

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In Re: LIQUID ALUMINUM SULFATE
ANTITRUST LITIGATION

Civil Action No. 16-md-2687 (JLL) (JAD)

**SETTLEMENT AGREEMENT BETWEEN INDIRECT PURCHASER
CLASS PLAINTIFFS AND USALCO, LLC**

THIS SETTLEMENT AGREEMENT (“Agreement”) is made and entered into as of the 13th day of May 2019 (“Execution Date”) by and between on the one hand plaintiffs City of Homestead, Florida, and City of Creston Water Works Department (collectively, “Indirect Purchaser Class Plaintiffs”), individually and on behalf of the putative Indirect Purchaser Settlement Class; and on the other hand Defendant USALCO, LLC (“USALCO”). The Indirect Purchaser Class Plaintiffs, on behalf of the Indirect Purchaser Settlement Class¹, and USALCO are referred to collectively as the “Settling Parties” and individually as a “Settling Party.” This Agreement does not release any claims of the Indirect Purchaser Class Plaintiffs and the other members of the Indirect Purchaser Settlement Class against any Non-Settling Defendant.

WHEREAS, the Indirect Purchaser Class Plaintiffs (on behalf of themselves and as representatives of the putative class of similarly situated persons or entities) allege in the Consolidated Proceedings, among other things, that USALCO participated in a conspiracy – with other Defendants in this litigation and unnamed co-conspirators – to allocate territories and/or not to compete for each other’s historical business by rigging bids, allocating customers, and fixing,

¹ Terms with initial capital letters that are not immediately defined shall have the meanings ascribed to them in Section 1 "Definitions" herein.

stabilizing, and maintaining the price of liquid aluminum sulfate (“Alum”) sold in the United States from January 1, 1997 through at least February 28, 2011;

WHEREAS, Interim IPP Lead Counsel has been appointed by the Court to represent, on an interim basis, the putative class of Indirect Purchasers;

WHEREAS, USALCO acknowledges that it is appropriate, solely as part of this Settlement, and subject to Final Approval, to stipulate to the certification of the Indirect Purchaser Settlement Class and that the prerequisites of Federal Rule of Civil Procedure 23 have been satisfied here for purposes of this settlement only;

WHEREAS, the Settling Parties wish to resolve all claims asserted and all claims that could have been asserted in the Consolidated Proceedings by Indirect Purchaser Class Plaintiffs against USALCO for its alleged participation in an alleged conspiracy – with other Defendants in this litigation and unnamed co-conspirators – to allocate territories and/or not to compete for each other’s historical business by rigging bids, allocating customers, and fixing, stabilizing, and maintaining the price of Alum sold in the United States from January 1, 1997 through February 28, 2011;

WHEREAS, counsel for the Settling Parties have engaged in arm’s-length negotiations on the terms of this Agreement, and this Agreement embodies all of the terms and conditions of the Settlement;

WHEREAS, Indirect Purchaser Class Plaintiffs have concluded, after preliminary discovery and investigation of the facts and after considering the circumstances of the Class Action and the applicable law, that it is in the best interests of Indirect Purchaser Class Plaintiffs to enter into this Agreement with USALCO to avoid the uncertainties of further complex litigation, and to obtain the benefits described herein for the Indirect Purchaser Settlement Class, and, further, that

this Settlement is fair, reasonable, adequate, and in the best interests of Indirect Purchaser Class Plaintiffs and the Indirect Purchaser Settlement Class; and

WHEREAS, USALCO, without admitting any liability or wrongdoing, wishes to avoid the costs, expenses, and uncertainties of this complex litigation;

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions set forth below, and other good and valuable consideration, it is agreed by and among the Settling Parties that the claims of the Indirect Purchaser Settlement Class Members in the Consolidated Proceedings be settled and compromised, and dismissed on the merits with prejudice as to USALCO subject to Court approval and to the other terms and conditions set forth herein.

1. Definitions. The terms below and elsewhere in this Agreement with initial capital letters shall have the meanings ascribed to them for purposes of this Agreement.

- a. “Case Contribution Award” means compensation for Indirect Purchaser Class Plaintiffs for their time and effort undertaken in the Class Action.
- b. “Class Action” means the putative class action filed by the Indirect Purchaser Class Plaintiffs in the Consolidated Proceedings.
- c. “Consolidated Proceedings” means the consolidated proceedings entitled *In re: Liquid Aluminum Sulfate Antitrust Litigation*, No. 16-md-2687 (JLL) (JAD), pending in the United States District Court for the District of New Jersey and any claim or complaint filed in or transferred to these proceedings.
- d. “Court” means the United States District Court for the District of New Jersey.
- e. “Defendants” mean the Defendants in the Class Action.

