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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 , Individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 TYSON FOODS, INC., DONNIE
16 SMITH, and DENNIS LEATHERBY,

17 Defendants.

Case No.

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

19
20 Plaintiff (“Plaintiff”), individually and on behalf of all other
21 persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s
22 complaint against Defendants (defined below), alleges the following based upon
23 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief
24 as to all other matters, based upon, *inter alia*, the investigation conducted by and
25 through Plaintiff’s attorneys, which included, among other things, a review of
26 Defendants’ public documents, conference calls and announcements made by
27 Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire
28 and press releases published by and regarding Tyson Foods, Inc. (“Tyson Foods” or

1 the “Company”), analysts’ reports and advisories about the Company, and information
2 readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support
3 will exist for the allegations set forth herein after a reasonable opportunity for
4 discovery.

5
6 **NATURE OF THE ACTION**

7 1. This is a federal securities class action on behalf of a class consisting of
8 all persons other than Defendants who purchased or otherwise acquired the securities
9 of Tyson Foods between November 23, 2015 and October 7, 2016, both dates inclusive
10 (the “Class Period”). Plaintiff seeks to recover compensable damages caused by
11 Defendants’ violations of the federal securities laws and to pursue remedies under
12 Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”)
13 and Rule 10b-5 promulgated thereunder.

14 **JURISDICTION AND VENUE**

15
16 2. The claims asserted herein arise under and pursuant to §§10(b) and 20(a)
17 of the Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated
18 thereunder by the SEC (17 C.F.R. §240.10b-5).

19 3. This Court has jurisdiction over the subject matter of this action under 28
20 U.S.C. §1331 and §27 of the Exchange Act.

21 4. Venue is proper in this District pursuant to §27 of the Exchange Act (15
22 U.S.C. §78aa) and 28 U.S.C. §1391(b) as the Company conducts business in this
23 District and a significant portion of the Defendants’ actions, and the subsequent
24 damages, took place within this District.

25 5. In connection with the acts, conduct and other wrongs alleged in this
26 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of
27 interstate commerce, including but not limited to, the United States mail, interstate
28 telephone communications and the facilities of the national securities exchange.

PARTIES

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2 6. Plaintiff, as set forth in the accompanying PSLRA Certification,
3 purchased securities of Tyson Foods at artificially inflated prices during the Class
4 Period and was damaged upon the revelation of the alleged corrective disclosures.

5 7. Defendant Tyson Foods, together with its subsidiaries, operates as a food
6 company worldwide. The Company operates through four segments: Chicken, Beef,
7 Pork, and Prepared Foods. The Company raises and processes chickens into fresh,
8 frozen, and value-added chicken products; processes live fed cattle and live market
9 hogs; and fabricates dressed beef and pork carcasses into primal and sub-primal meat
10 cuts, as well as case ready beef and pork, and fully-cooked meats. The Company is
11 incorporated in Delaware with principal executive offices located at 2200 West Don
12 Tyson Parkway, Springdale, Arkansas. The Company is registered to do business
13 within the state of California and its registered agent is located in Los Angeles,
14 California. Tyson Foods Class A common stock is traded on the New York Stock
15 Exchange (“NYSE”) under the ticker symbol “TSN”.

16 8. Defendant Donnie Smith (“Smith”) has served as the Chief Executive
17 Officer (“CEO”) of Tyson Foods since November 2009. Defendant Smith served as the
18 President of Tyson Foods from November 2009 until June 13, 2016.

19 9. Defendant Dennis Leatherby (“Leatherby”) has been the Chief Financial
20 Officer (“CFO”) and Executive Vice President of Tyson Foods since June 2008.

21 10. Defendants Smith and Leatherby are sometimes referred to herein as the
22 “Individual Defendants.”

23 11. Each of the Individual Defendants:

- 24 (a) directly participated in the management of the Company;
25 (b) was directly involved in the day-to-day operations of the Company at the
26 highest levels;

- 1 (c) was privy to confidential proprietary information concerning the
2 Company and its business and operations;
- 3 (d) was directly or indirectly involved in drafting, producing, reviewing
4 and/or disseminating the false and misleading statements and information
5 alleged herein;
- 6 (e) was directly or indirectly involved in the oversight or implementation of
7 the Company's internal controls;
- 8 (f) was aware of or recklessly disregarded the fact that the false and
9 misleading statements were being issued concerning the Company; and/or
- 10 (g) approved or ratified these statements in violation of the federal securities
11 laws.

12 12. Tyson Foods is liable for the acts of the Individual Defendants and its
13 employees under the doctrine of *respondeat superior* and common law principles of
14 agency because all of the wrongful acts complained of herein were carried out within
15 the scope of their employment.

