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TRANSLATION Nº 374/2019

I, the undersigned Sworn Public Translator and Commercial Interpreter, registered under nr. 168 with the Board of Trade of the State of Rio de Janeiro (JUCERJA), Federative Republic of Brazil, and under tax nr. (CPF/MF) 735.052.187-15 with the Ministry of Finance, do hereby certify that a document written in Portuguese has been submitted to me for translation into English, which I undertake in my official capacity, as follows:

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# 5105535-91.2019.4.02.5101

Cover: **Part 1**

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**Galdino e Coelho**  
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The Honorable Federal Judge of the \_\_\_<sup>th</sup> Federal Court of the Judiciary Section of the State of Rio de Janeiro

**MAURICIO JORGE PEREIRA DA MOTA**, Brazilian, married, Lawyer, member of the Brazilian Bar Association Rio de Janeiro Chapter OAB/ RJ under nº 83.845 Individual Taxpayer CPF/ME Number 795.458.587-53, voter's card Nº. 0032.0602.0353, fully vested in his political rights, with domicile in this city at Praça Mahatma Gandhi, Nº. 2, grupo 613/615, Centro, 20.031-100 (Doc. 1), through his lawyers (Doc. 2), under art. 5, LXXIII of the

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Federal Constitution ("CRFB") and Law No. 4,717 / 65 ("Law of Citizen  
Lawsuits"), brings the present

**CITIZEN LAWSUIT**

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Case 5105535-91.2019.4.02.5101/ RJ, Event 1, INIC1, Page 2

**Galdino e Coelho**

**Advogados**

against (i) **JOESLEY MENDONÇA BATISTA** ("Joesley"), Brazilian, married, businessman, Individual Taxpayer CPF Number 376.842.211-91, with business address at Av. Marginal Direita Tietê, Nº. 500, bloco 1, 1º andar, Vila Jaraguá, Sao Paulo / SP, unknown email address; (ii) **WESLEY MENDONÇA BATISTA** ("Wesley" and, when mentioned together with his brother Joesley, "the Batista brothers"), Brazilian, married, businessman, Individual Taxpayer CPF Number 364.873.921-20, with business address at Av. Marginal Direita Tietê, Nº. 500, bloco 1, 1º andar, Vila Jaraguá, Sao Paulo / SP, unknown email address; (iii) **JBS S.A.** ("JBS"), Corporate Taxpayer CNPJ Number 02.916.265/0001-60, with address at Av. Marginal Direita do Tietê, Nº. 500, bloco 1, 3º andar, Vila Jaraguá, Sao Paulo / SP, 04.617-004, unknown email address; (iv) **J&F INVESTIMENTOS S.A.** ("J&F Investimentos"), Corporate Taxpayer CNPJ Number 00.350.763/0001-62, with address at Av. Marginal Direita do Tietê, Nº. 500, Vila Jaraguá, Sao Paulo / SP, 05.118-100, unknown email address; and, in the capacity of state institutions victims of illegal acts committed by the first Defendants. (v) **BANCO NACIONAL DE DESENVOLVIMENTO ECONÔMICO E SOCIAL** ("BNDES"), a federal state company, Corporate Taxpayer CNPJ Number, 33.657.248/0001-89 with address at Avenida República do Chile, Nº 100, Rio de Janeiro / RJ, 20.031-917, unknown email address; and (vi) **BNDES PARTICIPAÇÕES S.A. - BNDESPAR** ("BNDESPar"), a corporation with Corporate Taxpayer CNPJ Number, with address at Avenida República do Chile, nº. 100, parte, 20.031-91, unknown email address (Doc. 3), for the following facts and legal grounds:

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THIS ACTION SEEKS:  
MEETING SOCIETY'S EXPECTATIONS THAT CRIMES SHOULD NOT PAY

1. Joesley and Wesley Mendonça Batista, as well as Ricardo Saud,

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have already confessed in their statements provided under their notorious plea agreements entered into with the Federal Prosecutor Office ("MPF") that it was through corruption of public officials that they managed to obtain loans and capital contributions of government funds reaching billions of reais so that they could expand their own businesses, especially protein processing and distributing via JBS (Doc. 4).

2. Although these funds came mostly from BNDES and BNDESPar, not a penny has been reverted to the benefit of the country: the billions contributed by these state institutions in operations involving the confessed payment of kickbacks, served the sole interests of the Batista Brothers in expanding JBS' operations worldwide.
3. Almost two and a half years after they turned state evidence, when their past illegal practices and consequent losses started to surface, it is surprising to find that the harm caused to the BNDES System under these operations has not been repaired. Worse: it is outrageous that BNDES and BNDESPar have not sought reparation of the losses inflicted.
4. As clearly demonstrated throughout this complaint, due to breaches in three (3) capital contribution operations carried out at JBS identified by the Federal Court of Accounts (TCU) and the Brazilian Parliament<sup>1</sup>,

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BNDESPar was prevented from receiving approximately 130 million shares in the Company. More precisely, a total of one hundred and thirty one million, three hundred and sixty-eight thousand, three hundred and seventy-six (131,368,376) shares were not transferred to BNDESPar.

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<sup>1</sup> The losses were also identified during the "Parliamentary Inquiry Committee (CPI) created to investigate unlawful practices and breaches in connection with BNDES relating to the internationalization of Brazilian companies between 2003 and 2015 (BNDES CPI). The work of the Committee has been recently concluded and publicized in a detailed report (BNDES CPI Report – Doc. 5).

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5. Considering the price of R\$ 25.88 per share, verified at the closing of yesterday's trading session (Dec. 18 2019), only the losses resulting from this underpayment corresponds to three billion, three hundred and ninety-nine million, eight hundred and thirteen thousand, five hundred and seventy reais and eighty-eight cents (**R\$ 3,399,813,570.88**). Obviously, one should add to this figure the amounts corresponding to the dividends and to the interests on equity that BNDESPar has failed to receive from JBS (and failed to pass on to its controlling shareholder BNDES) over the past few years.
6. An outrageous, intolerable situation still remains today, in which the Brazilian Treasury has been inflicted double harm: first, for having served a company whose controlling shareholders are confessed, corrupt and corrupting criminals, who have expanded and continue to expand their business around the world at the expense of public money obtained through confessed payment of kickbacks; Secondly, for the fact that the harm caused to the BNDES System has not been properly repaired to this day.
7. This is the distress underlying the present citizen lawsuit: the confessed criminals, after having admitted to hundreds of acts of corruption, simply cannot continue to dodge their duty to fully repair the losses inflicted to BNDES and BNDESPar.
8. Thus, the primary objective of the present lawsuit is to put an end to this situation that so challenges Democracy and the Rule of Law. It is requested that the losses identified by the TCU and by BNDES CPI in the three (3) operations motivated by confessed acts of corruption be duly compensated by sentencing

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the Batista Brothers, JBS and J&F Investimentos to jointly reimburse the damage they have caused.

EXPECTED CONDUCT OF BNDES AND BNDESPAR:  
ACTING ALONGSIDE THE CITIZEN SUIT AS PLAINTIFF

9. The Defendants of this citizen lawsuit include state institutions

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that have been harmed by the acts of corruption perpetrated by the Batista Brothers and JBS, namely BNDES and BNDESPar whose inaction so far is outrageous.

10. The inclusion of these institutions as defendants is justified with grounds on art. 6, lead paragraph, of the Citizen Lawsuit Act<sup>2</sup>, not only because they contributed with government funds to JBS against the payment of kickbacks to the government officials involved, but above all, because they were directly harmed by the other Defendants.

11. However, considering that BNDES and BNDESPar were victims of the Batista Brothers, the conduct expected of these state institutions (and their new management) is that they act alongside the Plaintiff - and never alongside confessing criminals - pursuant to § 3 of art. 6 of the Citizen Lawsuit Act:

"Paragraph 3. A legal entity governed by public law or private law, whose act is under challenge, may refrain from contesting the request, or may act alongside the plaintiff, provided that this is useful to public interest, at the discretion of the legal representative or officer " (our emphasis)

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12. After all, the acts of corruption having been made public, it is shocking that currently after the changes made to the governing bodies by the new Federal Administration, BNDES and BNDESPar still act alongside the Batista Brothers and JBS in the defense of the operations admittedly entered into as a result of corruption and which caused harm to the BNDES System, as already acknowledged by The Federal Court of Accounts and the Brazilian Parliament.