- f. “Final Approval” means an order and judgment by the Court which finally approves this Agreement and the Settlement pursuant to Federal Rule of Civil Procedure 23 and dismisses with prejudice USALCO from the Class Action.
- g. “Final Judgment” means the first date upon which both of the following conditions shall have been satisfied:
 - i. Final Approval; and
 - ii. Either (1) thirty days have passed from the date of Final Approval with no notice of appeal having been filed with the Court; or (2) Final Approval has been affirmed by a mandate issued by any reviewing court to which any appeal has been taken, and any further petition for review (including certiorari) has been denied, and the time for any further appeal or review of Final Approval has expired.
- h. “Indirect Purchaser” or “Indirect Purchasers” means all persons or entities that purchased Alum in the Indirect Purchaser States indirectly for end use and not for resale from a Defendant or a co-conspirator during the Settlement Class Period.
- i. “Indirect Purchaser Escrow Account” means the escrow account established at Bank Leumi USA to receive and maintain funds contributed by USALCO for the benefit of the Indirect Purchaser Settlement Class.
- j. “Indirect Purchaser Escrow Agreement” means that certain agreement between Bank Leumi USA, USALCO, and Indirect Purchaser Class

Plaintiffs (by and through Interim IPP Lead Counsel) pursuant to which the Indirect Purchaser Escrow Account is established and funded for the benefit of the Indirect Purchaser Settlement Class.

- k. “Indirect Purchaser Settlement Class” means all Indirect Purchasers, including the Indirect Purchaser Class Plaintiffs and Indirect Purchaser Settlement Class Members. This also means the additional plaintiffs identified in Exhibit A that filed their own lawsuits in the Consolidated Proceedings or filed lawsuits that were transferred to the Consolidated Proceedings that purchased Alum in the Indirect Purchaser States indirectly for end use and not for resale from a Defendant or co-conspirator during the Settlement Class Period (“Direct Action Indirect Purchaser Settlement Class Members”). To the extent the Direct-Action Indirect Purchaser Settlement Class Members also made direct purchases of Alum from USALCO, such direct purchases are not subject to this Agreement. The Direct-Action Indirect Purchaser Settlement Class Members may participate in this Settlement, and will be subject to and bound by this Agreement, only to the extent of their indirect purchases of Alum from USALCO and if they do not elect to opt out of the Settlement. Excluded from the Indirect Purchaser Settlement Class are: 1) Defendants and co-conspirators and their respective parents, subsidiaries, and affiliates, and 2) any Indirect Purchasers who timely and validly elect to be excluded from the Indirect Purchaser Settlement Class.

- l. “Indirect Purchaser Settlement Class Member” means any person or entity that is a member of the Indirect Purchaser Settlement Class.
- m. “Indirect Purchaser States” means Alabama, Arkansas, Arizona, California, Colorado, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.
- n. “Interim IPP Lead Counsel” means Jay B. Shapiro of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. and Marvin A. Miller of Miller Law LLC as appointed by the Court to represent the putative class of Indirect Purchasers.
- o. “IPP Releasing Party” or “IPP Releasing Parties” shall refer individually and collectively, to the Indirect Purchaser Settlement Class and all Indirect Purchaser Settlement Class Members, including the Indirect Purchaser Settlement Class Plaintiffs, each on behalf of themselves and their respective predecessors and successors; their current and former, direct and indirect parents, subsidiaries and affiliates; their present and former shareholders, partners, directors, officers, owners of any kind, principals, members, agents, employees, contractors, attorneys, insurers, heirs, executors, administrators, devisees, representatives; the assigns of all such persons or entities, as well as any person or entity acting on behalf of or through any of them in any capacity whatsoever, jointly and severally; and any of their

past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions; and also means, to the full extent of the power of the signatories hereto to release past, present and future claims, the following: (1) any Releasing Party's subdivisions (political or otherwise, including, but not limited to, municipalities, counties, parishes, villages, unincorporated districts and hospital districts), public entities, public instrumentalities and public education institutions; and (2) persons or entities acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer or any other capacity, whether or not any of them participate in this Settlement. As used in this Paragraph, "affiliates" means entities controlling, controlled, in whole or in part, by or under common ownership or control with, in whole or in part, any of the IPP Releasing Parties or their predecessors.

- p. "Non-Settling Defendant(s)" means any Defendant that has been a named defendant at any time in the Class Action, including any Defendants that may be added at a later date, other than the USALCO Released Parties.
- q. "Non-Settling Plaintiff(s)" means any plaintiff that has been a named plaintiff at any time in the Consolidated Proceedings, including any party that may be added at a later date, other than the Indirect Purchaser Class Plaintiffs.
- r. "Notice and Administrative Costs" means the reasonable and authorized costs and expenses of disseminating and publishing the Indirect Purchaser Settlement Class Notices, as defined below, and all reasonable and

authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and expenses associated with assisting members of the Indirect Purchaser Settlement Class, processing claims, escrowing funds, and issuing and mailing payments.