16 13. The scienter of the Individual Defendants and other employees and agents
17 of the Company is similarly imputed to Tyson Foods under *respondeat superior* and
18 agency principles.

19 14. Defendant Tyson Foods and the Individual Defendants are referred to
20 herein, collectively, as the "Defendants."

21 **SUBSTANTIVE ALLEGATIONS**

22 **Materially False and Misleading Statements**

23

24 15. On November 23, 2015, the Company filed a Form 10-K for the fiscal
25 year ended October 3, 2015 (the "2015 10-K") with the SEC, which provided the
26 Company's year-end financial results and position and stated that the Company's
27 internal control over financial reporting and disclosure controls and procedures were
28 effective as of October 3, 2015. The 2015 10-K was signed by Defendant Leatherby

1 and Smith. The 2015 10-K also contained signed certifications pursuant to the
2 Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants Leatherby and Smith attesting to
3 the accuracy of financial reporting, the disclosure of any material changes to the
4 Company’s internal control over financial reporting, and the disclosure of all fraud.

5 16. The 2015 10-K discussed the strategies utilized by Tyson Foods to
6 compete with its competitors for a leading market position for its food products, stating
7 in pertinent part :

8 **COMPETITION**
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10 Our food products compete with those of other food producers and
11 processors and certain prepared food manufacturers. Additionally, our
12 food products compete in markets around the world.

13 We seek to achieve a leading market position for our products via our
14 principal marketing and competitive strategy, which includes:

- 15 • identifying target markets for value-added products;
- 16 • concentrating production, sales and marketing efforts to appeal to
17 and enhance demand from those markets; and
- 18 • utilizing our national distribution systems and customer support
19 services.

20 Past efforts indicate customer demand can be increased and sustained
21 through application of our marketing strategy, as supported by our
22 distribution systems. The principal competitive elements are price,
23 product safety and quality, brand identification, innovation, breadth and
24 depth of product offerings, availability of products, customer service and
25 credit terms.

26 * * *

27 Our results of operations and financial condition, as well as the selling
28 prices for our products, are dependent upon the cost and supply of
commodities and raw materials such as pork, beef, poultry, corn, soybean,

1 packaging materials and energy and, to a lesser extent, cheese, fruit,
2 seasoning blends, flour, corn syrup, corn oils, butter and sugar. Corn,
3 soybean meal and other feed ingredients, for instance, represented roughly
4 64% of our cost of growing a live chicken in fiscal 2015. ***Production and***
5 ***pricing of these commodities are determined by constantly changing***
6 ***market forces of supply and demand over which we have limited or no***
7 ***control.***

8 * * *

9 ***The prices we receive for our products may fluctuate due to competition***
10 ***from other food producers and processors.***

11 The food industry in general is intensely competitive. We face
12 competition from other food producers and processors that have various
13 product ranges and geographic reach. Some of the factors on which we
14 compete include: pricing, product safety and quality, brand identification,
15 innovation, breadth and depth of product offerings, availability of our
16 products and competing products, customer service, and credit terms.

17 From time to time in response to these competitive pressures or to
18 maintain market share, we may need to reduce the prices for some of our
19 products...

20 [Emphasis added].

21 17. The statements referenced in ¶¶ 15 – 16 above were materially false and/or
22 misleading because they misrepresented and failed to disclose the following adverse
23 facts pertaining to the Company’s business, operational and financial results, which
24 were known to Defendants or recklessly disregarded by them. Specifically, Defendants
25 made false and/or misleading statements and/or failed to disclose that: (1) since 2008,
26 Tyson Foods has colluded with the country’s leading poultry producers to manipulate
27 the supply of broiler-chickens in order to keep the price of broiler-chickens artificially
28 high; (2) from 2013-2016, Tyson Foods exported hatching eggs to Mexico and other
foreign countries to artificially reduce the supply of broiler-chickens in the U.S. and to

1 increase the price of broiler-chickens in the U.S.; (3) in turn, Tyson Foods lacked
2 effective internal control over financial reporting; and (4) as a result, Tyson Foods’
3 public statements were materially false and misleading at all relevant times.

