Even more: consistent with the written agreement's formality, the parties sought to preclude the very argument that has brought the parties before this Court today. An integration clause appearing in every draft warranted that "no Party will assert any claim against another based on any alleged agreement affecting or relating to the terms of this Settlement Agreement not in writing and signed by the Parties." *Id.* at 6. The parties' understanding that execution was the *sine qua non* of a settlement could not have been made clearer.

D. The parties' subsequent conduct underscores their understanding that a writing was necessary to bind themselves

In the months that followed, as the parties exchanged settlement drafts, no one acted as though a binding deal already existed. To the

contrary—Pilgrim's spent those months cajoling Sysco on the one hand to "finalize" a settlement, and litigating against Sysco on the other. If parties to a supposed contract spend months after its supposed formation acting on the assumption that no contract exists, that is strong evidence they had no intention to be bound. After all, "[c]ourts look to all of the circumstances surrounding the negotiations, including the actions of the principals both during *and after*, to determine what the parties intended." *A/S Apothekernes Laboratorium for Specialpraeparater v. I.M.C. Chem. Grp., Inc.*, 873 F.2d 155, 157 (7th Cir. 1989) (emphasis added).

Continued Negotiations. Well after Flynn's September 2022 email, in which the district court strained to find agreement, the parties continued their bargaining. The parties' continued negotiations over a draft agreement go to show the parties intended to be bound only by execution of that agreement. For example, when Sangalis "took the liberty of sending the drafts before allocations [we]re finalized," he asked Flynn to "let me know if you or counsel have any comments." ECF No. 7438 Ex. 22. As it turned out both did—Flynn and Sysco's

outside counsel opined on the drafts, as did Pilgrim's outside counsel. *Id.* Exs. 26, 27.

This was not a perfunctory negotiation, one where a later written contract was "*substantially based* on the terms" already agreed upon. *Quake Constr., Inc. v. Am. Airlines, Inc.*, 565 N.E.2d 990, 997 (Ill. 1990). The agreement on monetary terms left plenty remaining for resolution. The parties thus "schedule[d] a call with" in-house and outside counsel "to discuss the competing edits to the draft agreement." ECF No. 7438 Ex. 32. That November 16 call precipitated yet another offer on November 28, "with a redline that compares this draft to the last draft." *Id.* Ex. 33. (A blow-by-blow on the material terms remaining for negotiation follows, *infra* Part III, but the parties' heated disputes over assignments, the JSA, and the MFN continued all through this period.)

Other negotiations would continue, too, with Flynn proposing a "change to the indemnification language" and later a "tweak t[o] the cooperation language" so that he could "send [Sangalis] a better draft here soon." ECF No. 7438 Ex. 39. Only after all this did the drafts coalesce into what Pilgrim's now calls the agreements' final form.

Pilgrim's Pressure Tactics. As the fall wore on with no settlement in sight, Pilgrim's grew impatient. Sangalis followed up with Flynn to move things along, wanting to know how "we can get comments as promptly as possible?" *Id.* Ex. 29. "I'm getting pressure from Accounting," he explained, "to *finalize this and get it off our books*." *Id.* (emphasis added). That is, Pilgrim's did not think from a corporate or accounting perspective that it had a "finalize[d]" agreement, even though it wanted one.

Not long after, Flynn announced a wrench in the parties' ongoing negotiations: Burford had won a temporary restraining order against Sysco's executing the settlement. This further angered Pilgrim's. They badly wanted a done deal—and they didn't have one. So rather than dispute the validity of the order (which it still does not do), Pilgrim's "expressed frustration over the delay in executing the proposed settlements that resulted from the TRO, . . . threaten[ing] . . . to wait only until early February" before pulling the deal. *Id.* Ex. 42. Indeed, on January 29, 2023, Sysco disclosed to Carina that Pilgrim's and JBS would "not hold their offer open indefinitely, nor [would] they commit to

hold the offer open in the face of any significant developments in the Antitrust Litigations." ECF No. 6976 Ex. 29 at 9.

This is not the behavior of a party that thinks it already has a binding settlement. If Pilgrim's thought (and outwardly manifested) then what it espouses now, it would have asked Sysco for wire instructions—not a signature. And it would have told Sysco that the arbitration was moot (and the temporary restraining order too late) because the deal was done.

Pilgrim's Continued Litigation. If that were not enough to show the parties never had a binding settlement, Pilgrim's litigation activities eliminate any doubt. Pilgrim's never indicated in any filings that it had reached a binding settlement with Sysco. To the contrary, between the agreement-in-principle emails and Pilgrim's first motion to enforce the settlement: (1) Pilgrim's moved for summary judgment against all the *Broilers* plaintiffs, including Sysco, in October 2022, *Broilers* ECF No. 5894, and (2) JBS moved to dismiss plaintiffs' *Pork* claims, *Pork* ECF No. 1756, mentioning Sysco by name in its brief, in January 2023. *Id.* at 26.

Had Pilgrim's and JBS won those motions, they surely would not be here seeking to enforce a $50 million settlement. But what defendant wouldn't love to settle *after* its summary judgment motion has been denied at a price negotiated *before* that ruling (and thus discounted by the plaintiff's risk of losing summary judgment)? That explains why Pilgrim's waited until September 2023 to concoct the false narrative that the parties had settled more than a year earlier. Illinois law doesn't give defendants a free or "unilateral" option. *PFT Roberson*, 420 F.3d at 732. Rather, Illinois law enforces the parties' understanding that a binding deal is contingent on execution of a written settlement agreement precisely to guard against that kind of rank opportunism. So too should this Court.

* * *

In short, Sysco and Pilgrim's always understood that only a writing would bind them—and they manifested that understanding before, during, and after the exchange that JBS points to.

