

**UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE: PROCESSED EGG PRODUCTS</b>	:	
<b>ANTITRUST LITIGATION</b>	:	<b>MDL No. 2002</b>
<hr style="border: 0.5px solid black;"/>	:	<b>08-md-02002</b>
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<b>THIS DOCUMENT APPLIES TO:</b>	:	
<b>All Direct Purchaser Class Actions</b>	:	

**PLAINTIFFS’ MOTION FOR FINAL APPROVAL  
OF THE CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND  
DEFENDANTS MOARK, LLC, NORCO RANCH, INC., AND LAND O’LAKES, INC.**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs move the Court for final approval of the settlement between the Direct Purchaser Class Plaintiffs (“Plaintiffs”) and Defendants Moark, LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. (collectively “Moark”) on the terms and conditions set forth in the Settlement Agreement Between Plaintiffs and Moark (“Settlement” or “Settlement Agreement”), and to certify the Class for the purpose of Settlement pursuant to Federal Rules 23(a) and 23(b)(3). This Motion is based upon Plaintiffs’ Memorandum of Law, Declaration of Stanley D. Bernstein, and Affidavit of Jennifer M. Keough submitted herewith, and is made on the following grounds:

1. The Settlement is entitled to an initial presumption of fairness, because the settlement negotiations were undertaken at arm’s-length over several months by experienced antitrust counsel who entered the negotiations with sufficient background in the facts of the case, and no members of the class have objected. *In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001)

2. The Settlement is fair, reasonable, and adequate, and the nine *Girsh* factors strongly support approval. *Girsh v. Jepsen*, 521 F.2d 153, 156 (3d Cir. 1975). The Settlement is fair,

reasonable and adequate given the complexity, expense, and likely duration of the litigation, the stage of the proceedings, and the costs and risks involved in the litigation for Plaintiffs absent Moark's cooperation. Moreover, the likelihood of further recoveries for Plaintiffs is enhanced by Moark's cooperation, and the reaction of the class has been overwhelmingly positive, with no objections to the Settlement received.

3. As set out in the Court's July 15, 2010 Order, ECF No. 387, the Settlement Class, as defined in the Settlement Agreement, meets the requirements of Rule 23(a) and Rule 23(b)(3). Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3).

WHEREFORE, Plaintiffs respectfully request that the Court grant the motion. For the Court's convenience a Proposed Order is provided herewith.

Dated: January 27, 2010

Respectfully submitted,

/s/ Steven A. Asher

Steven A. Asher

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UNITED STATES DISTRICT COURT  
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ANTITRUST LITIGATION

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All Direct Purchaser Class Actions

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL  
APPROVAL OF THE CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND  
DEFENDANTS MOARK, LLC, NORCO RANCH, INC., AND LAND O'LAKES, INC.**

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Plaintiffs respectfully submit this Memorandum of Law in Support of their Motion for Final Approval of Class Action Settlement Between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. (collectively "Moark"), and for final certification of the Settlement Class pursuant to Federal Rule of Civil Procedure Rule 23.<sup>1</sup> This Court preliminarily approved the proposed settlement on July 15, 2010 (ECF No. 387).

**I. INTRODUCTION**

After months of intense arm's-length negotiations, Plaintiffs successfully obtained a settlement with Moark, which included a \$25,000,000 cash settlement payment, as well as extensive cooperation that will aid Plaintiffs in their continued prosecution of this action. In light of the uncertainty, complexity, and expense inherent in litigation, this proposed settlement is fair, reasonable and adequate and should be finally approved.

**II. BACKGROUND**

**A. THE LITIGATION**

This is a class action alleging a conspiracy among the nation's largest egg producers. The operative complaint in this action is the Second Consolidated Amended Class Action Complaint ("Complaint"), filed on April 7, 2010, and later redacted pursuant to Court Order. (ECF No. 291). The Complaint alleges that Moark, along with other shell egg and egg products producers, violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce their shell egg and egg product output and thereby artificially fix, raise, maintain and/or stabilize the prices of shell eggs and egg products in the United States.<sup>2</sup>

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<sup>1</sup> At this time Plaintiffs are not submitting to the Court a plan of allocation for distribution of the settlement funds or a motion for attorneys' fees and for reimbursement of costs and expenses, but will do at some point in the future.

<sup>2</sup> Unless otherwise stated herein, all capitalized terms shall have the same meanings as set forth in the Settlement Agreement between Plaintiffs and Moark, dated May 21, 2010 ("Settlement Agreement") (ECF No. 349). A copy of the Settlement Agreement is attached to the Declaration

Plaintiffs allege that, as a result of Defendants' conduct, Plaintiffs and members of the Class paid prices for shell eggs and egg products that were higher than they otherwise would have been absent the conspiracy. The lawsuit seeks injunctive relief, treble damages, attorneys' fees and costs from Defendants. On June 10, 2008, Defendant Sparboe Farms, Inc. ("Sparboe") entered into a settlement agreement with Plaintiffs. Pursuant to that agreement, Sparboe agreed to provide documents and witnesses that enabled Plaintiffs to file the Complaint, which bolstered their claims against the remaining Defendants. The Court preliminarily approved the Sparboe settlement on October 23, 2009. (ECF No. 216). The Court held a Final Fairness Hearing on the Sparboe settlement on January 13, 2011.

Moark, LLC and Norco Ranch, Inc., along with eight other Defendants, answered the Complaint on February 26, 2010. Other Defendants, including Land O'Lakes, Inc. moved to dismiss.

**B. THE MOARK SETTLEMENT NEGOTIATIONS**

Following the Sparboe settlement, Interim Counsel and Moark's counsel, Eimer Stahl Klevorn & Solberg LLP, entered into settlement negotiations entailing months of settlement calls and meetings. *See* Bernstein Decl. ¶¶ 8-12, attached hereto as Exhibit 1. At these meetings, the parties discussed financial settlement terms and the extent and value of Moark's potential cooperation. *See* Bernstein Decl. ¶ 12. After extensive negotiations, and countless proposals and counterproposals, the parties finally came to a mutually agreeable resolution and the Settlement Agreement was fully executed on May 21, 2010. *See* Bernstein Decl. ¶ 13.

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of Stanley D. Bernstein in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. ("Bernstein Decl."), Exhibit 1, as Exhibit A.

### III. THE PROPOSED SETTLEMENT

Plaintiffs and Moark agreed to a Settlement Class that provides for two subclasses, Shell Egg and Egg Products. *See* Settlement Agreement ¶ 19 (Bernstein Decl. Ex. A). Moark agreed to pay \$25,000,000 to the Settlement Class, and to cooperate with Interim Counsel by providing documents and witnesses for interviews in the continued prosecution of the claims against the non-settling Defendants.<sup>3</sup> *See* Settlement Agreement ¶¶ 33-34, 39 (Bernstein Decl. Ex. A). The \$25,000,000 Settlement Amount represents almost 1% of total Moark egg sales during the class period and almost 28% of Moark's cumulative net profits in the egg division for the last six years.<sup>4</sup> *See* Bernstein Decl. ¶ 16. In exchange, Plaintiffs and the Settlement Class members will release Moark from any and all claims arising out of or resulting from the conduct asserted in this lawsuit. *See* Settlement Agreement ¶¶ 25-28 (Bernstein Decl. Ex. A).

#### A. THE SETTLEMENT CLASS

The Settlement Agreement defines the proposed Settlement Class as follows:

All persons and entities that purchased eggs, including Shell Eggs and Egg Products, produced from caged birds in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published.

##### i) **Shell Egg SubClass**

All individuals and entities that purchased Shell Eggs produced from caged birds in the United States directly from any Producer including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published, excluding individuals and entities that purchased only "specialty" Shell Eggs (certified organic, nutritionally enhanced,

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<sup>3</sup> The non-settling Defendants are: Cal-Maine Foods Inc., Michael Foods, Inc., Rose Acre Farms, Inc., Ohio Fresh Eggs, LLC, Hillandale Farms of Pa., Inc., Hillandale-Gettysburg, L.P., Hillandale Farms East, Inc., Hillandale Farms, Inc., Daybreak Foods, Inc., United Egg Producers, United States Egg Marketers, and United Egg Association.

<sup>4</sup> For the full time period in which reliable data was available (2002-2008), Moark's net profits from eggs and egg products were approximately \$90,516,000. *See* Bernstein Decl. ¶ 16.

cage-free, free-range, and vegetarian-fed types) and “hatching” Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

**ii) Egg Products SubClass**

All individuals and entities that purchased Egg Products produced from Shell Eggs that came from caged birds in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court’s entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published, excluding individuals and entities that purchased only “specialty” Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types).

Excluded from the Class and SubClasses are Producers, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court’s or staff’s immediate family.

Settlement Agreement ¶ 19 (Bernstein Decl. Ex. A).

**B. MONETARY PAYMENTS AND COOPERATION PROVISION**

Moark agreed to pay the Settlement Class \$25,000,000 in cash on or before June 7, 2010 (the “Settlement Amount”). *See* Settlement Agreement ¶¶ 33-34 (Bernstein Decl. Ex. A). That amount, together with any interest earned thereon, less any administrative expenses, and less any escrow expenses and taxes incurred, will be distributed on a *pro rata* basis to the Settlement Class Members, consistent with the distribution plan as set forth in the Notice. *See* Notice at 2-3 (Bernstein Decl. Ex. D). This actual distribution of funds will take place at a later date, but only after submission and approval by the Court of an appropriate Plan of Allocation.

In addition to the Settlement Amount, Moark must also provide documents related to Plaintiffs’ allegations in the Complaint, and make witnesses available for informal interviews, depositions and trial. *See* Settlement Agreement ¶ 39 (Bernstein Decl. Ex. A).

**C. RELEASE OF CLAIMS AGAINST MOARK**

In exchange for the consideration provided by Moark, Plaintiffs have agreed to release Moark from any and all claims arising out of or resulting from the conduct asserted in this lawsuit. *See* Settlement Agreement ¶¶ 25-28 (Bernstein Decl. Ex. A).

**IV. DISTRIBUTION OF THE SETTLEMENT FUND**

The distribution plan, as described in detail in the Notice, provides for a *pro rata* distribution to all the members of the Class who timely and properly submit a valid Claim Form. *See* Notice at 2-3 (Bernstein Decl. Ex. D). Each Class Members' *pro rata* share will be based on the dollar amount of their direct purchases of shell eggs and egg products in the United States.<sup>5</sup> *Id.*

Distribution plans based on a *pro rata* distribution to all eligible Class members have been held as reasonable and adequate in class actions. *See Bradburn Parent Teacher Store, Inc. v. 3M (Minn. Mining and Mfg. Co.)*, 513 F. Supp. 2d 322, 335 (E.D. Pa. 2007) (citing *In re Remeron Direct Purchaser Antitrust Litig.*, Civ. A. No. 03-0085, 2005 WL 3008808, at \*11 (D.N.J. Nov. 9, 2005); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 493 (E.D. Pa. 2003)). Here, the distribution plan was prepared by Interim Counsel to fairly allocate the recovery among Settlement Class members in accordance with Plaintiffs' theories of potential damages in the Action. It reflects a reasonable division of the Settlement Fund.

**V. PRELIMINARY APPROVAL ORDER AND CLASS CERTIFICATION**

On July 15, 2010, this Court preliminarily approved the Moark Settlement, certified the Class for settlement purposes, and authorized Interim Counsel to disseminate Notice and Claim

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<sup>5</sup> Because the alleged overcharge is only a portion of the price paid for eggs and egg products, recovery will be less than the total amount paid.



Forms by direct mail and publication. (ECF Nos. 387 and 388). A final fairness hearing is scheduled for February 28, 2011. (ECF No. 388).

**VI. THE NOTICE PLAN COMPORTS WITH THE REQUIREMENTS OF RULE 23(E) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

The Settlement Class Members are entitled to notice of the proposed Settlement and an opportunity to be heard. *See* Fed. R. Civ. P. 23(e); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). The mechanics of the notice process “are left to the discretion of the court subject only to the broad ‘reasonableness’ standards imposed by due process.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975) (citation omitted). The Notice comports with the requirements of Rule 23(e), as well as due process requirements. *See* Notice (Bernstein Decl. Ex. D). The Notice apprised Settlement Class Members of the existence of the action (Notice at 1-2), the Settlement (Notice at 2-3), and information concerning their rights to object to, or exclude themselves from the Settlement (Notice at 6-7), as well as information needed to make informed decisions about their participation in the settlement (Notice at 7-8). *Id.*

**A. THE NOTICE**

On September 2, 2010, Garden City Group, Inc. (“GCG” or “Claims Administrator”), the Settlement Claims Administrator retained by Interim Counsel, mailed the Notice and Claim Forms (the “Notice Packet”) to approximately 13,211 direct purchasers of shell eggs and egg products, identified using the sales data produced by Defendants. *See* Affidavit of Jennifer M. Keough Re: Notice and Settlement Administration (“Keough Aff.”) ¶ 9, attached hereto as Exhibit 2. As of January 25, 2011, the date the Keough Affidavit was executed, GCG has received 83 Notice Packets returned by the U.S. Postal Service with forwarding address information and 2,333 Notice Packets returned by the U.S. Postal Service without forwarding

address information.<sup>6</sup> Keough Aff. ¶ 12. As of January 25, 2011, GCG received no objections to the Settlement and only 150 requests for exclusion. *Id.* at ¶¶ 17-18. As of January 25, 2011 GCG received 894 Claim Forms. *Id.* at ¶ 16.

**B. SUMMARY NOTICE, PRESS RELEASES AND WEBSITE**

Summary Notice was published in the following industry journals: *PetFood Industry* (September 2010 issue), *Restaurant Business* (September 2010 issue), *Convenience Store News* (September 6, 2010 issue), *Hotel F&B* (September / October 2010 issue), *Nation's Restaurant News* (September 6, 2010 issue), *Food Service Director* (September 2010 issue), *Progressive Grocer* (September 2010 issue), *Food Manufacturing* (September 2010 issue), *Supermarket News* (September 6, 2010 issue), *Stores* (September 2010 issue), *Egg Industry Magazine* (September 2010 issue), *Modern Baking* (October 2010 issue), *Baking Buyer* (September 2010 issue), *Food Processing* (September 2010 issue), and *Long Term Living* (September 2010 issue). *Id.* at ¶ 11. Moreover, GCG arranged for publication on September 13, 2010 of the Summary Notice in the *Wall Street Journal*. *Id.* Combined, these publications have a circulation of over 2,316,000. *Id.* In addition, GCG coordinated the release of two press releases, one for the Sparboe settlement and the other for the Moark Settlement, via PR Newswire on September 13, 2010. *Id.* at ¶ 13. The releases were distributed over the US1 Newswire and included distribution to almost 1,000 journalists in the Restaurant and Food Industries. *Id.* The press release resulted in a total of 335 articles reporting the Sparboe and Moark settlements. *Id.*

A nationally available website devoted to the settlement was also established, which made available for review and downloading the Notice Packet as well as review of the Dissemination (of Notice) Order, Moark Preliminary Approval Order, Settlement Agreement and

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<sup>6</sup> Notice Packets returned by the U.S. Postal Service with forwarding address information were promptly re-mailed to the updated addresses provided.

other relevant Court documents. *Id.* at ¶ 14. The Settlement website has been operational since August 30, 2010 and is accessible 24 hours a day, seven days a week. As of January 25, 2011, the website has received 4,820 visits. *Id.*

**C. TOLL-FREE TELEPHONE NUMBER**

In addition to the Settlement website, GCG and Plaintiffs established a toll-free 24-hour telephone number and call center where potential Class Members could obtain information about the Settlement, including a mechanism to obtain the Notice and Claim Form. *Id.* at ¶ 15. As of January 25, 2011, there have been 549 calls to the automated number and 95 callers requested and received a Notice Packet in response to their calls. *Id.*

**D. THE NOTICE PLAN AND CLAIMS PROCEDURES MEET THE REQUIREMENTS OF DUE PROCESS**

A combination of direct mail, publication, press releases, a website, and a toll-free telephone number, was intended to reach the Class Members defined in the Courts Order. *Id.* at ¶ 5. “In order to satisfy due process, notice to class members must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 119 (D.N.J. 2002) (internal quotations and citation omitted). For those whose names and addresses cannot be determined by reasonable efforts, notice by publication suffices under both Rule 23(c)(2) and the due process clause. *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 325 (E.D. Pa. 1993) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317-18 (1950)).

The Class Action Fairness Act (“CAFA”) mandates that “[a]n order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice

required under subsection (b).” *See* 28 U.S.C. § 1715(d). The responsibility for providing CAFA Notice belongs to settling defendants. 28 U.S.C. § 1715(b).

Here, Moark served its CAFA notice on January 7, 2011; therefore, the 90-day period will not elapse until April 7, 2011. In instances such as this, courts have used their discretion to structure the timing of final approval orders to excuse a failure to timely provide CAFA notice. *See, e.g., D.S. ex rel. S.S. v. New York City Dept. of Educ.*, No. 05 Civ. 4787, 2008 WL 4911874, at \*2 (E.D.N.Y. Nov. 14, 2008); *D.S. ex rel. S.S. v. New York City Dept. of Educ.*, 255 F.R.D. 59, 79 (E.D.N.Y. 2008) (holding the fairness hearing prior to CAFA notice being issued, but providing that the proposed final approval order would not become final until the defendant had submitted its CAFA notice, 90 days had elapsed, and no relevant authority had objected or requested a hearing); *Kay Co. v. Equitable Prod. Co.*, No. 06 Civ. 00612, 2010 WL 1734869, at \*4 (S.D.W. Va. Apr. 28, 2010) (the Court received final approval briefing, held a fairness hearing and then waited to enter the final approval order after the 90-day period had elapsed).

Plaintiffs respectfully request that the Court issue an Order of Final Approval contingent on the passage of the CAFA deadline on April 7, 2011, absent any objections or requests for hearings being received from any Federal or State official.

**VII. THE PROPOSED SETTLEMENT CLASS SATISFIES RULE 23 AND SHOULD BE CERTIFIED**

In its preliminary approval order, this Court certified the Settlement Class for the limited purpose of this Settlement. *See* Preliminary Approval Order at 3 (Bernstein Decl. Ex. C). The Court determined that the Settlement Class satisfied the Rule 23(a) requirements of numerosity, commonality, typicality and adequacy. *Id.* at 3-4. The Court also found that the Settlement Class satisfied the Rule 23(b)(3) requirements of predominance and superiority. *Id.* at 4. There is no need for the Court to revisit any of the Rule 23(a) or (b)(3) requirements with respect to the

Settlement Class. The sole remaining consideration to be assessed prior to final approval of the Moark Settlement is whether the Settlement is fair, reasonable and adequate.

### **VIII. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

The United States Supreme Court has identified the “important principle that settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits.” *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 401 (1977) (internal quotation marks, citations, and alterations omitted). Class action settlements minimize the litigation expenses of the parties and reduce the strain that litigation imposes upon already scarce judicial resources. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d. Cir. 1995) (“the law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation”); *Austin v. Pa. Dep’t of Corr.*, 876 F. Supp. 1437, 1455 (E.D. Pa. 1995) (“the extraordinary amount of judicial and private resources consumed by massive class action litigation elevates the general policy encouraging settlements to an overriding public interest”) (internal quotations omitted).

#### **A. THE SETTLEMENT IS ENTITLED TO AN INITIAL PRESUMPTION OF FAIRNESS**

Under Federal Rule of Civil Procedure 23(e), a settlement must be “fair, reasonable and adequate” to be approved. Fed. R. Civ. P. 23(e). *See also In re The Prudential Ins. Co. of Am. Sales Practices Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998), *cert. denied*, *Krell v. Prudential Ins. Co. of Am.*, 525 U.S. 1114 (1999); *Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118 (3d Cir. 1990); *Walsh v. Great Atl. & Pa. Tea Co., Inc.*, 726 F.2d 956, 965 (3d Cir. 1983). In evaluating the settlement, the court acts as a fiduciary responsible for protecting the rights of the absent class members and is required to “independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interest of

those whose claims will be extinguished.” *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001) (quoting *Gen. Motors*, 55 F.3d at 785).

The Third Circuit affords an initial presumption of fairness to a settlement “if the court finds that: (1) the negotiations occurred at arm’s-length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; (4) only a small fraction of the class object.” *In re Cendant*, 264 F.3d at 233 n.17; *see also In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) (“A presumption of correctness is said to attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery”) (citing *Hanrahan v. Britt*, 174 F.R.D. 356, 366 (E.D. Pa. 1997)); *Lake v. First Nationwide Bank*, 156 F.R.D. 615, 628 (E.D. Pa. 1994) (giving “due regard to the recommendations of the experienced counsel in this case, who have negotiated this settlement at arm’s length and in good faith”). As illustrated below, these criteria are satisfied here.