- s. “Preliminary Approval” means an order by the Court to preliminarily approve this Agreement and the Settlement pursuant to Federal Rule of Civil Procedure 23.
- t. “Released Claims” shall have the meaning set forth in Paragraphs 15 and 16 of this Agreement.
- u. “Settlement” means the settlement of the Class Action with respect to USALCO as set forth in this Agreement.
- v. “Settlement Administrator” means A.B. Data, Ltd., the firm retained to disseminate the Indirect Purchaser Settlement Class Notices and to administer the Settlement, subject to approval of the Court.
- w. “Settlement Class Period” means January 1, 1997 through February 28, 2011. However, to the extent the Class Period, as that term is defined in the Class Action, is expanded, the definition of the Settlement Class Period will also expand to the same time period, if such expansion is approved by the Court prior to Final Approval.
- x. “Settlement Funds” means the payment amount set forth in Paragraph 9 herein to be made by USALCO pursuant to this Agreement, including any interest accrued on such payments.

y. “USALCO Released Parties” means USALCO, its predecessors or assigns, and their current and former, direct and indirect parents, subsidiaries, affiliates, and all of their directors, officers, attorneys, managers, members, agents, representatives and employees. As used in this Paragraph, “affiliates” means entities controlling, controlled, in whole or in part, by or under common ownership or control with, in whole or in part, USALCO or its predecessors.

2. The Settling Parties’ Efforts to Effectuate this Settlement. The Settling Parties agree to support the entry of Final Approval, including through the conclusion of any appeal, motion for re-argument, motion for rehearing, petition for a writ of certiorari, or other writ.

3. Settlement Announcement and Litigation Standstill. Upon execution of this Agreement, the Settling Parties shall inform the Court and Non-Settling Defendants that the Settling Parties have executed this Agreement; provided, however, that the terms of this Agreement (including the amount of the Settlement Funds set forth in Paragraph 9 below), shall remain confidential and not disclosed unless and until (i) the Settling Parties consent to their disclosure, or (ii) a motion for preliminary approval of this Agreement is filed with the Court by the Indirect Purchaser Class Plaintiffs. This means that USALCO will also not disclose the relationship of the settlement amount to any other settlement reached in the case or any other metric (such as sales, percentages of single or other damages, etc.). The Indirect Purchaser Class Plaintiffs and the Indirect Purchaser Settlement Class, through Interim IPP Lead Counsel, shall cease all litigation activities related to the pursuit of claims against USALCO in the Consolidated Proceedings, provided however that nothing herein shall be construed to prevent or limit Indirect Purchaser Class Plaintiffs from pursuing their claims against any Non-Settling Defendant.

4. Cessation of All Joint Defense Efforts Relating To The Class Action. USALCO represents and warrants that on April 26, 2019, it and its counsel ceased all joint defense efforts with the Non-Settling Defendants (collectively or individually) related to the defense of the claims asserted by the Indirect Purchaser Class Plaintiffs in the Class Action and further acknowledge that this representation and covenant is a material term of this Agreement. The Indirect Purchaser Class Plaintiffs acknowledge that USALCO remains in a joint defense group and will engage in joint defense efforts with Non-Settling Defendants with respect to claims asserted in the Consolidated Proceedings by certain Non-Settling Plaintiffs. The Indirect Purchaser Class Plaintiffs represent and warrant that on April 26, 2019, they and their counsel ceased all joint efforts with the Non-Settling Plaintiffs (collectively or individually) related to the prosecution of any claims against USALCO in the Consolidated Proceedings and further acknowledge that this representation and covenant is a material term of this Agreement.

- a. USALCO and its counsel shall not resume or participate in any further joint defense efforts with the Non-Settling Defendants (collectively or individually) related to the defense of the Class Action, including as follows:
 - i. USALCO and its counsel shall not share any testifying or non-testifying expert reports, data, briefs, internal memoranda or other work product relating to the defense of the Class Action or any class action claims asserted in the Consolidated Proceedings with any Non-Settling Defendant or their counsel.
 - ii. Counsel for USALCO will not take the deposition of either of the Indirect Purchaser Class Plaintiffs in the Consolidated Proceedings, nor shall they

assist any of the Non-Settling Defendants in preparing for or taking the depositions of any of the Indirect Purchaser Class Plaintiffs.

iii. Neither USALCO nor its counsel shall take any other action to assist the remaining Non-Settling Defendants with respect to defending any of the class action claims being asserted by the Indirect Purchaser Class Plaintiffs in the Class Action, nor in defending any of the Indirect Purchaser Class Plaintiffs' class certification efforts.

b. Likewise, the Indirect Purchaser Class Plaintiffs and their counsel shall not resume or participate in any further joint efforts with the Non-Settling Plaintiffs (collectively or individually) related to the prosecution of any claims against USALCO in the Consolidated Proceedings, including as follows:

i. The Indirect Purchaser Class Plaintiffs and their counsel shall not share any testifying or non-testifying expert reports, data, briefs, internal memoranda or other work product relating to the prosecution of any claims against USALCO in the Consolidated Proceedings with any Non-Settling Plaintiff or their counsel.

ii. Counsel for the Indirect Purchaser Class Plaintiffs shall not assist any of the Non-Settling Plaintiffs in preparing for or taking the depositions of USALCO.

iii. Neither the Indirect Purchaser Class Plaintiffs nor their counsel shall take any other action to assist the remaining Non-Settling Plaintiffs with respect to prosecuting any of the claims being asserted against USALCO in the Consolidated Proceedings.