II. THE DISTRICT COURT ERRED BY ENFORCING A PARTIAL BARGAIN WITH MATERIAL TERMS OPEN

One "good reason" for Illinois's policy against "enforcing tentative agreements that are expressly contingent on the signing of formal or

final documents" is this: "If any sign of agreement on any issue exposed the parties to a risk that a judge would deem the first-resolved items to be stand-alone contracts, the process of negotiation would be more cumbersome" than is practical. *PFT Roberson*, 420 F.3d at 731. Accordingly, the law permits parties to put negotiation of some terms behind them and turn their attention to others—without binding themselves to a partial bargain. Only once the parties achieve "a meeting of the minds or mutual assent as to all material terms"—plus, where the parties have so agreed, an executed written agreement—does a contract form. *Abbott Lab'ys*, 164 F.3d at 387.

A. The record shows the parties agreed to bargain in stages

The summer 2022 emails between the parties reveal they had agreement on at most one term: money. Contrary to the district court's evaluation of the record, however, a jury could well view that agreement as the conclusion of just the first of many stages. That's precisely what Sysco's counsel, Flynn, has testified: the offer "was subject to negotiation of other material terms." ECF No. 7438 Ex. 10 ¶ 8.

Consistent with Flynn's understanding, "Illinois . . . allows parties to approach agreement in stages, without fear that by reaching a

preliminary understanding they have bargained away their privilege to disagree on the specifics." *Empro*, 870 F.2d at 426. "Letters of intent and agreements in principle often, and here, do no more than set the stage for negotiations on details. Sometimes the details can be ironed out; sometimes they can't." *Kap Holdings*, 55 F.4th at 527 (quoting *Empro*, 870 F.2d at 426). Here, these details were not mere trifles, and never were ironed out, and so under Illinois law these parties' email correspondence "did not create a valid contract." *Id.*

Not for nothing have the Illinois courts adopted this policy. "Approaching agreement by stages is a valuable method of doing business." *Empro*, 870 F.2d at 426. The contrary rule, as this Court has long recognized, "would frustrate negotiations" by imposing "the risk that a jury will think that some intermediate document is a contract." *PFT Roberson*, 420 F.3d at 733. Pilgrim's position imposes intolerable transaction costs on negotiators. After all, if Pilgrim's position were the law, "the parties would have to hedge every sentence with cautionary legalese," and "these extra negotiating expenses would raise the effective price." *Id.* at 731. Contract law should and does facilitate negotiations, rather than create traps for the unwary.

It's natural that the parties began by seeing if they could reach agreement on the money. That's how many, if not most, commercial settlement negotiations unfold. *See* Joshua Higbee et al., *Fix the Price or Price the Fix? Resolving the Sequencing Puzzle in Corporate Contracting* 4, 8-9 (rev. Mar. 5, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5159164 (explaining the prevalence of such "two-stage contracting" and showing that "fixing price first can better incentivize parties toward efficient search for and production of welfare-enhancing non-price terms"). The amount of money is an easy term to negotiate over, free from the drafting complexities that plague other contractual terms: everyone knows what "$50 million" means. Only if agreement on monetary amount is in hand (or at least in clear view) is it worth negotiating the release in light of the assignments, or other complicated terms like the most-favored-nation or qualified settlement clauses.

But that does not mean that agreement on the monetary amount stands on its own. That is especially true in this case, where the only term on which the parties ever agreed was the money—not even coming to terms on the "inherently material" flip side of the coin: "fifty million

dollars *for what*?" *Abbott Lab'ys*, 164 F.3d at 388 (scope of release is an inherently material term). As explained above, that question continued to bedevil the parties for months thereafter.

It is thus unsurprising that, at the very moment Pilgrim's points to as a meeting of the minds, both parties' minds already were on this next stage of the negotiation over critical questions relating to compliance with the JSA, the allocations, the most-favored-nation clause, and Sysco's assignments. As noted, the "offer" email on August 24 itself called for the parties to "figure out the allocation and draw up the agreements." ECF No. 7438 Ex. 11. The "acceptance" email, understanding that "draw[ing] up the agreements" was not nearly as simple as it sounds, called on Sangalis to "have your outside counsel connect with ours . . . to work on the release." *Id.* Ex. 18. The parties did not intend the agreement on money to be severed from agreement on these other matters still to be negotiated in later stages. The district court thought the only possible conclusion was that "money for dismissal" was a complete agreement. But the evidence supports the opposite conclusion—or at least a reasonable jury could so conclude.

The district court's error is also illustrated by its use of the December drafts to backfill the material terms of the agreement that it found had been reached months earlier, in the August and September 2022 emails. *See* App. 3. But that isn't coherent. If the agreement was finalized in August and September 2022, the later drafts (which were never signed) cannot supply material terms. And if the drafts count as the agreement, there is no basis for the court to ignore the express terms in the drafts providing that the agreement is not binding or effective until executed by an authorized representative of each party.

The district court's pick-and-choose approach gives Pilgrim's the best of both worlds: all the looseness of the September email "agreement," all the rigor of the December drafts. The sounder analysis—and one a reasonable jury could certainly credit—is that these were actually different stages of negotiation. The parties agreed only that, *if* the remaining material terms could be worked out, the dollar value would be $50 million. Both parties understood that there was no binding deal until all those terms were agreed-upon through execution of the final settlement agreement. Illinois law embraces that

negotiating framework, and a reasonable jury could easily conclude that the parties adopted it here.

B. The record shows the parties left material terms open, precluding contract formation

"Under Illinois contract law, a binding agreement requires a meeting of the minds or mutual assent as to all material terms." *Abbott Lab'ys*, 164 F.3d at 387. Put differently, when "elements D and E are essential to the mix, Illinois does not bind the parties to A, B, or C alone"—not even if they "reach agreement on A, B and C, with more negotiation required on D and E." *PFT Roberson*, 420 F.3d at 731.