There can be no doubt that the negotiations that led to this Settlement were undertaken at arm’s length. The Settlement negotiations spanned months and included many telephone conferences and in-person meetings. *See* Bernstein Decl. ¶¶ 8-12. Numerous settlement offers were proposed and rejected, and the parties exchanged detailed information, including sales data for the Class Period. *See id.* at ¶¶ 9-12. After countless proposals, counterproposals and extensive negotiations, the parties came to a mutually agreeable resolution. *See id.* at ¶ 12. The best interests of the Settlement Class were of paramount importance throughout the negotiation process.

Interim Counsel conducted its own extensive and in depth investigation of the facts of this case, and concluded that a settlement was in the best interest of the class. The Settlement Agreement was only entered into after careful review of Moark’s sales figures, net profits and

market share during the damages period, and balanced them against the likely expense of litigating claims against Moark through trial. *See id.* at ¶¶ 12-15. The Settling Parties have been represented by seasoned class action litigators. Interim Counsel is experienced in similar antitrust class actions, and unreservedly recommend this Settlement. Counsel for the Moark Defendants, Eimer Stahl Klevorn & Solberg LLP, are similarly experienced, and likewise support the Settlement. Courts recognize “significant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class.” *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 731 (E.D. Pa. 1995); *see also Spring Garden United Neighbors, Inc. v. City of Philadelphia*, No. 83-3209, 1986 WL 1525, at \* 3 (E.D. Pa. Feb. 4, 1986) (“the professional judgment of counsel involved in the litigation is entitled to significant weight”); *In re Am. Family Enters.*, 256 B.R. 377, 421 (D.N.J. 2000) (“In determining the fairness, adequacy, and reasonableness of a proposed settlement, significant weight should also be given to the belief of experienced counsel that settlement is in the best interest of the class, so long as the Court is satisfied that the settlement is the product of good faith, arms-length negotiations.”) (internal quotations omitted); *Austin*, 876 F. Supp. at 1457 (“courts have accorded significant weight to the view of experienced counsel who have engaged in arm’s-length negotiations”); *In re Michael Milken and Assocs. Sec. Litig.*, 150 F.R.D. 57, 68 (S.D.N.Y. 1993) (“Experienced counsel’s opinions are entitled to substantial weight by the Court in determining whether to approve [a] settlement.”).

Finally, there have been no objections to the Settlement and only 150 Class Members have elected to exclude themselves from the Settlement. *See Keough Aff.* ¶¶ 17-18. The absence of objections and a small percentage of exclusions give rise to a presumption of fairness. *See McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 459 (D.N.J. 2008) (finding that 601 opt-outs

and nine objections qualified for a presumption of fairness); *In re Remeron End-Payor Antitrust Litig.*, No. 02-2007, 2005 WL 2230314, at \*16 (D.N.J. Sept. 13, 2005) (finding that 70 opts outs and eight objections from a class of 850,000 qualified for a presumption of fairness).

Accordingly, an initial presumption of fairness should be given to the Settlement.

**B. APPLICATION OF THE GIRSH FACTORS**

District courts have broad discretion in determining whether to approve a proposed class action settlement. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004).

However, in determining whether the Settlement is fair and reasonable, courts in the Third Circuit must consider the following factors, commonly known as the *Girsh* factors, as set forth in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975):

- (1) The complexity, expense, and likely duration of the litigation;
- (2) The reaction of the class to the settlement;
- (3) The stage of the proceedings and the amount of discovery completed;
- (4) The risks of establishing liability;
- (5) The risks of establishing damages;
- (6) The risks of maintaining the class action through trial;
- (7) The ability of the defendants to withstand a greater judgment;
- (8) The range of reasonableness of the settlement in light of the best possible recovery; and
- (9) The range of reasonableness of the settlement in light of all attendant risks of litigation.

*See Girsh*, 521 F.2d at 157.

As set forth below, the application of each of these factors to the Settlement demonstrates that the Settlement is fair, reasonable and adequate.



C. THE PROPOSED SETTLEMENT SATISFIES THE *GIRSH* CRITERIA FOR FINAL APPROVAL

1. **The Complexity, Expense, and Likely Duration of the Litigation**

The first *Girsh* factor considers the “probable costs, in both time and money of continued litigation.” *Cendant*, 264 F.3d at 233 (internal quotations omitted); *In re Ins. Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 2589950, at \*4 (D.N.J. Sept. 4, 2007) and 2007 WL 542227, at \*4 (D.N.J. Feb. 16, 2007), *aff’d*, 579 F.3d 241 (3d Cir. 2009). It has often been observed that “[a]n antitrust class action is arguably the most complex action to prosecute.” *Linerboard*, 292 F. Supp. 2d at 639 (internal citations omitted); *see also Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989) (noting that antitrust class actions are “notoriously complex, protracted, and bitterly fought”). The complexities of an antitrust case have become evident at an earlier stage of litigation since the Supreme Court’s decision in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), which some courts have found requires factual enhancement to support a claim at the pleading stage. Continuing this litigation against Moark would entail a lengthy and complex battle.

Moark was fully prepared to defend itself and litigate this case. Had the case continued, Moark would have asserted various defenses, and a jury trial (assuming the case proceeds beyond pretrial motions) might well turn on questions of proof, making the outcome inherently uncertain for both parties. *Linerboard*, 292 F. Supp. 2d at 639; *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475-76 (S.D.N.Y. 1998) (“Antitrust litigation in general, and class action litigation in particular, is unpredictable . . . . [T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.”). A trial on the merits of this case would entail considerable expense, including numerous experts, further pre-trial motions, and

thousands of additional hours of attorney time. Moreover, even after trial is concluded, there would likely be one or more lengthy appeals. *See Remeron*, 2005 WL 2230314, at \*17.

By reaching a favorable Settlement early in the litigation, Plaintiffs have avoided significant expense and delay, and have ensured a recovery to the Class. These factors weigh in favor of the Settlement. *See Warfarin Sodium*, 391 F.3d at 535-36 (acknowledging this factor because “continuing litigation through trial would have required additional discovery, extensive pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial.”); *Linerboard*, 292 F. Supp. 2d at 642 (noting that the “protracted nature of class action antitrust litigation means that any recovery would be delayed for several years,” and this settlement’s “substantial and immediate benefits” to class members favors settlement approval).

Accordingly, the first *Girsh* factor weighs heavily in favor of approving the Settlement.

## **2. Class Reaction to the Proposed Settlement**

This factor “attempts to gauge whether members of the class support the settlement.” *Prudential*, 148 F.3d at 318. A lack of substantial objections or exclusions by class members is highly significant. *See Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313-14 (3d Cir. 1993); *In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577-78 (E.D. Pa. 2003). There have been no objections to the Settlement. Keough Aff. ¶ 18. Courts typically approve settlements where no objections have been received. *See, e.g., Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 415 (E.D. Pa. 2010) (approving settlement that received no objections to the fairness or adequacy of the settlement); *In re CIGNA Corp.*, No. 02 Civ. 8088, 2007 WL 2071898, at \*3 (E.D. Pa. July 13, 2007) (“The class has been exceptionally supportive in that no objections to the settlement were filed.”); *United States v. Pennsylvania*, 160 F.R.D. 46, 49 (E.D. Pa. 1994) (“The failure of any class member to object to the proposed settlement despite having adequate

opportunity to do so demonstrates that the class members assent to the agreement.”) (citing *Bell Atl. Corp.*, 2 F.3d at 1313-14 & n.15).

Additionally, there have only been 150 requests for exclusion from the Class of thousands of direct purchasers.<sup>7</sup> Keough Aff. ¶ 17. These numbers are consistent with Third Circuit precedent and the decisions of other federal courts approving settlements. See *Stoetznner*, 897 F.2d at 118-19 (holding that only 29 objections in 281 member class – or 10% – “strongly favors settlement”); *Prudential*, 148 F.3d at 318 (affirming conclusion of district court that class reaction was favorable when 19,000 class members opted out of class of eight million and 300 objected); *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 175 (E.D. Pa. 2000) (settlement approved where there were 2,500 requests for exclusion from an original notice to 140,000 class members).

Thus, the second *Girsh* factor weighs heavily in favor of final approval. See *McAlarnen v. Swift Transp. Co., Inc.*, No. 09 Civ. 1737, 2010 WL 365823, at \*7 (E.D. Pa. Jan. 29, 2010) (a lack of objections and low exclusion rate “weighs heavily in favor of final approval”); *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06 Civ. 3202, 2009 WL 2137224, at \*9 (E.D. Pa. July 16, 2009) (“Such a response (or lack thereof) weighs greatly in favor of approving the settlement.”); *In re PNC Fin. Servs. Group, Inc.*, 440 F. Supp. 2d 421, 432 (W.D. Pa. 2006) (“Here, no class member objected to the proposed settlement. Similarly, only five opt outs were received after the mailing of over 73,000 copies of the notice and the publication of the summary notice. Under these circumstances an inference of strong class support is properly drawn.”); *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 115 (E.D. Pa. 2005) (holding that, when only 70 out of 90,000 potential class members opted out and “not a single class member

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<sup>7</sup> 13,211 potential class member customers received a direct mailing from the claims administrator. Keough Aff. ¶ 9.

objected to the proposed settlement . . . [s]uch a response (or lack thereof) weighs greatly in favor of approving the settlement”) (citing cases).

### 3. The Stage of Proceedings and Amount of Discovery Completed

The Third Circuit has found that this Girsh factor, analyzing the stage of proceedings and the amount of discovery completed, is intended to ensure “that a proposed settlement is the product of informed negotiations” and that “the parties . . . have an adequate appreciation of the merits of the case before negotiating.” *Prudential*, 148 F.3d at 319 (internal quotation omitted). This factor “captures the degree of case development that interim counsel [had] accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.” *General Motors*, 55 F.3d at 813. Plaintiffs, through Interim Counsel, conducted extensive investigations into the case in preparation for filing of the Complaint. *See* Bernstein Decl. ¶ 3.

In addition to all the reasons stated above, the cooperation that will be provided by Moark as a result of this Settlement weighs strongly in favor of final approval. *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2004 WL 1068807, at \*2 (E.D. Pa. May 11, 2004) (acknowledging the assistance that the settling defendants will provide “in pursuing this case against the remaining Defendants”). After Preliminary Approval, Moark produced 2005-2008 transaction data to Interim Counsel on July 18, 2010. Bernstein Decl. ¶ 19. In late 2010, Moark produced 3,200 documents to Interim Counsel. *Id.*

While the case is in an early stage and formal discovery has yet to take place, “Plaintiffs benefit from an early resolution in that they save the expenses and inevitable rising costs of counsel fees.” *In re Am. Sterilizer S’holder Litig.*, No. 84 Civ. 5587, 1985 WL 4027, at \*4 (E.D. Pa. Nov. 26, 1985). The Class will receive the substantial benefit of having Moark’s testimony and documents before discovery opens, which will provide them with knowledge of the

conspiracy with a particular emphasis on the end of the Class Period where Sparboe's cooperation ended. *See* Bernstein Decl. ¶ 18. In addition, Moark will provide assistance in fighting privilege issues asserted by the UEP. *See id.* This factor, therefore, weighs in favor of final approval. *See, e.g., Milliron v. T-Mobile USA, Inc.*, No. 08 Civ. 4149, 2009 WL 3345762 at \*7 (D.N.J. Sept. 10, 2009) (“While little discovery has taken place within the confines of this particular action, the parties have each assessed the settlement value of the case and have examined the strengths and weaknesses of their relative positions . . . . Thus, even though the action settled at a relatively early stage in the proceedings, the Court finds that counsel on both sides of the table are experienced and able litigators, and that the parties have sufficiently apprised themselves of the relevant facts and law to make a knowledgeable decision as to settlement.”).

#### 4. The Risks of Establishing Liability

The fourth *Girsh* factor “examine[s] what the potential rewards (or downside) of litigation might have been had interim counsel elected to litigate the claims rather than settle them.” *General Motors*, 55 F.3d at 814. “The inquiry requires a balancing of the likelihood of success if ‘the case were taken to trial against the benefits of immediate settlement.’” *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 89 (D.N.J. 2001) (quoting *Prudential*, 148 F.3d at 319). Here, “the Court need not delve into the intricacies of the merits of each side’s arguments, but rather may ‘give credence to the estimation of the probability of success proffered by [Interim Counsel], who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action.’” *Perry*, 229 F.R.D. at 115 (quoting *Lachance v. Harrington*, 965 F. Supp. 630, 638 (E.D. Pa. 1997)).

While Interim Counsel believe that they will prevail at trial, they recognize that antitrust cases, like all complex litigation against large companies with highly talented defense counsel,

have inherent risks.<sup>8</sup> “Here, as in every case, Plaintiffs face the general risk that they may lose at trial, since no one can predict the way in which a jury will resolve disputed issues.” *Lazy Oil Co. v. Wotco Corp.*, 95 F. Supp. 2d 290, 337 (W.D. Pa. 1997), *aff’d sub nom. Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581 (3d Cir. 1999), *see also State of West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) (“It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced.”), *aff’d*, 440 F.2d 1079 (2d Cir. 1971).

### 5. The Risks of Establishing Damages

The fifth *Girsh* factor, similar to the fourth, “attempts to measure the expected value of litigating the action rather than settling it at the current time.” *Cendant*, 264 F.3d at 238-39 (quoting *General Motors*, 55 F.3d at 816). Even if Class Plaintiffs successfully reach trial as a class, and establish liability, proof of damages will be provable, but complex. *See, e.g., Lazy Oil*, 95 F. Supp. 2d at 337 (“[C]ourts have recognized the need for compromise where divergent testimony would render the litigation an expensive and complicated battle of experts.”) (internal quotations and citations omitted); *NASDAQ*, 187 F.R.D. at 476 (recognizing the risk plaintiffs face in not establishing damages in class action antitrust cases). However confident Interim Counsel may be that liability can be proven against Moark, Interim Counsel must also recognize the existence of a genuine risk of no recovery or only a limited recovery. In addition, the cooperation obtained from Moark enhances Plaintiffs’ ability to establish damages against the

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<sup>8</sup> Because Plaintiffs are continuing to prosecute this case against the remaining Defendants, Interim Counsel do not wish to highlight potential weaknesses (if any) or emphasize particularly vulnerable points in their case. To do so could prejudice the prosecution of this action. *See Manual for Complex Litigation - Fourth* § 21.651 (2004) (“Given that the litigation might continue against other defendants. The parties may be reluctant to disclose fully and candidly their assessment of the proposed settlement’s strengths and weaknesses that led them to settle separately.”).

non-settling Defendants, and may encourage a complete settlement of the action reducing the likelihood that damages will have to be proven.

**6. The Risks of Maintaining a Class Action Through Trial**

The sixth *Girsh* factor evaluates the risks of maintaining the class action through a trial. “Because the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the [class] action, this factor measures the likelihood of obtaining and keeping a class certified if the action were to proceed to trial.” *Warfarin Sodium*, 391 F.3d at 537 (internal quotation and citation omitted). The Class has been preliminarily certified for settlement purposes only. *See* Preliminary Approval Order at 5-6 (Bernstein Decl. Ex. C). However, Interim Counsel acknowledges that had Moark not settled, it would have joined the non-settling Defendants in contesting class certification.

This uncertainty further supports approval of the proposed Settlement.

**7. The Ability of the Defendant to Withstand a Greater Judgment**

The Third Circuit has interpreted this seventh *Girsh* factor as concerning “whether the defendants could withstand a judgment for an amount significantly greater than the Settlement.” *Cendant*, 264 F.3d at 240. The fact that Moark could withstand a larger judgment is not an obstacle to approving the Settlement. Settlements have been approved where a settling defendant has had the ability to pay greater amounts, but the risks of litigation outweigh the potential gains from continuing on to trial. *See Lazy Oil*, 95 F. Supp. 2d at 318 (“The Court presumes that Defendants have the financial resources to pay a larger judgment. However, in light of the risks that Plaintiffs would not be able to achieve any greater recovery at trial, the Court accords this factor little weight in deciding whether to approve the proposed Settlement.”); *Perry*, 229 F.R.D. at 116 (“Fleet could certainly withstand a much larger judgment as it has considerable assets. While that fact weighs against approving the settlement, this factor’s

importance is lessened by the obstacles the class would face in establishing liability and damages.”).

**8. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation**

The eighth and ninth *Girsh* factors assess the reasonableness of the settlement fund. These factors “test two sides of the same coin: reasonableness in light of the best possible recovery and reasonableness in light of the risks the parties would face if the case went to trial.” *Warfarin Sodium*, 391 F.3d at 538. A court evaluating a proposed class action settlement should consider “whether the settlement represents a good value for a weak case or a poor value for a strong case.” *Id.*; *see also Girsh*, 521 F.2d at 157. In the process, however, a court must “avoid deciding or trying to decide the likely outcome of a trial on the merits.” *In re Nat’l Student Mktg. Litig.*, 68 F.R.D. 151, 155 (D.D.C. 1974).

As courts have explained, “[w]hile the court is obligated to ensure that the proposed settlement is in the best interest of the class members by reference to the best possible outcome, it must also recognize that settlement typically represents a compromise and not hold counsel to an impossible standard.” *In re Aetna, Inc. Sec. Litig.*, MDL No. 1219, 2001 WL 20928 at \*6 (E.D. Pa. Jan. 4, 2001); *see also General Motors*, 55 F.3d at 806 (noting that “after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.”) (citation omitted); *Lazy Oil*, 95 F. Supp. 2d at 338-39 (stating that a court “should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and abandoning of highest hopes”) (internal quotations and citation omitted). The Settlement represents good value for the class in light of the stage of



the litigation and the risks attendant with its continuing prosecution. It thus, satisfies the eighth and ninth *Girsh* factors.

Therefore, for the reasons stated above, the Settlement satisfies the factors set forth in *Girsh*, 521 F.2d at 157, and is fair, reasonable and adequate.

**IX. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement pursuant to Federal Rule of Civil Procedure 23(e) and certify the requested Settlement Class for settlement purposes pursuant to Rules 23(a) and 23(b)(3). A proposed Order is attached hereto as Exhibit 3.

Dated: January 27, 2011

Respectfully submitted,

/s/ Steven A. Asher

Steven A. Asher

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# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE: PROCESSED EGG PRODUCTS</b>	:	
<b>ANTITRUST LITIGATION</b>	:	<b>MDL No. 2002</b>
_____	:	<b>08-md-02002</b>
	:	
<b>THIS DOCUMENT APPLIES TO:</b>	:	
<b>All Direct Purchaser Class Actions</b>	:	

**DECLARATION OF STANLEY D. BERNSTEIN IN SUPPORT  
OF PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF THE CLASS  
ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANTS  
MOARK, LLC, NORCO RANCH, INC., AND LAND O’LAKES, INC.**

I, Stanley D. Bernstein, declare as follows:

1. I am a partner of the law firm Bernstein Liebhard LLP and am one of the Court-appointed Interim Co-Lead Counsel (“Interim Counsel”) for Direct Purchasers in the above captioned action. I submit this declaration in support of the Motion for Final Approval of the proposed settlement with Moark, LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. (collectively “Moark”). This declaration is based on my personal knowledge and conversations with other Interim Counsel.

2. This is a class action alleging that Moark along with other shell egg and egg products producers violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce their shell egg and egg product output and thereby artificially fix, raise, maintain and/or stabilize the prices of shell eggs and egg products in the United States.

3. In the fall and winter of 2008, numerous cases were filed in several federal district courts, including the Eastern District of Pennsylvania, the District of Minnesota, and the District of New Jersey. The class actions were transferred to, and consolidated in this Court into the above captioned MDL, and pursuant to the Court’s December 9, 2008 Order.

4. On June 10, 2008, Defendant Sparboe Farms, Inc. (“Sparboe”) entered into a settlement agreement with Plaintiffs. Pursuant to that agreement, Sparboe produced documents and witnesses that enabled Plaintiffs to amend their Consolidated Amended Class Action Complaint, bolstering Plaintiffs’ claims against the remaining Defendants. The Court preliminarily approved the Sparboe settlement on October 23, 2009. On December 14, 2009, incorporating information obtained from Sparboe, Plaintiffs filed their Second Consolidated Amended Class Action Complaint (“Complaint”) which provided in exhaustive detail specific instances relating to Defendants’ formation and implementation of an antitrust conspiracy.<sup>1</sup>

5. Moark, LLC and Norco Ranch, Inc. answered the Complaint (ECF No. 245), while Land O’Lakes, Inc. moved to dismiss (ECF No. 239). All three Defendants moved to dismiss any claim by Direct Purchasers of an egg products conspiracy (ECF No. 235) and for claims of damages prior to September 24, 2004 (ECF No. 241). Moark’s motions to dismiss were withdrawn subject to reinstatement, if the Settlement Agreement is not finally approved, by a May 27, 2010 Stipulation signed by this Court. (ECF No. 338).