13. The inevitable question is: what drives BNDES and BNDESPar to

<sup>2</sup> Art. 6 The lawsuit shall be brought against public or private persons and the entities referred to in art. 1, against the authorities, employees or officers who have authorized, approved, ratified or practiced the contested act, or who, by omission, have given rise to the harm, and against the direct beneficiaries thereof.



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remain in omission and not seek reparation of losses inflicted by confessed criminals? Why is BNDES, as the victim, not following the positive example of Petrobras that has been acting as assistant to the prosecution in criminal cases related to the Car Wash operation and has filed suits for damages against the perpetrators of the crimes that have caused harm to the company?

14. Thus, the Plaintiff trusts that, pursuant to § 3 of art. 6 of the Citizen Lawsuit Act, BNDES and BNDESPar will express their interest in migrating to the prosecution side of the lawsuit and shall act alongside the Plaintiff by taking the necessary steps so that the harm caused to them by the Batista Brothers and their companies can finally be compensated.

15. Otherwise, BNDES and BNDESPar shall be treated as Defendants, the Plaintiff in the present Citizen Lawsuit reserving the right to amend the complaint to include other individuals or companies that, by action or omission, have caused harm, or committed the crime of omission by being in breach of the duty to act in seeking reparation. In case this undesirable hypothesis is confirmed, such persons shall have to explain the reasons why they are in breach of such fiduciary obligation as to safeguard the interests of the BNDES System by insisting on remaining unduly silent in seeking compensation for the losses identified by The Federal Court of Accounts and the Brazilian Parliament.

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THE GROUNDS FOR THE CITIZEN LAWSUIT  
DEMOCRATIC MEANS OF PROTECTION OF THE RES PUBLICA

16. Corollary of the Democratic State of Law based on the premise that "all power emanates from the people" (art. 1, single paragraph, CRFB - Constitution of the Federative Republic of Brazil), the Citizen Lawsuit is the instrument that gives effectiveness to the right of every citizen to participate actively in the supervision of the management of the public matter through the Judiciary. In simple terms, Citizen Lawsuit is an expression of popular sovereignty.

17. By means of a Citizen Lawsuit, the plaintiff in question as

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well as any other citizen are granted the legitimacy to plead for enforcing the critical prevention and cracking down on immorality and to make possible the reparation of the harm inflicted on the public wealth - which is, indeed, the object of the present legal action.

18. The Citizen Lawsuit is therefore a clear instrument for the promotion of democracy (as it is based on it), and in such cases as the present, it contributes to the struggle against endemic corruption of government officials and elected political representatives as well as against misappropriation of public funds. The justification of the citizen Lawsuit could not be clearer.

19. After having demonstrated the admissibility and relevance of the present lawsuit, the immoral and harmful facts perpetrated against the Brazilian Treasury that led to filing this action are listed below.

WHO THE PRIVATE DEFENDANTS ARE AND  
WHAT THEY HAVE CONFESSED TO HAVING DONE

20. It is worth remembering that we are referring to the brothers Joesley and Wesley Batista, the businessmen whose true expertise, beyond processing animal protein or any other activity, is undoubtedly corrupting government officials.

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21. It is also worth recalling that in the depositions collected under their plea agreements, they admitted to have corrupted over the years no less than one thousand, eight hundred and twenty-nine (1,829) political candidates<sup>3</sup> - the detailed list of the kickbacks paid out, including amounts and values, government officials as well as receiving political parties, is recorded in the statement provided by Ricardo Saud, former executive of the J&F Investimentos group and who operated most illegal payments:

<sup>3</sup> The video of this excerpt from Ricardo Saud's deposition as part of his plea agreement is available from Jornal o Globo at <https://oglobo.globo.com/brasil/delator-diz-que-dinheiro-da-jbs-irrigou-1892-candidatos-de-28-partidos-21366155> access on this date.





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"It is important for us to understand that of the R\$ 500 million, actually, almost R\$ 600 million we are talking about here, basically, if we take these R\$ 10, R\$ 15 million out here, the rest is all kickbacks. Everything has an administrative act, a promise, everything has something. So I would like to point out for the record that this is what we did: we donated kickbacks to 28 parties. The money was split up to 1,829 candidates. 179 elected state politicians in 23 different states. Federal congressman elected: 167 federal congressmen from 19 parties. We paid kickbacks to 28 senators of the Republic, some of whom ran and lost the elections for governor and some ran for reelection or election to the Senate. And we paid kickbacks to 16 elected governors, four from PMDB, four from PSDB, three from PT, two from PSB, one from PP, one from PSD. This was a study that I carried out myself, out of my own initiative (...) I think this can be useful in the future, here are all the people who received kickbacks either directly or indirectly from us. "

22. The funds used by the Batista Brothers and their companies to pay kickbacks to government officials, as explained by Ricardo Saud, originated from the regular sales of products to consumers paid in cash:

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"That the JF Group's cash-generating gear in various regions of Brazil consisted of using cash from legitimate sales to clients for payment of such kickbacks also in cash."

(State Evidence Nº 20 of Ricardo Saud Plea Agreement - **Doc. 6**)

23. Thus, by keeping government officials on their payroll, the Batista Brothers confessed to being able to conceive ways of defending their ill-intended interests within government companies of critical importance for the functioning of the economy, such as the Securities and Exchange Commission ("CVM") and the Administrative Council for Economic Defense ("CADE"), as

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well as in the company Vale S.A.. In this regard, find below the following excerpts from Joesley deposition under his plea agreement:

"that the question of CADE is the Bolivian gas, under PETROBRAS monopoly, which is not in the interest of the deponent as he needs to use fuel in a thermal power plant in the State of Mato Grosso; that RODRIGO said it out loud to a member of CADE, not sure I got the name right GILVANDRO: that it was clear to the deponent that the issue was going to see progress"

"that he also told RODRIGO of the need to have a President aligned with the government's interest (sic) in the Securities and Exchange Commission CVM; that RODRIGO phoned a CVM secretary before the deponent but failed to make progress, demonstrating not to have the same relationship as with the CADE board member"

"that in this context he spoke to AÉCIO who knew that he would appoint the president of Vale do Rio Doce; that the deponent said that he wanted ALDEMIR BENDINE, 'DIDA' for Vale: that the appointment of Bendine would solve the problem of the R\$ 40 million requested by ANDRÉA NEVES; that AÉCIO said he had already indicated another person whose name he could not disclose, but nevertheless, AÉCIO said that the deponent could choose any of the other four officers".

(Deposition Nº. 2 Joesley Plea agreement - **Doc. 7**)

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24. With their kickbacks, the Batista Brothers were even able to commission the passing of laws to benefit them, such as the payroll tax relief for the poultry industry. On this subject, find below the following excerpt from Joesley plea deal:

"At the time, Eduardo Cunha explained to Joesley Batista a topic was about to be dealt with in the House of Representatives agenda: to renew the payroll tax exemption and asked for 20 million in kickbacks for the poultry industry to maintain its exemption, claiming that he needed to distribute the money to other federal congressmen. Joesley Batista accepted, and the exemption was approved. "

(Annex 1 to Joesley plea Agreement - **Doc. 8**)

25. As the Batista Brothers lack of scruples knows no limits, even under their plea deals they could not help but be just as opportunistic. In this regard, it is recalled that the Batista Brothers are accused, in a complaint filed by the Federal Prosecution Office (**Doc. 9**), of having practiced insider trading and of manipulating the foreign exchange markets by utilizing inside information to their benefit when the content of their plea agreements were to be disclosed. (*rectius*: information leak to the press by themselves) thereby profiting from the exchange rate (given the devaluation of the Brazilian Real) and the trading JBS shares (which of course also depreciated after the plea deal leaks).

26. The omission of information about past crimes and the perpetration of new offenses after entering into the plea agreements substantiated the decisions whereby the Federal Prosecution Office terminated the plea agreements of the Batista Brothers and others. In this regard, see the final arguments recently presented by the Office of the Attorney General before the Federal Supreme Court in the records of the Pet 7003, in which the Office of the Attorney General reiterated the request

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for the approval of the decisions terminating the agreements  
(**Doc. 10**).

27. Like the Batista brothers, JBS needs no introduction: it is the largest producer of animal protein in the world, a position achieved for having been chosen under the (supposed) government policy of fostering

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large companies in specific industries, the so-called "national champions", to compete on a global scale. Today it is known that JBS was a national champion feeding on kickback fat ...