Here, the August and September 2022 emails left several material terms open, or so a jury could find. For "whether extra elements *are* essential is for the parties themselves to say," *id.* at 732, not a judge imposing his own sense of priorities on a deal. And here the parties themselves said there were at least *three* essential, material terms outstanding: compliance with the *Broilers* Judgment Sharing Agreement, acceptance by Pilgrim's of the scope of Sysco's assignments, and the allocation of funds among the three separate cases. Indeed, Pilgrim's did not even dispute below that any final agreement "was

subject to negotiation of other material terms and execution of a finalized agreement." ECF No. 7438-01 at 5 (Carina's SUMF).

1. The Judgment Sharing Agreement

Start as Pilgrim's did, with the JSA. "[T]he parties themselves" said this term was essential from the beginning, as early as November 2021, when Pilgrim's made an offer to Sysco "contingent on a full settlement & release of all claims related to Broilers antitrust (including release of Pilgrim's share of liability under the Judgment Sharing Agreement)." ECF No. 7438 Ex. 3. And Pilgrim's continues to acknowledge the importance of a qualified settlement under the JSA. Below, in moving to enforce the purported settlement, it insisted that "the essential terms of the agreement" were "that Sysco would release its claims . . . in return for a payment of $50 million, *and that the agreement would comply with the Broilers JSA*." ECF No. 6853 at 8 (emphasis added). Pilgrim's further called "compliance with the JSA" one of "the material terms the parties could not proceed without." *Id.* at 10. For good reason: the JSA created a huge potential penalty for Pilgrim's if it failed to get Sysco to agree to the "Qualified Settlement" language.

That admission leaves Pilgrim's in a difficult position. It cannot defend the district court's reasoning, which held the Qualified Settlement term was "not material," because, in the court's view, "[t]he "heart" of the agreement was to dismiss the claims in exchange for a total amount of money allocated across the three cases." App. 3.

Necessarily, then, Pilgrim's has come to lean on the later-exchanged drafts, contending for instance in the *Beef* litigation that "the parties indisputably agreed to all material terms by December 12, 2022, when they exchanged a draft of the *Broilers* settlement delineating its terms," including the Judgment Sharing Agreement compliance term. *Beef* ECF No. 1194 at 11-12. As explained above, the fact that Pilgrim's now seeks to find admittedly material terms in unexecuted drafts exchanged two months after the supposed agreement only proves that the parties *were* bargaining in stages and *did* always intend to be bound only by a signed writing.[3]

[3] Pilgrim's cannot defend summary judgment by contending that the "Qualified Settlement" provision was agreed to in the August 24 phone call between Flynn and Sangalis. Pilgrim's only evidence for this claim is Sangalis's declaration; Flynn's declaration says the opposite. ECF No. 7438 Ex. 10 ¶ 8. Only a jury can resolve this credibility contest. *See Stokes v. Bd. of Educ. of Chicago*, 599 F.3d 617, 619 (7th Cir. 2010). If this Court were to weigh these declarations, Flynn's is more credible. Sangalis's declaration was tailor-made for this litigation, seeking to show that a settlement exists. Flynn's declaration arises instead from Burford's earlier

2. Sysco's assignments

Though Pilgrim's concedes materiality only for the "Qualified Settlement" term, a jury reasonably could—and likely would—infer that other terms were material. The first of these is assurances about the scope of Sysco's assignments. Direct purchasers often assign their antitrust claims to customers, and Pilgrim's knew Sysco had assigned away some of its claims. *See*, *e.g.*, *Wallach v. Eaton Corp.*, 837 F.3d 356, 370 (3d Cir. 2016). What it didn't know as of summer 2022 was: how many claims had Sysco assigned away?

Sure enough, Pilgrim's recognized the importance of that information by pushing for details on Sysco's assignments. ECF No. 7438 Ex. 4 ("we can proceed with Sysco's sales numbers, subject to any assignments"); *id.* Ex. 9 (Pilgrim's settlement offer "subject to full disclosure and representations regarding Sysco's assignments of claims in each case"); *id.* Ex. 11 (August 2022 offer email insisting: "Let me know the assignments in each case[.]"); *id.* Ex. 17 ("Before we draft the releases, can you confirm the assignments in Broilers?"); *id.* Ex. 20 ("[D]o you have assignments in Pork and Beef as well?"); *id.* Ex. 21

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arbitration with Sysco, where Flynn's goal was to get the settlement done. This difference in circumstance is an indicium of reliability favoring Flynn.

("Any luck pulling the assignments in Pork and Beef?"); *id.* Ex. 22 ("if you're able to ascertain the assignment information in Pork and Beef, that would be helpful" to determining allocations among the cases). A jury is not required to conclude that Pilgrim's was chasing after non-material terms.

Indeed, when Pilgrim's finally got the details on Sysco's *Broilers* assignments, that changed the math on what Pilgrim's now calls a done deal. As Pilgrim's counsel would explain during negotiations, it "applied the maximum settlement ratio to that estimated [volume of commerce to] achieve the largest value possible for Sysco without triggering additional payments to other plaintiffs" under those other plaintiffs' own most-favored-nation clauses. *Id.* Ex. 33 at 1. So when the assignments from Sysco made clear "that it had assigned away other claims that we previously believed to be held by Sysco, the value of the settlement declined in proportion to the reduction of the volume" of sales. *Id.* That exchange alone supplies ample ground for a reasonable jury to find the assignments material.