6. Moark was fully prepared to defend itself and litigate this case. Nevertheless, Moark was interested in seeing if an agreement could be reached to resolve this litigation. There were protracted discussions over the course of eight months between Interim Counsel and Moark’s counsel.

7. Plaintiffs entered into the negotiations with Moark with a significant amount of knowledge of Defendants’ antitrust conspiracy, as a result of months of investigations into the conspiracy conducted by the numerous experienced law firms representing them, and information obtained pursuant to the Sparboe settlement.

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<sup>1</sup> The operative version of the Second Amended Complaint is found at ECF No. 291. Originally filed on April 7, 2010, redactions were made pursuant to a Court Order in January 2011.

8. Preliminary contact with Eimer Stahl Klevorn & Solberg LLP, counsel for Moark, about a potential settlement, occurred in August of 2009.

9. After an October 9, 2009 meeting, Moark provided sales data and other financial information that permitted Plaintiffs to accurately estimate the range of damages that could be proven at trial.

10. Direct settlement negotiations began in March 2010. Negotiations were intense and conducted at arm's-length. Interim Counsel and Moark's counsel vigorously advocated their respective clients' positions in the settlement negotiations.

11. Prior to entering into the Settlement Agreement, Interim Counsel wanted to be convinced that the monetary compensation afforded to the Class Members was fair, reasonable and adequate and that the cooperation provided would substantially assist Plaintiffs in advancing claims against the non-settling defendants. Thus, as part of these negotiations, Moark described the nature and extent of the cooperation that it would agree to provide as part of any settlement.

12. Settlement negotiations included telephone conferences and in-person meetings that were held on multiple occasions throughout March, April and May 2010. At these meetings the parties discussed the potential settlement terms and the extent of Moark's cooperation. Numerous possible settlement amounts were proposed and rejected, and the parties exchanged detailed information, including comprehensive sales data for the class period. On several occasions, negotiations were suspended because the demands of Plaintiffs and Moark appeared too far apart for any agreement to be reached. Only after countless stops and starts, proposals and counterproposals, did the long negotiations finally bear fruit, permitting the parties to come to a mutually satisfactory agreement.

13. On Friday, May 21, 2010 the Settlement Agreement was fully executed by Interim Counsel and Moark's Counsel. A true and complete copy of this Agreement is attached as Exhibit A. An addendum to that Agreement, executed on June 1, 2010 is attached as Exhibit B.

14. This Court preliminarily approved the proposed Settlement on July 15, 2010 (ECF No. 387). The Preliminary Approval Order is attached as Exhibit C. That same day, this Court by a second order, authorized Interim Counsel to disseminate Notice and Claim Forms by direct mail and publication (ECF No. 388). A copy of the Notice is attached as Exhibit D. A final fairness hearing is scheduled for February 28, 2011.

15. The Settlement Agreement provided that on or before June 7, 2010, Moark would pay \$25,000,000 in cash (the "Settlement Amount"). The Settlement Amount is being maintained in an escrow account.

16. The \$25,000,000 Settlement Amount represents almost 1% of total Moark egg sales during the class period and almost 28% of Moark's cumulative net profits in the egg division for the last six years. For the full time period in which reliable data was available (2002-2008), Moark's total shell egg sales to non-defendants from 2002-2008 were approximately \$2,456,200,000. Moark's net profits from shell eggs and egg products were approximately \$90,516,000. The proposed Settlement with Moark is well within the "range of possible approval" required by law. It compares favorably to settlements approved in other antitrust cases.

17. Interim Counsel, who have substantial experience litigating antitrust class actions, believe the Settlement Amount is an appropriate amount of cash consideration for the discharge of the claims of the Class against Moark and a highly favorable result for the Class. The

Settlement Agreement was entered into after careful review of Moark's sales figures, net profits and market share during the damage period as well as the likely expense of litigating claims against Moark through a trial.

18. Moark has agreed to undertake significant cooperation to support Plaintiffs' prosecution of this action. One such benefit is information regarding the conspiracy and Defendant United Egg Producers' ("UEP") participation in it for the length of the Class Period. Thus, important information and witnesses that bolster Plaintiffs' claims against the non-settling Defendants will be made available to Plaintiffs without the time and expense involved in pursuing formal discovery.

19. Pursuant to the Settlement Agreement Moark has already provided substantial cooperation, including general descriptions of the times, places, and corporate participants relating to the conduct at issue in the Action. In addition, after the Settlement was preliminarily approved by this Court, on or around July 18, 2010 through the end of July, Moark produced transaction data in response to an ESI request from Interim Counsel and interviewed employees and reviewed the documents from several custodians. Moark also produced to Interim Counsel 3,200 documents at the end of 2010 to assist Plaintiffs in the prosecution of this action. Additional cooperation has been delayed by an ongoing privilege dispute raised by the UEP, the resolution of which will be aided by Moark.

20. Furthermore, upon Final Approval, Moark will be required to produce sworn affidavits substantiating Plaintiffs' case as well as knowledgeable witnesses for interview, deposition, or testimony at trial.

21. Moark's continued cooperation will be instrumental in the prosecution of this action against non-settling Defendants.



I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 27, 2011

/s/ Stanley D. Bernstein  
Stanley D. Bernstein

# EXHIBIT A

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: PROCESSED EGG PRODUCTS :**  
**ANTITRUST LITIGATION :** MDL No. 2002  
: 08-md-02002  
:  
**THIS DOCUMENT APPLIES TO:** :  
**All Direct Purchaser Actions :**

**SETTLEMENT AGREEMENT BETWEEN  
DIRECT PURCHASER PLAINTIFFS AND DEFENDANTS  
MOARK, LLC, NORCO RANCH, INC., AND LAND O' LAKES, INC.**

This Settlement Agreement ("Agreement") is made and entered into this 21st day of May, 2010 (the "Execution Date"), by and between Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. (collectively the "Moark Defendants"), together with their past and present parents, subsidiaries, and affiliates, and plaintiff Class representatives ("Plaintiffs")(as defined herein at Paragraph 11), both individually and on behalf of a Class (as defined herein at Paragraph 4) of direct purchasers of Shell Eggs and Egg Products (as defined herein at Paragraphs 7 and 17).

WHEREAS, Plaintiffs are prosecuting the above-captioned actions currently pending and consolidated in the Eastern District of Pennsylvania, and including all actions transferred for coordination, and all direct purchaser actions pending such transfer (including, but not limited to, "tag-along" actions) (the "Action") on their own behalf and on behalf of the Class against Moark Defendants and other Defendants;

WHEREAS, Plaintiffs allege that Moark Defendants participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of certain Shell Eggs and Egg

Products in the United States at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement with Moark Defendants according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Class;

WHEREAS, Moark Defendants deny all allegations of wrongdoing in the Action. However, despite their belief that they are not liable for, and have good defenses to, the claims alleged in the Action, Moark Defendants desire to settle the Action, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of the Action, or any action or proceeding relating to the matters being fully settled and finally put to rest in this Agreement;

WHEREAS, Moark Defendants agree to cooperate with Class Counsel (defined in Paragraph 1 below) and the Class by providing information related to the claims asserted by Plaintiffs in this Action against Non-Settling Defendants, or other parties not currently named as Defendants, with regard to the sale of Shell Eggs and Egg Products;

WHEREAS, arm's-length settlement negotiations have taken place between Class Counsel and Moark Defendants' Counsel, and this Agreement has been reached as a result of these negotiations;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to Moark Defendants only, without

costs as to Plaintiffs, the Class or Moark Defendants, subject to the approval of the Court, on the following terms and conditions:

**A. Definitions**

The following terms, as used in this Agreement, have the following meanings:

1. "Class Counsel" shall refer to the law firms of Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065-8404. "Plaintiffs' Counsel" shall refer to the law firms identified on pages 133-137 of the Second Consolidated Amended Class Action Complaint filed in the Action on April 7, 2010.
2. "Moark Defendants' Counsel" shall refer to the law firm of Eimer Stahl Klevorn & Solberg LLP, 224 South Michigan Avenue, Suite 1100, Chicago, Illinois 60604.
3. "Counsel" means both Plaintiffs' Counsel and Moark Defendants' Counsel, as defined in Paragraphs 1 and 2 above.
4. "Class Member" or "Class" shall mean each member of the settlement class, as defined in Paragraph 19 of this Agreement, who does not timely elect to be excluded from the Class, and includes, but is not limited to, Plaintiffs.
5. "Class Period" shall mean the period from and including January 1, 2000 up to and including the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published.

6. "Defendant(s)" shall refer to the parties listed as defendants in the Second Consolidated Amended Complaint as filed on January 30, 2010, and each of their corporate parents, subsidiaries, and affiliated companies.
7. "Egg Products" shall mean the whole or any part of eggs that have been removed from their shells and may be processed, with or without additives, into dried, frozen or liquid forms.
8. "Final Approval" shall mean the definition given to that phrase in Paragraph 24 hereof.
9. "Non-Settling Defendants" shall refer to Defendants other than Moark Defendants.
10. "Claims Administrator" shall mean the Garden City Group, Inc.
11. "Plaintiffs" shall mean each of the following named Class representatives: T.K. Ribbing's Family Restaurant, LLC; Eby-Brown Company LLC; Goldberg and Solovy Foods, Inc.; Karetas Foods, Inc.; Nussbaum-SF, Inc.; Somerset Industries, Inc.; Wixon, Inc.; John A. Lisciandro d/b/a/ Lisciandro's Restaurant, and SensoryEffects Flavor Co. d/b/a SensoryEffects Flavor Systems.
12. "Producer" shall mean any person or entity that owns, contracts for the use of, leases or otherwise controls hens for the purpose of producing eggs for sale.
13. "Releasees" shall refer, jointly and severally, and individually and collectively, to Moark Defendants, their parents, subsidiaries, and affiliated companies, and their past and present officers, directors, employees, agents, insurers, attorneys, shareholders, joint venturers that are not Non-Settling Defendants, partners and representatives, as well as the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

14. "Releasors" shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Class Members, and to each of their respective past and present officers, directors, parents, subsidiaries, affiliates, partners, and insurers, and to the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

15. "Settlement Amount" shall refer to \$25,000,000 U.S. dollars.

16. "Settlement Fund" shall mean the funds accrued in the escrow account established in accordance with Paragraph 33 below.

17. "Shell Eggs" shall mean eggs that are sold in the shell for consumption or for breaking and further processing.

18. "Total Sales" shall mean the sum of the annual U.S. sales of all Producers, to be mutually agreed upon by Counsel, of Shell Eggs and Egg Products for the years during the Class Period.

**B. Settlement Class Certification**

19. Subject to Court approval, the following Class shall be certified for settlement purposes only as to Moark Defendants:

All persons and entities that purchased eggs, including Shell Eggs and Egg Products, produced from caged birds in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs produced from caged birds in the United States directly from any Producer including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement

purposes is first published, excluding individuals and entities that purchased only “specialty” Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and “hatching” Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

**b.) Egg Products SubClass**

All individuals and entities that purchased Egg Products produced from Shell Eggs that came from caged birds in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court’s entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published, excluding individuals and entities that purchased only “specialty” Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types).

Excluded from the Class and SubClasses are Producers, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court’s or staff’s immediate family.

**C. Approval of this Agreement and Dismissal of Claims**

20. Plaintiffs and Moark Defendants shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking Court approval of this Agreement and securing both the Court’s certification of the Class and the Court’s approval of procedures, including the giving of Class notice under Federal Rules of Civil Procedure 23(c) and (e), to secure the prompt, complete, and final dismissal with prejudice of the Action as to Moark Defendants.

21. Within two (2) business days after the execution of this Agreement by Moark



Defendants, Counsel shall jointly file with the Court a stipulation for suspension of all proceedings against Moark Defendants pending approval of this Agreement. Ten (10) business days after execution of the Agreement by Moark Defendants, Plaintiffs shall submit to the Court a motion (the "Motion"): (a) for certification of a Class for settlement purposes; and (b) for preliminary approval of the Agreement, and authorization to disseminate notice of Class certification, the settlement, and the final judgment contemplated by this Agreement to all potential Class Members. The Motion shall include: (a) the definition of the Class for settlement purposes as set forth in Paragraph 19 of this Agreement; (b) a proposed form of, method for, and date of dissemination of notice; and (c) a proposed form of final judgment order. The text of the items referred to in clauses (a) through (c) above shall be agreed upon by Plaintiffs and Moark Defendants before submission of the Motion. Individual notice of the Agreement shall be mailed to persons and entities identified by Moark Defendants and, as ordered by the Court, those identified by Plaintiffs and Plaintiffs' Counsel or other Non-Settling Defendants in the Action, who are located in the United States and who purchased Shell Eggs and Egg Products directly from Moark Defendants or any Non-Settling Defendant(s) in the Action during the Class Period, and notice of the Settlement shall be published once in the Wall Street Journal and in such other trade journals targeted towards direct purchasers of Shell Eggs and Egg Products, if any, as Moark Defendants and Class Counsel agree to or as ordered by the Court. Within twenty (20) business days after the Execution Date, Moark Defendants shall supply to Class Counsel at Moark Defendants' expense and in such form as kept in the regular course of business (electronic format if available) such names and addresses of potential Class Members as it has. If practicable, Plaintiffs may combine dissemination of notice of the proposed certification of the Class for settlement purposes and the Agreement with the dissemination of notice of other

settlement agreements. However, the notice of this Agreement and the proposed certification of the Class shall be separate from any other notice.

22. Within twenty (20) business days after the end of the opt-out period established by the Court and set forth in the notice, Plaintiffs shall provide Moark Defendants, through Moark Defendants' Counsel, a written list of all potential Class Members who have exercised their right to request exclusion from the Class, the dollar volume of purchases of Shell Eggs and Egg Products during the Class Period for each such potential Class Member and the percentage that such potential Class Member's purchases represents of the Total Sales.

23. Within sixty (60) business days of preliminary approval of this Agreement by the Court, Plaintiffs and Moark Defendants shall jointly seek entry of an order and final judgment, the text of which Plaintiffs and Moark Defendants shall agree upon, as provided for in Paragraphs 20 and 21 of this Agreement:

- (a) as to the Action, approving finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- (b) directing that, as to Moark Defendants, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- (c) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- (d) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the final judgment of dismissal as to Moark Defendants shall be entered; and
- (e) requiring Class Counsel to file with the Clerk of the Court a record of potential Class Members who timely excluded themselves from the Class, and to provide a copy of the record to counsel for Moark Defendants.

24. This Agreement shall become final only when (a) the Court has entered an order approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final

judgment dismissing the Action against Moark Defendants on the merits with prejudice as to all Class Members and without costs has been entered, and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in clause (a) above has expired or, if appealed, approval of this Agreement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review ("Final Approval"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated time. On the Execution Date, Plaintiffs and Moark Defendants shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 29 and 32 of this Agreement.

**D. Release and Discharge**

25. In addition to the effect of any final judgment entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants, including any entities or individuals that may later be added as a defendant to the Action, (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting,

marketing, or distributing of Shell Eggs and Egg Products in the United States or elsewhere, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, whether or not concealed or hidden, in the Complaints filed in the Action (the "Complaints"), which in whole or in part arise from or are related to the facts and/or actions described in the Complaints, including under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, from the beginning of time to the date when notice of the Court's entry of an order preliminarily approving this Agreement is first published (the "Released Claims"). Releasors shall not, after the date of this Agreement, seek to recover against any of the Releasees for any of the Released Claims. Notwithstanding anything in this Paragraph, Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge, claims based solely on purchases of Shell Eggs and Egg Products outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases. This Release is made without regard to the possibility of subsequent discovery or existence of different or additional facts.

26. Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"): "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any

equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of this Settlement Agreement, but each Releasor hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, claim whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts.

27. In addition to the provisions of Paragraphs 25 and 26, each Releasor hereby expressly and irrevocably waives and releases, upon this Agreement becoming finally approved by the Court, any and all defenses, rights, and benefits that each Releasor may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in Paragraphs 25 and 26. Each Releasor also expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

28. The release and discharge set forth in Paragraphs 25 through 27 herein do not include claims relating to payment disputes, physical harm, defective product or bodily injury (the "Excepted Claims") and do not include any Non-Settling Defendant.

**E. Rescission**

29. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 23 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, then Moark Defendants and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) business days of the action giving rise to such option. If this Agreement is rescinded, all amounts in the escrow created pursuant to Paragraph 33 hereof, less any expenses authorized pursuant to this Agreement, shall be wire transferred to the Moark Defendants, pursuant to their instructions, within ten (10) business days of the notice of rescission.

30. In the event of rescission, if Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 23 of this Agreement, Class Counsel agree that this Agreement, including its exhibits, and any and all negotiations, documents, information and discussions associated with it shall be without prejudice to the rights of Moark Defendants, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth of any of the claims or allegations made in this Action in any pleading, and shall not be used directly or indirectly, in any way, whether in this Action or in any other proceeding, unless such documents and/or information is otherwise obtainable by separate and independent discovery permissible under the Federal Rules of Civil Procedure.

31. Class Counsel further agree that, in the event of rescission, the originals and all copies of documents provided by or on behalf of Moark Defendants pursuant to this Agreement,

together with all documents and electronically stored information containing information provided by Moark Defendants, including, but not limited to, notes, memos, records, and interviews, shall be returned to Moark Defendants at Moark Defendant's expense, or destroyed by Class Counsel at their own expense, provided that attorney notes or memoranda may be destroyed rather than produced if an affidavit of such destruction is promptly provided to Moark Defendants through their counsel.

32. If Class Counsel notify Moark Defendants, pursuant to Paragraph 22, that Class Members whose purchases represent 7.5% or more of the Total Sales have requested exclusion from this Agreement ("Excluded Class Members"), Moark Defendants shall have the right and option within fifteen (15) business days after receipt of such notice to either (1) rescind the Agreement or (2) reduce the Settlement Amount by the percentage that the total purchases reported to Moark Defendants pursuant to Paragraph 22 represents of the Total Sales (example: total purchases of Excluded Class Members / Total Sales). Within ten (10) business days of the exercise of option (2), the amount by which the Settlement Amount was reduced shall be wire transferred from the escrow established pursuant to Paragraph 33 to a newly established Escrow Account of Moark Defendants' choosing ("Reduction Escrow"). Distribution of the Reduction Escrow to Moark Defendants shall occur only upon written notice to Class Counsel by Moark Defendants' Counsel that actual settlement or judgment has occurred between Moark Defendants and any Excluded Class Member(s) ("Reduction Distribution"). Any Reduction Distribution shall only be for the actual amount of any settlement or judgment between an Excluded Class Member and Moark Defendants. Any unclaimed remainder in the Reduction Escrow that exists at the later of the termination of this Action or any action brought by an Excluded Class Member shall revert to the benefit of the Class. Moark Defendants shall have no claim to any Settlement

Amount other than from the Reduction Distribution Escrow. Moark Defendants shall give written notice to Class Counsel in order to invoke rights under this Paragraph to rescind or reduce the Settlement Amount.

**F. Payment**

33. Moark Defendants shall pay or cause to be paid the Settlement Amount in settlement of the Action. The Settlement Amount shall be wire transferred by Moark Defendants or their designee within ten (10) business days of the Execution Date into the Settlement Fund, which shall be established as an escrow account at a bank agreed to by Class Counsel and Moark Defendants' Counsel, and administered in accordance with the Escrow Agreement attached hereto as Exhibit A.

34. Each Class Member shall look solely to the Settlement Amount for settlement and satisfaction, as provided herein, of all claims released by the Releasors pursuant to this Agreement.

35. Class Counsel may seek an award of attorneys' fees and reasonable litigation expenses approved by the Court, to be paid out of the Settlement Amount after the Final Approval of the Agreement. Moark Defendants agree not to object to Class Counsel's petition to the Court for payment of attorneys' fees, costs, and expenses from the Settlement Amount. The Moark Defendants shall have no obligation to pay any fees or expenses for Class Counsel.

36. Upon entry of an order by the Court approving the request for an award of attorneys' fees ("Attorneys' Fees Order") made pursuant to Paragraph 35 above, attorneys' fees may be distributed from the Settlement Fund pursuant to the terms of the fee order, provided however that any Class Counsel seeking to draw down their share of the attorneys' fees prior to Final Approval and the Attorneys' Fees Order becoming final shall secure the repayment of the



amount drawn down by a letter of credit or letters of credit on terms, amounts, and by banks acceptable to Moark Defendants. The Attorneys' Fees Order becomes final when the time for appeal or to seek permission to appeal from the Attorneys' Fees Order has expired or, if appealed, has been affirmed by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

37. In order to receive distribution of funds pursuant to Paragraph 36 prior to Final Approval and the Attorneys' Fees Order becoming final above, each Class Counsel shall be required to provide the Claims Administrator the approved letter(s) of credit in the amount of Class Counsel's draw-down, and shall be required to reimburse the Settlement Fund within thirty (30) business days all or the pertinent portion of the draw-down with interest, calculated as the rate of interest published in the Wall Street Journal for 3-month U.S. Treasury Bills as of the close on the date that the draw-down was distributed, if Final Approval is not granted or if the award of attorneys' fees is reduced or overturned on appeal. The Claims Administrator may present the letter(s) of credit in the event the Class Counsel fails to honor the obligation to repay the amount withdrawn.

