

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

IN RE: PROCESSED EGG PRODUCTS :
ANTITRUST LITIGATION :
: :
: :
THIS DOCUMENT APPLIES TO :
ALL DIRECT PURCHASER ACTIONS :
: :

MDL No. 2002
Case No: 08-md-02002

**DIRECT PURCHASER PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENTS BETWEEN PLAINTIFFS AND DEFENDANT
NATIONAL FOOD CORPORATION AND PLAINTIFFS AND DEFENDANT
MIDWEST POULTRY SERVICES, LP, FOR CERTIFICATION OF CLASS ACTION
FOR PURPOSES OF THE SETTLEMENTS, AND FOR LEAVE TO FILE
MOTION FOR FEES, EXPENSES, AND INCENTIVE AWARDS**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs (“Plaintiffs”) respectfully move the Court to: (1) preliminarily approve a settlement between Plaintiffs and National Food Corporation (“NFC”) as set forth in the “Settlement Agreement Between Direct Purchaser Plaintiffs and Defendant National Food Corporation,” attached as Exhibit 1 to the Pizzirusso Declaration (NFC); (2) preliminarily approve a settlement between Plaintiffs and Midwest Poultry Services, LP (“Midwest Poultry”) as set forth in the “Settlement Agreement Between Direct Purchaser Plaintiffs and Defendant Midwest Poultry Services, LP,” attached as Exhibit 1 to the Pizzirusso Declaration (Midwest Poultry); (3) preliminarily certify a class for purposes of each Settlement Agreement; and (4) grant Plaintiffs leave to file a motion for attorneys’ fees and reimbursement of expenses, and for reasonable incentive awards, where appropriate.

This motion is based on the accompanying Memorandum of Law in Support and the Declarations of James J. Pizzirusso submitted herewith, and is made on the following grounds:

1. The Settlements fall within the range of reasonableness, *In re Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.*, 2013 U.S. Dist. LEXIS 18332, at *7

(E.D. Pa. Feb. 11, 2013), and are “sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard,” the applicable standards for preliminary approval of a class action settlement, *see In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *1 (E.D. Pa. May 11, 2004) (citation omitted).

2. The Settlement Agreements will provide the proposed class with valuable cash consideration, and require NFC and Midwest Poultry to cooperate with Plaintiffs in the continued litigation of the case, as described in the Settlement Agreements and accompanying memorandum. Interim Co-Lead Counsel believe that this will greatly assist them in further analyzing and prosecuting the claims this Action. *See In re Ikon Office Supplies Inc. Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000).
3. The Settlements are fair to the Class as a whole, treat Class Representatives the same as other Settlement Class members, and require Interim Co-Lead Counsel to seek Court approval of an award for attorneys’ fees and expenses from the Settlement Amount.
4. The Settlements are the result of extensive arm’s-length negotiations by experienced antitrust and class action lawyers. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807 at *1 (citations omitted); *Thomas v. NCO Fin. Sys.*, No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002).
5. The Settlement Agreements were negotiated and executed after fact discovery was significantly advanced.
6. The expense and uncertainty of continued litigation against NFC and Midwest Poultry, and the likelihood of appeals, militates strongly in favor of approval. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003); *In re Remeron End-Payor Antitrust Litig.*, No. Civ. 02-2007, 2005 WL 2230314, at *17 (D.N.J. Sept. 13, 2005).
7. The Settlement Class, as defined in the Settlement Agreements, meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3).

Dated: April 25, 2014

Respectfully submitted,

/s/ Steven A. Asher

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**DIRECT PURCHASER PLAINTIFFS'
MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENTS BETWEEN PLAINTIFFS AND
DEFENDANT NATIONAL FOOD CORPORATION AND PLAINTIFFS AND
DEFENDANT MIDWEST POULTRY SERVICES, LP, FOR CERTIFICATION OF
CLASS ACTION FOR PURPOSES OF THE SETTLEMENTS, AND FOR LEAVE TO
FILE MOTION FOR FEES, EXPENSES, AND INCENTIVE AWARDS**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 3

A. The Litigation..... 3

B. Previous Settlement History 3

C. The NFC Settlement Negotiations 4

D. The Midwest Poultry Negotiations 5

III. PROVISIONS OF THE SETTLEMENT AGREEMENTS 7

A. The Settlement Class..... 7

B. Cash Consideration to the Proposed Class & Rescission Provisions 8

1. NFC..... 8

2. Midwest Poultry 8

C. The Cooperation Provisions..... 9

1. NFC..... 9

2. Midwest Poultry 10

D. Release Provisions 10

IV. THE PROPOSED SETTLEMENTS ARE SUFFICIENTLY FAIR,
REASONABLE AND ADEQUATE..... 11

A. Standard For Granting Preliminary Approval Of The Settlements 11

B. The Settlement Amounts, the Cooperation Provisions and the Terms of the
Agreements Support Preliminary Approval..... 13

C. The Negotiation Processes Supports Preliminary Approval..... 16

D. The Extent of Discovery at the Time the Settlement Agreement was
Negotiated and Agreed to Supports Preliminary Approval. 17

E. The Expense and Uncertainty of Continued Litigation Against NFC and
Midwest Poultry Supports Preliminary Approval..... 18

V.	PRELIMINARY CERTIFICATION OF THE PROPOSED NFC AND MIDWEST POULTRY SETTLEMENT CLASSES IS WARRANTED	19
A.	This Case Satisfies The Prerequisites Of Rule 23(a).....	20
1.	The Settlement Class is sufficiently numerous.....	20
2.	There are common questions of law and fact.	22
3.	The Representative Plaintiffs’ claims are typical of those of the Settlement Class.....	23
4.	The Representative Plaintiffs will fairly and adequately protect the interests of the Class.	24
B.	The Representative Plaintiffs’ Claims Satisfy The Prerequisites Of Rule 23(b)(3).	25
1.	Common legal and factual questions predominate.	26
2.	A class action is superior to other methods of adjudication.	31
VI.	PLAINTIFFS’ MOTION FOR LEAVE TO FILE MOTION FOR ATTORNEYS’ FEES AND EXPENSES AND INCENTIVE AWARDS	32
VII.	CONCLUSION.....	33

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S.591 (1997).....	25, 26, 32
<i>Austin v. Pa. Dept of Corr.</i> , 876 F. Supp. 1437 (E.D. Pa. 1995).....	13
<i>Baby Neal v. Casey</i> , 43 F.3d 48 (3d Cir. 1994)	22
<i>Bogosian v. Gulf Oil Corp.</i> , 561 F.2d 434 (3d Cir. 1977).....	24
<i>Comcast Corp. v. Behrend</i> , 133 S. Ct. 1426 (2013).....	30
<i>Danny Kresky Enter. Corp. v. Magid</i> , 716 F.2d 206 (3d Cir. 1983).....	26
<i>Gates v. Rohm & Haas Co.</i> , 248 F.R.D. 434 (E.D. Pa. 2008).....	12
<i>Girsh v. Jepson</i> , 521 F.2d 153 (3d Cir. 1975).....	12
<i>Hanrahan v. Britt</i> , 174 F.R.D. 356 (E.D. Pa. 1997).....	16
<i>Hedges Enters., Inc. v. Cont'l Grp., Inc.</i> , 81 F.R.D. 461 (E.D. Pa. 1979).....	30
<i>Hoxworth v. Blinder, Robinson & Co., Inc.</i> , 980 F.2d 912 (3d Cir. 1992).....	23, 24
<i>In re Am. Inv. Life Ins. Co. Annuity Mktg. and Sales Practices Litig.</i> , 263 F.R.D. 226 (E.D. Pa. 2009).....	11
<i>In re Auto. Refinishing Paint Antitrust Litig.</i> , MDL NO. 1426, 2004 WL 1068807 (E.D. Pa. May 11, 2004)	11, 14, 15
<i>In re Auto. Refinishing Paint Antitrust Litig.</i> , No. MDL 1426, 2003 WL 23316645 (E.D. Pa. Sept. 5, 2003)	16
<i>In re Auto. Refinishing Paint Antitrust Litig.</i> , 617 F. Supp. 2d 336 (E.D. Pa. 2007)	12, 13

In re Catfish Antitrust Litig.,
826 F. Supp. 1019 (N.D. Miss. 1993).....23

In re Chambers Dev. Sec. Litig.,
912 F. Supp. 822 (W.D. Pa. 1995).....19

In re Cmty. Bank of N. Va.,
418 F.3d 277 (3d Cir. 2005).....25, 30

In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions,
410 F. Supp. 659 (D. Minn. 1974).....15

In re Corrugated Container Antitrust Litig.,
MDL 3101981, WL 2093 (S.D. Tex. June 4, 1982), *aff'd*, 659 F.2d 1322
(5th Cir. 1981).....15

In re Fine Paper Antitrust Litig.,
82 F.R.D. 143 (E.D. Pa. 1979).....30

In re Flat Glass Antitrust Litig.,
191 F.R.D. 472 (W.D. Pa. 1999)22, 29

In re Gen. Instruments Sec. Litig.,
209 F. Supp. 2d 423 (E.D. Pa. 2001)15

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.,
55 F.3d 768 (3d Cir. 1995).....11, 13

In re Hydrogen Peroxide Antitrust Litig.
552 F.3d 305 (3d Cir. 2008).....26, 27

In re Ikon Office Supplies Inc. Sec. Litig.,
194 F.R.D. 166 (E.D. Pa. 2000).....14, 19

In re Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.,
No. 11-md-2284, 2013 U.S. Dist. LEXIS 18332 (E.D. Pa. Feb. 11, 2013).....12, 18

In re Ins. Brokerage Antitrust Litig.,
579 F.3d 241 (3d Cir. 2009)..... *passim*

In re Ins. Brokerage Antitrust Litig.,
Case No. 04-5184, 2013 WL 3956378 (D.N.J. Aug. 1, 2013)13

In re K-Dur Antitrust Litig.,
No. 01-1652, 2008 WL 2699390 (D.N.J. Apr. 14, 2008).....22, 29

In re Linerboard Antitrust Litig.,
305 F.3d 145 (3d Cir. 2002).....26

In re Linerboard Antitrust Litig.,
292 F. Supp. 2d 631 (E.D. Pa. 2003) *passim*

In re Mercedes-Benz Antitrust Litig.,
213 F.R.D. 180 (D.N.J. 2003).....22, 24, 26

In re Microcrystalline Cellulose Antitrust Litig.,
218 F.R.D. 79 (E.D. Pa. 2003).....22, 24, 30

In re Mid-Atlantic Toyota Antitrust Litig.,
564 F. Supp. 1379 (D.C. Md. 1983)11, 15

In re NASDAQ Market-Makers Antitrust Litig.,
169 F.R.D. 493 (S.D.N.Y. 1996)21

In re NASDAQ Market-Makers Antitrust Litig.,
187 F.R.D. 465 (S.D.N.Y. 1998)19

In re OSB Antitrust Litig.,
2007 WL 2253418 (E.D. Pa. Aug. 3, 2007)22

In re Pet Food Prods. Liability Litig.,
No. 07-2867, 2008 WL 4937632 (D.N.J. Nov. 18, 2008)19

In re Plywood Antitrust Litig.,
76 F.R.D. 570 (E.D. La. 1976).....29

In re Prudential Ins. Co. of Am. Sales Practices Litig.,
962 F. Supp. 450 (D.N.J. 1997)11, 12

In re The Prudential Ins. Co. of Am. Sales Practices Litig. Agent Actions,
148 F.3d 283 (3d Cir. 1998).....31

In re Prudential Sec. Inc. Ltd. P’ships Litig.,
163 F.R.D. 200 (S.D.N.Y. 1995)19

In re Remeron End-Payor Antitrust Litig.,
No. Civ. 02-2007, 2005 WL 2230314 (D.N.J. Sept. 13, 2005)19

In re Rite Aid Corp. Sec. Litig.,
146 F. Supp. 2d 706 (E.D. Pa. 2001)12

In re Sumitomo Copper Litig.,
189 F.R.D. 274 (S.D.N.Y. 1999)21, 22

In re Warfarin Sodium Antitrust Litig.,
391 F.3d 516 (3d Cir. 2004).....12, 20, 23

In re Warfarin Sodium Antitrust Litigation,
 212 F.R.D. 231 (D. Del 2003) *aff'd*, 391 F.3d 516 (3d Cir. 2004).....31

Krell v. Prudential Ins. Co. of Am.,
 525 U.S. 1114 (1999).....31

Lake v. First Nationwide Bank,
 156 F.R.D. 615 (E.D. Pa. 1994).....16

Marsden v. Select Med. Corp.,
 246 F.R.D. 480 (E.D. Pa. 2007).....21

McGuinness v. Parnes,
 No. 87-2728-LFO, 1989 WL 29814 (D.D.C. Mar. 22, 1989)15

Petruzzi’s Inc. v. Darling-Delaware Co.,
 880 F. Supp. 292 (M.D. Pa. 1995).....16

Robidoux v. Celani,
 987 F.2d 931 (2d Cir. 1993).....21

Stewart v. Abraham,
 275 F.3d 220 (3d Cir. 2001).....21

Stewart v. Rubin,
 948 F. Supp. 1077 (D.D.C. 1996), *aff’d*, 124 F.3d 1309 (D.C. Cir. 1997).....15

Sullivan v. DB Inv., Inc.,
 667 F.3d 273 (3d Cir. 2011) *cert. denied*, 132 S. Ct. 1876 (2012).....26, 27

Thomas v. NCO Fin. Sys.,
 No. CIV.A. 00-5118, 2002 WL 1773035 (E.D. Pa. July 31, 2002).....12

Transamerican Refining Corp. v. Dravo Corp.,
 130 F.R.D. 70 (S.D. Tex. 1990).....22

Wal-Mart Stores Inv. v. Dukes,
 131 S. Ct. 2541 (2011).....27

Weisfeld v. Sun Chem. Corp.,
 210 F.R.D 136 (D.N.J. 2002).....22

Weseley v. Spear,
 711 F. Supp. 713 (E.D.N.Y. 1989)18

STATUTES

15 U.S.C. § 1.....3

RULES

Rule 23(a)..... *passim*
Rule 23(b)20, 25, 26, 31
Rule 23(e).....1, 2, 17

OTHER AUTHORITIES

2 NEWBERG ON CLASS ACTIONS, § 11.41 (3d ed. 1992).....16
4 NEWBERG ON CLASS ACTIONS, § 11.25 (4th ed. 2002).....11

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs (“Plaintiffs”) respectfully submit this memorandum in support of their motion: (1) for preliminary approval of a settlement between Plaintiffs and National Food Corporation (“NFC”) as set forth in the “Settlement Agreement Between Direct Purchaser Plaintiffs and Defendant National Food Corporation” (“NFC Agreement” or “NFC Settlement Agreement”), attached as Exhibit 1 to the Declaration of James J. Pizzirusso (NFC); (2) for preliminary approval of a settlement between Plaintiffs and Midwest Poultry Services, LP (“Midwest Poultry”) as set forth in the “Settlement Agreement Between Direct Purchaser Plaintiffs and Defendant Midwest Poultry Services, LP” (“Midwest Poultry Agreement” or “Midwest Poultry Settlement Agreement”), attached as Exhibit 1 to the Declaration of James J. Pizzirusso (Midwest Poultry); (3) for certification of a class for purposes of each Settlement Agreement; and (4) for leave to file motions for attorney’s fees, reimbursement of expenses, and reasonable incentive awards.