5. Motion for Preliminary Approval. As soon as practicable, and in no event later than fifteen (15) days after the Execution Date, unless otherwise extended by written agreement of the Settling Parties, Indirect Purchaser Class Plaintiffs, through Interim IPP Lead Counsel, shall submit to the Court a motion for Preliminary Approval of this Agreement, seeking certification of the Indirect Purchaser Settlement Class for settlement purposes. The Preliminary Approval motion shall include: (a) the proposed definition of the class for settlement purposes; (b) a proposed form of, method for, and date of dissemination of notice; (c) a proposed schedule for the filing of any motion for fees and expenses, the filing of a motion to approve finally this Agreement, and a final fairness hearing; and (d) a proposed form of order preliminarily approving this Agreement and certifying the Indirect Purchaser Settlement Class for settlement purposes. A reasonable time in advance of submission to the Court, the papers in support of the motion for Preliminary Approval shall be provided by Interim IPP Lead Counsel to USALCO for its review, so that USALCO shall have the opportunity to make reasonable comments/revisions before the pleadings are filed with the Court. To the extent that USALCO objects to any aspect of the motion, it shall communicate such objection to Interim IPP Lead Counsel and the parties shall meet and confer to resolve any such objection. The Settling Parties shall take all reasonable actions as may be necessary to obtain Preliminary Approval and certification of the Indirect Purchaser Settlement Class. The Settling Parties agree to cooperate to the extent reasonably necessary in connection with Interim IPP Lead Counsel's preparation of the motion for Preliminary Approval and any related documents necessary to effectuate and implement the terms and conditions of this Agreement.

6. Indirect Purchaser Settlement Class Notices. After Preliminary Approval, and subject to approval by the Court of the means for dissemination of notice of this Settlement (“Indirect Purchaser Class Notice”):

- a. As set forth in Paragraph 10 below, USALCO shall provide, as kept in the regular course of business, the names and addresses of all known Indirect Purchasers that purchased Alum from USALCO during the Settlement Class Period, or confirm that they have previously provided USALCO's available sales data for the Settlement Class Period.
- b. Indirect Purchaser Class Notice shall be provided in accordance with a notice plan which shall be submitted to the Court for approval in connection with the motion for Preliminary Approval. After Final Judgment has been obtained, and USALCO's right of rescission under Paragraphs 18 and 19 cannot be exercised or has been waived, all Notice and Administrative Costs, including without limitation, costs and expenses associated with the Indirect Purchaser Escrow Account, and the costs and expenses for filing of tax returns and payment of taxes, will be paid out of the Settlement Funds as specified in the Indirect Purchaser Escrow Agreement, subject to Court approval. All expenses and costs incurred by the Indirect Purchaser Class Plaintiffs, including expenses and costs incurred by their counsel of record, such as Interim IPP Lead Counsel, shall be reimbursed and indemnified solely out of the Settlement Funds, as provided by an order of the Court. The USALCO Released Parties shall not be liable for any costs, fees, or expenses of any of Indirect Purchaser Class Plaintiffs' and Interim IPP Lead Counsel's attorneys, experts, advisors, agents, or representatives. All such costs, fees, and expenses shall be paid out of the Settlement Funds.

7. Motion for Final Approval and Entry of Final Judgment. If the Court grants Preliminary Approval and certifies the Indirect Purchaser Settlement Class, Indirect Purchaser Class Plaintiffs, through Interim IPP Lead Counsel, shall – in accordance with the schedule set forth in the Court’s Preliminary Approval – submit to the Court a separate motion for Final Approval of this Agreement by the Court. A reasonable time in advance of submission to the Court, the papers in support of the motion for Final Approval shall be provided by Interim IPP Lead Counsel to USALCO for its review, so that USALCO shall have the opportunity to make reasonable comments/revisions before the pleadings are filed with the Court. To the extent that USALCO objects to any aspect of the motion, it shall communicate such objection to Interim IPP Lead Counsel and the parties shall meet and confer to resolve any such objection. The motion for Final Approval shall seek entry of an order and Final Judgment:

- a. subject to Paragraph 11, finally approving the Settlement as being a fair, reasonable, and adequate settlement for the Indirect Purchaser Settlement Class within the meaning of Federal Rules of Civil Procedure 23, and directing the implementation, performance, and consummation of the Settlement pursuant to the terms and conditions set forth in this Agreement;
- b. subject to Paragraph 11, dismissing the Class Action, with prejudice as to USALCO;
- c. subject to Paragraph 11, discharging and releasing the USALCO Released Parties from all Released Claims;
- d. subject to Paragraph 11, reserving continuing and exclusive jurisdiction over the Settlement for all purposes, including the administration of the Settlement or its execution; and

- e. subject to Paragraph 11, determining under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to USALCO shall be final and appealable and entered forthwith.