28. Finally, J&F Investimentos is the holding company of the group and the main control vehicle of the Batista Brothers in the other invested companies, which include, in addition to JBS itself, Flora (domestic cleaning and personal hygiene), Eldorado Brasil (pulp), Banco Original (financial institution) and Canal Rural (TV station).

J&F Investimentos is signatory to the leniency agreement entered into with the Federal Prosecution Office (**Doc. 11**), dealt with below.

29. These are the people who, despite having confessed to paying (themselves or via lobbyists / agents) kickbacks to more than 1,800 government officials, have so far managed to avoid fully repairing the harm caused to BNDES and BNDESPar. This situation, obviously, cannot last.

IDENTIFICATION OF OPERATIONS AND LOSSES CAUSED

30. There is no doubt that JBS owes its multinational footprint to the billions in public funds that have been contributed by the BNDES System. If today JBS can boast on its website<sup>4</sup> that "it is one of the global leaders in the food industry", that it is "present in 16 countries" and that the American brands Swift and

<sup>4</sup> <https://jbs.com.br/sobre/>. access on this date.



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Pilgrim's make up their "diversified portfolio", it is because it was the public funds contributed by the BNDES System, and not their own, which allowed the business to thrive.

31. The heart of the matter is: the billion dollar contributions were made because BNDES and BNDESPar rely so heavily and blindly on the management of the Batista Brothers at the head of JBS and because they understand that there would be public interest in expanding their business to other countries? Or was it because the Batista Brothers, themselves or via

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agents or their companies, paid kickbacks to certain influential people with decision-making power over BNDES and BNDESPar, in order to ensure the funneling of contributions from public funds?

32. It is precisely because the Batista Brothers have already confessed to the second alternative that this legal action has been filed. In fact, JBS's breakneck growth stemmed less from the Batista Brothers entrepreneurial skills, and more from their ability and lack of limits in fostering the corruption of government officials to use the res public for their gain.

33. At the request of the Financial Supervision and Control Committee of the House of Representatives, the Federal Court of Accounts ordered a compliance audit to be conducted at BNDES and BNDESPar, with the purpose of *"examining credit operations and financial transactions carried out with the JBS/Friboi group, the criteria used to choose the beneficiary company, the social benefits deriving from these operations, compliance with the contract clauses signed by the parties, in particular the terms relating to the enforcement of fines, the acquisition of bonds and potential loss suffered by the bank with the exchange of these bonds for equity in the meat processing company"*.

34. For this purpose, the Federal Court of Accounts has introduced Audit Report No. 007.527 / 2014-4, which resulted in the Federal Court of Accounts (Plenary) Decision No. 3011/2015. Justice Rapporteur Augusto Sherman, Judgement entered at the session on Nov 25<sup>th</sup> 2015 ("TCU Decision 3011/2015" - **Doc. 12**).

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35. In the course of the audit, the Federal Court of Accounts investigated, among others, three (3) transactions involving capital contributions into JBS through the subscription of JBS shares or acquiring bonds convertible into share on a compulsory basis. These operations are where the funds were raised to be then used in the acquisition of foreign companies, (especially American companies):

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- a) Subscription of shares issued by JBS by BNDESPar in July 2007, in the historical amount of R\$ 1,137,006,240.00, with the purpose of financing the acquisition of the US Swift Food Company (Operation 1645717.0001 / 2007);
- b) Subscription of shares issued by JBS by BNDESPar and PROT - Participation Investment Fund ("PROT FIP"), a currently extinct investment fund whose main shareholders were BNDESPar, the Federal Economists Foundation (FUNCEF), Caixa Econômica Federal Pension Fund) and Petrobras Social Security Foundation - PETROS (Petrobras Pension Fund), between August 2007 and May 2008, in the historical amount of R\$ 995,867,813.30, with the purpose of financing the acquisition of US companies Smithfield Beef Group Company (including its subsidiary Five Rivers Ranch Cattle Feeding) and National Beef Packing Company (beef division) (Operation 1821764.0001 / 2008); and
- c) subscription, by BNDESPar, of bonds issued by JBS, mandatorily convertible into equity interest, between December 2009 and February 2010, for the historical value of R\$ 3,477,567,913.60 (then corresponding to US\$ 2 billion), with the purpose of financing the acquisition of 64% of the US company Pilgrim's Pride Corporation and the assets of the meat processing company Bertin S.A. (Operation 2231068.0001 / 2009).

36. From the work that resulted in the TCU Decision 3011/2015, other fronts were set up by the Court of Accounts to further

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investigate the above operations, resulting in further judgments  
that will be referred to below.

37. Thus, each of the operations will be detailed below, adopting  
the following structure: (i) description of the operation; (ii)  
confession of kickbacks payment; (iii) identified breaches and  
the harm caused; and (iv) conclusion.

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a) Capital contribution for the acquisition of US Swift Food  
Company via acquisition of JBS shares by BNDESPar

38. **Description of the operation.** In 2007, JBS went public, having  
its shares traded on the former BOVESPA. In July and August of  
that year, BNDES, through BNDESPar, acquired 139,470,160 JBS  
shares for the price of R\$ 8,123 per share, making a total  
investment of one billion, one hundred and thirty seven million,  
two thousand, five hundred and eighty-five reais and thirty-six  
cents (R\$ 1,137,002,585.36), in historical values. Accordingly,  
the terms in which that transaction was described in TCU Decision  
3011/2015 are as follows:

"The first of these transactions took place in July 2007, when  
JBS increased its capital by privately issuing new shares to  
raise funds to enable it to acquire Swift Food Company, the  
third largest meat company in the United States at the time.  
BNDESPar disbursed R\$ 1,137,006 thousand in the acquisition of  
a set of these new shares, at the price of R\$ 8.1523 per  
share, with payment of a premium of R\$ 0.50 per share  
acquired. After this operation, BNDESPar had a 12.95% stake in  
JBS.

(...)

On June 29, 2007, there was a capital increase, with the  
issuance of 227,400,000 new shares of the company, at the  
price of R\$ 8.1523 per share. BNDESPar acquired 139,470,160 of  
the new shares issued by assigning a portion of the preemptive

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rights of the controlling shareholders (ZMF and J&F), pursuant to an investment agreement between the parties, with a view to the acquisition of the US Swift Food Company." (Doc. 12)

39. **Confession to the payment of kickbacks.** Joesley confessed having paid kickbacks for obtaining approval to this operation through the access that his lobbyist, Victor Garcia Sandri ("Vic"), had to Guido Mantega, President of BNDES at the time:

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"That when Guido Mantega became the President of BNDES, the deponent managed, through Vic, in the beginning of 2005, to schedule a meeting at BNDES, with Guido himself as well as the bank top management; THAT the purpose of the meeting was to make a presentation on JBS expansion plan and so start convincing BNDES to support the plan; THAT after the meeting, in June and in August 2005, JBS submitted to BNDES, two application letters, applying for a total 80 million dollar loan to support the expansion plan for that year; THAT Vic Asked for himself and Guido Mantega the payment of 4% of the credit facility in Exchange for colaboration with Guido Mantega including scheduling meetings and approval of the financial operation; THAT the deponent promised to make the payment; THAT the operation was very quickly approved; THAT the credit referring to the first application letter was made available in August 2005, and the amount relating to the second application letter just days after submission; THAT the deponent paid out the amount promised to Vic via an offshore company controlled by the deponent into a bank account abroad indicated by Vic; THAT, even after 2006, when Guido Mantega was appointed Finance Minister, two operations were closed between JBS and BNDES via Vic; **THAT the first operation was closed in June 2007 and was the acquisition by BNDES of a 12.94% stake in JBS for 580 million Dollars intended to**

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support the expansion plan for that year; THAT the second operation was completed in the first half of 2008 and was the acquisition by BNDES, of 12,99% of JBS capital for 500 million Dollars in a joint transaction with FUNCEF and PETROS, this time in support of the 2008 expansion plan; THAT, during this period the deponent realized in his direct dealings with Guido Mantega that Vic's intermediation was real; THAT Vic managed to Schedule more than ten meetings with Guido Mantega; THAT when Guido Mantega met with the deponent, he was well informed of the topics the deponent told Vic that he wanted to discuss with Guido."