I. INTRODUCTION

After many months of intense arm’s-length negotiations, Plaintiffs successfully obtained mutually agreeable settlements with both NFC and Midwest Poultry.¹ In exchange for a release from this lawsuit, NFC has agreed to pay \$1,000,000 into a fund to provide for the claims of members of the proposed Settlement Class. The NFC Agreement also requires that NFC authenticate documents, provide a witness to testify at trial, and provide additional factual information relating to the issues and events relevant to this action.

¹ The NFC and Midwest Poultry settlement agreements were negotiated and executed completely separate and independent from one another. Plaintiffs file one brief in support of both settlements for purposes of efficiency and because the same legal standards apply to both settlements.

In exchange for a release from this lawsuit, Midwest Poultry has agreed to pay \$2,500,000 into a fund to provide for the claims of members of the proposed Settlement Class. The Midwest Poultry Agreement also requires that Midwest Poultry authenticate documents, provide a witness to testify at trial, and provide additional factual information relating to the issues and events in this action.

Plaintiffs believe these commitments by NFC and Midwest Poultry, which are in addition to paying money damages, will materially assist Plaintiffs in further analyzing and prosecuting this action against the remaining Defendants: Daybreak Foods, Inc., Hillandale Farms of Pa., Inc., Hillandale-Gettysburg, L.P., Rose Acre Farms, Inc., Michael Foods, Inc., NuCal Foods, Inc., Ohio Fresh Eggs, LLC, United Egg Producers, Inc., United States Egg Marketers, Inc., and R. W. Sauder, Inc. (“Non-Settling Defendants”).

Plaintiffs respectfully move the Court for an Order (“Preliminary Approval Order”), for each of the Settlement Agreements, in substantially the same form as the proposed orders submitted herewith, that provides, among other things:

- the settlement proposed in the Settlement Agreement has been negotiated at arm’s length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;
- the Settlement Class defined in the Settlement Agreement be certified, designating Class Representatives and Settlement Class Counsel as defined therein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is not approved by the Court or any appellate court; and
- a hearing on the settlement proposed in the Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

These provisions will set in motion the procedures necessary to obtain final approval of the proposed settlements as required by Rule 23(e) of the Federal Rules of Civil Procedure.

At this time, in considering whether to grant preliminary approval of a proposed settlement, the Court need determine only whether the settlement is sufficiently fair, reasonable, and adequate to allow notice of the proposed settlement to be disseminated to the Settlement Class. A final determination of the settlement's fairness will be made at or after the Fairness Hearing, after Class Members have received notice of the settlement and have been given an opportunity to object to it or opt-out of the class. As set forth below, Plaintiffs submit that both the NFC Agreement and the Midwest Poultry Agreement amply satisfy the required standards.

II. BACKGROUND

A. The Litigation

This case concerns an alleged conspiracy among the nation's largest egg producers. Plaintiffs allege that Defendants and other named and unnamed co-conspirators violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce output and thereby artificially fix, raise, maintain and/or stabilize the prices of shell eggs and egg products in the United States. As a result of Defendants' alleged 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 treble damages, injunctive relief, attorneys' fees, and costs from Defendants. Midwest Poultry and NFC deny all allegations of wrongdoing in this action.

B. Previous Settlement History

On June 8, 2009, Sparboe Farms, Inc. ("Sparboe") entered into a settlement agreement with Plaintiffs providing for cooperation in the continued litigation of the case, and on July 16, 2012, this Court granted final approval of the settlement. ECF No. 698. On May 21, 2010, Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. entered into a settlement agreement with Plaintiffs providing for both continued cooperation and a cash settlement of

\$25,000,000.00, and on July 16, 2012, this Court granted final approval of the settlement. ECF No. 700. On August 2, 2013 Cal-Maine Foods, Inc., (“Cal-Maine”) entered into a settlement agreement with Plaintiffs providing for continued cooperation and a cash settlement of \$28,000,000.00. ECF No. 848-2. This Court granted preliminary approval of that settlement on February 28, 2014. ECF No. 908.

C. The NFC Settlement Negotiations

Interim Co-Lead Counsel for Plaintiffs (“Class Counsel”) and NFC’s counsel, Davis Wright Tremaine, LLP, engaged in extensive arm’s length negotiations over the course of nearly a year to reach the current settlement. The scope and details of the negotiations are described in the Pizzirusso Declaration (NFC) attached hereto. Class Counsel and NFC’s counsel, both highly experienced and capable, vigorously advocated their respective clients’ positions in the settlement negotiations.

Preliminary settlement discussions began in late 2012 and early 2013, but quickly stalled. Pizzirusso Decl. (NFC) ¶ 5. The parties renewed discussions in May 2013, and by July 2013 were working towards a joint mediation. *Id.* at ¶¶ 6–7. At that point, Class Counsel had also reviewed NFC’s financial statements, which were provided by NFC’s counsel so that Class Counsel would consider NFC’s financial status when forming its demand.

Settlement discussions with NFC were put on hold shortly thereafter for a variety of reasons, including the parties’ consideration of a global mediation with all Defendants. Plaintiffs continued to pursue discovery of NFC in the interim by attempting to schedule NFC depositions and by pursuing additional information regarding NFC transactional data, among other things. *Id.* at ¶ 8. NFC also produced a new round of financial statements, which demonstrated that NFC’s financial condition was not improving. *Id.* at 9.

Class Counsel and NFC's counsel renewed settlement discussions in November 2013 after an unsuccessful global mediation in October in which NFC did not participate. *Id.* at ¶ 11. The parties engaged in several more rounds of telephone calls and email exchanges, and eventually agreed to a settlement requiring that NFC pay \$1,000,000.00 and cooperate with Plaintiffs in the continued litigation of the case. The settlement amount was based primarily on NFC's precarious financial status and the amount of its commerce in the case. *Id.* At the time of the agreement, Class Counsel had reviewed over 100,000 documents produced by NFC—as well as the productions of many other defendants, and therefore had extensive knowledge of Defendants' antitrust conspiracy and the strengths and weaknesses of their claims and Defendants' asserted defenses.

The parties reached an agreement in principle on February 28, 2014. *Id.* at ¶ 12. The Settlement Agreement was fully executed by Class Counsel and NFC's counsel on March 28, 2014. *Id.* at ¶ 13. After factual investigation and legal analysis, it is the opinion of Class Counsel that the Settlement Amount of \$1,000,000.00, combined with NFC's obligation to cooperate with Plaintiffs, is fair, reasonable, and adequate to the Class. Plaintiffs respectfully submit that the Settlement is in the best interest of the Class and should be preliminarily approved by the Court, and that a class should be certified for purposes of the Settlement.

D. The Midwest Poultry Negotiations

Class Counsel and Midwest Poultry's counsel, Faegre Baker Daniels LLP, engaged in arm's length negotiations over a period of roughly two months to reach the current settlement. The scope and details of the negotiations are described in the Pizzirusso Declaration (Midwest Poultry) attached hereto. Class Counsel and Midwest Poultry's counsel are both highly experienced and capable, and both vigorously advocated their respective client's positions in the settlement negotiations.

Midwest Poultry attended the global mediation session in October 2013. Although unsuccessful, Class Counsel decided to approach Midwest Poultry about reaching a possible resolution. The parties began substantive negotiations in January 2014. Pizzirusso Decl. (Midwest Poultry) ¶ 6. After several rounds of telephone calls and email exchanges, the parties eventually agreed to a settlement requiring that Midwest Poultry pay \$2,500,000.000 and cooperate with Plaintiffs in the continued litigation of the case. *Id.* The amount of money damages was based primarily on Midwest Poultry's financial condition and that a significant percent of the company's sales had been to Direct Action Plaintiffs. *Id.* At the time the parties reached an agreement, Class Counsel had spent significant time reviewing Midwest Poultry's production—consisting of over 40,000 documents, of which approximately 20% had been reviewed when the parties reached an agreement—and had deposed Midwest Poultry's CEO in his personal capacity and in his capacity as the corporate representative of Midwest Poultry. This, along with comprehensive review of the other Defendants' production, provided Class Counsel with extensive knowledge of Defendants' antitrust conspiracy and the strengths and weaknesses of Plaintiffs' claims and Defendants' asserted defenses.

Plaintiffs and Midwest Poultry reached an agreement in principle on February 10, 2014, and executed the Settlement Agreement on March 31, 2014. *Id.* at ¶¶ 7–8. After factual investigation and legal analysis, it is the opinion of Class Counsel that the Settlement Amount of \$2,500,000.00, combined with Midwest Poultry's obligation to cooperate with Plaintiffs, is fair, reasonable, and adequate to the Class. Plaintiffs respectfully submit that the Settlement is in the best interest of the Class and should be preliminarily approved by the Court, and that a class should be certified for purposes of the Settlement.

III. PROVISIONS OF THE SETTLEMENT AGREEMENTS

A. The Settlement Class

Both the NFC Settlement Agreement and the Midwest Poultry Settlement Agreement define the proposed Settlement Class as follows:

All persons and entities that purchased Shell Eggs and Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, 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.

NFC Settlement Agreement, ¶ 22 (Pizzirusso Decl. (NFC), Ex. 1); Midwest Poultry Settlement Agreement, ¶ 23 (Pizzirusso Decl. (Midwest Poultry), Ex. 1). The Cal-Maine, Moark, and Sparboe settlement agreements all similarly define the Settlement Class.²

² All of the settlement agreements define the Settlement Classes as “all persons and entities that purchased eggs . . . including Shell Eggs and Egg Products . . . directly from any producer . . .” And all of the Settlement Agreements exclude from the class those who purchased exclusively “specialty shell eggs” or “hatching shell eggs.” The Moark and Sparboe

B. Cash Consideration to the Proposed Class & Rescission Provisions

1. NFC

The NFC Settlement Agreement provides that, within 5 days of its execution, NFC will pay \$1,000,000.00 in cash (the “Settlement Amount”). *See* NFC Settlement Agreement ¶¶ 19, 37. This money shall be maintained in an escrow account controlled by NFC and Class Counsel pending approval of the settlement by the Court. The NFC and Plaintiffs each have the right and option to rescind the Settlement Agreement for the reasons described in ¶ 34 of the Agreement, including in the event that the Court refuses to approve the Agreement or any part thereof, or if such approval is modified or set aside on appeal.

Additionally, the NFC Settlement Agreement provides that Class Counsel may, at a time approved by the Court, seek from the Settlement Amount an award of attorney’s fees, expenses, and incentive awards for class representatives, and that NFC shall have no obligation to pay any fees or expenses of Class Counsel. *Id.* at ¶ 39.

2. Midwest Poultry

The Midwest Poultry Agreement provides that within 20 days of its execution, Midwest Poultry will pay \$2,500,000.00 in cash (the “Settlement Amount”). *See* Midwest Poultry Agreement ¶¶ 19, 38. This money shall be maintained in an escrow account controlled by Midwest Poultry and Class Counsel pending approval of the settlement by the Court. Midwest Poultry and Plaintiffs each have the right and option to rescind the Settlement Agreement for the reasons described in ¶ 34 of the Agreement, including in the event that the Court refuses to

Agreements provide for those exclusions in the class definitions themselves, whereas the Settlement Agreement with Cal-Maine simply defines “shell eggs” and “egg products” as excluding specialty and hatching shell eggs in the definition of those terms in the Agreement, thus incorporating those exclusions into the class definition by reference. *Compare* Cal-Maine Settlement Agreement (ECF 848-2) ¶¶ 8, 18, 20 *with* Moark Settlement Agreement (ECF No. 349-1) ¶ 19, *and* Sparboe Settlement Agreement (ECF No. 172-2) ¶ 11.

approve the Agreement or any part thereof, or if such approval is modified or set aside on appeal.

Midwest Poultry also has the right and option to rescind the Agreement should class members whose combined purchases of Shell Eggs and Egg Products equal or exceed a percentage of Midwest Poultry's total sales decide to exclude themselves from the Settlement Class. *Id.* at ¶ 37. The Opt-Out threshold is set forth in a Supplement Agreement between the parties, which will be disclosed to the Court and offered for an *in camera* inspection prior to entry of the preliminary approval order. *Id.*

Additionally, the Midwest Poultry Settlement Agreement provides that Class Counsel may, at a time approved by the Court, seek from the Settlement Amount an award of attorney's fees, expenses, and incentive awards for class representatives, and that NFC shall have no obligation to pay any fees or expenses of Class Counsel. *Id.* at ¶ 39.

C. The Cooperation Provisions

In addition to the Settlement Amount, both the NFC Agreement and the Midwest Poultry Agreement require that the respective settling Defendants cooperate with Plaintiffs in their prosecution of this case..

1. NFC

The NFC Agreement requires that NFC provide an attorney proffer of up to five hours with information concerning, *inter alia*, NFC, its operations, and identification of potential NFC witnesses with knowledge of the matters at issue in this case. NFC Agreement ¶ 43. The Agreement also requires that NFC make available for interview with Class Counsel up to two current directors, officers, and employees of NFC, and up to one former director, officer, or employee, who Class Counsel believe would assist Plaintiffs in prosecuting this case. *Id.* The Agreement further requires that NFC: (1) clarify transactional data produced by NFC; (2) establish the authenticity of and/or admissibility as business records of documents produced

by NFC and, to the extent possible, documents produced by Non-Settling Defendants that were sent to or received by NFC; and (3) make available from its current or former directors, officers, or employees up to two representatives who will testify at trial regarding the facts and issues in dispute. *Id.*

2. Midwest Poultry

The Midwest Poultry Agreement requires that Midwest Poultry provide an attorney proffer of up to eight hours with information concerning Midwest Poultry's knowledge, and that of its directors, officers, employees, and agents, of the facts and events at issue in this case. Midwest Poultry Agreement ¶ 44. The Agreement also requires that Midwest Poultry make available for interview with Class Counsel each of the current directors, officers, and employees of Midwest Poultry who Class Counsel believe would assist Plaintiffs in prosecuting this case. *Id.* Midwest Poultry shall use its best efforts to assist Class Counsel in arranging interviews with former Midwest Poultry directors, officers, employees, and agents. *Id.* The Agreement further requires that Midwest Poultry: (1) clarify transactional data produced by Midwest Poultry; (2) establish the authenticity of and/or admissibility as business records of documents produced by Midwest Poultry and, to the extent possible, documents produced by Non-Settling Defendants that were sent to or received by Midwest Poultry; and (3) make available from among its current or former directors, officers or employees a representative who will testify at trial regarding the facts and issues in dispute. *Id.*

D. Release Provisions

In exchange for the consideration described above, Plaintiffs have agreed to release NFC and Midwest Poultry from any and all claims arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants; (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 or Egg Products in the United States or elsewhere. The full text of the proposed releases, including the limitations thereof, is set forth in the Settlement Agreements. NFC Agreement ¶¶ 29–33; Midwest Poultry Agreement ¶¶ 30–33.

IV. THE PROPOSED SETTLEMENTS ARE SUFFICIENTLY FAIR, REASONABLE AND ADEQUATE

A. Standard For Granting Preliminary Approval Of The Settlements

The approval of class action settlements involves a two-step process: (1) preliminary approval; and (2) a fairness hearing, after notice to the class, to determine final approval of the proposed settlement. *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 562 (D.N.J. 1997); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *1 (E.D. Pa. May 11, 2004); 4 NEWBERG ON CLASS ACTIONS § 11:25, at 38-39 (4th ed. 2002).