The Settling Parties shall take all reasonable steps to obtain Final Judgment of the Settlement.

8. Indirect Purchaser Escrow Account. The Indirect Purchaser Escrow Account will be established at Bank Leumi USA and shall be administered by Interim IPP Lead Counsel for the Indirect Purchaser Class Plaintiffs and Indirect Purchaser Settlement Class under the Court's continuing supervision and control pursuant to the Indirect Purchaser Escrow Agreement. No disbursements of funds from the Indirect Purchaser Escrow Account will occur without order of the Court.

9. Settlement Consideration. Subject to the provisions hereof, and in consideration of the release of Released Claims, USALCO agrees to pay five million US dollars (\$5,000,000) directly into the Indirect Purchaser Escrow Account as follows: (a) \$1,000,000 within fifteen (15) days of the Execution Date; and (b) \$4,000,000 within thirty (30) days after the Court's entry of Preliminary Approval. No additional payments will be made to the Indirect Purchaser Class Plaintiffs or the Indirect Purchaser Settlement Class by USALCO or the USALCO Released Parties. The Settlement Funds represent all sums owed and payable by USALCO pursuant to this Agreement, including payment of damages, attorneys' fees, incentive fees, notice costs, costs of administration, and costs of any kind. The Settling Parties agree and acknowledge that none of the Settlement Funds paid by or on behalf of USALCO under this Agreement shall be deemed to be, in any way, a penalty or a fine of any kind, nor shall it be deemed or construed to be an

admission or evidence of any violation of any statute or law or any liability or wrongdoing by USALCO or the USALCO Released Parties.

10. Data for Class Notice. Within fifteen (15) days after the Execution Date, USALCO shall supply to Interim IPP Lead Counsel at USALCO's expense, and in such form as kept in the regular course of business (electronic format if available), the names and addresses of all known Indirect Purchasers that purchased Alum from USALCO during the Settlement Class Period, or confirm that it has previously provided USALCO's available sales data for the Settlement Class Period.

11. Material Breach and Reservation of Rights. The Settling Parties agree that a material breach of this Agreement will have occurred if USALCO defaults under the terms of this Agreement, including as to USALCO's obligations to provide the Settlement Funds (as set forth in Paragraph 9 of this Agreement). In the event the Indirect Purchaser Class Plaintiffs or the Indirect Purchase Settlement Class Members claim that USALCO has violated a material provision of this Agreement, USALCO has the right to dispute such claim by the Indirect Purchaser Class Plaintiffs or the Indirect Purchaser Settlement Class Members. In the event the Court finds such a material breach occurred, the Indirect Purchaser Class Plaintiffs shall be entitled to void this Agreement, in which event the Agreement shall be of no force or effect, the releases set forth in Paragraphs 15 and 16 shall have no force or effect, any dismissal with prejudice of the Indirect Purchaser Class Action or Final Judgment shall be of no force or effect, and the Indirect Purchaser Class Plaintiffs (on behalf of the Indirect Purchaser Settlement Class) and the Indirect Purchaser Settlement Class Members shall be entitled to reinstate and assert the full amount of the Indirect Purchaser Settlement Class Members' claims against the breaching party or parties only as if it had never been dismissed or compromised, reduced only by the value of any consideration actually

received, and with all statutes of limitations deemed tolled during the period between dismissal and reinstatement, and without the need to re-file their complaints or re-serve USALCO with process. If for some reason the Court does not permit the reinstatement and reassertion of such claims as set forth in the preceding sentence, nothing in this Agreement shall be deemed to preclude the Indirect Purchaser Class Plaintiffs from enforcing any other rights they have under this Agreement including, but not limited to, enforcing their rights to any payments under this Agreement. Additionally, the Indirect Purchaser Class Plaintiffs and the Indirect Purchaser Settlement Class Members agree that a material breach of this Agreement will have occurred if the Indirect Purchaser Class Plaintiffs or the Indirect Purchaser Settlement Class Members default under the terms of this Agreement. In the event that USALCO claims that the Indirect Purchaser Class Plaintiffs or the Indirect Purchaser Settlement Class Members have violated any material provision of this Agreement, the Indirect Purchaser Class Plaintiffs and the Indirect Purchaser Settlement Class Members have the right to dispute such claim of breach. In the event the Court finds such a material breach occurred, USALCO shall have the unilateral right in its sole discretion to terminate this Agreement. All rights, claims and defenses of USALCO and the Indirect Purchaser Class Plaintiffs and the Indirect Purchaser Settlement Class are otherwise reserved.

12. Qualified Settlement Fund. The Settling Parties agree to treat the Settlement Funds as being at all times a Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1, and to that end, the Settling Parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. In addition, Interim IPP Lead Counsel shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 12, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with

the procedures and requirements contained in such regulations. It shall be the responsibility of Interim IPP Lead Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Funds being a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1. Interim IPP Lead Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Funds (including without limitation the returns described in Treas. Reg. § 1.468B-2(k), (1)). Such returns shall reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Settlement Funds shall be paid out of the Settlement Funds. USALCO shall not be responsible for the filing or payment of any taxes or expenses connected to the Qualified Settlement Fund.