38. Disbursements for any payments and expenses incurred in connection with taxation matters relating to this Settlement Agreement shall be made from the Settlement Amount upon written notice by Class Counsel of such payments and expenses to the Claims Administrator, and such amounts shall not be refundable to Moark Defendants in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

**G. Cooperation**

39. Moark Defendants shall provide cooperation pursuant to this Agreement. All cooperation shall be coordinated in such a manner so that all unnecessary duplication and

expense is avoided. Moark Defendants' cooperation obligations shall only apply to Releasors who act with, by or through Class Counsel pursuant to this Agreement in this Action.

(a) **Proffers.** Upon execution of this Settlement Agreement, Moark Defendants shall begin to undertake to support Class Plaintiffs' prosecution of the Action. Beginning within ten (10) business days of the Execution Date, Moark Defendants agree that its counsel will meet with Class Counsel to begin to provide a general description of the times, places, and corporate participants relating to the conduct at issue in the Action.

(b) **Production of Documents.** No later than ten (10) business days after the Execution Date, Moark Defendants shall begin to confer with Class Counsel about agreed-upon categories of documents from an agreed-upon list of custodians for production purposes. Within one (1) business day after preliminary approval of this Agreement by the Court, Moark Defendants shall begin to produce the agreed-upon categories of documents from an agreed-upon list of custodians to Class Counsel.

(b) **Final Approval Cooperation.** Upon Final Approval of the Agreement, and the rescission right having lapsed, Moark Defendants shall begin providing the following cooperation:

(i) **Interviews:** At an agreed-upon time and at Moark Defendants' expense, Moark Defendants shall make available for one interview with Class Counsel and counsel for any other parties with which Moark Defendants have settled and/or their experts each then current directors, officers, and employees of Moark Defendants who possess information that, based on Class Counsel's good faith belief, would assist Plaintiffs in preparing and prosecuting the Action. The Moark Defendants would use their best efforts to assist Class Counsel in arranging interviews with former directors, officers, and employees of Moark Defendants.

(ii) **Declarations and Affidavits:** Moark Defendants shall make available to Class Counsel, upon reasonable notice, any then current directors, officers, and employees of Moark Defendants for the preparation of declarations and/or affidavits to be used in the prosecution of the Action. Moark Defendants shall use their best efforts to assist Class Counsel in arranging for declarations and/or affidavits of former directors, officers, and employees of Moark Defendants to be used in the prosecution of the Action.

(iii) **Depositions:** At an agreed-upon time and at Moark Defendants' expense, Moark Defendants shall make available for one deposition in the consolidated cases each of the then current directors, officers, and employees of the Moark Defendants, designated by Class Counsel, who

possess information that, based on Class Counsel's good faith belief, would assist Plaintiffs in preparing and prosecuting the Action. Written notice by Class Counsel upon Moark Defendants' counsel shall constitute sufficient service for such depositions. Moark Defendants shall use their best efforts to assist Class Counsel in arranging the deposition of former directors, officers, and employees of the Moark Defendants.

(iv) Testimony at Trial: Upon reasonable notice and at Moark Defendants' expense, Moark Defendants shall make available for testimony at trial, each of the then current directors, officers, and employees of Moark Defendants, designated by Class Counsel, who possess information, based on Class Counsel's good faith belief, that would assist Plaintiffs in trial of the Plaintiffs' claims as alleged in the Action. Moark Defendants shall use their best efforts to assist class Counsel in arranging for the appearance of former directors, officers, and employees at trial.

(c) Attorney Client Privilege. Moark Defendants shall make available for testimony or interview, upon reasonable notice and at Moark Defendants' expense, each of the then current directors, officers, and employees of Moark Defendants who Plaintiffs believe possess non-privileged information relating to any assertion of privilege by a third party, to the extent permissible under the law. Consistent with all applicable legal and ethical rules, Moark Defendants shall be under no obligation to produce documents that UEP claims are privileged until such time as any dispute as to such claimed privilege is resolved.

(d) Quantum Meruit. Moark Defendants will not object to any application made by Class Member or Class Counsel for quantum meruit from any entity or person who opts out of this Settlement.

(e) Termination. The Moark Defendants' obligations to cooperate under the Agreement terminate when final judgment has been rendered, with no remaining rights of appeal, in the Action against all Defendants.

40. Neither the entry into this Agreement nor any performance under it shall constitute a waiver of Moark Defendants' own attorney-client privilege or work product immunity.

41. Should the Moark Defendants or Plaintiffs be required to submit any information or documentation to the Court to obtain preliminary approval, such submission shall be, to the full extent permitted, for review by the court *in camera* only. All information and documents

provided by Moark Defendants to Class Counsel shall be subject to the protective order entered in the Action, and any documents or electronically stored information designated as “Confidential” or “Highly Confidential” by Moark Defendants shall have the same equivalent protection as under the protective order.

**H. Use of Information and Documents**

42. Class Counsel agree to use any and all of the information and documents obtained from Moark Defendants only for the purpose of this litigation, and agree to be bound by the terms of the protective order described above in Paragraph 41. Any person who receives information or documents produced in accordance with this Agreement shall agree to be bound by all the terms of this Agreement and shall not receive such material prior to such agreement. Notwithstanding the foregoing, or the terms of the protective order, Class Counsel agree, unless ordered by a court and consistent with due process, that under no circumstances shall information or documents be shared with any person, counsel, Class Counsel or Plaintiffs’ Counsel who is also (i) counsel for any plaintiff in any state or federal action against one or more of the Releasees, (ii) counsel for any plaintiff or Class Member who or which elects to opt out of the proposed class for settlement purposes under this Agreement, (iii) any counsel representing or advising indirect purchasers of Shell Eggs or Processed Eggs, or (iv) any counsel representing or advising direct or indirect purchasers of “specialty” shell egg or egg products (such as “organic,” “free range,” or “cage free”) and purchasers of hatching eggs (used by poultry breeders or produce breeder stock or growing stock for laying hens or meat), or (v) any third party not associated with Plaintiffs’ Counsel in this Action.

43. Notwithstanding the provisions of Paragraph 42 above, Class Counsel shall coordinate, organize, and/or manage any and all cooperation provided pursuant to this Agreement with any other potential civil plaintiffs as agreed to by Counsel.

**I. Notice of Settlement to Class Members**

44. Class Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement and the date of the hearing scheduled by the Court to consider the fairness, adequacy, and reasonableness of this Agreement is provided in accordance with the Federal Rules of Civil Procedure and any Court orders. Class Counsel will undertake all reasonable efforts to obtain from Non-Settling Defendants the names and addresses of those persons who purchased Shell Eggs or Egg Products directly from any Non-Settling Defendant during the Class Period. Notice of this Settlement will be issued after Preliminary Approval of this Settlement Agreement by the Court.

45. Class Counsel is authorized to use up to a maximum of \$350,000.00 of the Settlement Amount towards the costs of notice of the Settlement under this Agreement.

**J. Taxes**

46. Class Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Amount. Further, Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Escrow Funds. Class Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable Escrow Fund by notifying the Escrow Agent in writing. Moark

Defendants shall have no responsibility to make any tax filings relating to this Settlement Agreement.

47. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “Administrator” of the Settlement Amount shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Settlement Amount (including, without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B 2(1)).

48. The parties to this Agreement and their Counsel shall treat, and shall cause the Claims Administrator to treat, the Settlement Amount as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1. In addition, the Claims Administrator and, as required, the parties, shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B 1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Amount being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1.

**K. Miscellaneous**

49. This Agreement does not settle or compromise any claim by Plaintiffs or any

Class Member asserted in the Action against any Non-Settling Defendant or any potential defendant other than the Releasees. All rights of any Class Member against Non-Settling Defendants or any other person or entity other than the Releasees are specifically reserved by Plaintiffs and the Class Members. The sales of Shell Eggs and Egg Products by Moark Defendants to Class Members shall remain in the case against the Non-Settling Defendants in the Action as a basis for damage claims and shall be part of any joint and several liability claims against Non-Settling Defendants in the Action or other persons or entities other than the Releasees.

50. The United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and Moark Defendants. This Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Pennsylvania without regard to its choice of law or conflict of laws principles. Moark Defendants submit to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement and performance thereof. Moark Defendants otherwise retain all defenses to the Court's exercise of personal jurisdiction over Moark Defendants.

51. This Agreement constitutes the entire agreement among Plaintiffs (and the other Releasees) and Moark Defendants (and the other Releasees) pertaining to the settlement of the Action against Moark Defendants only, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Moark Defendants in connection therewith. In entering into this

Agreement, Plaintiffs and Moark Defendants have not relied upon any representation or promise made by Plaintiffs or Moark Defendants not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Moark Defendants, and approved by the Court.

52. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasers and Releasees. Without limiting the generality of the foregoing: (a) each and every covenant and agreement made herein by Plaintiffs, Class Counselor Plaintiffs' Counsel shall be binding upon all Class Members and Releasers; and (b) each and every covenant and agreement made herein by Releasees shall be binding upon all Releasees.

53. This Agreement may be executed in counterparts by Plaintiffs and Moark Defendants, and an electronically-scanned (in either .pdf or .tiff format) signature will be considered an original signature for purposes of execution of this Agreement.

54. The headings in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

55. In the event this Agreement is not approved or is terminated, or in the event that the order and final judgment approving the settlement is entered but is substantially reversed, modified, or vacated, the pre-settlement status of the litigation shall be restored and the Agreement shall have no effect on the rights of the Moark Defendants or Plaintiffs to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to Class certification, raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by Moark Defendants.

56. Neither Moark Defendants nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law,



or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

57. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasers, Moark Defendants, and Releasees any right or remedy under or by reason of this Agreement.

58. Any putative Class Member that does not opt out of the Class created pursuant to the Agreement may remain in the Class without prejudice to the right of such putative Class Member to opt out of any other past, present or future settlement class or certified litigation class in the Action.

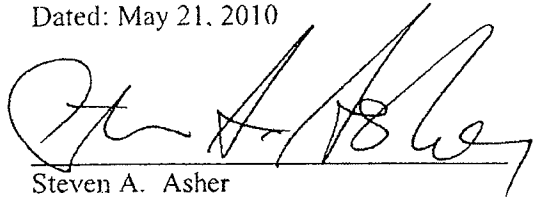
59. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

For the Class:  
Steven A. Asher  
WEINSTEIN KITCHENOFF & ASHER LLC  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103  
Asher@wka-law.com

For Moark Defendants:  
Nathan P. Eimer  
EIMER STAHL KLEVORN & SOLBERG LLP  
224 South Michigan Avenue, Suite 1100  
Chicago, IL 60604  
neimer@eimerstahl.com

60. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: May 21, 2010



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Steven A. Asher  
WEINSTEIN KITCHENOFF & ASHER LLC  
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Philadelphia, P A 19103  
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(Interim Co-Lead Counsel for the Class)

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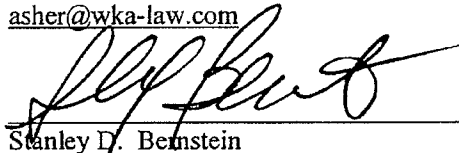
(On Behalf of Moark Defendants)

4837-3552-1030

Dated: May 21, 2010

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4837-3552-1030

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*Stephen D. Susman (by permission  
A. El-Hakam)*  
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Dated: May 21, 2010

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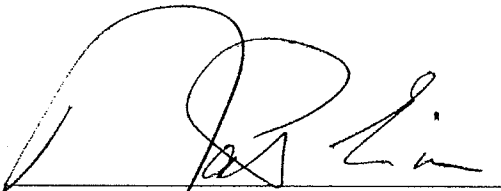
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(On Behalf of Moark Defendants)

4837-3552-1030

# EXHIBIT B

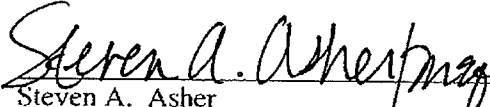
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

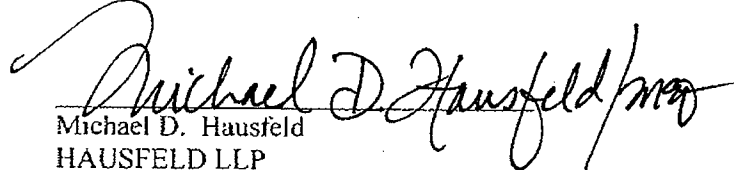
IN RE: PROCESSED EGG PRODUCTS :  
ANTITRUST LITIGATION : MDL No. 2002  
: 08-md-02002  
: \_\_\_\_\_ :  
: :  
THIS DOCUMENT APPLIES TO: :  
All Direct Purchaser Actions :

FIRST ADDENDUM TO  
SETTLEMENT AGREEMENT BETWEEN  
DIRECT PURCHASER PLAINTIFFS AND DEFENDANTS  
MOARK, LLC, NORCO RANCH, INC., AND LAND O' LAKES, INC.

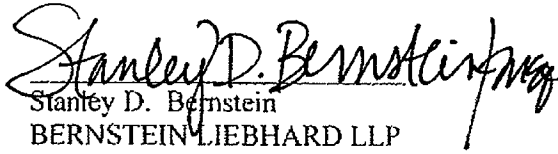
Pursuant to Paragraph 51 of the Settlement Agreement, Paragraph 33 is hereby modified  
by striking "within ten (10) business days" and replacing it with "within sixteen (16) business  
days."

Dated: June 1, 2010

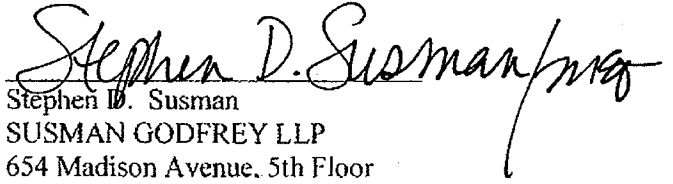
  
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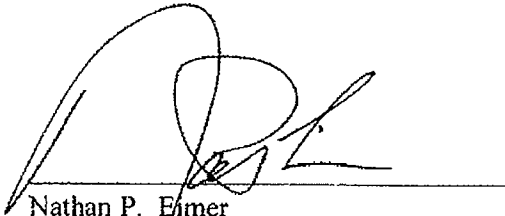


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(Interim Co-Lead Counsel for the Class)



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[neimer@eimerstahl.com](mailto:neimer@eimerstahl.com)

(On Behalf of Moark Defendants)

# EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE: PROCESSED EGG PRODUCTS</b>	:	
<b>ANTITRUST LITIGATION</b>	:	
	:	<b>MDL No. 2002</b>
	:	<b>08-md-02002</b>
	:	
<b>THIS DOCUMENT APPLIES TO:</b>	:	
<b>ALL ACTIONS</b>	:	

**ORDER ON PRELIMINARY APPROVAL OF SETTLEMENT WITH MOARK, LLC,**

**NORCO RANCH, INC. AND LAND O’LAKES, INC.**

Among the pending motions in this matter is the Direct Purchaser Plaintiffs’ Motion for Preliminary Approval of Settlement with Defendants Moark, LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. (Docket No. 347). For the reasons expressed below, on this 15th day of July 2010, it is hereby ORDERED that the motion is GRANTED.

**I. BACKGROUND**

**A. The Litigation**

This antitrust class action litigation (the “Litigation”) involves one or more alleged conspiracies to control the supply and to fix, raise, maintain and/or stabilize the prices of shell eggs and/or egg products in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiffs are direct and indirect purchasers of shell eggs and egg products (“Direct Plaintiffs” and “Indirect Plaintiffs,” respectively); Defendants are egg trade groups and vertically integrated producers of shell eggs, egg products, or both.

In the fall and winter of 2008, several cases were filed in several federal district courts, including the Eastern District of Pennsylvania, the District of Minnesota, and the District of New Jersey. The cases were transferred to this Court by the Judicial Panel on Multidistrict Litigation

on December 2, 2008, for coordinated pretrial proceedings. Co-Lead and Liaison Counsel were appointed for the Direct Plaintiffs and the Indirect Plaintiffs, and Liaison Counsel were appointed for the Defendants.

The Court appointed a Special Master to assist with electronic discovery issues and issued an order for the preservation of documents and electronically-stored information. The Court also issued a protective order, along with various other orders to facilitate and manage the Litigation. The majority of discovery has been stayed, but at the direction of the Court the parties have exchanged certain preliminary discovery materials and have served document preservation subpoenas on various third party entities and individuals.

Consolidated Amended Complaints were filed by the Direct Plaintiffs and the Indirect Plaintiffs, presumably replacing or superceding all of the previously-filed individual Complaints. Defendants responded to these Complaints and then, following the Court's preliminary approval of the settlement between Direct Plaintiffs and Defendant Sparboe Farms, Inc. ("Sparboe"), the Plaintiffs filed Second Consolidated Amended Complaints. In these Second Consolidated Amended Complaints, Plaintiffs seek injunctive relief, treble damages, attorneys' fees and costs. A briefing schedule was set, and Defendants have responded to the Second Consolidated Amended Complaints with answers as well as motions to dismiss. Oral Arguments have been set on the various motions to dismiss. In addition, the Court has addressed several miscellaneous issues, some of which required the assistance of Magistrate Judge Timothy Rice.

B. Direct Plaintiffs' Motion for Preliminary Approval of Moark Settlement

Direct Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. ("Moark") have now submitted a proposed settlement to the Court for preliminary approval

("Moark Settlement"). Under the proposed Moark Settlement, Direct Plaintiffs will release Moark from all pending claims, in exchange for monetary consideration as well as information and documents.

## II. PRELIMINARY APPROVAL

### A. Class Findings

For purposes of the Settlement of the claims against Moark (and only for such purposes, and certainly without an adjudication of the merits and, further, without any impact upon the issues between any of the Plaintiffs and any of the Non-Settling Defendants), the Court preliminarily finds that the requirements of the Federal Rules of Civil Procedure, the United States Constitution, the Rules of the Court and any other applicable law have been met insofar as the proposed settlement is concerned,<sup>1</sup> in that:

1. The Settlement Class Members, as defined below, are ascertainable from objective criteria, such as Moark's records, and the Settlement Class Members are so numerous that their joinder before the Court would be impracticable.

2. For purposes of preliminary approval, the commonality requirement of Federal Rule of Civil Procedure 23(a) is satisfied insofar as Direct Plaintiffs have alleged one or more questions of fact and law common to the Moark Settlement Class, including whether Moark violated the Sherman Antitrust Act, 15 U.S.C. § 1, et seq., by engaging in an unlawful

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<sup>1</sup> When deciding preliminary approval, a court does not conduct a "definitive proceeding on fairness of the proposed settlement." In re Mid-Atlantic Toyota Antitrust Litig., 564 F. Supp. 1379, 1384 (D.C. Md. 1983); see In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 785-86 (3d Cir. 1995). That determination must await the final hearing, at which the fairness, reasonableness, and adequacy of the settlement is assessed. In re Linerboard Antitrust Litig., 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).

conspiracy to control supply and fix, raise, maintain and/or stabilize the prices of shell eggs and/or egg products in the United States.

3. Based on Direct Plaintiffs' allegations that Defendants engaged in misconduct that uniformly affected members of the Moark Settlement Class, the Court preliminarily finds that the claims of the representative Direct Plaintiffs are typical of the claims of the Settlement Class members. The claims of the representative Direct Plaintiffs and absent class members rely on the same legal theories and arise from the same alleged "conspiracy" and "illegal agreement" by Defendants, namely, the agreement to control supply and fix, raise, maintain and/or stabilize the prices of shell eggs and/or egg products in the United States. Moreover, Direct Plaintiffs allege that all putative class members suffered injury as a result of Defendants' alleged anticompetitive conduct.

4. The Court preliminarily finds that the representative Direct Plaintiffs will fairly and adequately protect the interests of the Settlement Class, in that (i) the interests of the representative Direct Plaintiffs are consistent with those of the Moark Settlement Class members; (ii) there appear to be no conflicts between or among the representative Direct Plaintiffs and other Settlement Class members; (iii) the representative Direct Plaintiffs have been and appear to be capable of continuing to be active participants in both the prosecution and the settlement of this Litigation, and (iv) the representative Direct Plaintiffs and Moark Settlement Class members are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated class action cases, including those based upon violations of antitrust law.