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 also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) (holding that the “preliminary determination establishes an initial presumption of fairness”); *In re Am. Inv. Life Ins. Co. Annuity Mktg. and Sales Practices Litig.*, 263 F.R.D. 226, 238 (E.D. Pa. 2009) (same). That definitive determination must await the final hearing, at which the fairness, reasonableness, and adequacy of the settlement are more fully assessed. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).³ Indeed, as one court noted:

³ The factors considered for final approval of a class settlement as “fair, reasonable and adequate” include: (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

In evaluating a settlement for preliminary approval, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute Instead, the court must determine whether “the proposed settlement discloses grounds to doubt its fairness or otherwise obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and whether it appears to fall within the range of possible approval The analysis often focuses on whether the settlement is the product of ‘arms-length negotiations.’

Thomas v. NCO Fin. Sys., No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002) (internal citations omitted). In determining at the preliminary approval stage whether an antitrust settlement falls within a “range of reasonableness,” a court examines whether ““(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.””⁴ *In re Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.*, No. 11-md-2284, 2013 U.S. Dist. LEXIS 18332, at *7 (E.D. Pa. Feb. 11, 2013) (quoting *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003) and citing *In re Gen. Motors Corp.*, 55 F.3d at 784). After making such findings, a settlement agreement is entitled to a presumption of fairness and should be preliminarily approved. *Id.* at *8.

Additionally, in reviewing a proposed settlement, courts may also consider the amount of relief provided, *see, e.g., In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 344

discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a 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 the attendant risks of litigation. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534-35 (3d Cir. 2004); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 562 (D.N.J. 1997); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 713 (E.D. Pa. 2001). At the preliminary approval stage, “the Court need not address these factors, as the standard for preliminary approval is far less demanding.” *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 444 n.7 (E.D. Pa. 2008). Plaintiffs will thus fully address each of these factors in in their memorandum in support of their motion for final approval.

⁴ The last factor, the percentage of objections, is premature at this stage. *In re Imprelis*, U.S. Dist. LEXIS 18332, at *10.

(E.D. Pa. 2007), and commitments of settling defendants to provide information or cooperation that assists the class in prosecuting the action against non-settling defendants, *see e.g., In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 643.

Finally, the Court should consider that “settlement of litigation is especially favored by courts in the class action setting.” *In re Ins. Brokerage Antitrust Litig.*, Case No. 04-5184, 2013 WL 3956378 (D.N.J. Aug. 1, 2013) (citing *In re Gen. Motors Corp.*, 55 F.3d at 784 (holding that “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. Dept of Corr.*, 876 F. Supp. 1437, 1455 (E.D. Pa. 1995) (explaining that “the extraordinary amount of judicial and private resources consumed by massive class action litigation elevates the general policy of encouraging settlements to ‘an overriding public interest’”).

As discussed below, the proposed Settlement Agreements with NFC and Midwest Poultry are entitled to a presumption of fairness because they provide no preferential treatment of class representatives or segments of the class, do not provide for excessive compensation of attorneys, provide significant relief to the Settlement Class, and require that NFC and Midwest Poultry provide significant additional information regarding the facts and events at issue in this case, which will assist Plaintiffs in prosecuting the case against the Non-Settling Defendants.

B. The Settlement Amounts, the Cooperation Provisions and the Terms of the Agreements Support Preliminary Approval.

The settlement amounts provided in both proposed settlement agreements are fair and reasonable and represent a favorable result for the class. As noted above, the NFC Agreement requires that NFC pay \$1,000,000.00. This amount was agreed to after almost a year of back and forth negotiations, and is based on NFC’s amount of commerce in the case and its precarious financial position as established in the audited financial statements provided by NFC. Class

Counsel believes it is in the best interest of the class to enter into the NFC Agreement rather than continuing to pursue a judgment against NFC that may prove to be uncollectible. The Midwest Poultry Agreement requires that Midwest Poultry pay \$2,500,000. This amount was also hard fought on both sides, and is based primarily on Midwest Poultry's financial condition and the fact that a significant portion of Midwest Poultry's sales had been to Direct Action Plaintiffs. Moreover, the damages Plaintiffs suffered due to NFC's and Midwest Poultry's alleged conduct remain in the case and are recoverable from other Defendants under joint and several liability. *See In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *2 (preliminarily approving settlement agreement because, *inter alia*, "this settlement does not affect the joint and several liability of the remaining Defendants in this alleged conspiracy").

Also, as described above, the settlement agreements require that NFC and Midwest Poultry cooperate with Plaintiffs in prosecuting this case, which includes providing immediate assistance in developing additional factual information regarding the issues and events relevant to this case. Class Counsel believe that this assistance will strengthen Plaintiffs' claims in this case while at the same time avoiding the risk and expense of continuing litigation against NFC and Midwest Poultry. Class Counsel believes that the proposed settlements with NFC and Midwest Poultry will significantly benefit Plaintiffs and will assist Class Counsel in analyzing and prosecuting their claims in this case. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 643 ("The provision of such [cooperation] is a substantial benefit to the classes and strongly militates toward approval of the Settlement Agreement."); *In re Ikon Office Supplies Inc. Sec. Litig.*, 194 F.R.D. 166, 177 (E.D. Pa. 2000) (noting that cooperation agreements are valuable when settling a complex case); *In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807,

at *2 (acknowledging the assistance that the settling defendants will provide “in pursuing this case against the remaining Defendants”).⁵

Class Counsel have substantial experience litigating antitrust class actions and strongly believe that the settlement amounts are appropriate cash consideration for the discharge of the claims against NFC and Midwest Poultry, and are a highly favorable result of the Class. This determination is based in part on Class Counsel’s review of NFC’s and Midwest Poultry’s sales figures and market share during the damages period, as well as the risk and likely expense of continuing to litigate the claims against NFC and Midwest Poultry. Courts have accorded significant weight to the opinion of Class Counsel based on a thorough analysis of the facts. *See, e.g., In re Gen. Instruments Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001); *Stewart v. Rubin*, 948 F. Supp. 1077, 1099 (D.D.C. 1996), *aff’d*, 124 F.3d 1309 (D.C. Cir. 1997) (“A court should defer to the judgment of experienced counsel who have competently evaluated the strength of the proof.”); *McGuinness v. Parnes*, No. 87-2728-LFO, 1989 WL 29814, at *1 (D.D.C. Mar. 22, 1989) (“While the evaluation of the fairness and adequacy of a settlement such as this is anything but a scientific process, there is nothing about this Settlement suggesting that the Court should second-guess the product of the negotiations between the skilled and conscientious lawyers who represented parties on both sides of this litigation.”); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659, 667 (D.

⁵ *See also In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D.C. Md. 1983) (“[T]he commitment [the] Distributor defendants have made to cooperate with plaintiffs will certainly benefit the classes, and is an appropriate factor for the court to consider in approving a settlement”); *In re Corrugated Container Antitrust Litig.*, MDL 3101981, WL 2093, at *16 (S.D. Tex. June 4, 1981), *aff’d*, 659 F.2d 1322, 1329 (5th Cir. 1981) (“The settlement agreements provided for cooperation from the settling defendants that constituted a substantial benefit to the class. Those provisions were intended to save plaintiffs time and expense in the continuing litigation . . . [and] made certain information and expertise available to the class which might not have been available through normal discovery.”).

Minn. 1974) (“The recommendation of experienced antitrust counsel is entitled to great weight.”).

Finally, the NFC and Midwest Poultry settlements are fair to the class as a whole. They provide no preferential treatment to Class Representatives, and Class Counsel anticipate the allocation of settlement funds will be distributed pro-rata based on each class member’s (including Class Representative’s) purchases of shell eggs and egg products. Class representatives benefit from the Settlement Agreement in the same way as any other Settlement Class member. *See* Allocation Order, Nov. 9, 2012 (ECF No. 761) (finding pro rata allocation of settlement funds to be fair, reasonable, and adequate). And, as noted above, both Agreements provide that Class Counsel must obtain approval from the Court to receive fees and expenses from the Settlement Amounts, which may not be paid until final approval of the Agreements.

C. The Negotiation Processes Supports Preliminary Approval.

Settlements that result from arm’s-length negotiations between experienced counsel are generally entitled to deference from the court. *In re Auto. Refinishing Paint Antitrust Litig.*, No. MDL 1426, 2003 WL 23316645, at *6 (E.D. Pa. Sept. 5, 2003); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 640 (holding that “[a] presumption of correctness is said to attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel” (*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 arms-length and in good faith”); *Petruzzi’s Inc. v. Darling-Delaware Co.*, 880 F. Supp. 292, 301 (M.D. Pa. 1995) (“[T]he opinions and recommendations of such experienced counsel are indeed entitled to considerable weight”); 2 NEWBERG ON CLASS ACTIONS, § 11.41 (3d ed. 1992) (“There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm’s

length by counsel for the class, is presented for court approval.”). This deference reflects the understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness considerations of Rule 23(e).

As discussed above and in the accompanying Pizzirusso Declarations, the settlements with NFC and Midwest Poultry are the result of hard-fought, arm’s length negotiations between NFC’s and Midwest Poultry’s counsel and Class Counsel, all of whom are experienced and capable in complex class action and antitrust matters.⁶ NFC’s counsel, Midwest Poultry’s counsel, and Class Counsel vigorously advocated their respective clients’ positions in the settlement negotiations and were prepared to litigate the case fully if no settlement was reached. Nothing in the course of Plaintiffs’ negotiations with NFC or Midwest Poultry, or in the substance of the proposed Settlement Agreements, presents any reason to doubt the Agreements’ fairness.

D. The Extent of Discovery at the Time the Settlement Agreement was Negotiated and Agreed to Supports Preliminary Approval.

Fact discovery was well advanced when these Settlement Agreements were reached. When Class Counsel and NFC resumed settlement discussions in November 2013, Class Counsel had reviewed over 100,000 documents produced by NFC. When Class Counsel and Midwest Poultry began settlement discussions in February 2014, Midwest had produced over 40,000 documents, which were in the process of being reviewed by Class Counsel. Class Counsel had also already deposed Midwest Poultry’s CEO, both in his individual and corporate capacity. Additionally, at the time of these Settlement Agreements, Defendants collectively had produced over 1 million documents, much of which had already been reviewed by Class Counsel.

⁶ The experience and qualifications of Interim Co-Lead Class Counsel are described in Interim Co-Lead Counsel’s Submission in Support of Permanent Appointment of Interim Leadership Structure. No. 08-cv-4653 (E.D. Pa.), ECF No. 26, and accompanying exhibits.

Accordingly, the amount of discovery completed supports a finding that the Settlement is within the range of reasonableness. *In re Imprelis*, 2013 U.S. Dist. LEXIS 18332, at *9-10 (finding settlement within range of reasonableness where “[a] considerable amount of preliminary discovery was conducted, including the review of some 500,000 pages of documents . . . , the hiring and consultation of several experts, and a deposition of [Defendant’s] product manager”).

E. The Expense and Uncertainty of Continued Litigation Against NFC and Midwest Poultry Supports Preliminary Approval.

Class counsel have considered the complexities of this litigation, the risks, expense and duration of continued litigation against NFC and Midwest Poultry, and the likely appeals if Plaintiffs do prevail at trial. After weighing these against the guaranteed recovery to the Class and the significant benefits of NFC’s and Midwest Poultry’s obligations to cooperate with Plaintiffs in the continued litigation of this case, Class Counsel strongly believes the Settlements are favorable to and in the best interests of the Plaintiffs and the Class.

The settlements with NFC and Midwest Poultry are particularly reasonable given the inherent risks in moving forward with litigation towards trial. It has been often observed that “[a]n antitrust class action is arguably the most complex action to prosecute.” *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 639 (citation omitted); *see also Weseley v. Spear*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989) (noting that antitrust class actions are “notoriously complex, protracted, and bitterly fought”). Continuing this litigation against either party would entail a lengthy and expensive legal battle, which has already consumed over five years. This case does not follow a Department of Justice investigation or any public indictment. Additionally, both NFC and Midwest Poultry have asserted various defenses, and a jury trial (assuming the case proceeded beyond pretrial motions) might well turn on questions of proof, making the outcome inherently uncertain for both parties. *In re Linerboard Antitrust Litig.*, 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.”). Moreover, even after trial is concluded, there could be one or more lengthy appeals. *In re Remeron End-Payor Antitrust Litig.*, No. Civ. 02-2007, 2005 WL 2230314, at *17 (D.N.J. Sept. 13, 2005). The degree of uncertainty supports preliminary approval of the proposed Settlement Agreement. *See In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

All of the relevant factors—the terms of the settlement itself, the nature of the negotiations, the degree of discovery at the time of settlement, the experience of Class Counsel and the risks of proceeding against NFC and Midwest Poultry—support the conclusion that the Settlement falls within the range of possible final approvals and is entitled to the presumption of fairness, permitting notice to issue to the Class.

V. **PRELIMINARY CERTIFICATION OF THE PROPOSED NFC AND MIDWEST POULTRY SETTLEMENT CLASSES IS WARRANTED**

It is well-established that a class may be certified for purposes of settlement. *In re Pet Food Prods. Liability Litig.*, No. 07-2867, 2008 WL 4937632, at *3 (D.N.J. Nov. 18, 2008) (“Class actions certified for the purposes of settlement are well recognized under Rule 23.”); *Ikon*, 194 F.R.D. at 188 (class certified for purposes of settlement of securities class action). In the case of settlements, “tentative or temporary settlement classes are favored when there is little or no likelihood of abuse, and the settlement is fair and reasonable and under the scrutiny of the trial judge.” *In re Prudential Sec. Inc. Ltd. P’ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995) (internal quotation and citation omitted). The settlements here are fair, reasonable, and non-

abusive. Therefore the Settlement Class—which is the same in both the NFC Agreement and the Midwest Poultry Agreement—should be certified by the Court.

Rule 23 governs the issue of class certification for both litigation and settlement classes. A settlement class should be certified where the four requirements of Rule 23(a)—numerosity, commonality, typicality and adequacy—are satisfied, and when one of the three subsections of Rule 23(b) is also met. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 527-30.

A. This Case Satisfies The Prerequisites Of Rule 23(a).

Certification is appropriate under Rule 23(a) if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). This Court has already held that the similarly-defined settlement class satisfies Rule 23(a)'s prerequisites in its July 16, 2012 Order granting final approval to the Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. settlement agreement:

The Settlement Class is so numerous that joinder of all members is not practicable, there are questions of law and fact common to the Settlement Class, the claims of the Class Representatives are typical of the claims of the Settlement Class, and the Class Representatives will fairly and adequately protect the interests of the Settlement Class. For purposes of this settlement, questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Order, July 16, 2012 (ECF No. 700) ¶ 4. The Court also found that Rule 23(a)'s requirements were satisfied for purposes of preliminary approval of the Settlement Class set forth in the Cal-Maine Settlement Agreement, which used the same Settlement Class provided in the NFC and Midwest Poultry agreements. *See* Order, February 28, 2014 (ECF No. 908) ¶ 9.

1. The Settlement Class is sufficiently numerous.

Class certification under Rule 23(a)(1) is appropriate where a class contains so many members that joinder of all would be “impracticable.” *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). There is no threshold number required to satisfy the numerosity requirement and the most important factor is whether joinder of all the parties would be impracticable for any reason. *Stewart v. Abraham*, 275 F.3d 220, 227-28 (3d Cir. 2001) (noting that there is no minimum number to satisfy numerosity and observing that generally the requirement is met if the number of plaintiffs exceeds 40). Moreover, numerosity is not determined solely by the size of the class but also by the geographic location of class members. *Marsden v. Select Med. Corp.*, 246 F.R.D. 480, 484 (E.D. Pa. 2007).