13. Distribution of Settlement Funds to Indirect Purchaser Settlement Class. Indirect Purchaser Settlement Class Members shall be entitled solely to the Settlement Funds for settlement and satisfaction against the Settling Parties for the Released Claims, and shall not be entitled to any other payment or relief from USALCO or the USALCO Released Parties. Except as provided by order of the Court, no Indirect Purchaser Settlement Class Member shall have any interest in the Settlement Funds or any portion thereof. All expenses and costs incurred by the Indirect Purchaser Class Plaintiffs, including, but not limited to, the costs of notice of the Settlement to Indirect Purchaser Settlement Class Members and expenses and costs incurred by their class counsel of record, such as Interim IPP Lead Counsel, shall be reimbursed and indemnified solely out of the Settlement Funds. USALCO and the USALCO Released Parties shall not be liable for any costs, fees, or expenses of any of the Indirect Purchaser Class Plaintiffs’, the Indirect Purchaser Settlement Class Members or Interim IPP Lead Counsel’s attorneys, experts, advisors, or

representatives, but all such costs and expenses as approved by the Court shall be paid out of the Settlement Funds. Once Preliminary Approval is obtained, and prior to the grant of Final Approval of the Settlement, Interim IPP Lead Counsel shall be permitted to withdraw from the Settlement Funds up to \$100,000 to be used solely for the costs of disseminating notice to the Indirect Purchaser Settlement Class Members and for notice administration, which amount, if properly accounted for and used in good faith for the purposes approved hereunder, shall not be reimbursed to USALCO. Interim IPP Lead Counsel shall provide USALCO with an accounting of such costs as reasonably requested by USALCO. If the Court grants Final Approval of this Agreement pursuant to the provisions of Paragraph 7, and USALCO's right of rescission under Paragraph 19 cannot be exercised or has been waived, Indirect Purchaser Class Plaintiffs, with Court approval, may use the Settlement Funds to pay such costs and expenses for the litigation of the Class Action as set forth in this Paragraph.

14. No Objection to Fee Request or Case Contribution Awards. USALCO shall not take any position with respect to Indirect Purchaser Class Plaintiffs' application for attorneys' fees and reimbursement of costs and expenses. In addition, USALCO shall not oppose any request for Case Contribution Awards in an amount up to twenty-five thousand dollars (\$25,000) to each named Indirect Purchaser Class Plaintiff. The procedure for, and the grant, denial, or allowance by the Court of, attorneys' fees, reimbursement of costs and expenses, and Case Contribution Awards are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the applications for attorneys' fees, reimbursement of costs and expenses and Case Contribution Awards, or any appeal from any order relating thereto or the reverse or modification thereof, will

not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment approving this Agreement and the Settlement.

15. Release. Effective upon Final Judgment, the IPP Releasing Parties hereby completely and mutually release, acquit, and forever discharge the USALCO Released Parties from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Indirect Purchaser Settlement Class Member has objected to the Settlement or makes a claim upon or participates in the Settlement Funds, whether directly, representatively, derivatively or in any other capacity) that the IPP Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, that exist as of the date of Final Judgment, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to the facts and circumstances alleged in the Consolidated Proceedings, including but not limited to the claims asserted in the Indirect Purchase Class Plaintiffs' Consolidated Amended Complaint, dated October 17, 2016 ("Released Claims"), provided however, that nothing herein shall release claims involving or arising out of: (i) any negligence, personal injury, breach of contract (except breach of contract claims derived from the facts, claims, or causes of action asserted in the Consolidated Proceedings, which claims shall be released), breach of product warranty, bailment, failure to deliver lost goods, damaged or delayed goods, product defect, or similar claims relating to Alum; or (2) any purchase of Alum by a member of the Indirect Purchaser Class that was not an indirect purchase for end use and not for resale. In other words, to the extent any Indirect Purchaser also made a purchase of Alum directly from USALCO or any of the other Defendants in the Consolidated Proceedings, claims arising out of that direct purchase are not released herein.

During the period after the expiration of the deadline for submitting an opt-out notice, as determined by the Court, and prior to Final Judgment, the IPP Releasing Parties shall be preliminarily enjoined and barred from asserting any Released Claims against the USALCO Released Parties. USALCO further agrees that it will not file any suit or assert any claim against the IPP Releasing Parties that arises out of or relates in any way to the institution, prosecution, or settlement of the IPP Released Claims against USALCO. The release of the Released Claims will become effective as to the IPP Releasing Parties upon Final Judgment. Upon Final Judgment, the IPP Releasing Parties further agree that they will not file any other suit against the USALCO Released Parties arising out of or relating to the Released Claims.