(State Evidence n°1 of Joesley plea agreement - Doc. 13. Our emphasis)

40. **Breaches identified and losses caused.** Considering the fact that the operation was commissioned by the Batista Brothers via Lobbyist Vic in consideration of kickbacks paid out to the then President of BNDES (Guido Mantega), it is not a surprise to verify the various aspects demonstrating that the operation did not take place to protect the social or economic interests of the country.

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These aspects have all been detailed in TCU Decision 3011/2015 and are summarized below:

(i) Despite the fact that the acquisition of Swift involved a large complex and high risk operation, JBS submitted an application letter to BNDES on May 23<sup>rd</sup> 2007 and, quite magically, the classification of the operation was completed on the following day. Not very long after, on June 25<sup>th</sup> 2007, the entire operation appraisal had also been completed - only 22 working days later

(ii) At the time of the acquisition of Swift by JBS, Swift

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was highly indebted - US\$ 1.14 billion. However, none of the funds obtained were used to reduce such debt. The debt was entirely refinanced.

(iii) JBS had just gone public, on June 01<sup>st</sup> 2007. So, JBS was highly capitalized. For this reason, the operation entered into with BNDESPar turned out to be quite likely a mere way of obtaining additional capital.

(iv) An unjustifiable premium of R\$ 0.50 on each JBS share acquired by BNDESPar was paid out, on the argument that the company was going to go up in value after the acquisition of Swift. However, the company risk classification by credit rating companies was rather pointing to a decrease in value in the aftermath of the operation -which was actually later confirmed, as the share price dropped to R\$ 4.75 and stayed below the price paid by BNDESPar for quite some time.

41. As a result of the indefensible premium of R\$ 0.50 paid per share, BNDES suffered a loss in an estimated amount of **R\$ 69,735,305.00** (R\$ 0.50 x 139,470,610 shares), or approximately **9 million shares** at R\$ 7.65 per share:

"105. There is circumstantial evidence in connection with the support operation for the acquisition of Swift USA pointing to a potential loss of up to R\$ 69.7 million, equivalent to approximately 9.07 million JBS shares. In this operation the average share price in the last 30 trading sessions was increased with the R\$ 0.50 premium.

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Such premium, in my judgement, has not been justified in the records (pursuant to item IV, evidence 3, retro)."  
**(Doc. 12)**

- 42.** Such loss was acknowledged and confirmed by the TCU plenary under judgment of Complaint n° 034.930 /2015-9., which gave rise to TCU (Plenary) Decision n° 800 /2017. Justice Rapporteur Augusto Sherman, judgment issued during the session held on April 26<sup>th</sup> 2017 ("TCU Decision 800 /2017" – **(Doc. 14)**):

"77. Having said that, It is worth stressing that the estimated harm related to the amount overpaid compared to the shares traded in the stock market as calculated on the average price of the last 30 trading sessions without any justifiable reason - i.e. 139,470,610 shares multiplied by R\$ 0.50 -. making up an ascertained loss of R\$ 69,735,305.00 - and not the potential future gain/loss resulting from the operation, which is not under analysis in the case.

78. Completing the referral suggested by the director, with the approval of the technical Unit representative, I suggest the present records to be converted into special rendering of accounts, with service of process upon the signatories of Instruction AP/DEPRI 236/2007 (document 11, p. 1-4) and of Appraisal Report AMC/DEINV 3/2007 and AI/DEAGRO 17/2007 (document 12, p. 1-57), as well as upon the participants of the 113<sup>th</sup> and 114<sup>th</sup> Classification and Credit Committee Meeting (document 11p. 5) and of Manag Decision. 67/2007-BNDESPAR (document 12, p. 65-68) to submit their defense allegations on the acquisition of shares at a premium leading to the loss inflicted upon the coffers of BNDESPar.

79. I also rule that JBS, beneficiary of the premium added on the market price of the shares shall be jointly served process with the above individuals, so

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that it may equally submit its defense allegations on  
all the aspects involving the operation under  
investigation." (Doc. 14. Our emphasis)

**43. Conclusion.** According to what has been verified so far by the TCU, the loss caused to the BNDES System as a result of this operation in historical values is **R\$ 69,735,305.00** not including dividends and interests on equity that have not been distributed since then . Because of the payment of an unjustifiable premium of R\$ 0.50 per share, BNDES was prevented from receiving **9,115,726 JBS shares**

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(R\$ 69,735,305.00 / R\$ 7.65 per share) currently worth two hundred and thirty five million, nine hundred and fourteen thousand nine hundred eighty eight reais an eighty eight cents **(R\$ 235,914,988.88)** <sup>5</sup>

b) Capital contribution via subscription of JBS shares by BNDESPar to finance the acquisition of the US Smithfield Beef Group Company and National Beef Packing Company

**44. Description of the operation.** As in 2007, in 2008 the funds used by JBS for its expansion project came from new contributions from BNDESPar. On February 11<sup>th</sup> 2008, JBS submitted another application letter requesting financial support to acquire US companies Smithfield Beef Group Company (including its subsidiary Five Rivers Ranch Cattle Feeding) and National Beef Packing Company.

45. The new capital contribution was made through the acquisition of new shares issued through the capital increase of JBS. The capital contribution was made in two ways: (i) as a direct investment, in which BNDESPar acquired 47,421,190 million shares of JBS, for the price of R\$ 7.07 per share, totaling an

<sup>5</sup> Considering the R\$ 25.88 price upon closing of the last trading session on the day before filing this citizen lawsuit.



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investment of **R\$ 335,267,813.30**; and (ii) as an indirect investment, in which, through PROT FIP<sup>6</sup>, BNDESPar acquired 92,332,530 shares, for the price of R\$ 7.07 per share, totaling an investment of **R\$ 660,600,000.00**:

"To close the deal, the Bank contributed an additional R\$ 995.87 million to the Company through the direct purchase of shares and the payment of quotas of the PROT Participation Investment Fund.

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BNDESPAR subscribed and paid in 47,421,190 common shares issued by JBS, corresponding to R\$ 335,267,813.30, and acquired, through the PROT Fund, another 92,332,530 shares, corresponding to R\$ 660,600,000.00, for the price of R\$ 7.07 per share, which brought holdings, directly and indirectly, another 139,753,720 shares (6.47% of JBS capital). In the end, the sum of direct and indirect interests in the Company capital by the State Bank reached 19.42%. "Doc. 12)

46. **Confession to the payment of kickbacks.** As it might be assumed by this time, this funding was also obtained by the Batista Brothers through corruption, which was also the object of Joesley unambiguous confession recorded in his depositions collected in connection with his plea agreement:

"THAT even after 2006 when Guido Mantega became Minister of Finance, two operations were closed between JBS and BNDES with Vic intermediation; THAT the first operation was carried out in June 2007 and consisted of the acquisition by BNDES of 12,94% of JBS share capital, for US\$ 580 million, to support that year's expansion plan, **THAT the second operation was carried out in the first half of 2008 and consisted of BNDES buying 12.99% of JBS**

<sup>6</sup> Currently extinguished investment fund whose main shareholders were BNDESPar, the Federal Economics Foundation - FUNCEF (Caixa Econômica Federal pension fund) and the Petrobras Social Security Foundation - PETROS (Petrobras pension fund).