More fundamentally, as Pilgrim's counsel explained in his email of November 28, 2022, two concededly material terms depended directly

on the assignments: the scope of the release Pilgrim's would get, and the willingness to pay the $50 million price tag the parties had preliminarily agreed to. *Id.* As explained above, Sysco's assignments were inextricable from the "details of the release provision," which "are inherently material" in Illinois. *Abbott Lab'ys*, 164 F.3d at 388. Pilgrim's concedes, of course, that Sysco's release was material, ECF No. 6853 at 8 ("essential term[]" that "Sysco would release its claims"). Indeed, "many defendants would agree that the *most* material term in any settlement agreement is the release." *Higbee v. Sentry Ins. Co.*, 253 F.3d 994, 997 (7th Cir. 2001). And as here, "in a case involving multiple claims, which of those claims are covered by the release" is a quintessentially material term. *Id.* at 998. Without the assignments in *Broilers* and the other cases, the scope of the release term was indeterminate. That is, Pilgrim's did not know what "claims" "Sysco would release" until the assignments came. *See* ECF No. 7438 Ex. 33 at 1 ("That proposal . . . was always subject to confirmation of the value of Sysco's assignments.").

The uncertainty about the scope of the release also underscores that even the agreement on price was necessarily tentative. Had it

turned out that Sysco had assigned away a much higher percentage of its claims that Pilgrim's was expecting, Pilgrim's could have either walked away from the settlement altogether or tried to renegotiate the $50 million price. Sysco had provided no representation as to what that percentage was, and it is not reasonable to conclude—as the district court did—that Pilgrim's blindly bound itself to pay $50 million with no idea what claims would be released in return. The only way to explain the facts is that the September 2022 email "agreement" was not a binding settlement.

3. The allocations among the cases and the most-favored-nation clause

Still another material term remained open: the allocation of settlement funds across the three cases. Once more, "whether extra elements *are* essential is for the parties themselves to say." *PFT Roberson*, 420 F.3d at 731. The parties themselves said a whole lot about the allocations. *See* ECF No. 7438 Ex. 8 (Sysco settlement demand "bucketed by the various cases"); *id.* Ex. 9 (Pilgrim's "was able to ascertain an amount that each protein business is willing to pay at this time"); *id.* Ex. 11 ("we will figure out the allocation and draw up the agreements"); *id.* Ex. 20 (Pilgrim's "finalizing internal conversations on

the allocations before sending draft agreements"); *id.* Ex. 21 (Sangalis had "drafts about ready to go and [was] just waiting on the allocations" given the "different teams working on the different cases"); *id.* Ex. 22 ("I took the liberty of sending the drafts before allocations are finalized."). There was a lot of discussion for what Pilgrim's now insists was not a material term. A jury could well read the evidence differently.

That is all the more true because the parties had good reason to treat the allocations as material. The parties engaged in extended negotiations over the precise wording of a most-favored-nation clause in the *Broilers* settlement, which would have required a payment to Sysco if Pilgrim's settled on more favorable terms with a later plaintiff. Throughout these negotiations, the clause's mathematical operation depended on the allocation to the *Broilers* settlement. This was true as soon as Sysco asked JBS to add the MFN, ECF No. 7438 Ex. 26. Even as later Sysco drafts broadened it, ECF No. 6853-06 (Sangalis Decl. Ex. 5 at 3), only for JBS to narrow it, ECF No. 6853-15 (Bonanno Decl. Ex. 1 at 3-4), that formula stayed the same. The MFN's underlying calculation divided the *Broilers* allocation by the *Broilers* volume of

commerce—the total sales for which Pilgrim's obtained releases. *See* ECF No. 7438 Ex. 28 at 2-3 (defining "Settlement Ratio" and explaining that Pilgrim's will owe Sysco an additional payment should it give another settling plaintiff a higher Settlement Ratio). The most-favored-nation clause was central to the parties' negotiations, and it depended in turn on the allocations.

Moreover, as Sangalis explained multiple times, the various divisions of JBS—Pilgrim's was just one—had a real interest in the allocations. That accounts for the "internal conversations" over allocations that Sangalis had to navigate. *Id.* Ex. 20. After all, the "different teams working on the different cases" had different incentives, which left Sangalis as principal negotiator "waiting on the allocations" as JBS's corporate machinery resolved the question. *Id.* Ex. 21. These separate divisions were rightly interested in the allocations; they could affect future settlements in the other proteins cases and risked tying these other divisions' hands if other plaintiffs requested their own most-favored-nation clauses. There also may well have been internal accounting and other related consequences (like employee

compensation) tied to those allocations and the costs they would accrue to each of JBS's business units.

* * *

In sum, three buckets of material terms were never agreed to: the Judgment Sharing Agreement compliance term, the confirmation of assignments, and the allocation-related terms. The district court's conclusion that "these terms were not material" as a matter of law because they are not at the "heart" of the agreement, App. 3, was incorrect.

If history is any guide, Pilgrim's will cite to *Dawson v. General Motors Corp.*, 977 F.2d 369 (7th Cir. 1992), and its comment that "Illinois courts have not been shy about enforcing promises made in the context of ongoing negotiations and often involving preliminary or incomplete agreements." *Id.* at 374. From there, Pilgrim's will surely insist this interim promise has some binding effect.

But that's wrong—in truth, *Dawson* explains why reversal is required. That appeal arose from the grant of a pre-*Twombly* and *Iqbal* motion to dismiss *against* a party seeking to enforce a purported contract. Applying *Conley v. Gibson*'s now-discredited pleading

standard, further liberalized by this Court's then-rule permitting plaintiffs to assert new "unsubstantiated" facts on appeal, the panel found that there was "sufficient ambiguity in the alleged offer and acceptance" that the complaint "adequately alleged" an enforceable contract in the acceptance of "specific promises made in the course of negotiations." *Id.* at 372-74. Here, of course, the existence of factual ambiguities cuts the other way: where the proponent of a purported settlement seeks summary judgment in its favor, disputed facts and factual inferences require reversal and a jury trial.