Here, the proposed Settlement Class is comprised of purchasers of hundreds of millions of cases of shell eggs and of purchasers of egg products. Third Consolidated Amended Class Action Complaint (“3CAC”), ¶ 108 (ECF No. 779). In the Moark Settlement, notice of the Settlement Agreement was sent to more than 13,000 potential class members, and nearly 700 class members filed claims and received distributions from the Settlement Fund. *See* Mem. in Supp. of DPP’s Motion to Pay Costs of Settlement Administration (ECF No. 823-2) at 2, 6. Moreover, Class Representatives are located in California, Illinois, Missouri, New York, North Carolina, Pennsylvania and Wisconsin. 3CAC, ¶¶ 32-38. Putative class members are also geographically dispersed. Thus, joinder of all class members would be impracticable and the Settlement Class is sufficiently numerous to satisfy Rule 23(a)(1). *Stewart*, 275 F.3d at 227-28 (observing that generally the requirement is met if the number of plaintiffs exceeds 40); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 508-09 (S.D.N.Y. 1996) (holding that class members numbering a million made joinder impracticable); *In re Sumitomo Copper Litig.*,

189 F.R.D. 274, 278 (S.D.N.Y. 1999) (numerosity requirement met where potential class exceeded 20,000).

2. There are common questions of law and fact.

Antitrust cases like this one easily meet the commonality requirement of Rule 23(a)(2). See *In re K-Dur Antitrust Litig.*, No. 01-1652, 2008 WL 2699390, at *4 (D.N.J. Apr. 14, 2008) (holding that common issues predominate with respect to whether defendants violated antitrust law); *Weisfeld v. Sun Chem. Corp.*, 210 F.R.D 136, 141 (D.N.J. 2002) (holding that conspiracy to restrain trade subject to common proof); *In re OSB Antitrust Litig.*, 2007 WL 2253418, at *4 (E.D. Pa. Aug. 3, 2007); *In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D 180, 186-87 (D.N.J. 2003) (holding that common issues predominated on issue of alleged antitrust violation).

Moreover, to satisfy commonality:

The members need not have identical claims to have common legal or factual issues that satisfy commonality. Instead, all that is required is that the litigation involve some common questions and that plaintiffs allege harm under the same theory.

In re Microcrystalline Cellulose Antitrust Litig., 218 F.R.D. 79, 83-84 (E.D. Pa. 2003) (internal citations omitted).

Whether Defendants entered into an illegal agreement to reduce production and fix the prices of eggs is a factual question common to all class members because this question is an essential element of proving an antitrust violation. Common legal questions include whether, if such an agreement was reached, Defendants violated antitrust laws. “Indeed, consideration of the conspiracy issue would, of necessity focus on Defendants’ conduct, not the individual conduct of the putative class members.” *In re Flat Glass Antitrust Litig.*, 191 F.R.D. 472, 484 (W.D. Pa. 1999); *Transamerican Refining Corp. v. Dravo Corp.*, 130 F.R.D. 70, 75 (S.D. Tex. 1990) (“[T]he conspiracy issue ... is susceptible of generalized proof since it deals primarily with what

the Defendants themselves did and said.”); *In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1039 (N.D. Miss. 1993) (“Evidence of a national conspiracy . . . would revolve around what the defendants did, and said, if anything, in pursuit of a price fixing scheme.”); *In re Warfarin*, 391 F.3d at 528 (“In other words, while liability depends on the conduct of DuPont, and whether it conducted a nationwide campaign of misrepresentation and deception, it does not depend on the conduct of individual class members.”). Because there are several common legal and factual questions related to potential liability, the commonality requirement of Rule 23(a)(2) is met.

3. The Representative Plaintiffs’ claims are typical of those of the Settlement Class.

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” As the Third Circuit described in *Baby Neal v. Casey*, 43 F.3d 48 (3d Cir. 1994):

The typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees’ interests will be fairly represented. The typicality criterion is intended to preclude certification of those cases where the legal theories of the named plaintiffs potentially conflict with those of the absentees by requiring that the common claims are comparably central to the claims of the named plaintiffs as to the claims of the absentees.”

Typicality entails an inquiry whether “the named plaintiff’s individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based.” Commentators have noted that cases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.

Id. at 57-58 (internal citations omitted).

Moreover, “factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory.” *Hoxworth v. Blinder, Robinson & Co., Inc.*, 980

F.2d 912, 923 (3d Cir. 1992) (internal citations omitted). “Even if there are ‘pronounced factual differences among the plaintiffs, typicality is satisfied as long as there is a strong similarity of legal theories and the named plaintiff does not have any unique circumstances.’”

Microcrystalline, 218 F.R.D. at 84; *see also Mercedes-Benz*, 213 F.R.D at 185 (“[W]hile the Court must ensure that the interests of the plaintiffs are congruent, the Court will not reject the plaintiffs’ claim of typicality on speculation regarding conflicts that may arise in the future.”).

Here, typicality is satisfied because the claims of the Class Representatives and absent class members rely on the same legal theories and arise from the same alleged conspiracy and illegal agreement by Defendants, namely, Defendants’ agreement to reduce production and artificially fix and/or inflate the prices of eggs. 3CAC, ¶¶ 536. Moreover, Plaintiffs allege that all putative class members were direct purchasers of eggs and/or egg products and suffered injury as a result of Defendants’ alleged anticompetitive conduct. *Id.* ¶¶ 32-38. The Class is also divided into subclasses to address any differences between shell egg purchases and purchases of processed egg products. Accordingly, the Rule 23(a)(3) typicality requirement is satisfied.

4. The Representative Plaintiffs will fairly and adequately protect the interests of the Class.

Rule 23(a)(4) is satisfied if “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). As the Third Circuit explained in *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434 (3d Cir. 1977), the adequate representation requirement of Rule 23(a)(4):

[guarantees] that the representatives and their attorneys will competently, responsibly, and vigorously prosecute the suit and that the relationship of the representative parties’ interest to those of the class are such that there is not likely to be divergence in viewpoint or goals in the conduct of the suit.

Id. at 449.

Here, Class Counsel have extensive experience and expertise in antitrust disputes, complex litigation and class action proceedings throughout the United States. Class Counsel are qualified and able to conduct this litigation, as this Court recognized when appointing them as Interim Co-Lead Counsel. Class Counsel have vigorously represented Plaintiffs in the settlement negotiations with NFC and Midwest Poultry and have vigorously prosecuted this action. Moreover, the named Class Representatives have adequately represented the absent Class Members' interests, actively participating in discovery by responding to document production requests and interrogatories, and have no conflicts with them. Adequate representation under Rule 23(a)(4) is therefore satisfied.

B. The Representative Plaintiffs' Claims Satisfy The Prerequisites Of Rule 23(b)(3).

In addition to satisfying Rule 23(a), Plaintiffs must show that each putative class falls under at least one of the three subsections of Rule 23(b). Here, the Settlement Class qualifies under Rule 23(b)(3), which authorizes class certification if “the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”⁷ Fed. R. Civ. P. 23(b)(3). This Court has already found that a similar settlement class satisfies Rule 23(b)'s prerequisites in its July 16, 2012 Order approving the Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. settlement classes. Order, July 16, 2012 (ECF No. 700); *see also* Mem. in Supp. of Order (ECF No. 699). This

⁷ Since this is a settlement class, the Court need not examine the manageability of the class at trial. “[I]n a settlement-only class action . . . the court certifying the class need not examine issues of manageability. *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 306 (3d Cir. 2005) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S.591, 620 (1997)) (explaining that issues of individual liability and damages are even less likely to defeat predominance in settlement-only class actions).

Court has also already found that Rule 23(b)(3)'s requirements were satisfied for purposes of preliminary approval of the Settlement Class in the Cal-Maine Settlement Agreement, which defines the same Settlement Class provided in the NFC and Midwest Poultry Settlement Agreements. *See* Order, February 28, 2014 (ECF No. 908) ¶ 9(b).

Rule 23(b)(3) is “designed to secure judgments binding all class members, save those who affirmatively elect[] to be excluded,” where a class action will “achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614-15 (1997). Certification of the proposed Settlement Class under Rule 23(b)(3) will serve these purposes.

1. Common legal and factual questions predominate.

The Rule 23(b)(3) predominance requirement “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation” *Sullivan v. DB Inv., Inc.*, 667 F.3d 273, 297 (3d Cir. 2011) *cert. denied*, 132 S. Ct. 1876 (2012) (quoting *In re Ins. Broker. Antitrust Litig.*, 579 F.3d 241, 266 (3d Cir. 2009) (internal quotations omitted)); *In re Hydrogen Peroxide Antitrust Litig.* 552 F.3d 305, 311 (3d Cir. 2008); *see also Mercedes-Benz*, 213 F.R.D. at 186 (“Predominance requires that common issues be both numerically and qualitatively substantial in relation to the issues peculiar to individual class members.”).

A plaintiff seeking certification of an antitrust class action must show that common or class-wide proof will predominate with respect to: “(1) a violation of the antitrust laws... ,(2) individual injury resulting from that violation, and (3) measurable damages.” *In re Hydrogen Peroxide*, 552 F.3d at 311; *Danny Kresky Enter. Corp. v. Magid*, 716 F.2d 206, 209-10 (3d Cir. 1983); *In re Linerboard Antitrust Litig.*, 305 F.3d 145, 156 (3d Cir. 2002). The Rule 23(b)(3) test of predominance can be “readily met” in antitrust cases. *Amchem Products*, 521 U.S. at 625.

The Third Circuit discussed the predominance inquiry in the specific context of Section 1 antitrust settlements in *In re Ins. Brokerage Antitrust Litigation*, 579 F.3d 241 (3d Cir. 2009) (applying *Hydrogen Peroxide* in a settlement context). That case involved allegations of bid rigging and steering among brokers and insurers in the property and casualty insurance industry. As here, plaintiffs brought class action claims arising under Section 1 of the Sherman Act. On review, the Third Circuit examined the propriety of the standards applied by the district court in certifying two settlement-only classes against individual defendants. The district court had granted certification to both classes.

In evaluating a challenge to the predominance of common issues for each settlement class, the Third Circuit first noted that “because the ‘clear focus’ of an antitrust class action is on the allegedly deceptive conduct of defendant and not on the conduct of individual class members, common issues necessarily predominate.” *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d at 267; *see also Sullivan*, 667 F.3d at 299 (finding that *Wal-Mart Stores Inv. v. Dukes*, 131 S. Ct. 2541 (2011), bolstered a finding that common issues predominated in an antitrust case where the answers to the questions of alleged anticompetitive conduct and the harm it caused are common as to all class members). The court then turned to the specific common issues identified by the district court with respect to the antitrust claims:

(1) whether the ... Defendants entered into a conspiracy to allocate the market for the sale of insurance; (2) whether the ... Defendants’ alleged conspiracy had the purpose and effect of unlawfully restraining competition in the insurance industry; [and] (3) whether the . . . Defendants’ conduct violated Section 1 of the Sherman Act.

In re Ins. Brokerage Antitrust Litig., 579 F.3d at 267.

Finding these issues satisfied predominance, the court “examine[d] [each of] the elements of plaintiffs’ claim through the prism of Rule 23.” The court analyzed whether common questions of law or fact existed with respect to the four elements of a Sherman Act Section One

conspiracy claim, which require a plaintiff to show: “(1) concerted action by the defendants; (2) that produced anticompetitive effects within the relevant product and geographic markets; (3) that the concerted actions were illegal; and (4) that it was injured as a proximate result of the concerted action.” *Id.*

The court found that “[b]ecause the first and third elements of a Sherman Act violation focus on the conduct of the defendants . . . common questions abound with respect to whether the defendants engaged in illegal, concerted action” and that “[t]he second element of a Sherman Act violation, which focuses on the effects of the defendants’ challenged conduct, also involves common questions in the present case, including whether the . . . Defendants’ actions reduced competition for insurance, whether the . . . Defendants’ actions resulted in a consolidation of the insurance industry, and whether the . . . Defendants’ actions produced an increase in the cost of premiums for commercial insurance.” *Id.* at 268.

Thus, as here, the issues common to the class in *Insurance Brokerage* concerned whether Defendants “engaged in illegal concerted action” and whether that action “reduced competition,” and “produced an increase in the cost” of the commodity in the relevant market. *Id.* There, as here, it is clear that the same core set of operative facts and theory of liability apply to each class member. As discussed above, whether Defendants entered into an illegal agreement to reduce production and artificially fix, raise, maintain, and/or stabilize the prices of eggs is a factual question common to all class members. If Class Representatives and potential class members were to bring individual actions, they would each be required to prove the same wrongdoing by Defendants in order to establish liability. Therefore, common proof of the first three elements of Defendants’ violation of antitrust law will predominate.

After examining the first three elements of the Sherman Act conspiracy claim, the court in *Insurance Brokerage* turned to the final element: injury or antitrust impact. The court found that “the task for plaintiffs is to demonstrate that the element of antitrust impact is capable of proof at trial through evidence that is common to the class rather than individual to its members.” *Id.* The plaintiffs in that case argued antitrust injury was a common question because the overcharge attributable to the conspiracy was “built into every commercial premium for commercial insurance products, and the conspiratorial conduct of all Defendants reduced or eliminated competition for insurance products, thereby raising the insurance premiums paid by Plaintiffs and all members of the class.” *Id.* The court agreed, finding that “whether the named plaintiffs and absent class members were proximately injured by the conduct of the . . . Defendants is a question that is capable of proof on a class-wide basis” *Id.* After a brief discussion of the flow of injury through the insurance brokerage market, the court concluded that “we are satisfied that the element of antitrust injury—that is, the fact of damages—is susceptible to common proof, even if the amount of damage that each plaintiff suffered could not be established by common proof.” *Id.*

The *Insurance Brokerage* decision, expressly accounting for the Third Circuit’s earlier ruling in *Hydrogen Peroxide*, also accords with earlier cases holding that the fact of antitrust injury is susceptible to common proof, even where individual damages may differ. *See e.g., K-Dur*, 2008 WL 2699390, at *20; *Flat Glass*, 191 F.R.D. at 486 (“[T]he proof plaintiffs must adduce to establish a conspiracy to fix prices, and that defendants’ base price was higher than it would have been absent the conspiracy, would be common to all class members.”); *In re Plywood Antitrust Litig.*, 76 F.R.D 570, 584 (E.D. La. 1976) (“[I]f the members of each of the classes prove they purchased softwood plywood during the relevant period and that defendants

conspiratorially increased or stabilized plywood prices, then the trier of fact may conclude that the requisite fact of injury occurred.”); *Hedges Enters., Inc. v. Cont’l Grp., Inc.*, 81 F.R.D. 461, 475 (E.D. Pa. 1979) (proof of a conspiracy to establish a “base” price would establish at least the fact of damage, even if the extent of the damages suffered by the plaintiffs would vary).

Moreover, *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013) poses no barrier to certification here. In that case, injury was premised on four theories of impact (each theory may have affected some but not all class members); although all but one theory was rejected by the court, the damages model did not isolate injury tied to the remaining theory and thus impact could not be proven class-wide. 133 S. Ct. at 1430, 1434-35. Here, DPPs offer just one theory of liability—Defendants conspired to curtail supply and thus artificially inflated egg prices—which will be capable of measurement on a class-wide basis since all class members purchased eggs or egg products.