16. Further Release. In addition to the provisions of Paragraph 15, the IPP Releasing Parties hereby expressly waive and release, solely with respect to the Released Claims, upon Final Judgment, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each IPP Releasing Party may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 15, but each IPP Releasing Party hereby expressly waives and fully, finally, and forever settles and releases, upon Final Judgment, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that the IPP Releasing Parties have agreed to

release pursuant to Paragraph 15, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

17. Reservation of Claims. The Settling Parties intend by this Agreement to release only the USALCO Released Parties with respect to the Released Claims. The Settling Parties specifically do not intend this Agreement, or any part hereof or any other aspect of the proposed Settlement, to compromise or otherwise affect in any way any rights the IPP Releasing Parties have or may have against any other person, firm, association, or corporation whatsoever, including, but not limited to the Non-Settling Defendants. The releases set forth in Paragraphs 15 and 16 above are not intended to and shall not release any claims other than the Released Claims. The sales of Alum by USALCO in the Indirect Purchaser States, from January 1, 1997 through February 28, 2011, shall remain in the cases against the Non-Settling Defendants in the Consolidated Proceedings as a basis for establishing liability or calculating damages with respect to any of the Non-Settling Defendants and shall be part of any joint and several liability claims against Non-Settling Defendants in the Consolidated Proceedings or other persons or entities other than the USALCO Released Parties.

18. Option to Terminate. In the event that Indirect Purchasers representing a specified portion of relevant transactions during the Settlement Class Period timely opt-out of the Indirect Purchaser Settlement Class (the “USALCO Termination Option Trigger”), USALCO shall have the unilateral right in its sole discretion to terminate this Agreement as set forth in a side letter attached as Exhibit A, which shall be provided to the Court through a filing under seal.

19. Effect of Disapproval and Rescission. If the Court does not certify the Indirect Purchaser Settlement Class as defined in this Agreement, or if the Court does not approve this Agreement in all material respects, or if the Court does not enter Final Approval as provided for

in Paragraph 7 herein, or if any judgment approving this Agreement is materially modified or set aside on appeal, or if all of the conditions for Final Judgment do not occur as set forth in Paragraph 1(g) of this Agreement, or if this Agreement is terminated pursuant to Paragraph 11, 18, or this Paragraph 19, then this Agreement may be cancelled and terminated:

- a. solely by USALCO with respect to Paragraph 18, or
- b. otherwise by USALCO or Indirect Purchaser Class Plaintiffs on behalf of the Indirect Purchaser Settlement Class. If cancelled and terminated, (i) this Agreement shall become null and void, and the Settlement Funds, net of expended or incurred escrow fees and taxes as well as amounts expended or incurred for notice (and processing of associated claims forms) pursuant to this Agreement and approval by the Court, shall be returned to USALCO within ten (10) days of such termination; and (ii) the Settling Parties shall be returned to their respective positions in the Consolidated Proceedings as if this Agreement had never been entered into without prejudice to any claims, rights, or defenses of the Parties, and the releases (set forth in Paragraphs 15 and 16) shall be voided and shall be of no force or effect, any dismissal with prejudice of the Indirect Purchaser Class Action or Final Judgment shall be of no force or effect, and the Indirect Purchaser Class Plaintiffs (on behalf of the Indirect Purchaser Settlement Class) shall be entitled have any Final Judgment vacated and have their respective claims alleged in their complaints reinstated as if they had never been dismissed or compromised, with all statutes of limitation deemed tolled between the time of dismissal and re-instatement, and without the need to re-serve any Party

with process. The Settling Parties expressly reserve all of their rights if Final Judgment is not entered in accordance with the terms of this Agreement.

20. Consent to Jurisdiction. The Settling Parties and any IPP Releasing Parties hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of Paragraph 15 or 16, including but not limited to, any suit, action, or proceeding in which the provisions of Paragraph 15 or 16 are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of or relating to this Agreement. In the event that the provisions of Paragraph 15 or 16 are asserted by any Released Party as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Released Party shall be entitled to a stay of that suit, action, or proceeding until the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on such provisions. Solely for purposes of such suit, action, or proceeding, to the fullest extent that they may effectively do so under applicable law, the Settling Parties and any IPP Releasing Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the *in personam* jurisdiction of the Court. Nothing shall be construed as a submission to jurisdiction for any purpose other than enforcement of this Agreement.

21. Class Action Fairness Act. USALCO, at its sole expense, shall submit all materials required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

22. Costs Relating to Administration. Subject to Paragraph 13 above, USALCO shall not have any responsibility or liability relating to the administration, investment, or distribution of the Settlement Funds.

23. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors, assigns, and heirs of the Settling Parties, Indirect Purchaser Settlement Class Members, the IPP Releasing Parties, and the USALCO Released Parties. Without limiting the generality of the foregoing, upon certification of the Indirect Purchaser Settlement Class and Final Approval of the Settlement, each and every covenant and agreement herein by the Indirect Purchaser Class Plaintiffs shall be binding upon all Indirect Purchaser Settlement Class Members and IPP Releasing Parties who have not validly excluded themselves from the Indirect Purchaser Settlement Class.