5. The Court preliminarily finds that, for this settlement's purposes,

questions of law or fact common to members of the Settlement Class predominate over questions affecting only individual members of the Settlement Class, under Rule 23(b)(3), and that a class action resolution in the manner proposed in the Moark Settlement Agreement would be superior to other available methods for a fair and efficient adjudication of the Litigation insofar as Moark is concerned. In making these preliminary findings, the Court has considered, among other factors, (i) the interest of Settlement Class members in individually controlling the prosecution or defense of separate actions; (ii) the impracticality or inefficiency of prosecuting or defending separate actions; (iii) the extent and nature of any litigation concerning these claims already commenced; and (iv) the desirability of concentrating the litigation of the claims in a particular forum.

6. The Court makes no determination concerning the manageability of this Litigation as a class action, if this Litigation were to go to trial.

**B. Preliminary Class Certification for Settlement Purposes Only**

Based on the findings set forth in Section A above, the Court preliminarily certifies the Settlement Class for settlement purposes under FRCP 23(b)(3). At this preliminary certification phase, and only for purposes of this proposed settlement, the Moark Settlement Class is defined as follows:

**1. Settlement Class**

All persons and entities in the United States that purchased eggs, including Shell Eggs and Egg Products, produced from caged birds in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published..

a. Shell Eggs Subclass

All individuals and entities in the United States that purchased Shell Eggs produced from caged birds in the United States directly from any Producer including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published, excluding individuals and entities that purchased only "specialty" Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

b. Egg Products Subclass

All individuals and entities in the United States that purchased Egg Products produced from Shell Eggs that came from caged birds in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published, excluding individuals and entities that purchased only "specialty" Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types).

Excluded from the Class and SubClasses are Producers, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

The Court concludes that, for the sole purpose of settlement, and without an adjudication on the merits, the Settlement Class is sufficiently well-defined and cohesive to merit preliminary approval. The Settlement Class shall be modified as necessary. Neither this Order nor any final order regarding the Moark Settlement shall have any effect on the Court's consideration and determination of class certification or any other issue with respect to the Non-Settling Defendants.



C. Findings Regarding Proposed Settlement and Notice Procedures

The Court accepts the good faith representations of counsel that the proposed settlement was reached only after several months of intense arm's-length negotiations by counsel. Subject to final determination following an approved form of and plan for notice and a fairness hearing, the Moark Settlement falls within the range of possible approval and is sufficiently fair, reasonable and adequate so as to warrant preliminary approval. In addition, the Court finds that:

1. The proposed settlement appears to require substantial cooperation from Moark, including monetary consideration as well as the production of critical documents and witnesses that are expected to materially assist Direct Plaintiffs in pursuing this litigation against the Non-Settling Defendants.

2. The benefit of the monetary consideration and information supplied by Moark appears to outweigh the potential benefit of Moark's continued participation in the Litigation as defendants. Without commenting on whether the information and facts that Moark may provide would be established, or even admissible, at trial, based upon counsel's representations, they appear to provide significant assistance to the Moark Settlement Class members in the prosecution of their claims.

D. Notice to Class Members and Final Fairness Hearing

The schedule for dissemination of notices of the proposed settlement with Moark, and significant dates relating to final approval (e.g. objections, exclusions, briefing, final fairness hearing), shall be set forth in a separate order of the Court.

E. Miscellaneous

1. The Litigation against Moark is hereby stayed, pending further

order of the Court.


2. The terms used in this Order that are defined in the Moark Settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreement.

3. In the event the settlement does not become final and effective for any reason, nothing in this Order shall be construed to prejudice any position that any of the parties may assert in any aspect of the Litigation.

4. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Moark of the truth or any of the allegations in the Litigation, or of any liability, fault or wrongdoing of any kind. Likewise, nothing in the Settlement Agreement may be taken as evidence of any lack of viability or of the inadmissibility of any evidence or of any lack of merit in the Plaintiffs' allegations.

5. Counsel for Moark may be excused, if counsel so desires, from attendance at any subsequent meetings of counsel in the Litigation, except as may be specifically ordered by the Court.

BY THE COURT:



GENE E.K. PRATTER  
UNITED STATES DISTRICT JUDGE

# EXHIBIT D

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**If you purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer from January 1, 2000 through [insert date of court order preliminarily approving settlement], you could be a class member in a proposed class action settlement.**

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.  
PLEASE READ THIS NOTICE CAREFULLY.**

The purpose of this notice is to inform you that Plaintiffs in this class action reached a settlement with Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. ("Moark"). If you fall within the definition of the "Settlement Class," as defined herein, you will be bound by the settlement unless you expressly exclude yourself in writing pursuant to the instructions below. This notice is also to inform you of the nature of the action and of your rights in connection with it.

*A federal court authorized this Notice. This is not a solicitation from a lawyer.*

This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the settlement with Moark (the "Moark Settlement") and of your rights with respect to it, including, but not limited to, the right to remain a member of the Settlement Class or to exclude yourself from the Settlement Class.

These rights and options, and the deadlines to exercise them, are explained in this notice.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>TAKE NO ACTION</b>	You will receive the non-monetary benefits of the Moark Settlement and give up the right to sue Moark with respect to the claims asserted in this case. You may be eligible to receive a payment from the Moark Settlement <i>if</i> you submit a timely claim form (postmarked by January 7, 2011). You will give up the right to sue Moark.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS POSTMARKED NO LATER THAN NOVEMBER 16, 2010</b>	This is the only option that allows you to ever be a part of any other lawsuit against Moark with respect to the claims asserted in this case. You will not become a member of the Class. If you exclude yourself, you will be able to bring a separate lawsuit against Moark with respect to the claims asserted in this case.

<b>OBJECT NO LATER THAN NOVEMBER 16, 2010</b>	You will remain a member of the Class, but you also have the right to comment on the terms of the Moark Settlement.
<b>GO TO THE HEARING ON - _____, 2011 AFTER FILING A TIMELY OBJECTION</b>	If you file a timely objection, you may speak in Court about the fairness of the Moark Settlement.
<b>SUBMIT A CLAIM FORM POSTMARKED BY JANUARY 7, 2011</b>	This is the only way to receive a payment from the Moark Settlement.

**1. Why did I receive this notice?**

This legal notice is to inform you of the Moark Settlement that has been reached in the class action lawsuit, *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania. You are being sent this notice because you have been identified as a potential customer of one of the defendants in the lawsuit.

**2. What is this lawsuit about?**

In this lawsuit, Plaintiffs allege that Defendants, certain producers of shell eggs and egg products, conspired to decrease the supply of eggs. Plaintiffs allege that this supply conspiracy limited, fixed, raised, stabilized, or maintained the price of eggs, which caused direct purchasers to pay more for eggs than they would have otherwise paid. The term "eggs" refers to both shell eggs and egg products, which are eggs removed from their shells for further processing into a dried, frozen, or liquid form.

In the fall and winter of 2008, lawsuits were filed in several federal courts generally alleging this conspiracy to depress egg supply. On December 2, 2008, the Judicial Panel on Multidistrict Litigation transferred those cases for coordinated proceedings before the Honorable Gene E. K. Pratter, United States District Judge in the United States District Court for the Eastern District of Pennsylvania. On January 30, 2009, Plaintiffs filed their first consolidated amended complaint alleging a wide-ranging conspiracy to fix egg prices that injured direct egg purchasers.<sup>1</sup> Soon thereafter, Plaintiffs and Defendant Sparboe Farms, Inc. ("Sparboe") commenced settlement discussions. On June 8, 2009, Plaintiffs and Sparboe reached a settlement. By settling with Sparboe, Plaintiffs learned many more details about the alleged conspiracy. These details were included in a second consolidated amended complaint that Plaintiffs filed on December 11, 2009.

<sup>1</sup> This lawsuit alleges injuries to *direct* egg purchasers only, that is, entities or individuals who bought eggs directly from egg producers. A separate case is pending wherein the plaintiffs allege a wide-ranging conspiracy to fix egg prices that injured *indirect* egg purchasers. An indirect egg purchaser bought eggs from a direct purchaser of eggs or another indirect purchaser.

After an exchange of relevant sales data, Plaintiffs and Moark entered into settlement discussions in March of 2010. After extensive and arm's-length negotiations, on May 21, 2010, Plaintiffs and Moark reached a settlement.

Plaintiffs represent both themselves (the named plaintiffs) and the entire class of direct egg purchasers across the United States. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the class present and share common questions of law and fact. Plaintiffs claim that Defendants' actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from 2000 to the present. Plaintiffs allege that Defendants and unnamed co-conspirators controlled the egg supply through various methods that were all part of a wide-ranging conspiracy. These methods include, but are not limited to, agreements to limit or dispose of hen flocks, a pre-textual animal husbandry program that was a cover to further reduce egg supply, agreements to export eggs in order to remove eggs from the domestic supply, and the unlawful coercion of producers and customers to ensure compliance with the conspiracy. Plaintiffs allege that by collectively agreeing to lower the supply of eggs, the defendants caused prices to be higher than they otherwise would have been. Moark and the other defendants deny all of Plaintiffs' allegations.

### 3. Who is included in the Settlement?

Plaintiffs and Moark have agreed that, for purposes of the Moark Settlement, the Settlement Class is defined as follows:

All persons and entities in the United States that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through [INSERT: the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published].

Persons or entities that come within the definition of the Settlement Class and do not exclude themselves will be bound by the results of this litigation.<sup>2</sup>

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<sup>2</sup> The Settlement Class consists of two subclasses. The first subclass, called the "Shell Egg Subclass," is made up of "[a]ll individuals and entities in the United States that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published." The second subclass, called the "Egg Products Subclass," is comprised of "[a]ll individuals and entities in the United States that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published." Excluded from the subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family. Also excluded from the subclasses are individuals and entities that purchased only "specialty" shell eggs (certified organic,

#### 4. What does the Moark Settlement provide?

After several months of extensive settlement discussions, Plaintiffs and Moark reached a Settlement on May 21, 2010. The Moark Settlement is between Plaintiffs and Defendant Moark only; it does not affect any of the remaining non-settling defendants, against whom this case continues. Pursuant to the terms of the Moark Settlement, Plaintiffs will release Moark from all pending claims. In exchange, Moark has agreed to pay \$25,000,000 to a fund to compensate class members and to provide substantial and immediate cooperation with Plaintiffs, including producing documents and making witnesses available for interviews, which will provide important information in support of Plaintiffs' claims against the non-settling defendants and possibly others who participated in the alleged conspiracy. (If Class members whose combined purchases account for 7.5% or more of total sales for egg producers in the U.S. choose to exclude themselves from the Settlement Agreement, the Moark Defendants have the right to terminate the Settlement.) It is the opinion of Plaintiffs' attorneys that Moark's cooperation will provide significant benefits to members of the Settlement Class and will materially assist Plaintiffs in the prosecution of claims against the non-settling defendants.

On \_\_\_\_\_ 2010, the Court granted preliminary approval of the Moark Settlement, finding it sufficiently fair, reasonable, and adequate to warrant notifying the Settlement Class.

The Moark Settlement should not be taken as an admission by Moark of any allegation by Plaintiffs or of wrongdoing of any kind. Finally, the Court ordered that Plaintiffs shall provide notice of the Moark Settlement to all members of the Settlement Class who can be identified through reasonable effort.

#### 5. How will the Settlement Fund be distributed?

The \$25 million paid by the Moark Defendants may be reduced by court-ordered attorneys' fees and reimbursement of litigation expenses, including administration of the Settlement, as approved by the Court. The Settlement Fund will also be reduced by the expense of providing notice to the Class. If class members whose sales equal 7.5% or more of the total U.S. egg sales choose to exclude themselves from the class, the Settlement Fund also may be reduced by an amount equal to the total purchases of excluded class members divided by total U.S. egg sales times the settlement amount. The remainder of the Moark Settlement will be distributed on a *pro rata* basis among the members of the Class who timely and properly submit a valid Claim Form. Your *pro rata* share will be based on the dollar amount of your direct purchases of eggs and egg products in the United States. The Court retains the power to approve or reject, in part or in full, any individual claim of a class member based on equitable grounds. Because the

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nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

alleged overcharge is only a portion of the price paid for eggs and egg products, your recovery will be less than the total amount you paid.

**6. How do I file a claim form?**

The Claim Form and instructions for filing a proof of claim are included with this Notice. Claim Forms must be postmarked by January 7, 2011, to be considered for distribution.

You should carefully read the descriptions of the respective classes set forth earlier in this Notice to verify that you are a class member. Next, you should review your records and confirm that you purchased the relevant product(s) during the relevant time period. Then, included with this Notice, you will find a Claim Form which must be removed, completed by the Class member and returned to the address indicated on the Claim Form, and postmarked by January 7, 2011. *Any class member who does not complete and timely return the Claim Form will not be entitled to share in the Moark Settlement.*

Where records are available to calculate and document the dollar amount of your relevant purchases, you must use those records to complete the Claim Form.

Where adequate records are not available to calculate your purchases to be listed on the Claim Form, you may submit purchase information based on verifiable estimates as directed in the Claim Form.

**7. How will the lawyers be paid?**

These attorneys and their respective firms are referred to as Class Counsel. Class Counsel will apply to the Court for an award from the Settlement Funds of attorneys' fees and for reimbursement of litigation costs and expenses incurred, including fees and costs expended while providing Notice to the Class and while administering the Settlement Fund (including the plan of allocation).

Class Counsel, in compensation for their time and risk in prosecuting the litigation on a wholly contingent fee basis, intend to apply to the Court for an award of attorneys' fees in an amount not to exceed thirty percent of \$25 million as well as the costs and expenses incurred. To date, Class Counsel have not been paid any attorneys' fees. Any attorneys' fees and reimbursement of costs will be awarded only as approved by the Court in amounts determined to be fair and reasonable.

**8. What is the effect of the Court's final approval of the Moark Settlement?**

If the Court grants final approval, the Moark Settlement will be binding upon you and all other members of the Settlement Class. By remaining part of the Moark Settlement, if approved, you will give up any claims against Moark relating to the claims made or which could have been made in this lawsuit. By remaining a part of the Moark Settlement, you will retain all claims against all other defendants, named and unnamed.



**9. Who represents the Settlement Class?**

The Settlement Class is represented by the following attorneys:

Steven A. Asher WEINSTEIN KITCHENOFF & ASHER LLC 1845 Walnut Street, Suite 1100 Philadelphia, PA 19103	Michael D. Hausfeld HAUSFELD LLP 1700 K Street NW, Suite 650 Washington, DC 20006
Stanley D. Bernstein BERNSTEIN LIEBHARD LLP 10 East 40th Street, 22nd Floor New York, New York 10016	Stephen D. Susman SUSMAN GODFREY LLP 654 Madison Avenue, 5th Floor New York, New York 10065

**10. When and where will the Court hold a hearing on the fairness of the Settlement?**

The Court has scheduled a "Fairness Hearing" at \_\_\_\_\_.m. on \_\_\_\_\_, 2011, at the following address:

United States District Court  
 James A. Byrne Federal Courthouse  
 601 Market Street, Courtroom \_\_\_\_, Philadelphia, PA 19106-1797

The purpose of the Fairness Hearing is to determine whether the Moark Settlement is fair, reasonable, and adequate, and whether the Court should enter judgment granting final approval of it. You do not need to attend this hearing. You or your own lawyer may attend the hearing if you wish, at your own expense. Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind.

**11. How do I object?**

If you are a Settlement Class member and you wish to participate in the Moark Settlement, but you object to or otherwise want to comment on any term of the Moark Settlement (including the request for attorneys' fees), you may file with the Court an objection in writing. In order for the Court to consider your objection, your objection must be sent by mail and postmarked by November 16, 2010 to each of the following:

<b>The Court:</b> United States District Court	<b>Counsel for Plaintiffs:</b> Steven A. Asher	<b>Counsel for Moark:</b> Nathan P. Eimer
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James A. Byrne Federal Courthouse, 601 Market Street, Office of the Clerk of the Court, Room 2609 Philadelphia, PA 19106- 1797	WEINSTEIN KITCHENOFF & ASHER LLC 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103	EIMER STAHL KLEVORN & SOLBERG LLP 224 South Michigan Avenue, Suite 1100 Chicago, IL 60604
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Your objection must be in writing and must provide evidence of your membership in the Settlement Class. The written objection should state the precise reason or reasons for the objection, including any legal support you wish to bring to the Court's attention and any evidence you wish to introduce in support of the objection. You may file the objection through an attorney. You are responsible for any costs incurred in objecting through an attorney.

If you are a Settlement Class member, you have the right to voice your objection to the Moark Settlement at the Fairness Hearing. In order to do so, you must follow all instructions for objecting in writing (as stated above). You may object in person and/or through an attorney. You are responsible for any costs incurred in objecting through an attorney. You need not attend the Fairness Hearing in order for the Court to consider your objection.

#### **12. How do I exclude myself from the Settlement?**

If you are a Settlement Class member and you do not wish to participate in the Moark Settlement, the Court will exclude you from the Moark Settlement if you request exclusion. Your request for exclusion must be sent by mail postmarked by November 16, 2010 to the following address:

*In re Processed Egg Products Antitrust Litigation*– EXCLUSIONS  
c/o The Garden City Group, Inc., Claims Administrator  
P.O. Box 9476  
Dublin, OH 43017-4576

Do not request exclusion if you wish to participate in the Moark Settlement as a member of the Settlement Class. If you intend to bring your own lawsuit against Moark, you should exclude yourself from the Settlement Class.

If you remain in the class, it does not prejudice your right to exclude yourself from any other past, present or future settlement class or certified litigation class in this case.

#### **13. What happens if I do nothing?**

If you do nothing, you will remain a member of the Class. As a member of the Settlement Class, you will be represented by the law firms listed above in Question No. 9, and you will not be charged a fee for the services of such counsel and any other class counsel.

Rather, counsel will be paid, if at all, as allowed by the Court in some portion of whatever money they may ultimately recover for you and other members of the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

However, you must submit a timely claim form (see Question No. 6) in order to be considered for any monetary benefit from the Settlement Fund.

**14. Where do I get additional information?**

For more detailed information concerning matters relating to the Moark Settlement, you may wish to review the "Settlement Agreement Between Plaintiffs and Moark Farms, Inc." (signed May 21, 2010) and the "Order on Preliminary Approval of Moark Settlement" (entered \_\_\_\_\_). These documents are available on the settlement website, [www.eggproductssettlement.com](http://www.eggproductssettlement.com), which also contains answers to "Frequently Asked Questions," as well as more information about the case. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 10. You may also obtain more information by calling the toll-free helpline at (866) 881-8306. If your present address is different from the address on the envelope in which you received this notice, or if you did not receive this notice directly but believe you should have, please call the toll-free helpline.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION  
REGARDING THIS LAWSUIT.**

Dated: \_\_\_\_\_, 2010

**The Honorable Gene E. K. Pratter**

# **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS  
ANTITRUST LITIGATION

MDL No. 2002

THIS DOCUMENT APPLIES TO  
ALL DIRECT PURCHASER CLASS  
ACTIONS

Case No. 08-md-02002

**AFFIDAVIT OF JENNIFER M. KEOUGH**  
**RE: NOTICE AND SETTLEMENT ADMINISTRATION**

STATE OF WASHINGTON    )  
                                          )    ss.:  
COUNTY OF KING        )

JENNIFER M. KEOUGH, being duly sworn, states:

1. I am Executive Vice President, Operations, of The Garden City Group, Inc. (“GCG”). The following statements are based on my personal knowledge and information provided by other GCG employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

2. GCG has been providing comprehensive legal administration services for over 25 years. Our team has served as administrator for well over 1,000 cases. In the course of our history, we have mailed over 227 million notices, handled over 3 million calls, processed over 41 million claims, and distributed over \$22 billion.

SUPPLEMENTAL AFFIDAVIT OF JENNIFER M. KEOUGH

3. GCG was appointed by the Court in the above-captioned litigation (the “Litigation”) to develop and implement a legal notice program (“Notice Program”) to inform class members of a proposed class action settlement between Plaintiffs and Defendant Sparboe Farms, Inc. (“Sparboe”), as well as the separate proposed class action settlement between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc. and Land O’Lakes, Inc. (“Moark Defendants”).

4. I submit this Affidavit in order to report to the Court and the parties to the Litigation, that, in compliance with the Court’s Order Approving Dissemination of Notice of Settlements Between Direct Purchaser Plaintiffs and (i) Defendant Sparboe Farms, Inc. and (ii) Defendants Moark, LLC, Norco Ranch, Inc. and Land O’Lakes, Inc. filed July 15, 2010 (the “Dissemination Order”), all elements of the Notice Program have been successfully implemented. A detailed description of the elements is below.