Here, the alleged conspiracy is the overriding predominant question in this case. And, as alleged in the Complaint, the conspiracy permitted all Defendants to artificially maintain or inflate the price of eggs by eliminating the risk that customers would be able to avoid the non-competitive price, thus working an antitrust injury onto the entire class. See 3CAC, ¶¶ 496, 530-531. Accordingly, common or class-wide proof will also predominate with respect to the fact of injury or impact in this case.⁸

⁸ Regarding the amount of damages, “[a]ntitrust cases nearly always require some speculation as to what would have happened under competitive conditions, to estimate the damage done by restraints on trade or other collusion, but this is not fatal to class certification.” *Microcrystalline*, 218 F.R.D. at 92 (citing *In re Fine Paper Antitrust Litig.*, 82 F.R.D 143, 151-52 (E.D. Pa. 1979)) (noting that diversity of product, marketing practices, and pricing have not been fatal to class certification in numerous cases where conspiracy is “the overriding predominant question”). Accordingly, the need to determine the amount of damage sustained by each plaintiff is an insufficient basis for which to decline class certification. *In re Cmty. Bank of N. Va.*, 418 F.3d at 305-306 (“Although the calculation of individual damages is necessarily an

2. A class action is superior to other methods of adjudication.

“The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternate available methods of adjudication.” *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). In evaluating the superiority of a class action, the Court should inquire as to the class members’ interest in individually controlling the prosecution of separate actions, the extent and nature of any litigation concerning the controversy already commenced by members of the class, and the desirability or undesirability of concentrating the litigation of the claims in the particular forum. Fed. R. Civ. P. 23(b)(3).

Here, a class action is superior to other available methods for the fair and efficient adjudication of class claims, “because litigating all of these claims in one action is far more desirable than numerous separate actions litigating the same issues.” *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d at 259. Absent class action certification, the Court may be faced with dozens of individual lawsuits, all of which would arise out of the same set of operative facts. By proceeding as a class action, resolution of common issues alleged in one action will be a more efficient use of judicial resources and bring about a single outcome that is binding on all class members. Also, as in most antitrust lawsuits, potential plaintiffs are likely to be geographically dispersed, as are the Class Representatives. As such, the realistic alternative to a class action is many scattered lawsuits with possibly contradictory results for some plaintiffs and Defendants.

These very issues led the Supreme Court to acknowledge that the unique qualities of antitrust

individual inquiry, the courts have consistently held that the necessity of this inquiry does not preclude class action treatment where class issues predominate.”); *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 242 (D. Del 2003) (“[T]he need for individual damages calculations does not defeat predominance and class certification”) *aff’d*, 391 F.3d 516, 534-35 (3d Cir. 2004).

litigation often mean that a class action is superior to individual lawsuits. *Amchem*, 521 U.S. at 617. Finally, this is an appropriate forum to litigate the case because two of the Class Representatives are located in the district, many of the Defendants resided or transacted business in the district during the Class Period, and a substantial portion of the affected interstate trade and commerce was carried out in the district. 3CAC, ¶ 26. This is also the forum selected by the Judicial Panel on Multidistrict Litigation.

VI. PLAINTIFFS' MOTION FOR LEAVE TO FILE MOTION FOR ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

Plaintiffs also seek leave to file a motion for an award of attorneys' fees, reimbursement of expenses, and for reasonable incentive awards, as appropriate, from the Settlement Amount.⁹ As specified in the Proposed Orders filed herewith, Class Counsel's motion for attorneys' fees and for reimbursement of expenses shall be filed 45 days in advance of the Settlement objection and opt-out deadline, and shall be posted on the www.eggproductsettlesment.com website. The timing and form of notice will provide the potential class members with both sufficient notice of the motion and a reasonable opportunity to review it prior to determining whether to object to the motion or Agreement or to opt-out of the class.¹⁰ Additionally, as set forth in the proposed Orders, the Class Notice of the Settlement Agreement shall include the date on which the motion for fees and costs shall be filed, and inform the Class that the motion will be made available on the settlement website.

⁹ See Order, July 18, 2012 (ECF No. 704) n.1 (directing Plaintiffs, pursuant to CMO No. 1, to seek leave of Court prior to filing a motion for fees and expenses).

¹⁰ See Order, Aug. 15, 2013 (ECF No. 727) n.2 (concluding that the class must have sufficient notice of, and adequate opportunity to object to, a motion for fees and expenses prior to the objection deadline).

VII. CONCLUSION

For the reasons set forth above, Plaintiffs request that the Court: (1) preliminarily approve the Settlement Agreements; (2) certify a class for purposes of each Settlement Agreement; and (3) grant Plaintiffs leave to file a motion for attorneys' fees and reimbursement of expenses and reasonable incentive awards as provided in the proposed Order.

Dated: April 25, 2014

Respectfully submitted,

/s/ Steven A. Asher

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

IN RE: PROCESSED EGG PRODUCTS :
ANTITRUST LITIGATION :

MDL No. 2002
Case No: 08-md-02002

THIS DOCUMENT APPLIES TO :
DIRECT PURCHASER ACTIONS :

**DECLARATION OF JAMES J. PIZZIRUSSO IN SUPPORT OF DIRECT PURCHASER
PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS
AND DEFENDANT NATIONAL FOOD CORP.**

I, James J. Pizzirusso, declare as follows:

- 1) I am one of the founding partners of the law firm Hausfeld LLP and an one of the attorneys at my firm principally responsible for handling this case. My firm is appointed Interim Co-Lead Counsel for Direct Purchasers in the above captioned action, along with counsel from Weinstein Kitchenoff & Asher LLC, Susman Godfrey LLP, and Bernstein Liebhard LLP.
- 2) I submit this declaration in support of the accompanying motion for preliminary approval of the proposed settlement agreement between National Food Corp. (“NFC”) and Direct Purchaser Class Plaintiffs.
- 3) I was among the principal negotiators of the proposed Settlement Agreement with NFC, along with other Interim Co-Lead Counsel for Direct Purchasers, who were actively and directly involved in these negotiations.
- 4) The settlement negotiations with NFC were conducted by experienced counsel on both sides at arm’s length over a period of nearly a year.

- 5) Preliminary settlements discussions between Interim Co-Lead Counsel and NFC about the potential for interest in settlement first arose in late 2012 and early 2013 although the discussions did not proceed very far as there was little interest.
- 6) Additional discussions about the prospects for a potential resolution occurred in May 2013, as discovery was heating up and NFC's depositions were being planned. In May 2013, counsel for NFC shared the company's financials with Interim Co-Lead Counsel to see if we would be willing to consider those in fashioning a demand. NFC's Counsel also advised us we could share those with opt out counsel and counsel for the indirect purchasers so we did.
- 7) These intermittent discussions continued throughout mid 2013 and involved numerous teleconference discussions and e-mail exchanges. In July 2013, the parties were working towards a joint mediation.
- 8) At around this same time Interim Co-Lead Counsel were finalizing a settlement with Cal-Maine. In addition, the Direct Action Plaintiffs decided that they did not want to participate in a joint mediation. In addition, the parties were considering a global mediation with all Defendants. Thus, talks with NFC were put on hold and Plaintiffs continued pursuing NFC in discovery by, for example, asking for follow up on NFC transactional data concerns and attempting to schedule depositions.
- 9) On August 30, 2013, NFC Counsel circulated a new round of audited financial statements. These showed that NFC's financial condition was not getting any better.
- 10) In September 2013, the parties sought to stay the litigation to attend a joint mediation session in October. NFC chose not to attend that mediation and was hopeful it could reach a separate resolution. After the joint mediation appeared to be unsuccessful, Interim Co-Lead

Counsel decided to approach several individual Defendants, including NFC, about wrapping up a potential resolution.

11) In November 2013, the parties reengaged in substantive negotiations and NFC shared additional financial information. After several more rounds of telephone calls and email exchanges, the parties eventually agreed to a \$1,000,000.00 settlement based primarily on NFC's precarious financial condition and amount of commerce in the case.

12) On February 28, 2014, the parties reached an agreement in principal and set out to draft the settlement agreement.

13) On March 28, 2014, the Settlement Agreement was fully executed by the Co-Leads and NFC's Counsel. A true and complete copy of this Agreement is attached as Exhibit 1.

14) Pursuant to ¶ 43 of the Settlement Agreement, NFC has agreed to provide significant information concerning its knowledge of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action, to authenticate documents, and to provide witnesses to testify at trial, among other things.

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

Dated: April 17, 2014

/s/ James J. Pizzirusso
James J. Pizzirusso

EXHIBIT 1

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

IN RE: PROCESSED EGG : **MDL No. 2002**
PRODUCTS ANTITRUST : **08-md-02002**
LITIGATION :

THIS DOCUMENT APPLIES TO: :
All Direct Purchaser Actions :

**SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS
AND DEFENDANT NATIONAL FOOD CORPORATION**

This Settlement Agreement (“Agreement”) is made and entered into as of this 28th day of March 2014 (the “Execution Date”) by and between National Food Corporation (“NFC”) and Direct Purchaser Plaintiffs’ Class representatives (“Plaintiffs”) (as defined herein at Paragraph 15), 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 21).

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

WHEREAS, Plaintiffs allege that NFC participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of Shell Eggs and Egg Products in the United States at artificially inflated levels in violation of Section 1 of the Sherman Act;

WHEREAS, NFC denies all allegations of wrongdoing in the Action;

WHEREAS the Parties have conducted an investigation into the facts and the law regarding the Action and have engaged in extensive discovery;

WHEREAS, despite its belief that it is not liable for, and has good defenses to, the claims alleged in the Action, NFC desires to settle the Action in view of its financial condition, 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 Class Counsel has evaluated the ability of NFC to pay a significant judgment and has reached settlement terms reflecting NFC's financial condition.

WHEREAS, Class Counsel and NFC's Counsel have engaged in arm's-length settlement negotiations, and this Agreement has been reached as a result of these negotiations; and

WHEREAS Plaintiffs have concluded that settlement with NFC on the terms set forth below is the best that is practically attainable, that it is in the best interests of the Class to enter into this Agreement now rather than continue to pursue a judgment that may prove uncollectible, and that, under the circumstances, the Agreement is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Class;

NOW, THERFORE, 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 NFC only, without costs as to Plaintiffs, the Class, or NFC, and 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 147-151 of the Third Consolidated Amended Class Action Complaint filed in the Action on January 4, 2013.

2. “NFC’s Counsel” shall refer to the law firm of Davis Wright Tremaine LLP, 1201 Third Avenue, Suite 2200, Seattle, Washington, 98101.

3. “Claims Administrator” shall mean the Garden City Group, Inc.

4. “Class Member” or “Class” shall mean each member of the Settlement Class, as defined in Paragraph 22 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 on which the Court enters an order preliminarily approving the Agreement and certifying a Class for settlement purposes.

6. “Defendant(s)” shall refer to the parties listed as defendants in the Third Consolidated Amended Complaint filed on January 4, 2013 and each of their corporate parents, subsidiaries, and affiliated companies.

7. “Egg Products” shall mean the whole or any part of Shell Eggs that have been removed from their shells and then processed, with or without additives, into dried, frozen or liquid forms.

8. “Escrow Account” means the account with the Escrow Agent that holds the Settlement Fund.

9. “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Paragraph 37 of this Agreement.

10. “Fairness Hearing” means a hearing on the settlement proposed in this Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

11. “Final Approval” shall mean an Order entered by the Court finally approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure.

12. “Non-Settling Defendants” shall refer to Defendants other than NFC.

13. “Other Settling Defendants” shall refer to Moark LLC, Norco Ranch, Inc., Land O’Lakes, Inc. Sparboe Farms, Inc., and Cal-Maine Foods, Inc.

14. “Parties” means NFC and Plaintiffs.

15. “Plaintiffs” shall mean each of the following proposed 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.

16. “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, and the parents, subsidiaries, and affiliated companies of such Producer.

17. “Releasees” shall refer, jointly and severally, and individually and collectively, to NFC, its parents, subsidiaries, and affiliated companies, and its past and present officers, directors, employees, agents, insurers, attorneys, shareholders, joint venturers that are neither Non-Settling Defendants nor Other Settling Defendants, partners and representatives, as well as the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

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

19. “Settlement Amount” shall refer to \$1,000,000 (\$1 million) U.S. dollars.

20. “Settlement Fund” shall refer to the funds accrued in the Escrow Account established in accordance with Paragraph 37 below.

21. “Shell Eggs” shall mean eggs produced from caged birds that are sold in the shell for consumption or for breaking and further processing, excluding “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. Settlement Class Certification

22. The Parties to this Agreement hereby stipulate for purposes of settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the following Class shall be certified for settlement purposes as to NFC only:

All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, 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

23. The Parties 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 NFC.

24. Within two (2) business days after the execution of this Agreement by NFC, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against NFC in the Action pending approval of this Agreement. Within twenty (20) business days after execution of the Agreement by NFC, Plaintiffs shall submit to the Court a motion (the "Motion") for an Order granting preliminary approval of the Agreement, appointing Settlement Class Counsel as lead counsel for purposes of this Settlement Agreement, and certifying a Class for settlement purposes ("Preliminary Approval"). As a courtesy, a substantially final draft of the Motion shall be provided to NFC at least two (2) business days before filing. IF NFC suggests changes to the Motion, Plaintiffs shall have no obligation to accept those changes. Plaintiffs shall submit the Motion requesting entry of a Preliminary Approval Order, substantially in the form of Exhibit A, attached hereto, which shall provide that, *inter alia*:

- a. the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;
- b. the Settlement Class defined herein be certified, designating Class Representatives and Settlement Class Counsel as defined herein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is not approved by the

Court or any appellate court;

- c. a Fairness Hearing on the settlement proposed in this Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

25. After Preliminary Approval, and subject to approval by the Court of the form of and means for dissemination of notice, individual notice of the Agreement (“Class Notice”) shall be mailed to persons and entities who are located in the United States and who purchased Shell Eggs or Egg Products directly from NFC, any Non-Settling Defendant(s) in the Action, or Other Settling Defendants during the Class Period that: are identified by NFC; were previously identified by NFC and Other Settling Defendants; and are identified by Plaintiffs and Plaintiffs’ Counsel or Non-Settling Defendants in the Action. In addition, after Preliminary Approval, and subject to Court approval of the form of and means for dissemination of notice, Class Notice shall also 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, proposed by Class Counsel. Within twenty (20) calendar days after the Execution Date, NFC shall supply to Class Counsel at NFC’s 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. Plaintiffs shall use reasonable best efforts to, subject to approval by the Court, combine dissemination of notice of the certification of the Class for settlement purposes and of the Agreement with the dissemination of notice of other settlement agreements that may be reached with other Defendants in the Action near the time of the Execution Date of the Agreement.

26. Plaintiffs shall, following Preliminary Approval, seek entry of an order and final judgment, the text of which shall be proposed by Plaintiffs subject to the agreement of NFC, which agreement shall not be unreasonably withheld, which shall:

- a. approve 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. determine that the Class Notice constituted, under the circumstances, the most effective and best practicable notice of this Agreement and of the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- c. reconfirm the appointment of Class Representatives and Settlement Class Counsel as defined herein;
- d. direct that, as to NFC, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- e. reserve to the United States District Court for the Eastern District of Pennsylvania exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- f. determine 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 NFC shall be entered; and
- g. require Class Counsel to file with the Clerk of the Court a record with the names and addresses of Class Members who timely excluded themselves from the Class, and provide a copy of the record to counsel for NFC.

27. This Agreement shall become final only when (a) the Court has entered an order granting Final Approval to this Agreement; (b) the Court has entered final judgment dismissing the Action against NFC on the merits with prejudice as to all Class Members and without costs; and (c) 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 (b) 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. 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 if the conditions for Final Approval have been satisfied. On the Execution Date, Plaintiffs and NFC shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 34 and 35 of this Agreement.