24. Sole Remedy. This Agreement shall provide the sole and exclusive remedy for any and all Released Claims against any Released Party, and upon entry of Final Judgment, the IPP Releasing Parties shall be forever barred from initiating, asserting, maintaining, or prosecuting any and all Released Claims against any Released Party.

25. Authorization to Enter this Agreement.

- a. The undersigned representatives of USALCO covenant and represent that each such representative is fully authorized to enter into and to execute this Agreement.
- b. Interim IPP Lead Counsel represents that they are fully authorized to conduct settlement negotiations with defense counsel on behalf of the Indirect Purchaser Class Plaintiffs and putative Indirect Purchaser Settlement Class and have been authorized by Indirect Purchaser Class

Plaintiffs to execute this Agreement.

- c. The Settling Parties further acknowledge that this Agreement represents the entire agreement by and between them and that each makes no other representation and warranty upon which the other can rely other than as stated herein.

26. Notices. All notices under this Agreement shall be in writing. Each such notice shall be provided to either by: (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; or (c) Federal Express or similar overnight courier, and, in the case of either (a), (b), or (c) shall be addressed:

If directed to Indirect Purchaser Class Plaintiffs, the Indirect Purchaser Settlement Class, or any Indirect Purchaser Settlement Class Member, to:

Jay B. Shapiro
Stearns Weaver Miller Weissler
Alhadeff & Sitterson, P.A.
Museum Tower
150 West Flagler Street, Suite 2200
Miami, FL 33130

Marvin A. Miller
Miller Law LLC
115 S. LaSalle Street, Suite 2910,
Chicago, IL 60603

If directed to USALCO, to:

William F. Ryan, Jr.
Aaron L. Casagrande
Whiteford, Taylor & Preston L.L.P.
7 Saint Paul Street
Baltimore, MD 21202-1636

or such other address as the Settling Parties may designate, from time to time, by giving notice to all parties hereto in the manner described in this Paragraph.

27. No Admission. Whether or not Final Judgment is entered, or this Agreement is terminated, the Settling Parties expressly agree that this Agreement and its contents, and any and all statements, negotiations, documents, and discussions associated with it, are not and shall not

be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the Settling Parties or any of the USALCO Released Parties. Nothing in this Agreement shall affect the application of Federal Rule of Evidence 408 in any instance where it would otherwise apply.

28. No Third-Party Beneficiaries. No provision of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not a Released Party or Interim IPP Lead Counsel (on behalf of the Indirect Purchaser Settlement Class and with respect to fees and disbursements to be paid from the Settlement Funds pursuant to Court order).

29. No Settling Party is the Drafter. None of the Settling Parties hereto shall be considered to be the drafter of this Agreement, or any provision hereof, for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

30. Choice of Law. All terms of this Agreement and the other documents contemplated herein shall be governed by and interpreted according to the substantive laws of the State of New Jersey, without regard to its choice of law or conflict of laws principles.

31. Amendment and Waiver. This Agreement shall not be modified in any respect except in a writing that is fully executed by the Settling Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Settling Party. The waiver by any Settling Party of any particular breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement. This Agreement does not waive or otherwise limit the Settling Parties' rights and remedies for any breach of this Agreement. Any breach of this Agreement may result in irreparable damage to a Settling Party for which such Settling Party will

not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Settling Parties acknowledge and agree that the Settling Parties may immediately seek enforcement of this Agreement by means of specific performance or injunction, without the requirement of posting a bond or other security.

32. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement. Facsimile or Electronic Mail signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement and filed with the Court.

33. Integrated Agreement. This Agreement (including all Exhibits) comprises the entire, complete, and integrated agreement between the Settling Parties, and supersedes all prior and contemporaneous undertakings, communications, term sheets, representations, understandings, negotiations, and discussions, either oral or written, between the Settling Parties. The Settling Parties agree that this Agreement may be modified only by a written instrument signed by the Settling Parties and that no Settling Party will assert any claim against another based on any alleged agreement affecting or relating to the terms of this Agreement not in writing and signed by the Settling Parties.

34. Voluntary Settlement. The Settling Parties agree that this Agreement and the Settlement were negotiated in good faith by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent counsel and the participation of a neutral mediator, and no Settling Party has entered this Agreement as the result of any coercion or duress.

IN WITNESS WHEREOF, the Settling Parties, individually or through their duly authorized representatives, enter into this Agreement on the date first above written.



Jay B. Shapiro
Stearns Weaver Miller Weissler
Alhadéff & Sitterson, P.A.
Museum Tower
150 West Flagler Street, Suite 2200
Miami, FL 33130



Marvin A. Miller
Miller Law LLC
115 S. LaSalle Street, Suite 2910
Chicago, IL 60603

Interim Lead Counsel for Plaintiffs and Settlement Class



William F. Ryan, Jr.
Whiteford, Taylor & Preston L.L.P.
7 Saint Paul Street
Baltimore, MD 21202-1636

Counsel for USALCO, LLC