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**capital for 500 million dollars in a joint operation with  
FUNCEF and PETROS to support the 2008 expansion plan. "**

(State Evidence Nº. 1 of Joesley Plea Agreement - **Doc. 13.**  
Our emphasis)

\*\*\*\*

"THAT in the first half of 2008, the deponent set up an operation involving the acquisition, by BNDES, FUNCEF and PETROS of 12.99% of the JBS capital, for US\$ 1 billion, for the JBS Expansion plan that year; THAT BNDES, FUNCEF and PETROS set up, in this operation, a fund called PROT (protein), to finance the capitalization of JBS; THAT Paulo Ferreira was at the time the treasurer of the PT (Labor Party); THAT Guilherme Lacerda was at the time the president of FUNCEF; THAT Vagner Pinheiro was at the time the president of PETROS; THAT when the negotiations for the constitution of the PROT began, Guilherme Lacerda indicated to the deponent that he should establish a closer relationship with Paulo Ferreira, from the PT, considering that the party had influence, in the collective deliberation bodies of both entities, on members appointed by unions;

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THAT William Lacerda then introduced the deponent to Paulo Ferreira; THAT Paulo in turn introduced João Vaccari to the deponent; THAT as far as the he remembers, the deponent and João Vaccari settled the following agreement: João Vaccari would recommend the operations of interest of the J&F Group to the managers of the funds under his influence and the deponent would pay to PT the amount of 1% of each operation that J&F could get from the funds; THAT the deponent also agreed separately with Guilherme Lacerda and Vagner Pinheiro in private meetings with each a kickback of 1% each on the value of each operation that J&F could obtain from the funds. "

(State Evidence Nº. 2 of Joesley Plea Agreement - **Doc. 15.**  
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**47. Identified breaches and losses caused.** And expected, for various reasons this operation, as well as the one carried out in 2007, was geared only towards the private and selfish interests of the Batista Brothers and JBS. This statement, which is made without fear of making a mistake, is based on the sound elements also found to be breaches in the context of TCU Decision 3011/2015:

- (i) Due to complications in the United States, the acquisition of National Beef by JBS did not materialize. However, although BNDESPar and PROT FIP have secured, through a Stock Sale Option Contract and Other Covenants, the option to require JBS's controlling shareholders to purchase all or part of the subscribed shares if the acquisitions were not completed, this option was not exercised. Quite the opposite, the Stock Sale Option Contract and Other Covenant was actually amended three times and, in the end, the public funds were simply left at JBS.
- (ii) An unexplained premium was paid again for the acquisition of JBS shares: at the time of the transaction the share was traded at a price of R\$ 4.74, and if the BNDES calculation methodology had been followed (of the last 30, 60 and 90 trading sessions), the price would range between R\$ 5.09 and R\$ 5.90 per share. Nevertheless, an average of 120 trading sessions was used, without any reasonable justification, which raised the average share price to R\$ 7.07.

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Due to the change in methodology, the shares were eventually acquired for R\$ 7.07, thus representing a premium of R\$ 1.17 over the amount of R\$ 5.90 per share proposed in the framework (corresponding to the average of the last 90 trading sessions).

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48. As a result of this unjustifiable premium, BNDES incurred in a loss in the estimated historical value of R\$ 163,511,852.40 (R\$ 1.17 x 139,753,720 shares):

65. Again, the failure to provide reasonable justifications for the use of the calculation methodology that resulted in such a sharp increase in the acquisition price of the share may constitute harm to BNDES.

If we calculate the loss per share as the unjustified difference between the average 90 trading sessions (R\$ 5.90), because it is the higher value proposed in the framework, and the average of the last 120 trading sessions (R\$ 7.07), we will have R\$ 1.17, equivalent to 19.8% of the share price, which, multiplied by the number of shares acquired by BNDESPar (139,753,720 shares), results in an approximate amount of R\$ 163.5 million. In terms of the number of shares, this difference in value is equivalent to 27.67 million shares.

(...)

106. In the following transaction, in support of the acquisition of Smithfield Beef and National Beef, the estimated loss amounts to R\$ 163.5 million, equivalent to approximately 27.67 million shares of JBS. In this operation, the average share price in the last 90 trading sessions, estimated in the context of the higher acquisition price of the shares, was replaced by the average share price in the last 120 trading sessions, which is a substitution that, in my judgement, is not justified in the records (according to item IV, evidence 6, retro). "**Doc. 12**. Our emphasis)

49. The aforementioned loss of R\$ 163,511,852.40 was reaffirmed by the Federal Court of Accounts Plenary at the time of Judgment of Complaint No. 034,931 / 201 5-5, which gave rise to the TCU Decision(Plenary) No. 2342/2017, Rapporteur Justice Augusto Sherman, judgment entered in the session of October 10 2017 ("TCU Decision 2342/2017" - **Doc. 16**). In addition to this loss, the Federal Court of Accounts acknowledged another, in the amount of R\$ 16,112,401.00, corresponding to the dividends that were not paid out to BNDESPar between May 2008 and June 2016:

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"135. In light of the foregoing, I conclude, in accordance with the reviews and conclusions presented by the technical unit in its statement and opinions, that it has not been justified so far, in particular because of the contradictions and errors contained in the assessment report and the inadequacy of the explanations presented by BNDES, the amount of R\$ 7.07 per share paid by the Bank, therefore, there is an indication of overpayment, considering the favorable parameters to those responsible compared to those that would be acceptable (R\$ 5.90 = average of the last 90 trading sessions), in the amount of R\$ 163,511,852.40, in original values, to which an amount of R\$ 16,112,401.00 must be added, totaling R\$ 179,624,253.40, all in original values (representing an approximate total of R\$ 304 million, in updated values for 07/07/2017). " (Doc. 16.)

50. **Conclusion.** According to the Federal Court of Accounts, the BNDES System suffered a loss in the historical amount of **R\$ 163,511,852.40**, which does not include dividends on equity that were not distributed since then. Due to the payment of an unjustified premium of R\$ 1.17 per share, BNDESPar did not receive **27,713,873 JBS shares** (R\$ 163,511,852.40 / R\$ 5.90 per share) currently valued at R\$ 717,235,033.24 (seven hundred and seventeen million, two hundred and thirty five thousand, thirty three reais and twenty four cents)<sup>7</sup>.

c) Capital contribution for financial support for the acquisition of Pilgrim's Pride Corporation and the assets of Bertin meet processing company via acquisition of JBS bonds

51. **Description of the operation.** In 2009, JBS requested financial support from BNDES to acquire, through its subsidiary JBS USA Holdings Inc. ("JBS USA"), a 64% equity interest in Pilgrim's Pride Corporation, a US breeding, slaughter, processing and marketing poultry Company.

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<sup>7</sup> Considering the traded price of R\$ 25.88 at the closing of the trading session the day before the present Citizen Lawsuit was filed.



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52. The Negotiations that took place at the time between the Batista Brothers, JBS and BNDES resulted in the funds to be contributed that year also for the acquisition of the assets of Bertin S.A. meat processing company

53. On December 23, 2009, JBS issued a Material Fact (Doc. 17), in which it informed that its controlling shareholders and BNDESPar had entered into an Investment Agreement<sup>8</sup> the day before (December 22, 2009), according to which BNDESPar would subscribe mandatorily convertible bonds, in the amount in Reais, corresponding to US\$ 2 billion, except only those bonds that were eventually subscribed by other shareholders of JBS that manifest preemptive rights.

54. As these were necessarily convertible bonds, their payment had to be made by the conversion of the respective credit into shares, either JBS USA shares (in case JBS USA went public in the American stock market, in which case the bonds would be exchanged for Brazilian depositary receipts - BDRs, i.e. shares of foreign companies traded on the Brazilian stock exchange), or shares of defendant JBS itself, in the event that JBS USA did not complete its initial public offering ("IPO") in the United States, as it has not done so far.

55. As stated in TCU Decision 3011/2015, "The commitment to support resulted in a total investment of R\$ 3,477,567,913.60, with the issuance of the two million subordinated bonds mandatorily interchangeable by JBS USA stock BDRs between December 2009 and February 2010, corresponding to slightly less than the total amount of the issue (99.94%). "(Doc. 12)

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56. **Confession to the payment of kickbacks.** In his plea agreement, Joesley confessed to a further US\$ 50 million kickback payment to

<sup>8</sup> The Plaintiff could not locate this Investment Agreement, which he believes is not a public document.



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Guido Mantega in return for BNDESPar's commitment to subscribe to the bonds issued to fund the purchase of Pilgrim's Pride in the US and the acquisition of Bertin S.A. assets:

"THAT by 2009, the deponent understood that he was close enough to Guido Mantega and no longer needed Vic's intermediation;

THAT the deponent was then able to schedule a meeting directly with Guido Mantega, having explained at the meeting that for personal reasons he preferred not to use Vic's intermediation anymore;

THAT at the same meeting, there was also a conversation that the deponent recalls asking Guido Mantega how to adjust the amount of the kickbacks, to which Guido Mantega allegedly answered: 'it is up to you; I trust you';

THAT the deponent then asked what the percentage would be, pointing out that when the negotiations were conducted through Vic, a 'fixed percentage' was agreed, to which Guido Mantega replied that they should be dealt with on a case-by-case basis;

THAT the deponent understood that he should discuss kickback values for each deal in which Guido Mantega intervened in his favor and would keep the amounts himself;

THAT at this point the deponent understood that he was paying kickbacks to Guido Mantega himself;

THAT this format has been applied to two operations carried out under BNDES;

THAT the first was the acquisition, in December 2009, by BNDES, of JBS bonds, converted into shares, in the amount of US\$ 2 billion, to support the 2009 expansion plan;

THAT in this deal, Guido Mantega intervened with Luciano Coutinho, including in meetings to which the deponent was present, so that the deal would be closed, always overcoming the objections of the president of the Bank;

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THAT, although the negotiating of the transactions had been quite harsh, they were eventually carried out without breaches and without losses to the financial institution;

THAT on several occasions, the deponent even noticed the surprise and discomfort of Luciano Coutinho with his presence;

THAT the deponent wrote in favor of Guido Mantega, on account of this deal, a US\$ 50 million credit and opened an account abroad, in the name of an offshore controlled by him, where he deposited the amount."