28. Should NFC or Plaintiffs be required to submit any of NFC's confidential information or documentation to the Court to obtain preliminary or final approval, such submission shall be, to the full extent permitted by law or the Court, for review by the court *in camera* only.

D. Release and Discharge

29. 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 Releasors, 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 or 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 on which the Court enters an order preliminarily approving the Settlement and certifying a Class for settlement purposes (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.

30. This Release is made with full recognition of the possibility of subsequent discovery or existence of different or additional facts. Each Releasor waives California Civil Code Section 1542 and similar or comparable present or future law or principle of law of any jurisdiction. 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 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, with full recognition of the possibility of 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, again with full recognition of the possibility of the subsequent discovery or existence of such other or different facts.

31. In addition to the provisions of Paragraphs 29 and 30, 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 29 and 30. 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.

32. The release and discharge set forth in Paragraphs 29 through 31 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 or Other Settling Defendant.

33. Each Plaintiff, and each Class Member who submits a claim to participate in the distribution of the Settlement Amount, shall represent and warrant that their portion of the Released Claims is their property and they have not assigned or transferred to any person or entity any right to recovery for any claim or potential claim that would otherwise be released under this Agreement. Each Plaintiff, and each Class Member who submits a claim to participate in the distribution of the Settlement Amount, shall further represent and warrant that each of them has a valid and existing right to release such claims and is releasing such claims pursuant to their participation in the settlement.

E. Rescission

34. 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 27 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 NFC 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, within ten (10) business days of the later of the written notice of rescission to Class Counsel and the Escrow Agent and NFC's written instructions to the Escrow Agent, all amounts in the Escrow Account created pursuant to Paragraph 37 hereof, less any expenses authorized pursuant to this Agreement, shall be wire transferred to NFC, pursuant to its instructions; provided, however, that simultaneous with its written instructions to the Escrow Agent, NFC shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five (5) business days of receipt of such notice, notify the Escrow Agent of any objections to NFC's instructions and funds shall not be wired until expiration of that objection deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

35. If Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 27 of this Agreement, Class Counsel and NFC 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 NFC or Plaintiffs, shall not be deemed or construed to be an admission or denial, or evidence or lack of evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity 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.

36. Class Counsel further agree that in the event of rescission the originals and all copies of any notes, memos or records related to the Cooperation obligations pursuant to paragraph 43 shall be returned to NFC at NFC's expense or destroyed by Class Counsel at their own expense, provided however that such attorney notes, memoranda or records may be destroyed rather than produced if an affidavit of such destruction is promptly provided by Class Counsel to NFC's Counsel.

F. Payment

37. NFC shall pay or cause to be paid the Settlement Amount in settlement of the Action. The Settlement Amount shall be wire transferred by NFC or its designee within five (5) business days of the Execution Date into the Settlement Fund, which shall be established as an Escrow Account at a bank selected by Class Counsel and administered in accordance with the Escrow Agreement entered into by the Parties.

38. 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.

39. Class Counsel may, at a time approved by the Court, seek an award of attorneys' fees and reasonable litigation expenses and incentive awards for class representatives approved by the Court, to be paid out of the Settlement Amount after the Final Approval of the Agreement. NFC agrees not to object to Class Counsel's petition to the Court for payment of attorneys' fees, costs, expenses, and incentive awards for class representatives from the Settlement Amount. Except to the extent that the Court may award attorneys' fees and litigation expenses to be paid out of the Settlement Amount, NFC shall have no obligation to pay any fees or expenses of Class Counsel.

40. Upon entry of an order by the Court approving the request for an award of attorneys' fees and expenses and incentive awards for class representatives ("Attorneys' Fees Order") made pursuant to Paragraph 39 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 NFC, which acceptance shall not be unreasonably withheld. 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.

41. In order to receive distribution of funds pursuant to Paragraph 40 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.

42. Disbursements for any payments and expenses incurred in connection with taxation matters relating to this Settlement Agreement shall be made from the Settlement Amount pursuant to section H of this Agreement upon written notice to the Escrow Agent by Class Counsel of such payments and expenses, and such amounts shall not be refundable to NFC in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

43. **Cooperation:** NFC shall provide cooperation in accordance with the terms and provisions of this Agreement. NFC's cooperation obligations shall apply only to Releasers who act with, by or through Class Counsel pursuant to this Agreement in this Action. Such cooperation shall be as follows:

a. **Proffers:** NFC agrees that, as soon as practicable after the Execution Date, NFC's Counsel shall make themselves available to Class Counsel, in person in Seattle, Washington and/or by teleconference, at a mutually convenient date and time, to provide background information concerning: NFC, its organization, its operations, and its personnel; the identification of potential NFC witnesses with knowledge of the matters at issue in the Action; and the substance of their anticipated testimony according to the best understanding of NFC's counsel (the "Proffer"). The Proffer shall not extend for more than five (5) hours in duration; and shall, to the extent practicable, occur concurrently with any substantially similar interviews agreed to with other settling parties. NFC's Counsel will not be required or expected to disclose any matters that any other present or former Party to the Action asserts to be privileged material or work product (see subparagraph f below).

Plaintiffs and Class Counsel agree that they shall maintain all statements made by NFC's Counsel under this paragraph as strictly confidential and that they shall not use directly or indirectly the information so received for any purpose other than prosecution of the Action and that such information may not be used to prosecute any claim or action against Releasees. Class Counsel may use information contained in the Proffer in the prosecution of the Action without attributing the source of the information or breaching the agreement regarding confidentiality of statements made under the Proffer as provided in this paragraph unless so required by order of the Court or applicable law.

Class Counsel agree, unless ordered by a court and consistent with due process, that under no circumstances shall information or documents obtained from the Proffer 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 that elects to opt out of the proposed class for settlement purposes under this Agreement or from a litigation class that may be certified, (iii) any counsel representing or advising indirect purchasers of Shell Eggs or Processed Eggs, or (iv) any third party not associated with Class Counsel in this Action except in connection with prosecution of this Action. At the conclusion of the Action, Class Counsel shall destroy all notes, memoranda, or records related to the Proffer, and any copies thereof, and shall certify in writing to NFC Plaintiffs' compliance with this requirement.

b. **Interviews:** As soon as practicable after the Execution Date, NFC shall, at an agreed upon time, date and location, and at NFC's expense, make available for one interview with Class Counsel each of up to two then-current directors, officers, and employees of NFC, and up to one former director, officer or employee, who possess information that, based on Class Counsel's good faith belief, would assist Plaintiffs in prosecuting this action. Such interviews shall not exceed seven hours each in duration, and shall occur at a mutually agreed-to date and time. To the extent feasible, such interviews shall be concurrent with interviews conducted by other settling plaintiffs. NFC shall use best efforts to assist Class Counsel in arranging interviews with any former directors, officers, and employees of NFC. The failure of any former officer, director or employee to make himself or herself available for the interview shall not affect in any way the release of NFC, provided it has acted reasonably.

c. **Transactional Data:** NFC shall, upon request by Class Counsel, clarify to the best of its ability transactional and other data produced by NFC in discovery in the Action, including providing, upon request by Plaintiffs, follow-up information in response to questions Plaintiffs may reasonably have concerning such data. Class Counsel agrees to use reasonable efforts to minimize the burden of any such clarification or follow-up requests.

d. **Authentication of Documents & Certifications as to Business Records:** Prior to trial in this Action, NFC shall, at the request of Class Counsel and through reasonable means (including, but not limited to, affidavits and declarations by persons qualified to testify as to authenticity and/or as to business records (pursuant to Federal Rules of Evidence 902(11) and (12)) establish the authenticity of documents and/or admissibility as business records produced by NFC, and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by NFC or sent to or received by NFC. Class Counsel agree to use reasonable efforts to minimize the burden to NFC of any such authentication or business records testimony.

e. **Trial Testimony:** Upon the request of Class Counsel and at NFC's expense, NFC shall make available from among its current or former directors, officers or employees up to two representatives who Class Counsel believe in good faith to have knowledge regarding Plaintiffs' claims as alleged in the Action to testify at trial regarding facts or issues at issue in this Action.

f. **Privileged or Protected Matters:** Neither the entry into this agreement nor any performance of it shall constitute a waiver of NFC's attorney-client privilege or work-product protection. NFC's obligation to cooperate will be subject to its attorney-client privilege and work-product protection; provided, however, that NFC shall not produce any documents or disclose information that any Non-Settling Defendant or Other Settling Defendant asserts is privileged or protected until such time as the privileges and/or protection have been waived or determined to have been waived or otherwise determined to be inapplicable whether by agreement between Plaintiffs and such other party or by order of the Court.

g. **Confidentiality:** All information provided by NFC to Class Counsel pursuant to NFC's cooperation obligations shall be subject to the protective order entered in the Action.

h. **Further Discovery.** NFC will not be required to participate in further discovery in the Action except as stated above.

G. Notice of Settlement to Class Members

44. Class Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement ("Notice") 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 that purchased Shell Eggs or Egg Products directly from any Non-Settling Defendant during the Class Period. Class Notice will be issued after Preliminary Approval by the Court and subject to any Court orders regarding the means of dissemination of notice.

45. Subject to court approval, disbursements for any payments and expenses incurred in connection with the costs of Notice and administration of the Agreement by the Claims Administrator shall be made from the Settlement Amount upon written notice to the Escrow Agent by Class Counsel of such payments and expenses. Such amounts, up to a maximum of \$350,000, shall not be refundable to NFC in the event that this Agreement is disapproved, rescinded, or otherwise fails to become effective. If Notice of the Agreement is combined with dissemination of notice of other settlement agreements as provided for under paragraph 25, the costs of the combined notice and settlement administration shall be apportioned equally to the settlement amounts of each such settlement agreement. For example, if Notice of the Agreement is combined with notice of one other settlement agreement, fifty (50) percent of such costs shall be paid from the Settlement Amount.

H. 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 (“Tax Expenses”). Class Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including reasonable 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 and as provided in paragraph 42 herein. NFC shall have no responsibility to make any tax filings relating to this 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.

I. 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 NFC 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. Subject to Court approval, 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 NFC. 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. NFC submits to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. NFC otherwise retain all defenses to the Court's exercise of personal jurisdiction over NFC.

51. This Agreement constitutes the entire agreement among Plaintiffs (and the other Releasors) and NFC (and the other Releasees) pertaining to the settlement of the

Action against NFC only, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and NFC in connection therewith. In entering into this Agreement, Plaintiffs and NFC have not relied upon any representation or promise made by Plaintiffs or NFC not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and NFC and approved by the Court.

52. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Releasees. Without limiting the generality of the foregoing: (a) each and every covenant and agreement made herein by Plaintiffs, Class Counsel, or Plaintiffs' Counsel shall be binding upon all Class Members and Releasors; 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 Class Counsel and NFC's Counsel, 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 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 (including, without limitation, any applicable tolling of all statutes of limitations) shall be restored, and the Agreement shall have no effect on the rights of NFC 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 NFC.

56. Neither NFC 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, NFC, 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:

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WEINSTEIN KITCHENOFF & ASHER LLC
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Philadelphia, PA 19103
asher@wka-law.com

For NFC:

Marvin L. Gray, Jr.
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1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
montygray@dwt.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: March 28, 2014

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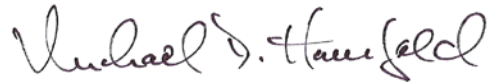

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(On Behalf of National Food Corporation)

Dated: March 28, 2014



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(On Behalf of National Food Corporation)

Exhibit A

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

IN RE: PROCESSED EGG PRODUCTS	:	MDL No. 2002
ANTITRUST LITIGATION	:	Case No: 08-md-02002
	:	
	:	
THIS DOCUMENT APPLIES TO	:	
ALL DIRECT PURCHASER ACTIONS	:	
	:	

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT WITH NATIONAL FOOD CORPORATION, CERTIFYING THE
CLASS FOR PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE
MOTION FOR FEES AND EXPENSES**

It is hereby ORDERED AND DECREED as follows:

1. The motion of Direct Purchaser Plaintiffs for preliminary approval of the proposed settlement, which Defendant National Food Corporation (“NFC”) does not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with NFC, as set forth in the settlement Agreement, subject to final determination following an approved form of and plan for notice and a Fairness Hearing,¹ falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to the following settlement class (the “Settlement Class”), for settlement purposes only:

All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

a.) Shell Egg SubClass

¹ The capitalized terms used in this Order that are defined in the settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Agreement.

All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, 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. 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 requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Class is 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. In accordance with the holding in *In re Community Bank*

of Northern Virginia, 418 F.3d 277, 306 (3d Cir. 2005), this Court makes no determination concerning the manageability of this action as a class action if it were to go to trial.

4. Plaintiffs 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 Sensory Effects Flavor Systems (collectively, "Plaintiffs"), will serve as Class Representatives on behalf of the Settlement Class.

5. The Court confirms the appointment of Class Counsel for purposes of the Settlement Class as the law firms 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.

6. Direct Purchaser Plaintiffs' request for leave to file a motion for attorneys' fees and litigation expenses is hereby approved and shall be filed in accord with the deadline to be proposed by Class Counsel as set forth in paragraph 7 herein that shall be at least 90 days prior to the date on which the final Fairness Hearing is held and at least 45 days prior to the date by which potential Class Members must exclude themselves from or object to the Agreement.

7. Class Counsel shall submit for the Court's approval (a) a Proposed Notice to the Class, including a proposed schedule for Class Members to opt out or object to the proposed Settlement, (b) a proposed Plan of Notice that includes the proposed manner of Notice, a proposed Administrator for Notice and Claims, (c) a proposed date for the Court's Fairness Hearing to determine whether the Settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court, (d) a proposed deadline by which Plaintiffs must file

their motion for an award of attorneys' fees and reimbursement of litigation expenses, (e) a proposed deadline by which Plaintiffs must file their Motion for Final Approval of the Settlement Agreement, and (f) proposed deadlines by which Class Members must object to or request exclusion from the Settlement Agreement.

8. Interim Co-Lead Counsel for Direct Purchaser Plaintiffs shall include in the text of their proposed Direct Mail Notice and Publication Notice of the Settlement Agreement the deadline by which Direct Purchaser Plaintiffs must file their motion for an award of attorneys' fees and litigation expenses and a statement that Class Members may review the motion at the www.eggproductsettlement.com website prior to the objection and opt-out deadlines set forth below.

9. Within 30 days of entry of this Order, each Defendant shall provide to Garden City Group ("GCG") a supplemental production that shall include the names and addresses of all customers in the United States (i) to whom that Defendant sold Shell Eggs or Egg Products in the United States between the date of that Defendant's most recent customer name and address production to GCG and the date of entry of this Order; and (ii) that were not included in that Defendant's most recent customer name and address production to GCG.