Moreover, the panel's analysis of Illinois law confirms why a reasonable jury could find that there was no enforceable partial agreement here. What the panel found "particularly noteworthy" were the plaintiff's allegations about "one party's acquiescence in the other's reliance on the preliminary agreement." *Id.* at 374 ("Dawson's September 25 letter made clear that he intended to rely on GM's 'assurances'; GM allegedly acquiesced in Dawson's reliance by doing nothing for a year.").

The objective evidence of the parties' conduct in this case is 180-degrees opposite. Pilgrim's never relied on Sysco's "We accept" email—

nor did Sysco "acquiesce" in any such reliance. To the contrary, Pilgrim's actions are inconsistent with a binding email agreement: it continued to negotiate outstanding material terms in the definitive settlement agreements, chased Sysco to sign those agreements, threatened to retract its offer in the absence of a signature, and then continued to litigate the merits in court when those signatures never came. That conduct—plus the parties' own words—reveals the parties' "intent not to be bound until [a written] document has been prepared and signed." *PFT Roberson*, 420 F.3d at 731.

One final note: if this Court does hold—despite the ample evidence that the parties required agreement on these three essential terms, and despite their mutual insistence on a signed writing—that a contract exists, the scope of that contract would be limited to a $50 million payment in exchange for nothing more than dismissal of the cases. The Court could not take the further step of imposing additional terms that appear only in the drafts—as the drafts themselves expressly insist on a formal execution which never occurred. If the Court were to pursue such a course, and enforce such a skeletal agreement despite its failure to address other important terms, it would

be imposing upon the parties an agreement that Pilgrim's itself has made clear it does not want to be bound to. And that is yet further evidence no agreement existed.

III. SUMMARY JUDGMENT SHOULD ALSO BE DENIED BECAUSE PILGRIM'S DID NOT TIMELY ENFORCE ITS ALLEGED SETTLEMENT RIGHTS

Even assuming the parties had a binding settlement in September 2022—which they did not—Pilgrim's waited too long to seek to enforce the settlement. Laches is a defense to the enforcement of a settlement agreement. *See Blue Cross & Blue Shield Ass'n v. Am. Express Co.*, 467 F.3d 634, 640-41 (7th Cir. 2006). To establish it, Carina must show delay caused by "an unreasonable lack of diligence" by Pilgrim's, plus "prejudice arising therefrom." *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 820 (7th Cir. 1999).

In its initial "fatally flawed" order enforcing the supposed settlement, the district court reasoned that the laches clock should start only when "Sysco and Carina filed their joint motion to substitute Carina for Sysco." App. 4. Measured that way, Pilgrim's slept on its rights only three months—but that starting point makes no logical sense. Pilgrim's settlement rights arose, on the district court's own

account, with Flynn's "We accept" email in September 2022. Pilgrim's conduct since that date—not the happenstance moment when Carina, Sysco's assignee, sought to be substituted into the case—should decide the timeliness issue.

The district court's nonsensical starting point led it to an unreasonable bottom-line result. Litigating for more than a year before asserting the existence of a settlement cannot be considered reasonably diligent. *Cf. Al-Nahhas v. 777 Partners LLC*, 129 F.4th 418, 424 (7th Cir. 2025) (participating in litigation for ten months is inconsistent with the right to arbitrate). And Sysco was certainly prejudiced by that lack of diligence, as the delay fundamentally rewrote the parties' deal by giving Pilgrim's the ability to decide whether to seek enforcement with the benefit of the district court's summary judgment ruling. Sysco never agreed—and never would have agreed—to give Pilgrim's that "unilateral option." *PFT Roberson*, 420 F.3d at 732.

IV. THIS COURT SHOULD REVERSE THE DISTRICT COURT'S SETTLEMENT-ENFORCEMENT ORDER

If it reverses the judgment below, this Court will also vitiate the district court's earlier, "fatally flawed" order purporting to enforce the purported settlement agreement not only in *Broilers* but also in *Beef*

and Pork. App. 1-8. It is of course well-settled that "an appeal from a final judgment allows the appellant to challenge any interlocutory actions by the district court along the way toward that final judgment." *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1019-20 (7th Cir. 2013). More than a mere step along the way, this earlier order was the basis for the district court's summary judgment order. App. 10 (dismissing Carina's summary judgment arguments because "the Court already considered [them] on Pilgrim's initial motion to enforce the agreement").

This Court should reverse the settlement-enforcement order for all the reasons delineated above. There was no settlement, and laches bars arguments to the contrary. The summary judgment order adopted the same reasoning as in the first order—the Court explained the second time around that it intended only "to determine the implications of the Court's [previous] finding that the agreement exists." *Id.* The two orders rise and fall together.

The settlement-enforcement order was flawed in a second respect. As Carina explained below, the district court lacked jurisdiction to enforce a "settlement of the claims pending in the District of

Minnesota." App. 4. The only basis for the court to entertain a motion to enforce the settlement agreement—which is, in substance, a suit for specific performance of a contract—was the district court's ancillary (or inherent) jurisdiction. But a court's ancillary jurisdiction, which confines itself to situations with "factually interdependent" claims or those where it is necessary "to enable a court to function successfully," does not extend to resolving the status of settlements of cases in other federal courts. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 379-80 (1994).[4] After this Court dismissed the appeal from the settlement-enforcement order, the district court retrenched. In its summary-judgment opinion, it confirmed that claims "in the District of Minnesota are not the subject of this motion for summary judgment." App. 12. That volte-face is essentially a confession of error, further warranting reversal of the predicate settlement-enforcement order.