(State evidence # 1 of Joesley Plea agreement - **Doc. 13**, Our emphasis)

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57. **Identified breaches and losses caused.** In TCU Decision 3011/2015, the Court of Accounts pointed out to several breaches summarized below:

(i) On November 23, 2009, JBS submitted to BNDES an application letter requesting support for this operation, which was classified on the following day and subsequently approved by the BNDES Board of Directors on December 22, 2009. Thus, the whole process of assessment and approval for this operation, despite its complexity and relevance, took just twenty working days.

(ii) The destination of the funds obtained with the bonds issuance operation was JBS USA, a company headquartered and operating in the United States of America, as it was JBS USA which was to acquire Pilgrim's Pride<sup>9</sup>. Therefore, BNDESPar agreed to

<sup>9</sup> It was later found that in the acquisition of Pilgrims' Pride, JBS allegedly only used US\$ 800 million of the total US\$ 2 billion raised through the issuance of the BNDESPar subscribed bonds, with a remaining balance of US\$ 1.2 billion dollars not used for



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acquire equity interest in a foreign company, which  
was prohibited by its bylaws.

- (iii) Despite of the huge amount involved, in the scope of  
the audit performed by The Federal Court of  
Accounts, there are no records that BNDES or  
BNDESPar effectively monitored the transfer of funds  
to JBS USA, or if they eventually got lost into the  
defendant JBS.

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- (iv) The bonds indenture (**Doc. 18**) clearly provided under  
clause III.18.1<sup>10</sup>that, in case JBS USA IPO did not  
occur, the bonds would then be converted into shares  
of the issuer itself - Defendant JBS -, observing  
the conversion price based on the average of the  
last 60 (sixty) trading sessions, limited to a floor  
of R\$ 6.50 and a ceiling of R\$ 12.50 per share.  
However, when it became certain that the JBS USA IPO  
was not going to happen, JBS proposed and BNDESPar  
accepted, in an unacceptable liberality, to amend  
the bonds indenture (**Doc. 19**), in order to change

the purpose described in the bond indenture. Bearing in mind that, subsequently JBS or JBS USA acquired, directly or indirectly, several other companies (or assets) worldwide (for example, Arizona-based McElhaney Cattle Co, Inc.; Wisconsin-based Link Snacks, Inc.; Alberta-based XL Foods Assets, Tyson Foods, Inc. poultry division Provemex Holdings LLC, both Delaware-based, additional stake in Pilgrim's Pride owned by Tyson Foods, Inc., Cargill Meat Solutions Corp. pork operations based in Delaware; Minnesota-based JFC LLC; Delaware-based Plumrose USA, Inc.; England-based Moy Park Holdings Europe Limited; Delaware-based Transbotics Corporation; and England-based Tulip Limited) there are strong indications that the capital was raised in excess of what was needed to fulfill the purpose stated in the bond indenture to finance JBS international expansion, which may have caused additional harm to the Treasury and the BNDES System.

<sup>10</sup> «III.18 CONVERTIBLE BONDS III.18.1 All the other provisions of the present bond indenture being complied with and observing what is provided under Clause 17 above, each bond shall, only in the event of Clause III.18:2 below or in case of anticipated maturity, be converted on a compulsory basis by a number of common shares issued by the company as a result of the split up of (a) the par value per share, plus a premium of ten percent (10%); and (b) the conversion price shall be determined by the weighted average per volume of the common share price issued by the Issuer traded at BM&FBovespa S:A: Bolsa de Mercadorias e Mercados Futuros («Bovespa») under code JBSS3 of the sixty (60) trading sessions immediately before the actual conversion of bonds, such average adjusted to declared earnings by a floor of six reais and fifty cents (R\$ 6.50) per share and a ceiling of twelve reais and fifty cents (R\$ 12.50) per share («Conversion Price») (Conversion into Shares) .»(**Doc 18**. Or emphasis)

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the previous rule and set the conversion price at R\$ 7.04 per share (average of the last 100 trading sessions). This caused the conversion price to fail to observe the previously set floor of R\$ 6.50 (applicable due to the fact that the average of the previous 60 trading sessions resulted in an average value of R\$ 5.87 per share) and to be set at R\$ 7.04, generating an unjustified premium for JBS benefit of R\$ 0.54 per share.

- (v) The bonds indenture (**Doc. 18**) expressly provided, under the same clause III.18.1, that, in the event that JBS USA IPO did not occur, the conversion of the bonds into Defendant JBS shares would be effected with a 10% premium. However, in the amendment to the said indenture (**Doc. 19**), BNDESPar agreed to the waiver of this premium and, upon conversion, was prevented from receiving Defendant JBS shares corresponding to the 10% originally guaranteed in the bonds indenture.

58. Due to the change in the conversion rules, which generated a premium of R\$ 0.54 per share, and non-receipt of the 10% premium due to the failure of JBS USA IPO, BNDES suffered losses, respectively

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of **R\$ 266.7 million** and **R\$ 347.8 million**, in historical values, as shown in the following excerpts of TCU Decision Nº 3011/2015:

"107. In the last operation, in support of the Pilgrim's Pride acquisition, the estimated losses resulting from the stock price increase reaches R\$ 266.7 million, equivalent to approximately 41.26 million JBS shares. In this operation, the methodology for calculating the share price to be used when converting the bonds, as set forth in the agreement, was replaced by another, in principle

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unfavorable to BNDES, a substitution that, in my judgment, was not justified in the records (according to item IV, clause 10, retro).

(...)

109. In addition to these, there is still a fourth piece of evidence, consistent with having BNDES waived, in Pilgrim's Pride's operation, the 10% premium at the time the bonds were converted into shares, which represents an indication of loss in the amount of R\$ 347.8 million, equivalent to approximately 49.72 million JBS shares (according to item IV, evidence 11, retro). "**Doc. 12**, our emphasis)

59. The losses mentioned above were reaffirmed by the TCU-Plenary at the time of the Judgment of Complaint No. 034.931 / 2015-1, which gave rise to Decision No. 2206/2018 TCU (Plenary), by Justice Rapporteur Augusto Sherman, judgement entered at the session of September 19 2018 ("TCU Decision 2206/2018" - **Doc. 20**). In addition to these losses, TCU recognized another in the historical amount of R\$ 50,417,950.37, corresponding to the dividends that were never paid to BNDESPar from May 2013 to June 2016:

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Debit Origin	Original Amount (R\$)	Date of event
41,037,733 JBS shares not received upon conversion of the bonds, at R\$ 6.50 per share, as stipulated in the agreement	266,745,264.50	June 29 11
53,501,044 JBS shares not received upon conversion of the bonds, corresponding to a 10% premium on the total amount subscribed, at R\$ 6.50 per share	347,756,791.36	June 29 11
Dividends lost due	4,337,303,.20	May 14 13

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to BNDESPar not having received 94,538,777 JBS shares when the bonds were converted	5,251,611.34	June 02 14
	11,713,338.18	May 12 15
	29,115,697.65	June 28 16

60. **Conclusion.** According to The Federal Court of Accounts, the BNDES System suffered a loss of **R\$ 614,502,055.86** (R\$ 266,745,264.50 due to unjustified premium + R\$ 347,756,791.36 as a result of non-payment of the 10% premium). This amount does not include dividends and interests on equity that were not distributed since then.