5. As further discussed below, the Notice Program, through a combination of direct mail, publication, press releases, a website, and a toll-free telephone number, was intended to reach the Class Members defined in the Orders of this Court.<sup>1</sup>

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<sup>1</sup> As defined both in the Court’s Order on Preliminary Approval of Settlement with Moark, LLC, Norco Ranch, Inc. and Land O’Lakes, Inc. filed July 15, 2010 (the “Moark Preliminary Approval Order”), and in the Court’s Order on Preliminary Approval of Sparboe Settlement filed October 23, 2009 (the “Sparboe Preliminary Approval Order”), the Class consists of all persons and entities in the United States that purchased eggs, including Shell Eggs and Egg Products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the date when notice of the Court’s entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published (the “Class Members”). The terms “Class” or “Class Members” do not include: (a) Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates; (b) all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court’s or staff’s immediate family; (c) purchases of “specialty” Shell Eggs or Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types); and (d) purchases of “hatching” Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

6. There are five elements to this multifaceted, nationwide program:
- Direct notice by first-class mail to Class Members, which includes the long-form notice of settlement with Sparboe, the long-form notice of settlement with Moark, and the Claim Form (collectively, the “Notice Packet”);
  - Publication of short-form notices (the “Summary Notices”);
  - A press release through PR Newswire;
  - A dedicated website through which Class Members can obtain information concerning the Moark Settlement and the Sparboe Settlement (the “Settlements”); and
  - A toll-free telephone helpline through which Class Members can obtain information concerning the Settlements.

**DIRECT MAIL NOTICE**

7. Between April 8, 2010 and July 16, 2010, GCG received various electronic data files from the seventeen named egg producer Defendants, and was advised that the files contained the list of potential Class Member names and addresses as specified in Paragraph 3 of the Dissemination Order. On August 25, 2010, GCG received a supplemental data file from one of the Defendants. In total, GCG received 13,900 electronic records from Defendants. These records are maintained in accordance with the confidentiality agreement executed between non-settling Defendants, Direct Purchaser Plaintiffs and GCG.

8. GCG loaded this data into a database created for the Litigation. Prior to mailing the Notice Packet, mailing addresses of potential Class Members were updated using the National Change of Address database (“NCOA”). The NCOA resulted in 98 address updates. Additionally, GCG identified and excluded 490 duplicate records, as well as 208 address records for Defendants (who are excluded by definition from the Settlement Class). GCG formatted the

Notice Packet, and caused it to be printed and personalized with the name and address of each known potential Class Member.

9. Pursuant to Paragraph 4 of the Dissemination Order, GCG posted the Notice Packets for first-class mail, postage pre-paid on September 2, 2010 (the "Notice Date"). On the Notice Date, 13,202 copies of the Notice Packet were mailed via first-class mail. Additionally, on the Notice Date, nine Notice Packets were mailed via overnight mail to the representative counsel for the Class Representatives. A copy of the Notice Packet is attached hereto as Exhibit 1.

#### **NOTICE BY PUBLICATION**

10. The publication component of the overall Notice Program served as an enhancement to the direct mail effort to reach Class Members whose (i) names were not available and/or (ii) whose names were available but whose current addresses were unknown. The use of the direct mail outreach process as the predominant, primary method of notice, combined with a reminder or enhancement through publication, is consistent with numerous court-approved notice programs.

11. Pursuant to Paragraph 5 of the Dissemination Order, GCG caused the Summary Notices to be published on September 13, 2010 in the nationally-distributed *Wall Street Journal*. Additionally, the Summary Notices were published in a variety of trade magazines that specifically cater to the restaurant and food industries. The Summary Notices published in the following trade magazines: *PetFood Industry* (September 2010 issue), *Restaurant Business* (September 2010 issue), *Convenience Store News* (September 6, 2010 issue), *Hotel F&B* (September / October 2010 issue), *Nation's Restaurant News* (September 6, 2010 issue), *Food*



*Service Director* (September 2010 issue), *Progressive Grocer* (September 2010 issue), *Food Manufacturing* (September 2010 issue), *Supermarket News* (September 6, 2010 issue), *Stores* (September 2010 issue), *Egg Industry Magazine* (September 2010 issue), *Modern Baking*<sup>2</sup> (October 2010 issue), *Baking Buyer* (September 2010 issue), *Food Processing* (September 2010 issue), and *Long Term Living* (September 2010 issue). These trade magazines specifically target those in egg-purchasing industries such as retailers, wholesalers, restaurateurs, hospitals, hoteliers, and grocery stores. Combined, these publications have a circulation of over 2,316,000 million. Publication Notice tear sheets from the publications are attached hereto as Exhibit 2.

12. As of the date of this Affidavit, GCG has received 83 Notice Packets returned by the U.S. Postal Service with forwarding address information. Notice Packets returned by the U.S. Postal Service with forwarding address information were promptly re-mailed to the updated addresses provided. As of the date of this Affidavit, GCG has received 2,333 Notice Packets returned by the U.S. Postal Service without forwarding address information.

### **PRESS RELEASE**

13. Pursuant to Paragraph 6 of the Dissemination Order, GCG coordinated the release of two press releases, one for each proposed settlement, via PR Newswire on September 13, 2010. The releases were distributed over the US1 Newswire and included distribution to almost 1,000

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<sup>2</sup> *Modern Baking* was scheduled to publish the notice in its September issue. However, due to a production error by the magazine, the ad was not published in the September issue. The publisher remediated the error in two ways: first, an email blast was sent to over 28,000 *Modern Baking* email subscribers on September 29, 2010. (There is subscriber overlap in circulation and the email list.) In addition the publisher ran the legal notices in the October 2010 issue of *Modern Baking*. This type of substitution is not an uncommon event in class action notice.

journalists in the Restaurant and Food Industries. The press release resulted in a total of 335 articles reporting the Sparboe and Moark Settlements. Attached as Exhibit 3 is a copy of the media reports for Sparboe and Moark articles.

#### **WEBSITE**

14. Pursuant to Paragraph 7 of the Dissemination Order, GCG established and maintains a website dedicated to this Settlement ([www.eggproductssettlement.com](http://www.eggproductssettlement.com)) to provide additional information to the Class Members and to answer frequently asked questions. Users of the website can download a Notice Packet as well as review the Dissemination Order, Moark Preliminary Approval Order, Sparboe Preliminary Approval Order, Settlement Agreements and other relevant Court documents. The web address is set forth in the Notice Packet. The settlement website has been operational since August 30, 2010, and is accessible 24 hours a day, 7 days a week. As of the date of this Affidavit, the website has received 4,820 visits.

#### **TOLL-FREE TELEPHONE HELPLINE**

15. Pursuant to Paragraph 8 of the Dissemination Order, beginning on August 30, 2010, GCG set up and continues to maintain an automated toll-free telephone number (1-866-881-8306), where potential Settlement Class Members can obtain information about the Settlement. This toll-free number is accessible twenty-four hours a day, seven days a week. Class Members who call the toll-free number during business hours have the option to speak directly to a live representative. Class Members who call during non-business hours have the option of leaving a voice message requesting either a Notice Packet or a return call from a call center representative. As of the date of this Affidavit, there have been 549 calls to the automated number. 95 callers

requested and received a Notice Packet mailing or a returned call. GCG has and will continue to expeditiously handle Class Member inquiries.

**CLAIM SUBMISSIONS**

16. Pursuant to Paragraph 15 of the Dissemination Order, Class Members who wish to file a claim were required to submit a complete Claim Form to GCG via mail postmarked no later than January 7, 2011. As of the date of this Affidavit, GCG has received 894 Claim Forms.

**OBJECTIONS AND EXCLUSIONS**

17. Pursuant to Paragraph 13 of the Dissemination Order, any Class Member who wished to be excluded from the Moark Settlement was required to submit their exclusion request to GCG on or before November 16, 2010. As of the date of this Affidavit, GCG has received 150 Moark Settlement exclusion requests from Class Members. Many of those who requested exclusion appear to be related entities with similar names and shared counsel. Of the entities who have requested exclusion, there are, for example, 35 “Price Chopper” entities, 14 “Associated/Assoc Wholesale” entities, 12 “Winn-Dixie” entities, and 9 “C&S” entities. The list of parties of excluded from the Moark Settlement is attached hereto as Exhibit 4.

///

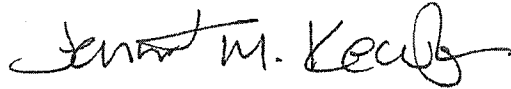
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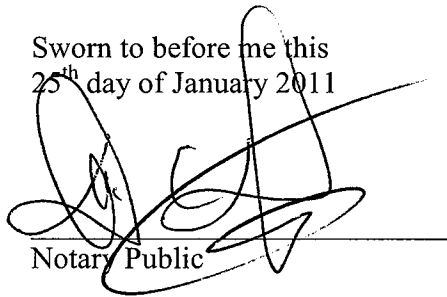
///

18. Pursuant to Paragraph 11 of the Dissemination Order, any Class Member who wished to object to the approval of the Moark Settlement was required to inform the Court and the Parties of their intent, on or before November 16, 2010. As of the date of this Affidavit, GCG has not received any objections from Class Members.

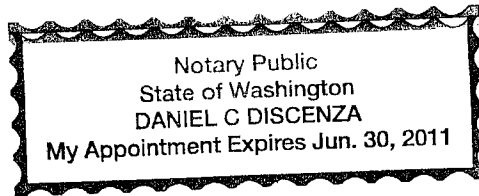


JENNIFER M. KEOUGH

Sworn to before me this  
25<sup>th</sup> day of January 2011



Notary Public



# Exhibit 1

**MUST BE  
POSTMARKED OR  
DELIVERED BY  
JANUARY 7, 2011**

**In re Processed Egg Products Antitrust Litigation  
c/o The Garden City Group, Inc.  
P.O. Box 9476  
Dublin, OH 43017-4576  
Toll-Free: 1 (866) 881-8306**

**EGS**



Claim No:

Control No:

<b><u>REQUIRED ADDRESS INFORMATION OR CORRECTIONS</u></b>	
If the pre-printed address to the left is incorrect or out of date, OR if there is no pre-printed data to the left, YOU MUST provide your current name and address here:	
Name:	<input type="text"/>
Address:	<input type="text"/>
City/State/Zip:	<input type="text"/>

**CLAIM FORM**

If you are a member of one or both of the Settlement subclasses defined below ("Claimant"), you must submit a timely and valid Claim Form by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,<sup>1</sup> January 7, 2011 for your claim to be considered for payment. Claim Forms should be mailed by first-class mail to the Claims Administrator at the following address:

**In re Processed Egg Products Antitrust Litigation  
c/o The Garden City Group, Inc.  
P.O. Box 9476  
Dublin, OH 43017-4576**

**GENERAL INSTRUCTIONS**

This Claim Form relates to a settlement ("Moark Settlement") with Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. (collectively, the "Moark Defendants") in the lawsuit *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania.

The Moark Settlement is for the benefit of **direct** egg purchasers only, that is, entities or individuals in the United States who bought eggs directly from egg producers, and not those who purchased eggs indirectly such as from wholesalers, distributors, or retailers. To be eligible to share in the Moark Settlement, you must have purchased eggs, including Shell Eggs and Egg Products (the whole or any part of eggs that have been removed from their shells and may be processed, with or without additives, into dried, frozen or liquid forms), produced from caged birds in the United States directly from any United States producer, including any Defendant, during the Class Period from January 1, 2000 through July 15, 2010.

The producer Defendants in this case include: Michael Foods, Inc.; Land O'Lakes, Inc.; Moark, LLC; Norco Ranch, Inc.; Rose Acre Farms, Inc.; National Food Corporation; Cal-Maine Foods, Inc.; Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms East, Inc.; Hillandale Farms, Inc.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; Midwest Poultry Services, L.P.; NuCal Foods, Inc.; R.W. Sauder, Inc.; and Sparboe Farms, Inc. You need not have purchased from one of these entities to make a claim. If you have a question about whether your purchases would qualify, please contact the Claims Administrator.

<sup>1</sup> To the extent you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: In re Processed Egg Products Antitrust Litigation (EGS), c/o The Garden City Group, Inc., 815 Western Avenue, Suite 200, Seattle, WA 98104.



The Settlement Class consists of two subclasses. You may belong to one or both subclasses.

A. Shell Egg Subclass

All individuals and entities in the United States that purchased Shell Eggs produced from caged birds in the United States directly from any United States producer, including any Defendant, during the Class Period from January 1, 2000 through July 15, 2010. Excluded from the subclass are purchases of "specialty" Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and purchases of "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

B. Egg Products Subclass

All individuals and entities in the United States that purchased Egg Products produced from Shell Eggs that came from caged birds in the United States directly from any United States producer, including any Defendant, during the Class Period from January 1, 2000 through July 15, 2010. Excluded from the subclass are purchases of "specialty" Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, or vegetarian-fed types).

Excluded from the Class and Subclasses are producers of Shell Eggs and/or Egg Products, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

Each corporation, trust or other business entity making a claim must submit its claim on a separate Claim Form. Please carefully review each page of the Claim Form. Only complete and valid Claim Forms will be accepted. Do not submit duplicate claims.

**CLAIMANT INFORMATION**

Claimant type (check one):  Individual  Corporation  Estate  
 Trustee in Bankruptcy  Other (Specify) \_\_\_\_\_

Claimant Name: \_\_\_\_\_

Representative or Contact Name: \_\_\_\_\_

Representative or Contact Title: \_\_\_\_\_

Street Address: \_\_\_\_\_  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone Number:( \_\_\_\_\_ ) \_\_\_\_\_ Email Address: \_\_\_\_\_



**SHELL EGG SUBCLASS PURCHASES**

Complete this section only if you are a member of the Shell Egg Subclass as defined on page 2.

- List below the yearly totals of your Shell Egg purchases made directly from Moark, LLC/Norco Ranch, Inc./Land O' Lakes, Inc. from January 1, 2000 through July 15, 2010.
- Separately list below the yearly totals of your Shell Egg purchases made directly from any other Shell Egg producer in the United States from January 1, 2000 through July 15, 2010, regardless of whether they are a Defendant in this action or not.
- Shell Eggs include both "table eggs" (generally purchased by retail entities for resale to the consuming public) and "breaking eggs" (generally purchased by food service entities for further processing).
- The yearly totals must be in U.S. dollars, and reflect the net amount paid after deducting any discounts, rebates, taxes, freight charges and delivery charges.
- If purchase records are available to allow you to calculate and document the sum amount of Shell Egg purchases, you must base your claim on those records. If records are **not** available, then you may submit purchase information based on estimates. Any purchase information based on estimates must include an adequate explanation as to why purchase documents are not available and why estimates are reasonable.
- You may attach additional sheets if needed.

**Shell Egg Purchases:**

PRODUCER	YEAR	TOTAL QUANTITY PURCHASED (List Purchase Totals by Year)	TOTAL COST
Moark, LLC / Norco Ranch, Inc. / Land O'Lakes, Inc.			
Moark, LLC / Norco Ranch, Inc. / Land O'Lakes, Inc.			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			

**Shell Egg Proof of Purchase**

Identify and list the records (e.g., invoices, purchase journals, accounts payable, etc.) used to calculate your claimed purchases. If you based your claims on estimates, list and identify all records used as the basis for your estimates. If you are using sales data and trends to estimate purchases, you must explain in detail your calculations and retain the documentation used for your calculations until the conclusion of this litigation.

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All claims are subject to audit by the Claims Administrator. Incomplete, invalid, or fraudulent claims will be denied. You may be required to provide all underlying documentation supporting your claim at a later time. **Please retain all documents supporting your claim until the conclusion of this litigation.**

Attach copies of a minimum of two documents used to calculate purchase costs for each producer.

Proof of Purchase documents attached?  Yes  No Reason: \_\_\_\_\_





**EGG PRODUCTS SUBCLASS PURCHASES**

Complete this section only if you are a member of the Egg Products Subclass as defined on page 2.

- List below the yearly totals of your Egg Product purchases made directly from Moark, LLC/Norco Ranch, Inc./Land O’ Lakes, Inc. from January 1, 2000 through July 15, 2010.
- Separately list below the yearly totals of your Egg Product purchases made directly from any other Egg Products producer in the United States from January 1, 2000 through July 15, 2010, regardless of whether they are a Defendant in this action or not.
- Egg Products are “breaking eggs” that have been removed from their shells and processed into dried, frozen or liquid forms.
- The yearly totals must be in U.S. dollars, and reflect the net amount paid after deducting any discounts, rebates, taxes, freight charges and delivery charges.
- If purchase records are available to allow you to calculate and document the sum amount of Egg Product purchases, you must base your claim on those records. If records are **not** available, then you may submit purchase information based on estimates. Any purchase information based on estimates must include an adequate explanation as to why purchase documents are not available and why estimates are reasonable.
- You may attach additional sheets if needed.

**Egg Product Purchases:**

PRODUCER	YEAR	TOTAL QUANTITY PURCHASED (List Purchase Totals by Year)	TOTAL COST
Moark, LLC / Norco Ranch, Inc. / Land O’Lakes, Inc.			
Moark, LLC / Norco Ranch, Inc. / Land O’Lakes, Inc.			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			
Other: (Specify)			

**Egg Products Proof of Purchase**

Identify and list the records (e.g., invoices, purchase journals, accounts payable, etc.) used to calculate your claimed purchases. If you based your claims on estimates, list and identify all records used as the basis for your estimates. If you are using sales data and trends to estimate purchases, you must explain in detail your calculations and retain the documentation used for your calculations until the conclusion of this litigation.

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All claims are subject to audit by the Claims Administrator. Incomplete, invalid, or fraudulent claims will be denied. You may be required to provide all underlying documentation supporting your claim at a later time. **Please retain all documents supporting your claim until the conclusion of this litigation.**

Attach copies of a minimum of two documents used to calculate purchase costs for each producer.

Proof of Purchase documents attached?  Yes  No Reason: \_\_\_\_\_



### **SUBMISSION TO JURISDICTION OF THE DISTRICT COURT**

This Claim Form is submitted on behalf of the Claimant under the terms of the Settlement Agreement in the Action described in the Notice. You hereby affirm that you are a member of the Class or the transferee or assignee of, or the successor to, the claims of a Class Member. You hereby submit to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania with respect to its claim to participate in the Class and for the purposes of enforcing the release set forth herein. You further acknowledge that you are bound by and subject to the terms of any orders or judgments that may be entered by the Court in the Action with respect to the settlement of the claims of the Class against the Moark Defendants, as described in the accompanying Notice. You agree to furnish additional information to the settlement Claims Administrator to support this claim if required to do so.

### **RELEASE**

If the Settlement Agreement is approved by the Court in accordance with its terms, you ("Claimant") will release the Released Claims described below that you may have against the Moark Defendants. If you do not submit a Claim Form, but do not elect to exclude yourself from the Class, you will nonetheless be releasing the Released Claims.

The Moark Defendants shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Claimant ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants, including any entities or individuals that may later be added as a Defendant to the Action, (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs and Egg Products in the United States or elsewhere, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, whether or not concealed or hidden, in the Complaints filed in the Action (the "Complaints"), which in whole or in part arise from or are related to the facts and/or actions described in the Complaints, including under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.*, from the beginning of time to July 15, 2010 (the "Released Claims"). Claimant shall not, after the date of this Agreement, seek to recover against any of the Moark Defendants for any of the Released Claims.

Each Claimant waives California Civil Code Section 1542 and similar provisions in other states. Each Claimant hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"): "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction.

Each Claimant may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of this Settlement Agreement, but each Claimant hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, claim whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts.

In addition to the above, each Claimant hereby expressly and irrevocably waives and releases, upon this Settlement Agreement becoming finally approved by the Court, any and all defenses, rights, and benefits that each Claimant may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained above. Each Claimant also expressly and irrevocably waives any and all defenses, rights, and benefits that the Claimant may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge (1) claims based solely on purchases of Shell Eggs and Egg Products outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases and (2) claims relating to payment disputes, physical harm, defective product or bodily injury (collectively, the "Excepted Claims").



**SUBSTITUTE IRS FORM W-9**

**Substitute IRS Form W-9**

Enter the claimant's federal taxpayer identification number:

\_\_\_\_ - \_\_\_\_ - \_\_\_\_\_ OR \_\_\_\_ - \_\_\_\_\_  
Social Security Number Employer Identification Number  
(for individuals) (for corporations, trusts, etc.)

Print claimant name:

[Empty box for printing claimant name]

Under penalties of perjury, I certify that:

1. The taxpayer identification number shown on this form is the taxpayer identification number of named claimant, **and**
2. Claimant is not subject to backup withholding because: (a) claimant is exempt from backup withholding, or (b) claimant has not been notified by the Internal Revenue Service (IRS) that claimant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified claimant that claimant is no longer subject to backup withholding.

Note: If you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above.