4 The Truth Emerges

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6 18. On September 2, 2016, Law360 published an article titled “Poultry
7 Producers Hit With Chicken Price Antitrust Suit” stating that Maplevale Farms, one of
8 the country’s leading poultry producers, has brought a federal class action antitrust
9 lawsuit (the “Maplevale Suit”¹) against Tyson Foods and the country’s top poultry
10 producers, alleging that, since 2008, they conspired to manipulate the supply of broiler-
11 chickens in order to keep the price of broiler-chickens artificially high, stating in
12 pertinent part:

13 **Poultry Producers Hit With Chicken Price Antitrust Suit**

14
15 By Eric Kroh

16 Law360, New York (September 2, 2016, 5:13 PM EDT) -- Food
17 distributor Maplevale Farms on Friday filed a proposed class action in
18 Illinois against Tyson Foods, Pilgrim’s Pride and several other poultry
19 producers alleging they conspired to fix chicken prices.

20 The poultry producers manipulated the price of so-called broiler chickens
21 by coordinating and limiting production and exchanged detailed
22 information about prices, capacity and sales volume through data
23 compiler Agri Stats Inc., also named as a defendant in the suit, Maplevale
24 Farms Inc. said.

25 “Defendants knew and intended that their coordinated limitation and
26 reduction in Broiler supply would artificially increase all Broiler prices —
27 for spot market and contract sales — above the level they would have been
28 absent the conduct alleged,” Maplevale farms said.

¹ The Maplevale Suit is styled as *Maplevale Farms, Inc. v. Koch Foods, Inc. et al.*,
Docket No. 1:16-cv-08637 (N.D. Ill. Sept 02, 2016).

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2 19. The Maplevale Suit alleges, among other things, that contrary to Tyson
3 Foods “independent economic self-interest”, Tyson Foods “exported hatching eggs to
4 Mexico and other foreign countries from 2013-2016 to artificially reduce the supply of
5 Broilers in the U.S. and increase the price of Broilers in the U.S.”

6 20. The Maplevale Suit also alleges that despite lowering its chicken
7 production in 2015, Tyson Foods posted “record earnings and sales in fiscal year
8 2015...posting \$40.6 billion in sales, including ringing up higher chicken sales.” The
9 Maplevale Suit alleges that “the explanation for Tyson’s ‘paradoxical’ 2015
10 performance—including increasing its Broiler profits but lowering its Broiler
11 production—was the result of the illegal conspiracy alleged in this Complaint.”

12 21. On this news, shares of Tyson Foods fell \$1.16 per share over two trading
13 days to close at \$75.28 per share on September 7, 2016, damaging investors.

14 22. On October 7, 2016, Pivotal Research issued a report (the “Pivotal
15 Research Report”) downgrading Tyson Foods to “sell” from “buy,” and slashing its
16 price target from \$100 to \$40. The Pivotal Research Report noted that the Maplevale
17 Suit is a “powerfully convincing class-action” and that if the allegations therein are
18 true, “[i]t explains why Tyson can offer EPS guidance with remarkable precision;
19 boasting of margins at record levels well into the future. The Tyson of old did not
20 provide guidance. We believe the consistent setting and meeting of earnings targets has
21 been a major factor in the positive re-rating of the shares.”

22 23. On this news, shares of Tyson Foods fell \$6.63 per share or over 8% from
23 its previous closing price to close at \$67.75 per share on October 7, 2016, further
24 damaging investors.

25 24. As a result of Defendants’ wrongful acts and omissions, and the
26 precipitous decline in the market value of the Company’s securities, Plaintiff and other
27 Class members have suffered significant losses and damages.

28

PLAINTIFF’S CLASS ACTION ALLEGATIONS

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2 25. Plaintiff brings this action as a class action pursuant to Federal Rule of
3 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
4 purchased or otherwise acquired Tyson Foods securities traded on the NYSE during
5 the Class Period (the “Class”); and were damaged upon the revelation of the alleged
6 corrective disclosures. Excluded from the Class are Defendants herein, the officers and
7 directors of the Company, at all relevant times, members of their immediate families
8 and their legal representatives, heirs, successors or assigns and any entity in which
9 Defendants have or had a controlling interest.

10 26. The members of the Class are so numerous that joinder of all members is
11 impracticable. Throughout the Class Period, Tyson Foods securities were actively
12 traded on the NYSE. While the exact number of Class members is unknown to Plaintiff
13 at this time and can be ascertained only through appropriate discovery, Plaintiff
14 believes that there are hundreds or thousands of members in the proposed Class. Record
15 owners and other members of the Class may be identified from records maintained by
16 Tyson Foods or its transfer agent and may be notified of the pendency of this action by
17 mail, using the form of notice similar to that customarily used in securities class actions.

18 27. Plaintiff’s claims are typical of the claims of the members of the Class as
19 all members of the Class are similarly affected by Defendants’ wrongful conduct in
20 violation of federal law that is complained of herein.