- a. The customer information shall be produced in a mutually agreeable electronic format or, if not available electronically, in the form in which such information is regularly maintained;
- b. The customer information transmitted by Defendants to GCG shall be treated as confidential, and shall only be used by GCG for purposes of creating and maintaining a customer database and for disseminating notice; and

- c. The customer information transmitted by Defendants to GCG shall not be shared with Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, their counsel, or their experts.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date: _____

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

IN RE: PROCESSED EGG PRODUCTS :
ANTITRUST LITIGATION :

MDL No. 2002
Case No: 08-md-02002

THIS DOCUMENT APPLIES TO :
DIRECT PURCHASER ACTIONS :

**DECLARATION OF JAMES J. PIZZIRUSSO IN SUPPORT OF DIRECT PURCHASER
PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS
AND DEFENDANT MIDWEST POULTY SERVICES, INC.**

I, James J. Pizzirusso, declare as follows:

- 1) I am one of the founding partners of the law firm Hausfeld LLP and an one of the attorneys at my firm principally responsible for handling this case. My firm is appointed Interim Co-Lead Counsel for Direct Purchasers in the above captioned action, along with counsel from Weinstein Kitchenoff & Asher LLC, Susman Godfrey LLP, and Bernstein Liebhard LLP.
- 2) I submit this declaration in support of the accompanying motion for preliminary approval of the proposed settlement agreement between Midwest Poultry Services, Inc. (“MPS”) and Direct Purchaser Class Plaintiffs.
- 3) I was among the principal negotiators of the proposed Settlement Agreement with MPS, along with other Interim Co-Lead Counsel for Direct Purchasers, who were actively and directly involved in these negotiations.
- 4) The settlement negotiations with MPS were conducted by experienced counsel on both sides at arm’s length over a period of approximately two months.
- 5) In September 2013, the parties sought to stay the litigation to attend a joint mediation session in October. MPS attended that mediation and while the joint mediation was unsuccessful,

Interim Co-Lead Counsel decided to approach several individual Defendants, including MPS, about wrapping up a potential resolution.

6) In January 2014, the Interim Co-Lead Counsel began substantive negotiations with MPS. After several rounds of telephone calls and email exchanges, the parties eventually agreed to a \$2,500,000.00 settlement based primarily on MPS's financial condition and given that a significant percent of MPS's sales had been made to Direct Action Plaintiffs.

7) On February 10, 2013, the parties reached an agreement in principal and set out to draft the settlement agreement.

8) On March 31, 2014, the Settlement Agreement was fully executed by the Co-Leads and MPS's Counsel. A true and complete copy of this Agreement is attached as Exhibit 1.

9) Pursuant to ¶ 44 of the Settlement Agreement, MPS has agreed to provide significant information concerning its knowledge of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action, to authenticate documents, and to provide witnesses to testify at trial, among other things.

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

Dated: April 17, 2014

/s/ James J. Pizzirusso
James J. Pizzirusso

EXHIBIT 1

**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 DEFENDANT MIDWEST POULTRY SERVICES, LP**

This Settlement Agreement (“Agreement”) is made and entered into this 31st day of March 2014 (the “Execution Date”) by and between Midwest Poultry Services LP (“Midwest Poultry”) and Direct Purchaser Plaintiffs’ Class representatives (“Plaintiffs”) (as defined herein at Paragraph 15), 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 21).

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

WHEREAS, Plaintiffs allege that Midwest Poultry participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of Shell Eggs and Egg Products in the United States at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, having conducted an investigation into the facts and the law regarding the Action and engaged in extensive discovery, Plaintiffs have concluded that a settlement with Midwest Poultry 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, Midwest Poultry denies all allegations of wrongdoing in the Action. However, despite its belief that it is not liable for, and has good defenses to, the claims alleged in the Action, Midwest Poultry desires 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, Class Counsel and Midwest Poultry's Counsel have engaged in arm's-length settlement negotiations, and this Agreement has been reached as a result of these negotiations;

NOW, THERFORE, 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 Midwest Poultry only, without costs as to Plaintiffs, the Class, Midwest Poultry, and 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 147-151 of the Third Consolidated Amended Class Action Complaint filed in the Action on January 4, 2013.

2. “Midwest Poultry’s Counsel” shall refer to the law firm of Faegre Baker Daniels LLP, 300 Meridian St., Suite 2700, Indianapolis, Indiana, 46204.

3. “Claims Administrator” shall mean the Garden City Group, Inc.

4. “Class Member” or “Class” shall mean each member of the Settlement Class, as defined in Paragraph 23 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 on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

6. “Defendant(s)” shall refer to the parties listed as defendants in the Third Consolidated Amended Complaint filed on January 4, 2013 and each of their corporate parents, subsidiaries, and affiliated companies.

7. “Egg Products” shall mean the whole or any part of Shell Eggs that have been removed from their shells and then processed, with or without additives, into dried, frozen or liquid forms.

8. “Escrow Account” means the account with the Escrow Agent that holds the Settlement Fund.

9. “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Paragraph 38 of this Agreement.

10. “Fairness Hearing” means a hearing on the settlement proposed in this Settlement Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

11. “Final Approval” shall mean an Order entered by the Court finally approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure.

12. “Non-Settling Defendants” shall refer to Defendants other than Midwest Poultry.

13. “Other Settling Defendants” shall refer to Moark LLC, Norco Ranch, Inc., Land O’Lakes, Inc. Sparboe Farms, Inc., and Cal-Maine Foods, Inc.

14. “Parties” shall mean or means Midwest Poultry and Plaintiffs.

15. “Plaintiffs” shall mean each of the following proposed 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.

16. “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, and the parents, subsidiaries, and affiliated companies of such Producer.

17. “Releasees” shall refer, jointly and severally, and individually and collectively, to Midwest Poultry, its owners, parents, subsidiaries, and affiliated companies, and its past and present officers, directors, employees, agents, insurers, attorneys, shareholders, joint venturers that are neither Non-Settling Defendants nor Other Settling Defendants, partners and representatives, as well as the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

18. “Releasors” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Class Members, and 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.

19. “Settlement Amount” shall refer to \$2,500,000 (\$2.5 million) U.S. dollars.

20. “Settlement Fund” shall refer to the funds accrued in the escrow account established in accordance with Paragraph 38 below.

21. “Shell Eggs” shall mean eggs produced from caged birds that are sold in the shell for consumption or for breaking and further processing, excluding “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).

22. “Midwest Poultry’s Total Sales” shall mean the sum of the annual U.S. sales by Midwest Poultry of Shell Eggs and Egg Products, excluding sales to Producers, for the years during the Class Period, to be mutually agreed upon by Counsel.

B. Settlement Class Certification

23. The Parties to this Agreement hereby stipulate for purposes of settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the following Class shall be certified for settlement purposes only as to Midwest Poultry:

All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, 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

24. The Parties 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 Midwest Poultry.

25. Within two (2) business days after the execution of this Agreement by Midwest Poultry, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against Midwest Poultry in the Action pending approval of this Agreement. Within twenty (20) business days after execution of the Agreement by Midwest Poultry, Plaintiffs shall submit to the Court a motion (the "Motion") for an Order granting preliminary approval of the Agreement, appointing Settlement Class Counsel as lead counsel for purposes of this Settlement Agreement, and certifying a Class for settlement purposes ("Preliminary Approval"). Plaintiffs shall submit the Motion requesting entry of a Preliminary Approval Order, substantially in the form of Exhibit A, attached hereto, which shall provide that, *inter alia*:

- a. the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;
- b. the Settlement Class defined herein be certified, designating Class Representatives and Settlement Class Counsel as defined herein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is not approved by the Court or any appellate court;
- c. a hearing on the settlement proposed in this Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair,

reasonable, and adequate, and whether it should be finally approved by the Court.

26. After Preliminary Approval, Class Counsel shall move the Court for approval of a proposed form of, and means for, dissemination of notice of the Agreement, subject to agreement by Midwest Poultry on the proposed form and means of notice, which agreement shall not be unreasonably withheld. Subject to approval by the Court of the form of and means for dissemination of notice, individual notice of the Agreement (“Class Notice”) shall be mailed to persons and entities who are located in the United States and who purchased Shell Eggs or Egg Products directly from Midwest Poultry, any Non-Settling Defendant(s) in the Action, or Other Settling Defendants during the Class Period that: are identified by Midwest Poultry; were previously identified by Midwest Poultry and Other Settling Defendants; and are identified by Plaintiffs and Plaintiffs’ Counsel or Non-Settling Defendants in the Action. In addition, after Preliminary Approval, and subject to Court approval of the form of and means for dissemination of notice, Class Notice shall also 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, proposed by Class Counsel. Within twenty (20) calendar days after the Execution Date, Midwest Poultry shall supply to Class Counsel at Midwest Poultry’s 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 reasonably practicable and approved by the Court, Plaintiffs may combine dissemination of notice of the certification of the Class for settlement purposes and of the Agreement with the dissemination of notice of other settlement agreements that may be reached with other Defendants in the Action.

27. Within twenty (20) days of the date on which the Court preliminarily approves the Agreement and certifies a Class for settlement purposes, Midwest Poultry shall provide to Plaintiffs (to the extent that such data have not already been produced by Midwest Poultry in discovery in the Action) in a text delimited format, Midwest Poultry's sales data over the Class Period sufficient to show the dollar volume of annual sales of Shell Eggs and Egg Products to each of Midwest Poultry's customers during the Class Period. 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 Midwest Poultry, through Midwest Poultry's 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 from Midwest Poultry during the Class Period for each such potential Class Member and the percentage that such potential Class Member's purchases represents of the Midwest Poultry's Total Sales as reflected in the data Midwest Poultry shall have produced pursuant to this paragraph.

28. Plaintiffs shall, following Preliminary Approval, as soon as reasonably possible and without delay, seek entry of an order and final judgment, the text of which shall be proposed by Plaintiffs, which shall:

- a. approve 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. determine that the Class Notice constituted, under the circumstances, the most effective and best practicable notice of this Settlement Agreement and of the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;

- c. reconfirm the appointment of Class Representatives and Settlement Class Counsel as defined herein;
- d. direct that, as to Midwest Poultry, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- e. reserve to the United States District Court for the Eastern District of Pennsylvania exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Agreement; and
- f. determine 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 Midwest Poultry shall be entered.

29. This Agreement shall become final only when (a) the Court has entered an order granting Final Approval to this Settlement Agreement; (b) the Court has entered final judgment dismissing the Action against Midwest Poultry on the merits with prejudice as to all Class Members and without costs; and (c) 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 (b) 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. 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 times. On the Execution Date, Plaintiffs and Midwest Poultry shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 34 through 37 of this Agreement.

D. Release and Discharge

30. 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 Releasors, 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 or 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 on which the Court enters an order preliminarily approving the Settlement and certifying a Class for settlement purposes (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.

31. Each Releasor waives California Civil Code Section 1542 and similar or comparable present or future law or principle of law of any jurisdiction. 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.

32. In addition to the provisions of Paragraphs 30 and 31, 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 30 and 31. 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.

33. The release and discharge set forth in Paragraphs 30 through 32 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 or Other Settling Defendant.

E. Rescission

34. 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 29 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 Midwest Poultry 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, within ten (10) business days of both the written notice of rescission to Class Counsel and the Escrow Agent and Midwest Poultry's written instructions to the Escrow Agent, all amounts in the escrow account created pursuant to Paragraph 38 hereof, less any expenses authorized pursuant to this Agreement, shall be wire transferred to Midwest Poultry pursuant to its instructions, provided, however, that simultaneous with its written instructions to the Escrow Agent, Midwest Poultry shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five (5) business days of receipt of such notice, notify the Escrow Agent of any objections to Midwest Poultry's instructions and funds shall not be wired until expiration of that objection deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

35. If Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 29 of this Agreement, Class Counsel and Midwest Poultry 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 Midwest Poultry or Plaintiffs, shall not be deemed or construed to be an admission or denial, or evidence or lack of evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity 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.

36. Class Counsel further agree that in the event of rescission the originals and all copies of documents provided by or on behalf of Midwest Poultry pursuant to this Agreement, together with all documents and electronically stored information containing information provided by Midwest Poultry, including, but not limited to, notes, memos, records, and interviews, related to the Cooperation obligations pursuant to paragraph 44 shall be returned to Midwest Poultry at Midwest Poultry's expense or destroyed by Class Counsel at their own expense, provided however that such attorney notes, memoranda or records may be destroyed rather than produced if an affidavit of such destruction is promptly provided by Class Counsel to Midwest Poultry's Counsel.

37. If Class Counsel notify Midwest Poultry, pursuant to Paragraph 27, that Class Members whose combined annual purchases of Shell Eggs and/or Egg Products from Midwest Poultry over the Class Period equal or exceed a percentage of Midwest Poultry's Total Sales set forth in a Supplemental Agreement signed by the parties ("Opt-Out Threshold") have requested exclusion from this Agreement ("Excluded Class Members"), Midwest Poultry shall have the right and option, within fifteen (15) business days after receipt of such notice from Class Counsel, to rescind the Agreement. The parties intend that the Supplemental Agreement shall be specifically disclosed to the Court and offered for *in camera* inspection by the Court at or prior to entry of the Preliminary Approval Order, but, subject to the Court's approval, it shall not be filed with the Court before the expiration of the Opt-Out Deadline unless ordered otherwise by the Court. The parties shall seek to keep the Opt-Out Threshold confidential prior to the Opt-

Out Deadline. In the event that the Court directs that the Supplemental Agreement be filed prior to the Opt-Out Deadline, no party shall have any right to any relief by reason of such disclosure. Midwest Poultry shall, within fifteen (15) business days of receipt of notice from Class Counsel as provided for under this paragraph, give written notice to Class Counsel to invoke rights under this Paragraph to rescind the Agreement. If this Agreement is rescinded, subject to the terms of the Supplemental Agreement, all amounts in the Escrow Account created pursuant to Paragraph 38 hereof, less any expenses, fees, or taxes authorized pursuant to this Agreement, shall be wire transferred to Midwest Poultry, pursuant to its instructions to the Escrow Agent; provided, however, that simultaneous with its written instructions to the Escrow Agent, Midwest Poultry shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five (5) days of receipt of such notice, notify the Escrow Agent of any objections to Midwest Poultry's instructions and funds shall not be wired until expiration of that objection deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

F. Payment

38. Midwest Poultry shall pay or cause to be paid the Settlement Amount in settlement of the Action. The Settlement Amount shall be wire transferred by Midwest Poultry or its designee within twenty (20) calendar days of the Execution Date into the Settlement Fund, which shall be established as an Escrow Account at a bank selected by Class Counsel and administered in accordance with the Escrow Agreement entered into by the Parties.

39. 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.

40. Class Counsel may, at a time approved by the Court, seek an award of attorneys' fees and reasonable litigation expenses and incentive awards for class representatives approved by the Court, to be paid out of the Settlement Amount after the Final Approval of the Agreement. Midwest Poultry agrees not to object to Class Counsel's petition to the Court for payment of attorneys' fees, costs, expenses, and incentive awards for class representatives from the Settlement Amount. Except to the extent that the Court may award attorneys' fees and litigation expenses to be paid out of the Settlement Amount, Midwest Poultry shall have no obligation to pay any fees or expenses for Class Counsel.

41. Upon entry of an order by the Court approving the request for an award of attorneys' fees and expenses and incentive awards for class representatives ("Attorneys' Fees Order") made pursuant to Paragraph 40 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 Midwest Poultry, which acceptance shall not be unreasonably withheld. 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.

42. In order to receive distribution of funds pursuant to Paragraph 40 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.

43. Disbursements for any payments and expenses incurred in connection with taxation matters relating to this Settlement Agreement shall be made from the Settlement Amount pursuant to section H of this Agreement upon written notice to the Escrow Agent by Class Counsel of such payments and expenses, and such amounts shall not be refundable to Midwest Poultry in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

44. **Cooperation:** Midwest Poultry shall provide cooperation in accordance with the terms and provisions of this Agreement to support the prosecution of Plaintiffs' claims. Midwest Poultry's obligations shall apply only to Releasers who act with, by or through Class Counsel pursuant to this Agreement in this Action. Midwest Poultry shall provide the following:

a. **Proffers:** Midwest Poultry agrees that, as soon as practicable after the Execution Date, Midwest Poultry's Counsel shall make themselves available, at dates, times and locations to be agreed upon by Midwest Poultry's Counsel and Class Counsel, to meet with Class Counsel for no more than eight (8) hours total to provide information concerning Midwest Poultry's knowledge, and that of its directors, officers, employees and agents, of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action (the "Proffer").