**The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.**

**CERTIFICATION**

**I hereby certify under penalty of perjury that:**

1. The information provided in this Claim Form is accurate and complete to the best of my knowledge, information and belief;
2. I am authorized to submit this Claim Form on behalf of the Claimant;
3. I have documentation to support my claim and agree to provide additional information to the Claims Administrator to support my claim if necessary, OR, if I do not have documentation, I have explained why purchase documents are not available and why estimates are reasonable;
4. I am either (a) a member of the Settlement Class and did not request to be excluded from the Settlement Class or (b) the assignee or transferee of, or the successor to, the claim of a member of the Settlement Class and did not request to be excluded from the Settlement Class;
5. I am neither a Defendant, nor a parent, employee, subsidiary, affiliate or co-conspirator of a Defendant;
6. I am not a government entity;
7. I am not a member of the Court or staff to whom this case is assigned or a member of the Court's or staff's immediate family;
8. I have not assigned or transferred (or purported to assign or transfer) or submitted any other claim for the same purchases of Shell Eggs and/or Egg Products and have not authorized any person or entity to do so on my behalf; and
9. I have read and, by signing below, agree to all of the terms and conditions set forth in this Claim Form.

I declare under penalty of perjury under the laws of the United States of America that the information provided in this Claim Form is true and correct. This Certification was executed on the \_\_\_\_\_ day of \_\_\_\_\_ in 201\_\_ in \_\_\_\_\_ (city, state, country).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title or Position (if applicable)

\_\_\_\_\_  
Print Name



**REMINDER CHECKLIST**

- Please confirm all required information is provided including Claimant Information and Purchase Information.
- Substitute W-9 Form must be complete.
- Certification must be signed.
- All claims must include a minimum of two supporting documents as Proof of Purchase for each producer claimed.
- Keep a copy of your Claim Form and supporting documents for your reference.
- The receipt of a Claim Form is not automatically confirmed by the Claims Administrator. If you wish to have confirmation that your submission was received you may choose to mail your Claim Form by U.S. Postal Service Certified Mail, return receipt requested.
- If your address changes after submitting your Claim Form, advise the Claims Administrator of your new address in writing.
- If you need additional information, you may contact the Claims Administrator toll free at 1-866-881-8306. Additional information and copies of Court documents are available on the Settlement website, [www.eggproductssettlement.com](http://www.eggproductssettlement.com).

**All Claim Forms must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by<sup>2</sup> January 7, 2011 to:**

In re Processed Egg Products Antitrust Litigation  
c/o The Garden City Group, Inc.  
P.O. Box 9476  
Dublin, OH 43017-4576

<sup>2</sup>To the extent you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: In re Processed Egg Products Antitrust Litigation (EGS), c/o The Garden City Group, Inc., 815 Western Avenue, Suite 200, Seattle, WA 98104.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**If you purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer from January 1, 2000 through July 15, 2010, you could be a Class member in a proposed class action settlement.**

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.  
PLEASE READ THIS NOTICE CAREFULLY.**

The purpose of this notice is to inform you that Plaintiffs in this class action reached a settlement with Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. ("Moark Defendants"). If you fall within the definition of the "Settlement Class" as defined herein, you will be bound by the settlement unless you expressly exclude yourself in writing pursuant to the instructions below. This notice is also to inform you of the nature of the action and of your rights in connection with it.

***A federal court authorized this Notice. This is not a solicitation from a lawyer.***

This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the settlement with the Moark Defendants (the "Moark Settlement") and of your rights with respect to it, including, but not limited to, the right to remain a member of the Settlement Class or to exclude yourself from the Settlement Class.

These rights and options, and the deadlines to exercise them, are explained in this notice.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>TAKE NO ACTION</b>	You will receive the non-monetary benefits of the Moark Settlement and give up the right to sue the Moark Defendants with respect to the claims asserted in this case. You may be eligible to receive a payment from the Moark Settlement <i>if</i> you submit a timely Claim Form (by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, January 7, 2011). You will give up the right to sue Moark.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010</b>	This is the only option that allows you to ever be a part of any other lawsuit against the Moark Defendants with respect to the claims asserted in this case. You will not become a member of the Class. If you exclude yourself, you will be able to bring a separate lawsuit against Moark with respect to the claims asserted in this case.
<b>OBJECT TO THE SETTLEMENT BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010</b>	You will remain a member of the Class, but you also have the right to comment on the terms of the Moark Settlement.
<b>GO TO THE HEARING ON FEBRUARY 28, 2011 AFTER FILING A TIMELY OBJECTION</b>	If you file a timely objection, you may speak in Court about the fairness of the Moark Settlement.
<b>SUBMIT A CLAIM FORM BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, JANUARY 7, 2011</b>	This is the only way to receive a payment from the Moark Settlement.

**1. Why did I receive this notice?**

This legal notice is to inform you of the Moark Settlement that has been reached in the class action lawsuit, *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania. You are being sent this notice because you have been identified as a potential customer of one of the Defendants in the lawsuit.

**2. What is this lawsuit about?**

In this lawsuit, Plaintiffs allege that Defendants, certain producers of shell eggs and egg products, conspired to decrease the supply of eggs. Plaintiffs allege that this supply conspiracy limited, fixed, raised, stabilized, or maintained the price of eggs, which caused direct purchasers to pay more for eggs than they would have otherwise paid. The term "eggs" refers to both shell eggs and egg products, which are eggs removed from their shells for further processing into a dried, frozen, or liquid form.

In the fall and winter of 2008, lawsuits were filed in several federal courts generally alleging this conspiracy to depress egg supply. On December 2, 2008, the Judicial Panel on Multidistrict Litigation transferred those cases for coordinated proceedings before the Honorable Gene E. K. Pratter, United States District Judge in the United States District Court for the Eastern District of Pennsylvania. On January 30, 2009, Plaintiffs filed their first consolidated amended complaint alleging a wide-ranging conspiracy to fix egg prices that injured direct egg purchasers.<sup>1</sup> Soon thereafter, Plaintiffs and Defendant Sparboe Farms, Inc. ("Sparboe") commenced settlement discussions. On June 8, 2009, Plaintiffs and Sparboe reached a settlement. By settling with Sparboe, Plaintiffs learned many more details about the alleged conspiracy. These details were included in a second consolidated amended complaint that Plaintiffs filed on April 7, 2010.

After an exchange of relevant sales data, Plaintiffs and the Moark Defendants entered into settlement discussions in March of 2010. After extensive and arm's-length negotiations, on May 21, 2010, Plaintiffs and the Moark Defendants reached a settlement.

Plaintiffs represent both themselves (the named plaintiffs) and the entire Class of direct egg purchasers across the United States. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the class present and share common questions of law and fact. Plaintiffs claim that Defendants' actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from the year 2000 to the present. Plaintiffs allege that Defendants and unnamed co-conspirators controlled the egg supply through various methods that were all part of a wide-ranging conspiracy. These methods include, but are not limited to, agreements to limit or dispose of hen flocks, a pre-textual animal husbandry program that was a cover to further reduce egg supply, agreements to export eggs in order to remove eggs from the domestic supply, and the unlawful coercion of producers and customers to ensure compliance with the conspiracy. Plaintiffs allege that by collectively agreeing to lower the supply of eggs, Defendants caused prices to be higher than they otherwise would have been. The Moark Defendants and the other Defendants deny all of Plaintiffs' allegations.

**3. Who is included in the Settlement?**

Plaintiffs and the Moark Defendants have agreed that, for purposes of the Moark Settlement, the Settlement Class is defined as follows:

All persons and entities in the United States that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010.

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<sup>1</sup> This lawsuit alleges injuries to *direct* egg purchasers only, that is, entities or individuals who bought eggs directly from egg producers. A separate case is pending wherein the plaintiffs allege a wide-ranging conspiracy to fix egg prices that injured *indirect* egg purchasers. An indirect egg purchaser buys eggs from a direct purchaser of eggs or another indirect purchaser.

Persons or entities that fall within the definition of the Settlement Class and do not exclude themselves will be bound by the results of this litigation.<sup>2</sup>

#### **4. What does the Moark Settlement provide?**

After several months of extensive settlement discussions, Plaintiffs and the Moark Defendants reached a Settlement on May 21, 2010. The Moark Settlement is between Plaintiffs and the Moark Defendants only; it does not affect any of the remaining non-settling Defendants, against whom this case continues. Pursuant to the terms of the Moark Settlement, Plaintiffs will release the Moark Defendants from all pending claims. In exchange, the Moark Defendants have agreed to pay \$25,000,000 to a fund to compensate Class members and to provide substantial and immediate cooperation with Plaintiffs, including producing documents and making witnesses available for interviews, which will provide important information in support of Plaintiffs' claims against the non-settling Defendants and possibly others who participated in the alleged conspiracy. (If Class members whose combined purchases account for 7.5% or more of total sales for egg producers in the U.S. choose to exclude themselves from the Settlement Agreement, the Moark Defendants have the right to terminate the Settlement.) It is the opinion of Plaintiffs' attorneys that the Moark Defendants' cooperation will provide significant benefits to members of the Settlement Class and will materially assist Plaintiffs in the prosecution of claims against the non-settling Defendants.

On July 15, 2010, the Court granted preliminary approval of the Moark Settlement, finding it sufficiently fair, reasonable, and adequate to warrant notifying the Settlement Class.

The Moark Settlement should not be taken as an admission by the Moark Defendants of any allegation by Plaintiffs or of wrongdoing of any kind. Finally, the Court ordered that Plaintiffs shall provide notice of the Moark Settlement to all members of the Settlement Class who can be identified through reasonable effort.

#### **5. How will the Settlement Fund be distributed?**

The \$25 million paid by the Moark Defendants may be reduced by court-ordered attorneys' fees and reimbursement of litigation expenses, including administration of the Settlement, as approved by the Court. The Settlement Fund will also be reduced by the expense of providing notice to the Class. If Class members whose sales equal 7.5% or more of the total U.S. egg sales choose to exclude themselves from the Class, the Settlement Fund also may be reduced by an amount equal to the total purchases of excluded Class members divided by total U.S. egg sales times the settlement amount. The remainder of the Moark Settlement will be distributed on a *pro rata* basis among the members of the Class who timely and properly submit a valid Claim Form. Your *pro rata* share will be based on the dollar amount of your direct purchases of eggs and egg products in the United States. The Court retains the power to approve or reject, in part or in full, any individual claim of a Class member based on equitable grounds. Because the alleged overcharge is only a portion of the price paid for eggs and egg products, your recovery will be less than the total amount you paid.

#### **6. How do I file a Claim Form?**

The Claim Form and instructions for filing a proof of claim are included with the Claim Form provided with this Notice. Claim Forms must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, January 7, 2011, to be considered for distribution.

You should carefully read the descriptions of the respective classes set forth earlier in this Notice to verify that you are a Class member. Next, you should review your records and confirm that you purchased the

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<sup>2</sup> The Settlement Class consists of two subclasses. The first subclass, called the "Shell Egg Subclass," is made up of "[a]ll individuals and entities in the United States that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." The second subclass, called the "Egg Products Subclass," is comprised of "[a]ll individuals and entities in the United States that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." Excluded from the subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family. Also excluded from the subclasses are purchases of "specialty" Shell Eggs or Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and purchases of "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

relevant product(s) during the relevant time period. Then, included with this Notice, you will find a Claim Form which must be completed by the Class member and returned to the address indicated on the Claim Form. Claim Forms must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, January 7, 2011. **Any Class member who does not complete and timely return the Claim Form will not be entitled to share in the Moark Settlement.**

Where records are available to calculate and document the dollar amount of your relevant purchases, you must use those records to complete the Claim Form.

Where adequate records are not available to calculate your purchases to be listed on the Claim Form, you may submit purchase information based on verifiable estimates as directed in the Claim Form.

**7. How will the lawyers be paid?**

These attorneys and their respective firms are referred to as Class Counsel. Class Counsel will apply to the Court for an award from the Settlement Fund of attorneys' fees and for reimbursement of litigation costs and expenses incurred, including fees and costs expended while providing Notice to the Class and while administering the Settlement Fund (including the plan of allocation).

Class Counsel, in compensation for their time and risk in prosecuting the litigation on a wholly contingent fee basis, intend to apply to the Court for an award of attorneys' fees in an amount not to exceed thirty percent of \$25 million as well as the costs and expenses incurred. To date, Class Counsel have not been paid any attorneys' fees. Any attorneys' fees and reimbursement of costs will be awarded only as approved by the Court in amounts determined to be fair and reasonable.

**8. What is the effect of the Court's final approval of the Moark Settlement?**

If the Court grants final approval, the Moark Settlement will be binding upon you and all other members of the Settlement Class. By remaining part of the Moark Settlement, if approved, you will give up any claims against the Moark Defendants relating to the claims made or which could have been made in this lawsuit. By remaining a part of the Moark Settlement, you will retain all claims against all other Defendants, named and unnamed.

**9. Who represents the Settlement Class?**

The Settlement Class is represented by the following attorneys:

Steven A. Asher WEINSTEIN KITCHENOFF & ASHER LLC 1845 Walnut Street, Suite 1100 Philadelphia, PA 19103	Michael D. Hausfeld HAUSFELD LLP 1700 K Street NW, Suite 650 Washington, DC 20006
Stanley D. Bernstein BERNSTEIN LIEBHARD LLP 10 East 40th Street, 22nd Floor New York, NY 10016	Stephen D. Susman SUSMAN GODFREY LLP 654 Madison Avenue, 5th Floor New York, NY 10065

**10. When and where will the Court hold a hearing on the fairness of the Settlement?**

The Court has scheduled a "Fairness Hearing" at 1:30 p.m. on February 28, 2011 at the following address:

United States District Court  
 James A. Byrne Federal Courthouse  
 601 Market Street  
 Philadelphia, PA 19106-1797

The purpose of the Fairness Hearing is to determine whether the Moark Settlement is fair, reasonable, and adequate, and whether the Court should enter judgment granting final approval of it. You do not need to



attend this hearing. You or your own lawyer may attend the hearing if you wish, at your own expense. Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind. Settlement Class members are advised to check [www.eggproductssettlement.com](http://www.eggproductssettlement.com) for any updates.

**11. How do I object?**

If you are a Settlement Class member and you wish to participate in the Moark Settlement, but you object to or otherwise want to comment on any term of the Moark Settlement (including the request for attorneys' fees), you may file with the Court an objection in writing. In order for the Court to consider your objection, your objection must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, November 16, 2010 to each of the following:

**The Court:**

United States District Court  
James A. Byrne Federal Courthouse  
601 Market Street  
Office of the Clerk of the Court, Room 2609  
Philadelphia, PA 19106-1797

**Counsel for Plaintiffs:**

Steven A. Asher  
WEINSTEIN KITCHENOFF & ASHER LLC  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103

**Counsel for the Moark Defendants:**

Nathan P. Eimer  
EIMER STAHL KLEVORN & SOLBERG LLP  
224 South Michigan Avenue, Suite 1100  
Chicago, IL 60604

Your objection must be in writing and must provide evidence of your membership in the Settlement Class. The written objection should state the precise reason or reasons for the objection, including any legal support you wish to bring to the Court's attention and any evidence you wish to introduce in support of the objection. You may file the objection through an attorney. You are responsible for any costs incurred in objecting through an attorney.

If you are a Settlement Class member, you have the right to voice your objection to the Moark Settlement at the Fairness Hearing. In order to do so, you must follow all instructions for objecting in writing (as stated above). You may object in person and/or through an attorney. You are responsible for any costs incurred in objecting through an attorney. You need not attend the Fairness Hearing in order for the Court to consider your objection.

**12. How do I exclude myself from the Settlement?**

If you are a Settlement Class member and you do not wish to participate in the Moark Settlement, the Court will exclude you from the Moark Settlement if you request exclusion. Your request for exclusion must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,<sup>3</sup> November 16, 2010 to the following address:

*In re Processed Egg Products Antitrust Litigation*– EXCLUSIONS  
c/o The Garden City Group, Inc., Claims Administrator  
P.O. Box 9476  
Dublin, OH 43017-4576

Your written request should specify that you wish to be excluded from the Moark Settlement. Do not request exclusion if you wish to participate in the Moark Settlement as a member of the Settlement Class. If you intend to bring your own lawsuit against the Moark Defendants, you should exclude yourself from the Settlement Class.

<sup>3</sup> To the extent you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: *In re Processed Egg Products Antitrust Litigation* (EGS), c/o The Garden City Group, Inc., 815 Western Avenue, Suite 200, Seattle, WA 98104.

If you remain in the Class, it does not prejudice your right to exclude yourself from any other past, present or future settlement class or certified litigation class in this case.

**13. What happens if I do nothing?**

If you do nothing, you will remain a member of the Class. As a member of the Settlement Class, you will be represented by the law firms listed above in Question No. 9, and you will not be charged a fee for the services of such counsel and any other class counsel. Rather, counsel will be paid, if at all, as allowed by the Court from some portion of whatever money they may ultimately recover for you and other members of the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

However, you must submit a timely Claim Form (see Question No. 6) in order to be considered for any monetary benefit from the Settlement Fund.

**14. Where do I get additional information?**

For more detailed information concerning matters relating to the Moark Settlement, you may wish to review the "Settlement Agreement Between Direct Purchaser Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc." (signed May 21, 2010) and the "Order on Preliminary Approval of Settlement with Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc." (entered July 15, 2010). These documents are available on the settlement website, [www.eggproductssettlement.com](http://www.eggproductssettlement.com), which also contains answers to "Frequently Asked Questions," as well as more information about the case. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 10. You may also obtain more information by calling the toll-free helpline at (866) 881-8306. If your present address is different from the address on the envelope in which you received this notice, or if you did not receive this notice directly but believe you should have, please call the toll-free helpline.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS LAWSUIT.**

Dated: July 15, 2010

**The Honorable Gene E. K. Pratter**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**If you purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer from January 1, 2000 through July 15, 2010, you could be a Class member in a proposed class action settlement.**

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.  
PLEASE READ THIS NOTICE CAREFULLY.**

The purpose of this notice is to inform you that Plaintiffs in this class action reached a settlement with Defendant Sparboe Farms, Inc. ("Sparboe"). If you fall within the definition of the "Class" as defined herein, you will be bound by the settlement unless you expressly exclude yourself in writing pursuant to the instructions below. This notice is also to inform you of the nature of the action and of your rights in connection with it.

***A federal court authorized this Notice. This is not a solicitation from a lawyer.***

This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the settlement with Sparboe (the "Sparboe Settlement") and of your rights with respect to it, including, but not limited to, the right to remain a member of the Class or to exclude yourself from the Class.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>TAKE NO ACTION</b>	You will receive the benefits of the Sparboe Settlement and give up the right to sue Sparboe with respect to the claims asserted in this case.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010</b>	This is the only option that allows you to ever be a part of any other lawsuit against Sparboe with respect to the claims asserted in this case.
<b>OBJECT TO THE SETTLEMENT BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010</b>	Write to the Court and explain why you do not like the Sparboe Settlement.
<b>GO TO THE HEARING ON JANUARY 13, 2011 AFTER FILING A TIMELY OBJECTION.</b>	Speak in Court about the fairness of the Sparboe Settlement.

These rights and options, and the deadlines to exercise them, are explained in this notice.

**1. Why did I receive this notice?**

This legal notice is to inform you of the Sparboe Settlement that has been reached in the class action lawsuit, *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania. You are being sent this notice because you have been identified as a potential customer of one of the Defendants in the lawsuit.

**2. What is this lawsuit about?**

In this lawsuit, Plaintiffs allege that Defendants, certain producers of eggs and egg products, conspired to decrease the supply of eggs. Plaintiffs allege that this conspiracy to limit supply raised the price of eggs, which caused direct purchasers to pay more for eggs than they would have otherwise paid. The term "eggs" refers to both shell eggs and egg products, which are eggs removed from their shells for further processing into a dried, frozen, or liquid form.

In the fall and winter of 2008, lawsuits were filed in several federal courts generally alleging this conspiracy to depress egg supply. On December 2, 2008, the Judicial Panel on Multidistrict Litigation transferred those cases for coordinated proceedings before the Honorable Gene E. K. Pratter, United States District Judge in the United States District Court for the Eastern District of Pennsylvania. On January 30, 2009, Plaintiffs filed their first consolidated amended complaint alleging a wide-ranging conspiracy to fix egg prices that injured direct egg purchasers.<sup>1</sup>

<sup>1</sup> This lawsuit alleges injuries to *direct* egg purchasers only, that is, entities or individuals who bought eggs directly from egg producers. A separate case is pending wherein the plaintiffs allege a wide-ranging conspiracy to fix egg prices that injured *indirect* egg purchasers. An indirect egg purchaser buys eggs from a direct purchaser of eggs or another indirect purchaser. The Sparboe Settlement does not affect your rights, if any, as an indirect egg purchaser.