21 28. Plaintiff will fairly and adequately protect the interests of the members of
22 the Class and has retained counsel competent and experienced in class and securities
23 litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

24 29. Common questions of law and fact exist as to all members of the Class
25 and predominate over any questions solely affecting individual members of the Class.
26 Among the questions of law and fact common to the Class are:
27
28

- 1 • whether the federal securities laws were violated by Defendants' acts as
2 alleged herein;
- 3 • whether statements made by Defendants to the investing public during the
4 Class Period misrepresented material facts about the financial condition,
5 business, operations, and management of Tyson Foods;
- 6 • whether Defendants' public statements to the investing public during the
7 Class Period omitted material facts necessary to make the statements
8 made, in light of the circumstances under which they were made, not
9 misleading;
- 10 • whether the Individual Defendants caused Tyson Foods to issue false and
11 misleading SEC filings and public statements during the Class Period;
- 12 • whether Defendants acted knowingly or recklessly in issuing false and
13 misleading SEC filings and public statements during the Class Period;
- 14 • whether the prices of Tyson Foods securities during the Class Period were
15 artificially inflated because of the Defendants' conduct complained of
16 herein; and
- 17 • whether the members of the Class have sustained damages and, if so, what
18 is the proper measure of damages.

19 30. A class action is superior to all other available methods for the fair and
20 efficient adjudication of this controversy since joinder of all members is impracticable.
21 Furthermore, as the damages suffered by individual Class members may be relatively
22 small, the expense and burden of individual litigation make it impossible for members
23 of the Class to individually redress the wrongs done to them. There will be no difficulty
24 in the management of this action as a class action.

25 31. Plaintiff will rely, in part, upon the presumption of reliance established by
26 the fraud-on-the-market doctrine in that:

- 27 • Defendants made public misrepresentations or failed to disclose material
28 facts during the Class Period;

- 1 • the omissions and misrepresentations were material;
- 2 • Tyson Foods securities are traded in efficient markets;
- 3 • the Company's securities were liquid and traded with moderate to heavy
- 4 volume during the Class Period;
- 5 • the Company traded on the NYSE, and was covered by multiple analysts;
- 6 • the misrepresentations and omissions alleged would tend to induce a
- 7 reasonable investor to misjudge the value of the Company's securities;
- 8 and
- 9 • Plaintiff and members of the Class purchased and/or sold Tyson Foods
- 10 securities between the time the Defendants failed to disclose or
- 11 misrepresented material facts and the time the true facts were disclosed,
- 12 without knowledge of the omitted or misrepresented facts.

13 32. Based upon the foregoing, Plaintiff and the members of the Class are
14 entitled to a presumption of reliance upon the integrity of the market.

15 33. Alternatively, Plaintiff and the members of the Class are entitled to the
16 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of*
17 *the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants
18 omitted material information in their Class Period statements in violation of a duty to
19 disclose such information, as detailed above.

20 **COUNT I**

21 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**
22 **Against All Defendants**

23
24 34. Plaintiff repeats and realleges each and every allegation contained above
25 as if fully set forth herein.

26 35. This Count is asserted against Tyson Foods and the Individual Defendants
27 and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule
28 10b-5 promulgated thereunder by the SEC.

1 36. During the Class Period, Tyson Foods and the Individual Defendants,
2 individually and in concert, directly or indirectly, disseminated or approved the false
3 statements specified above, which they knew or deliberately disregarded were
4 misleading in that they contained misrepresentations and failed to disclose material
5 facts necessary in order to make the statements made, in light of the circumstances
6 under which they were made, not misleading.

7 37. Tyson Foods and the Individual Defendants violated §10(b) of the 1934
8 Act and Rule 10b-5 in that they:

- 9 • employed devices, schemes and artifices to defraud;
- 10 • made untrue statements of material facts or omitted to state material facts
11 necessary in order to make the statements made, in light of the
12 circumstances under which they were made, not misleading; or
- 13 • engaged in acts, practices and a course of business that operated as a fraud
14 or deceit upon plaintiff and others similarly situated in connection with
15 their purchases of Tyson Foods securities during the Class Period.

16 38. Tyson Foods and the Individual Defendants acted with scienter in that
17 they knew that the public documents and statements issued or disseminated in the name
18 of Tyson Foods were materially false and misleading; knew that such statements or
19 documents would be issued or disseminated to the investing public; and knowingly and
20 substantially participated, or acquiesced in the issuance or dissemination of such
21 statements or documents as primary violations of the securities laws. These defendants
22 by virtue of their receipt of information reflecting the true facts of Tyson Foods, their
23 control over, and/or receipt and/or modification of Tyson Foods allegedly materially
24 misleading statements, and/or their associations with the Company which made them
25 privy to confidential proprietary information concerning Tyson Foods, participated in
26 the fraudulent scheme alleged herein.