61. Due to the payment of an unjustified premium of R\$ 0.54 per share and non-payment of the 10% premium due to the failure of the JBS USA IPO, BNDESPar did not receive **94,538,777 JBS shares**<sup>11</sup>, currently valued at **R\$ 2,446,663,548.76** (two billion, four hundred and forty six million, six hundred and sixty three thousand, five hundred and forty eight reais and seventy six cents)<sup>12</sup>

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COMPENSATORY DAMAGES IS A CLEAR AND RESOUNDING OBLIGATION

62. Immorality is the keyword in the present Citizen Lawsuit. The situation of confessed criminals continuing to benefit from public funds they have obtained through corruption is utterly immoral. It is a cancer that destroys the very fabric of democracy and the present action seeks to put an end to it.

63. The Batista Brothers and JBS were only able to obtain capital contributions with public funds into their business activities because they admittedly committed acts of corruption of

<sup>11</sup> 41,037,733 JBS shares not received upon conversion of bonds at R\$ 6.50 per share, as stipulated in the agreement, plus 53,501,044 JBS shares not received upon conversion of bonds, corresponding to the 10% premium on the total amount of the subscribed bonds, at R\$ 6.50 per share.

<sup>12</sup> Considering the trading price of R\$ 25.88 of the trading session closing the day before the filing of the present Citizen Lawsuit.





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government officials who had sufficient influence to obtain the approval of such contributions. Moreover, if today JBS claims the position of the largest animal protein processing company in the world, it is certain that this position was only achieved due to the contributions made by the BNDES System, through operations awash with confessed kickbacks. Nothing could be more detrimental to moral principles.

64. It turns out that administrative morality is a constitutionally protected moral value. Consequently, civil servants are not just required to comply with the law, but they have the duty to act according to ethical principles. It is such an invaluable moral value that violation is characterized as administrative corruption (art. 11 of Law No. 8.429 / 92) and leads to the nullity of the reputed immoral act. In this regard, it can be seen that the importance conferred by the legal system to the principle value of morality is so great that art. 5, item LXXVIII, of the Federal Constitution<sup>13</sup> provides that its violation, itself, constitutes enough reason for filing a Citizen Lawsuit, even if other public assets have not been violated.

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65. The indication of the elements involved in the validity of administrative acts is taken from art. 2 of the Citizen Lawsuit Act<sup>14</sup>. Therefore, there is no doubt that this democratic means is the best way to protect public all things public (the res public) by decreeing the nullity of acts harmful to the Treasury, such as those dealt with in the present legal action, which are absolutely unjustifiable.

<sup>13</sup> LXXIII - any citizen is a legitimate party to file a citizen lawsuit aimed at turning void an act harming the state or a State held entity, the administrative morality, the environment and the historical and cultural heritage, the Plaintiff, unless bad faith is demonstrated, is exempted from legal costs and loss of suit. ”

<sup>14</sup> Art. 2 The acts harmful to the state entities mentioned in the above article are made null and void, when there is:

- a) incompetence;
- b) defect of form;
- c) unlawfulness of the object;
- d) lack of reasons;
- e) deviation of purpose.”

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66. Therefore, it is clear that the administrative acts that resulted in losses to the BNDES System lack reasons. The motive element of the administrative act is known to be divided, for clarity purposes, into factual and legal reasons<sup>15</sup>. And, obviously, "receive the kickbacks that were offered" does not constitute a legitimate reason for any administrative act whatsoever.

67. In addition to these vices, the capital contributions operations at JBS stem from administrative acts committed in flagrant misuse of purpose, as they were intended to serve only the private interests of the Batista Brothers in expanding JBS's operation, consolidating it as a multinational group funded by the public funds obtained against the payment of kickbacks.

68. It is evident that the financial operations challenged herein were far from being approved in order to honor any social or economic interest, by means of the promotion of the international operations of JBS. In this respect, in the TCU Decision 3011/2015,

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the Federal Court of Accounts was emphatic in affirming that the operations questioned in this citizen suit did not have the timid purpose of meeting the social and economic interests of the country, but the private interests of the Batista Brothers:

"(...) it is not clear, from the elements introduced into the case records, what economic and social benefits provided the grounds for the direct investment of R\$ 5.6 billion into JBS, with subsidized public funds, in 3 years, for its growth (and of the

<sup>15</sup> Indication of the validity requirements of administrative acts in Brazil is provided for pursuant to Law 4717/1965, which rules Citizen Lawsuits. Article 2 of such law provides for the nullity of administrative acts and mentions the elements or requirements for validity of administrative acts: competence, purpose, form, reason and object. (FURTADO, Lucas Rocha. Curso de direito administrativo. 2<sup>nd</sup> Ed. Belo Horizonte: Fórum, 2009. P.262)

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jobs and of the meat production) only abroad, without the requirement of investments by the other members or any other consideration for the country, and which resulted in making the Brazilian state the largest individual shareholder of the company. (...)

It is possible to observe, therefore, that from 2007, the growth of the capital structure of JBS was sustained by public resources, by means of BNDESPar investments. Requirements of capital investment were not made on the other members of the company or any consideration for BNDES or for the country. On the contrary, the BNDESPar investments in JBS were all destined for the acquisition of companies in the USA. None of the described investments were for the expansion of the activities in Brazil and there is no information in the case records that demonstrates that they brought benefits to the country, as will be better detailed later, in item VII of this opinion." (Doc. 12, our emphasis)

69. The simple finding that it was by corruption that the Batista Brothers and their companies obtained the concession of the investments by the BNDES System represents the unlawful conduct required for the configuration of their duty to compensate for the damages caused to BNDES and to BNDESPar.

70. In turn, the damages caused to the BNDES System are duly evidenced, consisting of (i) the equity interest in JBS that BNDESP failed to receive due to the payment of unjustifiable premiums in the three (3) operations questioned in this citizen suit and the waiver of the premium of 10% in the case of the non-completion of the IPO of JBS USA; and (ii) in the amounts of dividends and

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interest on equity that were not paid to BNDESPar in relation to the stake that was unduly subtracted from it.

71. Schematically, the losses suffered by the BNDES System correspond (i) to the non-receipt of 131,368,376 shares of JBS by BNDESPar and (ii) to the non-payment of dividends and interest on equity in relation to these shares.

72. Considering the price of R\$ 25.88 at the end of the trading day on the eve of the filing of this citizen suit, only the equity interest that BNDESPar did not receive corresponds to **R\$ 3,399,813,570.88** (three billion, three hundred and ninety-nine million, eight hundred and thirteen thousand, five hundred and seventy reais and eighty-eight cents):

<b>Operation</b>	<b>Shares not received by BNDESPar</b>	<b>Updated value of the Shares</b>	<b>Dividends and interest on own capital not paid in the period</b>
Subscription of JBS shares for the acquisition of the Swift Food Company	9,115,726	R\$ 235,914,988.88	To be calculated during the action
Subscription of JBS shares for the acquisition of the Smithfield Beef Group Company and the National Beef Packing Company	27,713,873	R\$ 717,235,033.24	To be calculated during the action
Subscription of JBS bonds for the acquisition of Pilgrim's Pride and the assets of Bertin S.A.	94,538,777	R\$ 2,446,663,548.76	To be calculated during the action
<b>TOTAL</b>	<b>131,368,376</b>	<b>R\$ 3,399,813,570.88</b>	To be calculated during the action

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73. As is well-known, article 11 of the Citizen Suit Act establishes that "the judgment that, upholding the citizen suit, by decreeing the invalidity of the contested act, will order the payment of losses and damages by those responsible for its practice. And the beneficiaries of it, except for the regressive action against the employees who caused the damage, when guilty."

74. Therefore, having demonstrated the losses caused to the BNDES System and the illegality of the acts that caused them, the Batista Brothers, JBS and J&F (the holding company of its economic group) should be sentenced, as being responsible for and the final beneficiaries of these operations, to reimburse the losses and damages caused to the BNDES System, whose amount should be calculated during this citizen suit, as established in article 14 of the Citizen Suit Act.

THE LENIENCY AGREEMENT IS NOT AN OBSTACLE TO COMPENSATION FOR DAMAGES

75. Finally, the Citizen lawsuit Plaintiff emphasizes that the leniency agreement entered into between J&F Investments and the Federal Prosecution Office (Doc. 11) does not represent an obstacle to the continuation of this citizen suit and to the full award of the damages discussed herein.

76. By means of the aforesaid agreement, J&F Investments are required to pay to BNDES the amount of **R\$ 1,750,000,000.00** one billion, and seven hundred and fifty million reais, over 25 (twenty-five) years (clause 16, item I).