Soon thereafter, Plaintiffs and Sparboe commenced settlement discussions. On June 8, 2009, Plaintiffs and Sparboe reached a settlement. By settling with Sparboe, Plaintiffs learned many more details about the alleged conspiracy. These details were included in a second consolidated amended complaint that Plaintiffs filed on April 7, 2010 against the following nineteen named Defendants: United Egg Producers, Inc.; United Egg Association; United States Egg Marketers, Inc.; Michael Foods, Inc.; Land O'Lakes, Inc.; Moark, LLC; Norco Ranch, Inc.; Rose Acre Farms, Inc.; National Food Corporation; Cal-Maine Foods, Inc.; Hillandale Farms of PA, Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms East, Inc.; Hillandale Farms, Inc.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; Midwest Poultry Services, L.P.; NuCal Foods, Inc.; and R.W. Sauder, Inc. Further, Plaintiffs' attorneys believe that there are more individuals and entities that have conspired to raise the price of eggs.

Plaintiffs represent both themselves (the named plaintiffs) and the entire Class of direct egg purchasers across the United States. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the Class present and share common questions of law and fact. Plaintiffs claim that Defendants' actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from the year 2000 to the present. Plaintiffs allege that Defendants and unnamed co-conspirators controlled the egg supply through various methods that were all part of a wide-ranging conspiracy. Plaintiffs allege that these methods include, but are not limited to, specific restrictions on the number of hens, a pretextual animal husbandry program that was a cover to further reduce egg supply, agreements to export eggs outside the U.S. in order to remove eggs from domestic supply even though producers could charge more domestically for those eggs, and the unlawful coercion of producers and customers to ensure compliance with the conspiracy. Plaintiffs further allege that eggs are unique in that there is no substitute; as such, demand remains constant regardless of price. Plaintiffs allege that a reduction in supply would therefore cause prices to rise, and producers' profits would increase substantially. Sparboe and the other Defendants deny all of Plaintiffs' allegations.

### **3. Who is included in the Settlement?**

Plaintiffs and Sparboe have agreed that, for purposes of the Sparboe Settlement, the Class is defined as follows:

All persons and entities in the United States that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010.

Persons or entities that fall within the definition of the Class and do not exclude themselves from it will be bound by the results of this litigation.<sup>2</sup>

### **4. What does the Sparboe Settlement provide?**

After several months of extensive settlement discussions, Plaintiffs and Sparboe reached a Settlement on June 8, 2009. The Sparboe Settlement is between Plaintiffs and Defendant Sparboe only; it does not affect any of the remaining non-settling Defendants, against whom this case continues. Pursuant to the terms of the Sparboe Settlement, Plaintiffs will release Sparboe from all claims arising from the facts in Plaintiffs' complaint. In exchange, Sparboe has agreed to substantial and immediate cooperation with Plaintiffs, including producing documents and making witnesses available for interviews, which Plaintiffs believe will provide important information in support of Plaintiffs' claims against the non-settling Defendants and possibly others who participated in the alleged conspiracy. It is the opinion of Plaintiffs' attorneys that this cooperation will provide significant benefits to members of the Class and will materially assist Plaintiffs in the prosecution of claims against the non-settling Defendants. For instance, through Sparboe's cooperation, Plaintiffs have already learned more details about the alleged conspiracy. Plaintiffs have included these details in the second amended consolidated complaint filed on April 7, 2010. Further, because it was not known whether the opportunity to secure a Defendant's cooperation would be available indefinitely, prompt settlement was important. The Sparboe Settlement is based entirely on cooperation; there is no financial compensation component to the Sparboe Settlement.

On October 23, 2009, the Court granted preliminary approval of the Sparboe Settlement, finding it sufficiently fair, reasonable, and adequate to warrant notifying the Class. The Court found that the Sparboe Settlement appears to require substantial cooperation from Sparboe, including the production of critical documents and witnesses that are expected to materially assist Plaintiffs in prosecuting their claims against the non-settling Defendants. The Court also found that the

<sup>2</sup> The Class consists of two subclasses. The first subclass, called the "Shell Egg Subclass," is made up of "[a]ll individuals and entities in the United States that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." The second subclass, called the "Egg Products Subclass," is comprised of "[a]ll individuals and entities in the United States that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." Excluded from the Class and the subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family. Also excluded from the Class and the subclasses are purchases of "specialty" Shell Eggs or Egg Products (such as "organic," "free-range," or "cage-free"), as well as purchases of "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

benefit of the information to be supplied by Sparboe appears to outweigh the potential benefit of Sparboe's continued participation in the lawsuit.

The Sparboe Settlement should not be taken as an admission by Sparboe of any allegation by Plaintiffs or of wrongdoing of any kind. Finally, the Court ordered that Plaintiffs shall provide notice of the Sparboe Settlement to all members of the Class who can be identified through reasonable effort.

**5. What is the effect of the Court's final approval of the Sparboe Settlement?**

If the Court grants final approval, the Sparboe Settlement will be binding upon you and all other members of the Class. By remaining part of the Sparboe Settlement, if approved, you will give up any claims against Sparboe relating to the claims made or which could have been made in this lawsuit. By remaining a part of the Sparboe Settlement, you will retain all claims against all other Defendants, named and unnamed.

**6. Who represents the Class?**

The Class is represented by the following attorneys:

Steven A. Asher WEINSTEIN KITCHENOFF & ASHER LLC 1845 Walnut Street, Suite 1100 Philadelphia, PA 19103	Michael D. Hausfeld HAUSFELD LLP 1700 K Street NW, Suite 650 Washington, DC 20006
Stanley D. Bernstein BERNSTEIN LIEBHARD LLP 10 East 40th Street, 22nd Floor New York, NY 10016	Stephen D. Susman SUSMAN GODFREY LLP 654 Madison Avenue, 5th Floor New York, NY 10065

**7. When and where will the Court hold a hearing on the fairness of the Settlement?**

The Court has scheduled a "Fairness Hearing" at 1:30 p.m. on January 13, 2011 at the following address:

United States District Court  
James A. Byrne Federal Courthouse  
601 Market Street  
Philadelphia, PA 19106-1797

The purpose of the Fairness Hearing is to determine whether the Sparboe Settlement is fair, reasonable, and adequate, and whether the Court should enter judgment granting final approval of it. You do not need to attend this hearing. You or your own lawyer may attend the hearing if you wish, at your own expense. Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind. Settlement Class members are advised to check [www.eggproductssettlement.com](http://www.eggproductssettlement.com) for any updates.

**8. How do I object to the Sparboe Settlement?**

If you are a Class member and you wish to participate in the Sparboe Settlement, but you object to or otherwise want to comment on any term of the Sparboe Settlement, you may file with the Court an objection in writing. In order for the Court to consider your objection, your objection must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, November 16, 2010 to each of the following:

**The Court:**  
United States District Court  
James A. Byrne Federal Courthouse  
601 Market Street  
Office of the Clerk of the Court, Room 2609  
Philadelphia, PA 19106-1797

**Counsel for Plaintiffs:**  
Steven A. Asher  
WEINSTEIN KITCHENOFF & ASHER LLC  
1845 Walnut Street, Suite 1100  
Philadelphia, PA 19103

**Counsel for Sparboe:**  
Troy J. Hutchinson  
STOEL RIVES LLP  
33 South Sixth Street, Suite 4200  
Minneapolis, MN 55402

Your objection must be in writing and must provide evidence of your membership in the Class. The written objection should state the precise reason or reasons for the objection, including any legal support you wish to bring to the Court's

attention and any evidence you wish to introduce in support of the objection. You may file the objection through an attorney. You are responsible for any costs incurred in objecting through an attorney.

If you are an objecting Class member, you have the right to voice your objection to the Sparboe Settlement at the Fairness Hearing. In order to do so, you must follow all instructions for objecting in writing (as stated above). You may object in person and/or through an attorney. You are responsible for any costs incurred in objecting through an attorney. You need not attend the Fairness Hearing in order for the Court to consider your objection.

**9. How do I exclude myself from the Settlement?**

If you are a Class member and you do not wish to participate in the Sparboe Settlement, the Court will exclude you from the Sparboe Settlement if you request exclusion. Your request for exclusion must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,<sup>3</sup> November 16, 2010 to the following address:

*In re Processed Egg Products Antitrust Litigation – EXCLUSIONS*  
c/o The Garden City Group, Inc., Claims Administrator  
P.O. Box 9476  
Dublin, OH 43017-4576

Your written request should specify that you wish to be excluded from the Sparboe Settlement. Do not request exclusion if you wish to participate in the Sparboe Settlement as a member of the Class. If you intend to bring your own lawsuit against Sparboe, you should exclude yourself from the Class.

**10. What happens if I do nothing?**

If you do nothing, you will remain a member of the Class. As a member of the Class, you will be represented by the law firms listed above in Question No. 6, and you will not be charged a fee for the services of such counsel and any other class counsel. Rather, counsel will be paid, if at all, as allowed by the Court, in some portion of whatever money they may ultimately recover for you and other members of the Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

**11. Where do I get additional information?**

For more detailed information concerning matters relating to the Sparboe Settlement, you may wish to review the "Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc." (signed June 22, 2009) and the "Order on Preliminary Approval of Sparboe Settlement" (entered October 23, 2009). These documents are available on the Sparboe Settlement website, [www.eggproductssettlement.com](http://www.eggproductssettlement.com), which also contains answers to "Frequently Asked Questions," as well as more information about the case. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 7. You may also obtain more information by calling the toll-free helpline at (866) 881-8306. If your present address is different from the address on the envelope in which you received this notice, or if you did not receive this notice directly but believe you should have, please call the toll-free helpline in order to provide your new address.

**PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS LAWSUIT.**

Dated: July 15, 2010

**The Honorable Gene E. K. Pratter**

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<sup>3</sup> To the extent you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: In re Processed Egg Products Antitrust Litigation (EGS), c/o The Garden City Group, Inc., 815 Western Avenue, Suite 200, Seattle, WA 98104.

**EXHIBITS 2 AND 3 TO THE KEOUGH  
AFFIDAVIT (EXHIBIT 1 TO  
MEMORANDUM) ARE AVAILABLE  
AT THE CLERK'S OFFICE**

# Exhibit 4



Claimant No.	Excluded Class Member
449	ABERDEEN LOGISTICS LLC
474	APPLE MARKET
481	APPLE MARKET
482	APPLE MARKET
479	APPLE MARKET
1001252	ASSOC WHOLESALE GROC KC
1001255	ASSOC WHOLESALE GROC TX
1001254	ASSOC WHOLESALE GROC. TN
1000910	ASSOCIATED WHOLESALE GRO
1001305	ASSOCIATED WHOLESALE GROC
1001306	ASSOCIATED WHOLESALE GROCERS
1006979	ASSOCIATED WHOLESALE GROCERS
1006982	ASSOCIATED WHOLESALE GROCERS, INC
470	ASSOCIATED WHOLESALE GROCERS, INC.
1006968	ASSOCIATED WHOLESALE GROCERS, INC.
1006978	ASSOCIATED WHOLESALE GROCERS, INC.
7178043	ASSOCIATED WHOLESALE GROCERS, INC.
1006980	ASSOCIATED WHOLESALE GROCERS-GOODLE
1006981	ASSOCIATED WHOLESALE GROCERS-KANSAS
1000924	BEE XIONG
427	BI-LO, INC.
431	BIRMINGHAM LOGISTICS LLC
563	BRESETTE FOODS, INC
185	BRESETTE'S PRICE CHOPPER
483	BROOKSIDE MARKET
425	BRUNO'S
455	BUFFALO LOGISTICS LLC
438	C&S LOGISTICS OF FRESNO LLC
444	C&S LOGISTICS OF HAWAII LLC
439	C&S LOGISTICS OF SACRAMENTO/ TRACY LLC
441	C&S LOGISTICS OF SUFFIELD
429	C&S WHOLESALE GROCERS
420	C&S WHOLESALE GROCERS, INC.
452	C&S WHOLESALE GROCERS, INC.
428	C&S WHOLESALE SERVICES LLC
421	C&S/TOPS WAREHOUSE
451	CASCADE LOGISTICS LLC
1001183	CNW FOODS, INC (D/B/A FOOD 4 LESS)
529	CNW FOODS, INC (D/B/A FOOD 4 LESS)
435	COLLINGTON SERVICES LLC
473	CONSENTINO ENTERPRISES, INC
471	CONSENTINO GROUP, INC
395	COPPS
1004734	COSENTINO'S PC 119 OVERLAND PARK
401	CRACKIN' GOOD, INC.
187	CYPAUL FOODS, LLC
402	DEEP SOUTH PRODUCTS, INC.
404	DIXIE DARLING BAKERS, INC.
403	DIXIE PACKERS, INC.
489	DOWNTOWN MARKET
457	DUBOIS LOGISTICS, LLC
437	ERIE LOGISTICS LLC

Claimant No.	Excluded Class Member
460	ES3 YORK LLC
459	ES3 YORK LLC (FREEZER)
419	FAIRWAY FOOD STORES, INC.
422	FLEMING CO.
1000448	FOOD INGREDIENT SALES, L.L.C.
424	FOOD WORLD
465	FOUR B CORP D/B/A BALLS FOOD STORES
456	FREMONT LOGISTICS LLC
1003355	GIANT EAGLE, INC.
168	GLORIA ESTRADA
463	GRAND PRAIRIE LOGISTICS LLC
442	GU MARKETS OF HARTFORD LLC
385	H.J. HEINZ COMPANY
464	H.J. HEINZ COMPANY L.P.
433	HATFIELD NORTH LOGISTICS LLC
467	HEN HOUSE
418	KWIK CHEK SUPERMARKETS, INC.
468	KWIK CHEK SUPERMARKETS, INC.
469	KWIK CHEK SUPERMARKETS, INC.
1001256	LAS BRANDS, INC.
461	LOUCKS MILL LOGISTICS LLC
1001848	MANUEL ESTRADA
183	MCKEEVER ENTERPRISES, INC.
388	MEGA MARTS, LLC
397	METRO MARKET
472	MID-AM FOOD ENTERPRISES, INC.
462	MILTON LOGISTICS LLC
453	MONTGOMERY LOGISTICS LLC
445	MUSCATINE LOGISTICS LLC
1005526	NEW MARK SUNFRESH
454	NEWBURGH LOGISTICS LLC
458	OCEAN LOGISTICS LLC
443	PEACHTREE LOGISTICS LLC
394	PICK 'N SAVE
426	PIGGLY WIGGLY
466	PRICE CHOPPER
475	PRICE CHOPPER
476	PRICE CHOPPER
486	PRICE CHOPPER
487	PRICE CHOPPER
488	PRICE CHOPPER
480	PRICE CHOPPER
484	PRICE CHOPPER
485	PRICE CHOPPER
490	PRICE CHOPPER
491	PRICE CHOPPER
1005749	PRICE CHOPPER #002
1001080	PRICE CHOPPER #100
1001081	PRICE CHOPPER #102
1001082	PRICE CHOPPER #105
1001083	PRICE CHOPPER #106
1001084	PRICE CHOPPER #109

Claimant No.	Excluded Class Member
1001085	PRICE CHOPPER #110
1001086	PRICE CHOPPER #119
1001087	PRICE CHOPPER #120
1001088	PRICE CHOPPER #121
1001089	PRICE CHOPPER #200
530	PRICE CHOPPER #300
1001091	PRICE CHOPPER #400
531	PRICE CHOPPER #500
1005462	PRICE CHOPPER #600
532	PRICE CHOPPER #700
1001100	PRICE CHOPPER #76
533	PRICE CHOPPER #900
1005756	QUEEN ENTERPRISES, LLC
564	QUEEN ENTERPRISES, LLC
1001076	QUEEN ENTERPRISES, LLC
565	QUEEN-MORRIS VENTURES, LLC
566	QUEEN-MORRIS VENTURES, LLC
396	RAINBOW FOODS
389	RBF, LLC
1013353	RHODES PRODUCE
393	RINDT ENTERPRISES, LLC
391	ROUNDY'S ILLINOIS, LLC
386	ROUNDY'S SUPERMARKETS, INC.
412	SAVE RITE GROCERY WAREHOUSE
400	SAVE-RITE FOODS, INC.
390	SHOP-RITE, LLC
423	SOUTHERN FAMILY MARKETS
440	STOCKTON LOGISTICS LLC
477	SUNFRESH
405	TABLE SUPPLY FOOD STORES CO., INC.
392	THE COPPS CORPORATION
413	THRIFTWAY, INC.
387	ULTRA MART FOODS, LLC
446	WESTFIELD LOGISTICS
409	WINN-DIXIE ATLANTA, INC.
414	WINN-DIXIE CHARLOTTE, INC.
415	WINN-DIXIE GREENVILLE, INC.
410	WINN-DIXIE LOUISIANA, INC.
416	WINN-DIXIE LOUISVILLE, INC.
417	WINN-DIXIE MIDWEST, INC.
406	WINN-DIXIE MONTGOMERY, INC.
407	WINN-DIXIE PROCUREMENT, INC.
408	WINN-DIXIE RALEIGH, INC.
398	WINN-DIXIE STORES, INC.
399	WINN-DIXIE SUPERMARKETS, INC.
411	WINN-DIXIE TEXAS, INC.

# **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
IN THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE: PROCESSED EGG PRODUCTS</b>	:	
<b>ANTITRUST LITIGATION</b>	:	<b>MDL No. 2002</b>
<hr/>	:	<b>08-md-02002</b>
	:	
<b>THIS DOCUMENT APPLIES TO:</b>	:	
<b>All Direct Purchaser Class Actions</b>	:	

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF THE  
CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANTS  
MOARK, LLC, NORCO RANCH, INC., AND LAND O’LAKES, INC.**

It is hereby ORDERED AND DECREED as follows:

(1) The motion of Direct Purchaser Class Plaintiffs for final approval of the proposed settlement with Defendants Moark, LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. (collectively “Moark”) who do not oppose, is hereby GRANTED.

(2) On the basis of the entire record before the Court, including a full fairness hearing, the Court finds that the proposed settlement is sufficiently fair, reasonable and adequate to the following settlement class (the “Settlement Class”), certified for settlement purposes only:

The Settlement Agreement defines the proposed Settlement Class as follows:

All persons and entities that purchased eggs, including Shell Eggs and Egg Products, produced from caged birds in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court’s entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs produced from caged birds in the United States directly from any Producer including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court’s entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published, excluding individuals and entities that purchased only “specialty” Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and “hatching” Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs that came from caged birds in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date when notice of the Court's entry of an order preliminarily approving this settlement and certifying a Class for settlement purposes is first published, excluding individuals and entities that purchased only "specialty" Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types).

Excluded from the Class and SubClasses are Producers, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

(3) Specifically, the Court finds that the settlement is entitled to an initial presumption of fairness because the settlement negotiations were undertaken at arm's-length over a four-month period, by experienced antitrust counsel who entered the negotiations with sufficient background in the facts of the case, and no members of the class objected. *In re Cendant Corp. Litig.*, 264 F.3d 201, 232 n.18 (3d Cir. 2001). Moreover, the settlement is fair, reasonable and adequate as the nine *Girsh* factors strongly support approval. *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir. 1975). The settlement is fair, reasonable and adequate given the complexity, expense, and likely duration of the litigation, the stage of proceedings and the costs and risks involved in the litigation for Plaintiffs absent Moark's cooperation. Moreover, the likelihood of further recoveries for Plaintiffs is greatly enhanced by Moark's cooperation and the reaction of the class has been overwhelmingly positive, with no objections to the settlement received.

(4) For the reasons set forth in the Court's July 15, 2010 Order, ECF No. 387, for purposes of settlement and on the basis of the entire record before the Court, the Court finds that the Settlement Class fully complies with the requirement of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Classes are so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the Settlement Classes; (3) the claims or defenses of the representative parties are typical of the claims or

defenses of the Settlement Classes; and (4) the representative parties will fairly and adequately protect the interests of the class. Additionally, for purposes of settlement, the Court finds that Federal Rule of Civil Procedure 23(b)(3) is also met and that there are questions of law or fact common to class members which predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The Court makes no determination, in accordance with *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 527-530 (3d Cir. 2004), concerning the manageability of this action as a class action if the matter were to go to trial.

(5) This Order will become final if no objections or requests for hearings have been made by a State or Federal official within 90-days (April 7, 2011) from the date on which Defendants fulfilled their obligations under the Class Action Fairness Act, 18 U.S.C. § 1711 *et seq.* (January 7, 2011).

This \_\_\_\_\_ day of \_\_\_\_\_, 2011

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**HONORABLE GENE PRATTER  
DISTRICT COURT, EASTERN DISTRICT OF  
PENNSYLVANIA**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of January, 2011, a copy of Direct Purchaser Plaintiffs' Motion for Final Approval of the Moark Settlement and related papers were filed with the Clerk of the Court, per the Local Rules, and will be available for viewing and downloading via the CM/ECF system and the CM/ECF system will send notification of such filing to all attorneys of record. On this date, the document was also served, via electronic mail, on (1) all counsel on the Panel Attorney Service List pursuant to Case Management Order No. 1; (2) the below-listed Liaison Counsel for Defendants and Indirect Purchaser Plaintiffs; and (3) the below-listed counsel for plaintiffs filing independent complaints:

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Date: January 27, 2011

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