CONCLUSION

The decisions below are legally erroneous and would chill settlement discussions by imposing new, burdensome transaction costs

[4] Indeed, the district court's suggestion that the settlement-enforcement order was "not making any ruling or finding that the Minnesota court will be forced to contend with in the future," App. 6, turned out to be incorrect. *Beef* ECF No. 1222 at 7 (contending with that finding).

on high-stakes contract negotiations. This Court should not enshrine such bad policy into precedent. The decisions below should be reversed.

Dated: March 31, 2025

Respectfully submitted,

/s/ *Derek T. Ho*

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Fed. R. App. 32(a)(7) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this document contains 12,704 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font. As permitted by Fed. R. App. P. 32(g), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

Dated: March 31, 2025

/s/ *Derek T. Ho*
Derek T. Ho

SHORT APPENDIX

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the appendix.

Dated: March 31, 2025

/s/ *Derek T. Ho*
Derek T. Ho

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST LITIGATION	No. 16 C 8637 Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

Sysco Corporation sued Pilgrim's Pride Corporation in this District alleging price fixing in the Broiler chicken market. Sysco also sued Pilgrim's in the District of Minnesota alleging price fixing in the beef and pork markets.

In August and September 2022, counsel for the parties memorialized a settlement of all three cases in a chain of emails. On August 24, counsel for Pilgrim's emailed counsel for Sysco with the statement, "We have a deal at [$$] for settlements of Broilers, Pork, and Beef antitrust cases." *See* R. 6853-2. He also stated that the parties would "figure out the allocation and draw up the agreements." *See id.* The next day, Pilgrim's counsel again sent an email "confirming that . . . Pilgrim's [is] offering [$$] for a global settlement of Broilers, Pork, and Beef antitrust cases." *See* R. 6853-3. On September 9, 2022, Sysco's counsel responded saying, "sorry for the delay. We accept." *See id.*

In the ensuing months, the parties prepared a draft settlement agreement for each of the three cases. The final drafts allocated the total settlement amount among the three cases. *See* R. 6853-7 at 8, 14; R. 6853-8 at 9, 16. The drafts also included provisions that the agreement would comply with the defense Judgment Sharing

Agreement ("JSA") and a "most favored nation" clause regarding allocation. *See* R. 6853-1 ¶¶ 20-21; R. 6853-7 at 9. In December 2022, Sysco's counsel sent the final agreements, which Pilgrim's counsel accepted by email, asking Sysco's counsel to sign them. *See* R. 6853-8.

The written agreements, however, were never signed because Sysco's litigation funder, Burford Capital, objected to the settlement. This eventually led to Sysco assigning its claims to a Burford entity called Carina Ventures LLC. It is Carina that opposes Pilgrim's motion to enforce the purported settlement agreement which is now before the Court.

A. Agreement

Carina argues that the parties did not reach an agreement for two reasons: (1) the parties agreed that a written agreement was necessary to "manifest assent" and also to comply with the requirements of the JSA, *see* R. 6976 at 9-11; and (2) Pilgrim's has not "performed any of its obligations under the supposed settlement," *see id.* at 12. Neither argument is sufficient to undermine the objective evidence of agreement that is in the record.

It is unsurprising that the parties anticipated a written agreement and that they would not perform until the written agreements were signed. Most motions to enforce arise in the context of a lack of final, signed written agreement, and performance is often not appropriate until a court enforces the agreement. The question is not whether the parties failed to execute a final written agreement—that is of course what happened here. The question is whether the steps the parties

completed—the emails and drafts exchanged—are sufficient to establish an agreement from an objective perspective. *See Dillard v. Starcon Int'l, Inc.*, 483 F.3d 502, 507 (7th Cir. 2007) (explaining that "whether a 'meeting of the minds' occurred depends on the parties' objective conduct, not their subjective beliefs").

The objective facts here are emails from August, September, and December 2022 that demonstrate an agreement. There is also no question as to the terms of the agreement because the parties finalized written draft agreements memorializing the terms in detail. The only issue is that those written agreements were never signed. Nevertheless, as discussed, the parties indicated their agreement by email. That is sufficient objective evidence of an agreement to enforce it.

Carina also argues that the parties "did not agree on several material terms." R. 6976 at 12. According to Carina, "[a]s of September 2022, the parties had not agreed on several material terms: (1) Qualified Settlement language under the JSA; (2) the terms and operation of the [most favored nation clause]; (3) the volume of Sysco's assignments to its customers; and (4) other material terms." *Id.* But all of these terms were incorporated into the written draft agreements Sysco sent to Pilgrim's in December 2022. Carina does not contend otherwise.

In any event, these terms were not material. The "heart" of the agreement was to dismiss the claims in exchange for a total amount of money allocated across the three cases. *See Dillard v. Starcon Int'l, Inc.*, 483 F.3d 502, 508 (7th Cir. 2007). The email communications and draft written agreements demonstrate that the parties reached such an agreement.

B. Laches

Carina also argues that Pilgrim's waited too long to enforce the agreement. The agreement was initially reached in September 2022, and further finalized in December 2022. Pilgrim's filed its motion in September 2023.

Carina argues that Pilgrim's strategically waited until the Court denied summary judgment on the Track 1 claims, making Sysco's remaining Track 2 claims more valuable. Perhaps this is true. But the initial delay was not caused by Pilgrim's, but by Burford's attempt to enjoin the settlement. It was only with the settlement of the dispute between Sysco and Burford, followed by the assignment of Sysco's claims to Carina, that it became clear that Carina would not honor Sysco's settlement agreement with Pilgrim's. Pilgrim's filed this motion three months after Sysco and Carina filed their joint motion to substitute Carina for Sysco as the party in interest in this case. That is not an unreasonable delay by Pilgrim's.