77. As demonstrated, the amount to be allocated to the BNDES over 25 (twenty five) years is less than the losses that were caused to them due to the three (3) operations questioned in this action, which in itself authorizes the Citizen Lawsuit Plaintiff - and, as hoped, BNDES and BNDESPar, to migrate to the side of the plaintiffs - to pursue the full award for the damages caused.

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78. In reinforcing the above assertion, § 11, clause 16, of the leniency agreement stipulates that "the provisions in this Agreement, especially in this clause do not prevent any possible harmed entities from claiming in court or in arbitration, other reimbursements that they consider due. In any case, the rule of allowance established in paragraphs 3 and 5 of this section shall be respected."

79. Furthermore, it cannot be forgotten that **Pet 7003** was finally scheduled to be judged on June 17, 2020<sup>16</sup>, 16 when the bank in the Federal Supreme Court will decide whether to uphold the plea agreement of the Batista Brothers or, instead, ratify the request for terminatyin, made by the last three Federal Attorney Generals (Rodrigo Janot, Raquel Dodge and Augusto Aras).

80. If the termination of the plea agreement is ratified, the leniency agreement should be terminated, as established in its clause 36, according to which "this agreement may be entirely terminated if the plea agreement entered into by the executives and officers of the company and ratified by the Federal Supreme Court is annulled by the aforementioned court."

81. It has been demonstrated, therefore, that the leniency agreement entered into between J&F Investments and the Federal Prosecution Office does not represent an obstacle to the continuation of this citizen lawsuit, nor to the full award for the damages caused to the BNDES System.

FINAL REMARKS AND CLAIMS

82. Based on the foregoing, the Plaintiff requests service of process upon the Batista Brothers, JBS and J&F Investments, in order that, if so willing, they may submit a defense to this

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<sup>16</sup> <https://valor.globo.com/politica/noticia/2019/12/17/toffoli-agenda-aco-es-que-afetam-lava-jato-lrf-e-jbs-veja-cronograma.ghtml>



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citizen lawsuit, whose requests should be found valid, in order  
that:

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- (i) the nullity of the administrative acts that resulted in losses to the BNDES System de recognized against all the Defendants;
- (ii) the Batista Brothers and companies controlled by them that are listed as defendants in this citizen lawsuit be sentenced, jointly and severally, to compensate for the losses and damages caused to BNDES and BNDESPar, under the terms of article 11, of the Citizen Suit Act, consisting of (i) JBS stake not received by BNDESPar resulting from the payment of unjustifiable premiums in the three operations challenged herein and of the 10% premium owed due to the failure of JBS USA IPO upon conversion of the bonds into JBS shares and (ii) the amounts corresponding to the dividends and interests on equity not paid out to BNDESPar relating to the stake which was unduly subtracted from BNDESPar whose amount shall be determined in the course of the action, as established in article 14, of the same law, inflation adjusted and with added interest according to the law; and
- (iii) the Batista Brothers and companies controlled by them who are listed as defendants in this citizen suit be sentenced, jointly and severally, to reimburse any possibly incurred procedural expenses (as established in article 10 of the Citizen Suit Law) and to pay the legal fees for the loss of suit, to be fixed on the basis of article 85, of the CPC.

83. Additionally, the Plaintiff requests:

- (i) the service of notice to the Federal Prosecution Office, for it to accompany this citizen suit as established in article 6, paragraph 4, of the Citizen Suit Act,

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**Advogados**

based on the existence of public interest to legitimize its intervention in this action; and

(ii) the service of process upon BNDES and BNDESPar that, if they agree, to declare their interest in joining as a plaintiff in this citizen suit, as authorized by article 6, paragraph 3, of the Citizen Suit Act.

84. The Plaintiff declares the interest in the holding of the hearing of a pretrial conference or mediation hearing, in the understanding that the resolution of the dispute by the parties themselves is not applicable in this specific case.

85. The Plaintiff protests for the production of all means of evidence, especially (but not exclusively) for the requisition of documents held by third parties (cf. article 7, item I, letter "b" of the Citizen Suit Act), for the attachment of new documents, for the performance of expert evidence, the testimony of witnesses and personal depositions. The Plaintiff also reserves the possibility of requesting before other jurisdictions the obtainment of proof and evidence that can in any way contribute to this citizen suit and that is in possession and / or is known to people, companies or agencies located outside of Brazil (whether these persons, companies or agencies had been referred to or not in this complaint), in accordance with the applicable legislation in these jurisdictions.

86. Finally, it is requested that all the services of notice in the official press or by electronic media are carried out, under penalty of nullity, simultaneously in the name of the lawyers Flavio Galdino, registered with the OAB / RJ under no 94.605, and Gustavo Salgueiro, registered with the OAB / RJ under 135.064, both with an office in this city, at Av. Rio Branco, 138, 11º andar, Centro, 20040-002.

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**Advogados**

87. This suit has been given the value of (three billion three hundred ninety nine million eight hundred and thirteen thousand five hundred and seventy reais and eighty eight cents (R\$ 3,399,813,570.88.

Terms wherein  
Granting is requested.

Rio de Janeiro, December 19, 2019.

Signature	Signature
FLAVIO GALDINO	GUSTAVO SALGUEIRO
OAB/RJ no 94.605	OAB/RJ no 135.064

Signature	Signature
MAURO TEIXEIRA DE FARIA	WALLACE DE ALMEIDA CORBO
OAB/RJ no 161.530	OAB/RJ no 186.442

Signature  
LUAN GOMES PEIXOTO  
OAB/RJ no 189.791

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**Galdino e Coelho**  
**Advogados**

**List of Documents:**

<b>Doc.1</b>	Citizen Lawsuit Plaintiff Documents
<b>Doc.2</b>	Power of Attorney
<b>Doc.3</b>	Defendants Corporate Taxpayer Registration Number Cards
<b>Doc.4</b>	Joesley Mendonça Batista, Wesley Mendonça Batista e Ricardo Saud plea agreements and pre-settlements
<b>Doc.5</b>	PARLIAMENTARY INQUIRY COMMITTEE (CPI) - BRAZILIAN SOCIAL AND ECONOMIC DEVELOPMENT BANK (BNDES) REPORT
<b>Doc.6</b>	State Evidence nº20 of Ricardo Saud Plea Agreement

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<b>Doc. 7</b>	Annex 1 to Joesley Batista Plea Agreement
<b>Doc. 8</b>	State evidence n°2 of Joesley Plea Agreement pre settlement
<b>Doc. 9</b>	Federal Prosecution Office insider trading and market manipulation charges brought against Joesley and Wesley Batista
<b>Doc. 10</b>	Fianl Allegations submitted by the Federal Attorney General Office in Pet 7003(requesting termination of the Batista Brothers and others' plea agreements)
<b>Doc. 11</b>	Lenience Agreement entered into by J&F Investimentos and the Federal Prosecution Office.
<b>Doc. 12</b>	TCU Decision 3011/2015
<b>Doc. 13</b>	State Evidence n°1 of Joesley plea agreement pre settlement
<b>Doc. 14</b>	TCU Decision 800/2017
<b>Doc. 15</b>	Termo de Colaboração n°2 do Pré-acordo de colaboração premiada do Sr. Joesley
<b>Doc. 16</b>	TCU Decision 2342/2017
<b>Doc. 17</b>	Material Fact disclosed by JBS on December 23, 2009 stating that BNDESPar was to invest US\$ 2 billion as the bonds underwriter
<b>Doc. 18</b>	1st issue JBS Bond Indenture
<b>Doc. 19</b>	1 <sup>st</sup> amendment to 1st issue JBS Bond Indenture
<b>Doc. 20</b>	TCU Decision 2206/2018

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**THIS was the full text of said document, the true translation whereof I hereby ATTEST.**

Given at Rio de Janeiro, this December 20th, 2019.

**FRANZISKA AMALIA LUSTOSA BECSKEHAZY**

Obs: The certified translator does not confirm the authenticity of underlying document.

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## PROTOCOLO DE ASSINATURA(S)

Assinado digitalmente por Franziska A. L. Becskehazy Signed digitally by Franziska A. L. Becskehazy

Código para verificação: F7F2-C49C-788B-C231



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O(s) nome(s) indicado(s) para assinatura, bem como seu(s) status em 20/12/2019 é(são) :

- Franziska Amalia Lustosa Becskehazy (Signatário) - 735.052.187-15 em 20/12/2019 12:58 UTC-03:00

**Tipo:** Certificado Digital