27 39. Individual Defendants, who are the senior officers and/or directors of the
28 Company, had actual knowledge of the material omissions and/or the falsity of the

1 material statements set forth above, and intended to deceive Plaintiff and the other
2 members of the Class, or, in the alternative, acted with reckless disregard for the truth
3 when they failed to ascertain and disclose the true facts in the statements made by them
4 or other Tyson Foods personnel to members of the investing public, including Plaintiff
5 and the Class.

6 40. As a result of the foregoing, the market price of Tyson Foods' securities
7 was artificially inflated during the Class Period. In ignorance of the falsity of Tyson
8 Foods' and the Individual Defendants' statements, Plaintiff and the other members of
9 the Class relied on the statements described above and/or the integrity of the market
10 price of Tyson Foods securities during the Class Period in purchasing Tyson Foods
11 securities at prices that were artificially inflated as a result of Tyson Foods' and the
12 Individual Defendants' false and misleading statements.

13 41. Had Plaintiff and the other members of the Class been aware that the
14 market price of Tyson Foods securities had been artificially and falsely inflated by
15 Tyson Foods' and the Individual Defendants' misleading statements and by the
16 material adverse information which Tyson Foods' and the Individual Defendants did
17 not disclose, they would not have purchased Tyson Foods' securities at the artificially
18 inflated prices that they did, or at all.

19 42. As a result of the wrongful conduct alleged herein, Plaintiff and other
20 members of the Class have suffered damages in an amount to be established at trial.

21 43. By reason of the foregoing, Tyson Foods and the Individual Defendants
22 have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder
23 and are liable to the Plaintiff and the other members of the Class for substantial
24 damages which they suffered in connection with their purchase of Tyson Foods'
25 securities during the Class Period.

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1 **COUNT II**

2 **Violation of Section 20(a) of The Exchange Act**
3 **Against The Individual Defendants**

4 44. Plaintiff repeats and realleges each and every allegation contained in the
5 foregoing paragraphs as if fully set forth herein.

6 45. During the Class Period, the Individual Defendants participated in the
7 operation and management of Tyson Foods, and conducted and participated, directly
8 and indirectly, in the conduct of Tyson Foods' business affairs. Because of their senior
9 positions, they knew the adverse non-public information regarding Tyson Foods'
10 business practices.

11 46. As officers and/or directors of a publicly owned company, the Individual
12 Defendants had a duty to disseminate accurate and truthful information with respect to
13 Tyson Foods' financial condition and results of operations, and to correct promptly any
14 public statements issued by Tyson Foods which had become materially false or
15 misleading.

16 47. Because of their positions of control and authority as senior officers, the
17 Individual Defendants were able to, and did, control the contents of the various reports,
18 press releases and public filings which Tyson Foods disseminated in the marketplace
19 during the Class Period. Throughout the Class Period, the Individual Defendants
20 exercised their power and authority to cause Tyson Foods to engage in the wrongful
21 acts complained of herein. The Individual Defendants therefore, were "controlling
22 persons" of Tyson Foods within the meaning of Section 20(a) of the Exchange Act. In
23 this capacity, they participated in the unlawful conduct alleged which artificially
24 inflated the market price of Tyson Foods securities.

25 48. Each of the Individual Defendants, therefore, acted as a controlling person
26 of Tyson Foods. By reason of their senior management positions and/or being directors
27 of Tyson Foods, each of the Individual Defendants had the power to direct the actions
28

1 of, and exercised the same to cause, Tyson Foods to engage in the unlawful acts and
2 conduct complained of herein. Each of the Individual Defendants exercised control
3 over the general operations of Tyson Foods and possessed the power to control the
4 specific activities which comprise the primary violations about which Plaintiff and the
5 other members of the Class complain.

6 49. By reason of the above conduct, the Individual Defendants are liable
7 pursuant to Section 20(a) of the Exchange Act for the violations committed by Tyson
8 Foods.

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

12 A. Determining that the instant action may be maintained as a class action
13 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the
14 Class representative;

15 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class
16 by reason of the acts and transactions alleged herein;

17 C. Awarding Plaintiff and the other members of the Class prejudgment and
18 post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other
19 costs; and

20 D. Awarding such other and further relief as this Court may deem just and
21 proper.

22 **DEMAND FOR TRIAL BY JURY**

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24 Plaintiff hereby demands a trial by jury.
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Dated:

Respectfully submitted,

THE ROSEN LAW FIRM, P.A.

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