C. Jurisdiction

Lastly, Carina argues that the Court lacks jurisdiction to enforce settlement of the claims pending in the District of Minnesota. Carina acknowledges that the Court has the inherent power "to enforce an agreement to settle *a case pending before it*," *Wilson*, 46 F.3d at 664 (emphasis added by Carina), but argues that this power does not extend to claims *not* before this Court like the beef and pork claims in Minnesota. *See* R. 6976 at 7-8. Furthermore, Carina argues, the Court does not have the power to enforce settlement of the Minnesota claims because they are part of a multi-district

litigation for which the court in Minnesota has, what Carina describes as, "exclusive jurisdiction" per the MDL statute, 28 U.S.C. § 1407(b).

If this Court does not have jurisdiction to enforce the global settlement the parties reached here, the only alternative would be for Pilgrim's to file a separate complaint seeking enforcement before yet another court. But according to Carina's logic, even this "would tread on the [Minnesota] court's inherent authority over those cases, in violation of longstanding principles of comity among federal courts." R. 7227 at 3. Furthermore, the reverse would also be true, i.e., the Minnesota court also could not enforce the global settlement for fear of treading on *this* Court's jurisdiction. In other words, Carina's argument followed to its end would mean that no court has jurisdiction to enforce a global settlement across the two districts.

It cannot be that there is no court with jurisdiction to enforce the global settlement. As this Court has found, the parties reached an agreement. There must be some court that has the jurisdiction to enforce it. And because none of the possibilities avoid some "treading on" what Carina's considers to be another court's jurisdiction, this Court enforcing the agreement is no worse or better—jurisdictionally speaking—than any of the other possibilities.

The real solution to this apparent catch-22 is that enforcing the global settlement does not actually "tread on" *any* other court's jurisdiction as Carina's argument contends. Carina argues that enforcing the settlement would violate rules of "comity." But as the cases Carina cites demonstrate, "comity" generally concerns the priority of an earlier filed action over a later filed action in another court

concerning the same underlying operative facts. *See* R. 7227 at 3 (citing cases). The concern in that situation is that two courts addressing the same claims and facts in separate cases might issue conflicting rulings. That kind of comity has little relevance here. This Court exercising jurisdiction to enforce settlement of actions pending in Minnesota will not interfere with the Minnesota proceedings between Pilgrim's and Carina/Sysco—it will end them. There will no longer be any pending claims for which there is jurisdiction to interfere with. Concerns of comity cannot arise when there is no longer an action proceeding to which this Court should defer.

Carina's argument about the "exclusivity" of the MDL court's jurisdiction is similarly misleading. Certainly, an MDL court has exclusive jurisdiction to manage MDL claims that have been transferred to it. The statutory provision Carina cites concerns delineation of jurisdiction between an MDL court and a "transferee" court, to ensure that there is no conflict in the proceedings. The statute provides that MDL proceedings "*shall* be conducted by a judge or judges to whom such actions are assigned by the judicial panel on multidistrict litigation." 28 U.S.C. § 1407(b). And Carina cites courts that have described this provision as conferring "exclusive" jurisdiction on the MDL court. *See* R. 7227 at 5 (citing, e.g., *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1231 (9th Cir. 2006)). But for reasons similar to those just articulated, settlement of some of the MDL claims does not interfere with the MDL court's jurisdiction over the claims that continue. By enforcing the global settlement agreement, this Court is not making any ruling or finding that the Minnesota court will be forced to contend with in the future.

The statute's concern regarding the order of jurisdiction transfer in an MDL case is simply not implicated here by enforcing the global settlement.

At bottom, Pilgrim's and Carina/Sysco are parties before this Court. The Court has jurisdiction over the broiler pricing fixing claims Sysco brought against Pilgrim's and assigned to Carina. In settling those claims, Pilgrim's and Sysco also agreed to settle the Minnesota claims. Settlement of claims beyond those expressly alleged in a single complaint is an unsurprising and common characteristic of settlement agreements, because the goal of settlement is often to globally extinguish litigation between the parties involved. The fact that this Court does not have jurisdiction over the proceedings of those claims, does not mean that this Court does not have jurisdiction over the settlement agreement reached by Pilgrim's and Sysco, which binds Carina. *See Elysium Health, Inc. v. ChromaDex, Inc.*, 2023 WL 7037442, at *3 (2d Cir. Oct. 26, 2023) ("We discern no limiting rule that such an inherent authority is limited to settlement agreements that resolve only a single case [pending before it]."). The Court has jurisdiction to enforce the agreement because Sysco brought claims against Pilgrim's before this Court and then agreed to settle them. The Court has jurisdiction to enforce such an agreement, no matter the scope of the agreement's terms.

Conclusion

Therefore, Pilgrim's motion to enforce [6851] is granted.

ENTERED:

Honorable Thomas M. Durkin
United States District Judge

Dated: June 14, 2024

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE BROILER CHICKEN ANTITRUST LITIGATION	No. 16 C 8637 Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

Sysco Corporation sued Pilgrim's Pride Corporation in this District alleging price fixing in the Broiler chicken market. Sysco also sued Pilgrim's in the District of Minnesota alleging price fixing in the beef and pork markets.

The Court granted Pilgrim's motion to enforce an agreement settling all of Sysco's claims in both Districts. *See* R. 7272 (*In re Broiler Chicken Antitrust Litig.*, 2024 WL 3011350, at *1 (N.D. Ill. June 14, 2024)). That motion was opposed by Carina Ventures LLC, which the Court permitted to substitute as a plaintiff in this case after Sysco assigned its claims to Carina. Carina appealed the Court's order enforcing the settlement agreement. The Seventh Circuit remanded for lack of jurisdiction, explaining that the Court's order failed to comply with the requirement of Federal Rule of Civil Procedure 65(d) that an order granting an injunction "state its terms specifically" and "describe in reasonable detail . . . the act or acts restrained or required." *See* R. 7373. The Seventh Circuit held that the Court's order was "fatally flawed" because it "awarded no specific relief to either party and did not prohibit or require any party to take any specific actions and no separate document providing these details was entered." *See id.*

Pilgrim's now seeks the "specific relief" of summary judgment on Sysco's claims against it in this case based on the contention that Sysco released its claims in the settlement agreement the Court enforced when it granted Pilgrim's earlier motion. Pilgrim's has since paid the money due under the settlement agreement. Carina does not dispute that the Court found the parties reached a settlement agreement and that Pilgrim's has paid the amount due. *See* R. 7438-2 (Carina stating that these facts are undisputed).

Carina's opposition to Sysco's motion for summary judgment is based on its continued contention that the Court's finding that the parties reached an agreement was erroneous. Carina contends that questions of fact remain for a jury to decide regarding whether an agreement was reached. Primarily, Carina's points to a telephone call in August 2022 between Pilgrim's and Sysco's representatives, during which Carina contends Sysco's representatives indicated a lack of agreement.

The problem with this argument is that the Court already considered it on Pilgrim's initial motion to enforce the agreement. The Court found sufficient evidence of agreement based on an email exchange that took place after the August phone call Carina relies on in opposition to this motion. As the Court noted in its order granting Pilgrim's motion to enforce, in August and September 2022, counsel for the parties memorialized a settlement of all three cases in a chain of emails. On August 24, counsel for Pilgrim's emailed counsel for Sysco with the statement, "We have a deal at [$$] for settlements of Broilers, Pork, and Beef antitrust cases." *See* R. 6853-2. He also stated that the parties would "figure out the allocation and draw up the

agreements." *See id.* The next day, Pilgrim's counsel again sent an email "confirming that . . . Pilgrim's [is] offering [$$] for a global settlement of Broilers, Pork, and Beef antitrust cases." *See* R. 6853-3. On September 9, 2022, Sysco's counsel responded saying, "sorry for the delay. We accept." *See id.* These documented statements take precedence in determining whether there was a meeting of the minds over any dispute regarding statements made on an earlier phone call.

Furthermore, the parties exchanged final written agreements in December 2022, with *Sysco* itself sending the final written agreement regarding the Broilers claims on December 9, 2022, which Pilgrim's accepted by email. *See* R. 6853-8 at 2 (Sysco's representative stating "we are good here," and Pilgrim's representative responding "that's great"). Sysco never signed them due to its dispute with Carina's parent company. But the offer and acceptance had already occurred by email. There was no indication in any of these communications that settlement would be subject to further approval by Carina or its parent company.

Carina also argues that the Court's findings on Pilgrim's motion to enforce cannot be dispositive on a motion for summary judgment. But despite different phrasing in the relevant case law of the relevant legal standards for a motion to enforcement settlement and a motion for summary judgment, the standards are effectively the same. Had the Court identified a genuine issue of material fact on the motion to enforce, the Court would not have granted the motion and would have scheduled an evidentiary hearing or trial so that the necessary findings of fact could be made. The Court, however, found that such a hearing was unnecessary because

the documentary evidence demonstrated an unambiguous meeting of the minds regarding settlement. Such evidence is sufficient to find the existence of an agreement and enforce the settlement without a hearing.

Contrary to Carina's arguments, this motion for summary judgment does not concern whether a binding settlement agreement exists, because, as discussed, the Court has already determined that the evidence shows that such an agreement exists, and that no reasonable fact finder could find otherwise. The present motion is necessary to determine the implications of the Court's finding that the agreement exists. The Seventh Circuit held (correctly of course) that the Court's order enforcing the agreement provided insufficient direction to the parties, and that a further order of the Court is required. On remand, Pilgrim's might have made a motion for the Court to enter judgment under Federal Rule of Civil Procedure 65(d) specifically stating "the act or acts restrained or required" in accordance with the Court's enforcement of the global settlement agreement. Instead, Pilgrim's more straightforwardly seeks dismissal of the claims against it brought by Sysco (now assigned to Carina) in only this case. The Court having found that Sysco agreed that the claims should be released upon payment of the agreed upon sum, and Pilgrim's having made the payment, the Court sees no reason why judgment should not be entered against Carina's continuing prosecution the claims against Pilgrim's in this case. Carina's claims against Pilgrim's in the District of Minnesota are not the subject of this motion for summary judgment, and the Court need not address them further.

Conclusion

Therefore, Pilgrim's motion for summary judgment [7430] is granted.

ENTERED:

Honorable Thomas M. Durkin
United States District Judge

Dated: December 16, 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

IN RE BROILER CHICKEN ANTITRUST LITIGATION	
THIS DOCUMENT RELATES TO:	Case No. 1:16-cv-08637
Sysco Corp. v. Tyson Foods, Inc., et al. Case No. 18-cv-00700	Judge Thomas M. Durkin

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) Pilgrim's Pride Corporation.
and against plaintiff(s) Carina Ventures LLC.

Defendant(s) shall recover costs from plaintiff(s).

☒ other: The Court's 12/16/2024 Order, Dkt. 7451 (the "SJ Order"), is a final order in that it disposes of Carina's claims against Pilgrim's Pride Corporation ("Pilgrim's"). And because there will be minimal factual overlap between the appeal from this judgment and any future appeal in the case, an entry of final judgment would serve the interest in judicial economy, meaning there is no just reason for delay. Accordingly, the Court enters final judgment in favor of Defendant Pilgrim's on the claims identified in the SJ Order.

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Thomas M. Durkin on a motion for summary judgment.

Date: 12/31/2024

Thomas G. Bruton, Clerk of Court

Emily Wall, Deputy Clerk

CERTIFICATE OF SERVICE

I certify that, on March 31, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ *Derek T. Ho*
Derek T. Ho