Plaintiffs and Class Counsel agree that they shall maintain all statements made by Midwest Poultry's Counsel under this paragraph as strictly confidential and that they shall not use directly or indirectly the information so received for any purpose other than prosecution of the Action and that such information may not be used to prosecute any claim or action against Releasees. Class Counsel may use information contained in the Proffer in the prosecution of the Action without attributing the source of the information.

Class Counsel agree, unless ordered by a court and consistent with due process, that under no circumstances shall information or documents obtained from the Proffer 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 that elects to opt out of the proposed class for settlement purposes under this Agreement or from a litigation class that may be certified, (iii) any counsel representing or advising indirect purchasers of Shell Eggs or Processed Eggs, or (iv) any third party not associated with Class Counsel in this Action except in connection with prosecution of this Action. At the conclusion of the Action, Class Counsel shall destroy all notes, memoranda, or records related to the Proffer, and any copies thereof, and shall certify in writing to Midwest Poultry Plaintiffs' compliance with this requirement.

b. **Interviews:** At an agreed upon time, date and location, and at Midwest Poultry's expense, Midwest Poultry shall make available for one interview of no more than seven (7) hours with Class Counsel each of the then-current directors, officers, and employees of Midwest Poultry who possess information that, based on Class Counsel's good faith belief, would assist Plaintiffs in prosecuting this action. Midwest Poultry shall use best efforts to assist Class Counsel in arranging interviews with any former directors, officers, and employees of Midwest Poultry. The failure of any former officer, director or employee to make himself or herself available for the interview shall not affect in any way the release of Midwest Poultry, provided it has acted reasonably.

c. **Transactional Data:** Midwest Poultry shall, upon request by Class Counsel, clarify transactional and other data produced by Midwest Poultry in discovery in the Action, including providing, upon request by Plaintiffs, follow-

up information in response to questions Plaintiffs may have concerning such data. Class Counsel agrees to use reasonable efforts to minimize the burden of any such clarification or follow-up requests.

d. Authentication of Documents & Certifications as to Business Records:

Prior to trial in this Action, Midwest Poultry shall, at the request of Class Counsel and through reasonable means (including, but not limited to, affidavits and declarations by persons qualified to testify as to authenticity and/or as to business records (pursuant to Federal Rules of Evidence 902(11) and (12)) establish the authenticity of documents and/or admissibility as business records produced by Midwest Poultry, and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by Midwest Poultry or sent to or received by Midwest Poultry. Class Counsel agree to use reasonable efforts to minimize the burden to Midwest Poultry of any such authentication or business records testimony.

e. Trial Testimony: Upon the request of Class Counsel, Midwest Poultry shall make available from among its current or former directors, officers or employees a representative who Class Counsel believe in good faith to have knowledge regarding Plaintiffs' claims as alleged in the Action to testify at trial regarding facts or issues at issue in this Action. Midwest Poultry shall use its best efforts to assist Class Counsel in securing the testimony of any former employee of Midwest Poultry whom Midwest Poultry does not control but whom may be selected by Class Counsel for trial testimony. In the event that Midwest Poultry cannot secure the trial testimony of one or more such former employees selected by Class Counsel, Midwest Poultry shall make available a current director, officer or employees selected by Class Counsel to testify at trial.

G. Notice of Settlement to Class Members

45. Class Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement ("Notice") 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 that purchased Shell Eggs or Egg Products directly from any Non-Settling Defendant during the Class Period. Class Notice

will be issued after Preliminary Approval by the Court and subject to any Court orders regarding the means of dissemination of notice.

46. Subject to court approval, disbursements for any payments and expenses incurred in connection with the costs of Notice and administration of the Settlement Agreement by the Claims Administrator shall be made from the Settlement Amount upon written notice to the Escrow Agent by Class Counsel of such payments and expenses. If Notice of the Agreement is combined with dissemination of notice of other settlement agreements as provided for under paragraph 26, the costs of the combined notice and administration shall be apportioned equally to the settlement amount of each such settlement agreement and the Agreement's apportioned cost of combined notice and administration shall, subject to court approval, be disbursed from the Settlement Amount upon written notice to the Escrow Agent by Class Counsel. Disbursements for any payments and expenses incurred in connection with the costs of Notice and administration of the Settlement Agreement by the Claims Administrator, up to a maximum of \$350,000, shall not be refundable to Midwest Poultry in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

H. Taxes

47. 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 ("Tax Expenses"). Class Counsel shall be entitled to direct the Escrow Agent in writing

to pay customary and reasonable Tax Expenses, including reasonable 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 and as provided in paragraph 43 herein. Midwest Poultry shall have no responsibility to make any tax filings relating to this Settlement Agreement.

48. 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)).

49. 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.

I. Miscellaneous

50. 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 Midwest Poultry 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. This Agreement further does not settle, compromise or prejudice any defenses or affirmative defenses Midwest Poultry has asserted or may assert in indirect purchaser or tag along actions currently pending and consolidated in the Eastern District of Pennsylvania, including all such actions transferred for coordination. All rights of Midwest Poultry against such indirect purchaser and tag along plaintiffs are specifically reserved by Midwest Poultry.

51. Subject to Court approval, 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 Midwest Poultry. 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. Midwest Poultry submits to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. Midwest Poultry otherwise retain all defenses to the Court's exercise of personal jurisdiction over Midwest Poultry.

52. This Agreement, together with the Supplemental Agreement provided under paragraph 37 and incorporated by reference herein, constitutes the entire agreement among Plaintiffs (and the other Releasors) and Midwest Poultry (and the other Releasees) pertaining to the settlement of the Action against Midwest Poultry only, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Midwest Poultry in connection therewith. In entering into this Agreement, Plaintiffs and Midwest Poultry have not relied upon any representation or promise made by Plaintiffs or Midwest Poultry not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Midwest Poultry and approved by the Court.

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

54. This Agreement may be executed in counterparts by Class Counsel and Midwest Poultry's Counsel, and an electronically-scanned (in either .pdf or .tiff format)

signature will be considered an original signature for purposes of execution of this Agreement.

55. 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.

56. In the event this Agreement is not approved, 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 Midwest Poultry 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 Midwest Poultry.

57. Neither Midwest Poultry 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.

58. 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, Midwest Poultry, and Releasees any right or remedy under or by reason of this Agreement.

59. 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.

60. 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 Midwest Poultry:

Kathy L. Osborn
FAEGRE BAKER DANIELS LLP
300 N. Meridian St., Ste. 2700
Indianapolis, IN 46204
kathy.osborn@faegrebd.com

61. 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: March 31, 2014

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(Interim Co-Lead Counsel for the Class)



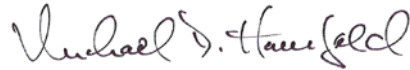
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Indianapolis, IN 46204
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Facsimile: (317) 237-1000
kathy.osborn@faegrebd.com

(On Behalf of Midwest Poultry Services LP)

Dated: March 31, 2014



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(Interim Co-Lead Counsel for the Class)

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Facsimile: (317) 237-1000
kathy.osborn@faegrebd.com

(On Behalf of Midwest Poultry Services LP)

Exhibit A

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

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

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT WITH MIDWEST POULTRY SERVICES LP, CERTIFYING THE
CLASS FOR PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE
MOTION FOR FEES AND EXPENSES**

It is hereby ORDERED AND DECREED as follows:

1. The motion of Direct Purchaser Plaintiffs for preliminary approval of the proposed settlement between Direct Purchaser Plaintiffs and Defendant Midwest Poultry Services LP (“Midwest Poultry”), which Midwest Poultry does not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with Midwest Poultry, as set forth in the Settlement Agreement, subject to final determination following an approved form of and plan for notice and a Fairness Hearing, falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to the following settlement class (the “Settlement Class”), for settlement purposes only:

All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, 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. 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 requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Class is 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. In accordance with the holding in *In re Community Bank*

of Northern Virginia, 418 F.3d 277, 306 (3d Cir. 2005), this Court makes no determination concerning the manageability of this action as a class action if it were to go to trial.

4. Plaintiffs 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 Sensory Effects Flavor Systems (collectively, "Plaintiffs"), will serve as Class Representatives on behalf of the Settlement Class.

5. The Court confirms the appointment of Class Counsel for purposes of the Settlement Class as the law firms 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.

6. Direct Purchaser Plaintiffs' request for leave to file a motion for attorneys' fees and litigation expenses is hereby approved and shall be filed in accord with the deadline to be proposed by Class Counsel as set forth in paragraph 7 herein which shall be at least 90 days prior to the date on which the final Fairness Hearing is held and at least 45 days prior to the date by which potential Class Members must exclude themselves from or object to the Agreement.

7. Class Counsel shall submit for the Court's approval (a) a Proposed Notice to the Class, including a proposed schedule for Class Members to opt out or object to the proposed Settlement, (b) a proposed Plan of Notice that includes the proposed manner of Notice, a proposed Administrator for Notice and Claims, (c) a proposed date for the Court's Fairness Hearing to determine whether the Settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court, (d) a proposed deadline by which Plaintiffs must file

their motion for an award of attorneys' fees and reimbursement of litigation expenses, (e) a proposed deadline by which Plaintiffs must file their Motion for Final Approval of the Settlement Agreement, and (f) proposed deadlines by which Class Members must object to or request exclusion from the Settlement Agreement.

8. Interim Co-Lead Counsel for Direct Purchaser Plaintiffs shall include in the text of their proposed Direct Mail Notice and Publication Notice of the Settlement Agreement the deadline by which Direct Purchaser Plaintiffs must file their motion for an award of attorneys' fees and litigation expenses and a statement that Class Members may review the motion at the www.eggproductsettlement.com website prior to the objection and opt-out deadlines set forth below.

9. Within 30 days of entry of this Order, each Defendant shall provide to Garden City Group ("GCG") a supplemental production that shall include the names and addresses of all customers in the United States (i) to whom that Defendant sold Shell Eggs or Egg Products in the United States between the date of that Defendant's most recent customer name and address production to GCG and the date of entry of this Order; and (ii) that were not included in that Defendant's most recent customer name and address production to GCG.

- a. The customer information shall be produced in a mutually agreeable electronic format or, if not available electronically, in the form in which such information is regularly maintained;
- b. The customer information transmitted by Defendants to GCG shall be treated as confidential, and shall only be used by GCG for purposes of creating and maintaining a customer database and for disseminating notice; and

- c. The customer information transmitted by Defendants to GCG shall not be shared with Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, their counsel, or their experts.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date: _____

4828-1629-4169, v. 1

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

IN RE: PROCESSED EGG PRODUCTS	:	MDL No. 2002
ANTITRUST LITIGATION	:	Case No: 08-md-02002
	:	
	:	
THIS DOCUMENT APPLIES TO	:	
ALL DIRECT PURCHASER ACTIONS	:	
	:	

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH NATIONAL FOOD CORPORATION, CERTIFYING THE CLASS FOR PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE MOTION FOR FEES, EXPENSES, AND INCENTIVE AWARDS

It is hereby ORDERED AND DECREED as follows:

1. The motion of Direct Purchaser Plaintiffs for preliminary approval of the proposed settlement, which Defendant National Food Corporation (“NFC”) does not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with NFC, as set forth in the settlement Agreement, subject to final determination following an approved form of and plan for notice and a Fairness Hearing,¹ falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to the following settlement class (the “Settlement Class”), for settlement purposes only:

All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

¹ The capitalized terms used in this Order that are defined in the settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Agreement.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, 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. 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 requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Class is 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. In accordance with the holding in *In re Community Bank*

of Northern Virginia, 418 F.3d 277, 306 (3d Cir. 2005), this Court makes no determination concerning the manageability of this action as a class action if it were to go to trial.

4. Plaintiffs 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 Sensory Effects Flavor Systems (collectively, "Plaintiffs"), will serve as Class Representatives on behalf of the Settlement Class.

5. The Court confirms the appointment of Class Counsel for purposes of the Settlement Class as the law firms 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.

6. Direct Purchaser Plaintiffs' request for leave to file a motion for attorneys' fees, litigation expenses, and incentive awards is hereby approved and shall be filed in accord with the deadline to be proposed by Class Counsel as set forth in paragraph 7 herein that shall be at least 90 days prior to the date on which the final Fairness Hearing is held and at least 45 days prior to the date by which potential Class Members must exclude themselves from or object to the Agreement.

7. Class Counsel shall submit for the Court's approval (a) a Proposed Notice to the Class, including a proposed schedule for Class Members to opt out or object to the proposed Settlement, (b) a proposed Plan of Notice that includes the proposed manner of Notice, a proposed Administrator for Notice and Claims, (c) a proposed date for the Court's Fairness Hearing to determine whether the Settlement is fair, reasonable, and adequate, and whether it

should be finally approved by the Court, (d) a proposed deadline by which Plaintiffs must file their motion for an award of attorneys' fees, reimbursement of litigation expenses, and incentive awards, (e) a proposed deadline by which Plaintiffs must file their Motion for Final Approval of the Settlement Agreement, and (f) proposed deadlines by which Class Members must object to or request exclusion from the Settlement Agreement.

8. Interim Co-Lead Counsel for Direct Purchaser Plaintiffs shall include in the text of their proposed Direct Mail Notice and Publication Notice of the Settlement Agreement the deadline by which Direct Purchaser Plaintiffs must file their motion for an award of attorneys' fees, litigation expenses, and incentive awards, and a statement that Class Members may review the motion at the www.eggproductsettlemnt.com website prior to the objection and opt-out deadlines set forth below.

9. Within 30 days of entry of this Order, each Defendant shall provide to Garden City Group ("GCG") a supplemental production that shall include the names and addresses of all customers in the United States (i) to whom that Defendant sold Shell Eggs or Egg Products in the United States between the date of that Defendant's most recent customer name and address production to GCG and the date of entry of this Order; and (ii) that were not included in that Defendant's most recent customer name and address production to GCG.

- a. The customer information shall be produced in a mutually agreeable electronic format or, if not available electronically, in the form in which such information is regularly maintained;
- b. The customer information transmitted by Defendants to GCG shall be treated as confidential, and shall only be used by GCG for purposes of

creating and maintaining a customer database and for disseminating notice;
and

- c. The customer information transmitted by Defendants to GCG shall not be shared with Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, their counsel, or their experts.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date: _____

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

IN RE: PROCESSED EGG PRODUCTS	:	MDL No. 2002
ANTITRUST LITIGATION	:	Case No: 08-md-02002
	:	
	:	
THIS DOCUMENT APPLIES TO	:	
ALL DIRECT PURCHASER ACTIONS	:	
	:	

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT WITH MIDWEST POULTRY SERVICES LP, CERTIFYING THE
CLASS FOR PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE
MOTION FOR FEES, EXPENSES, AND INCENTIVE AWARDS**

It is hereby ORDERED AND DECREED as follows:

1. The motion of Direct Purchaser Plaintiffs for preliminary approval of the proposed settlement between Direct Purchaser Plaintiffs and Defendant Midwest Poultry Services LP (“Midwest Poultry”), which Midwest Poultry does not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with Midwest Poultry, as set forth in the Settlement Agreement, subject to final determination following an approved form of and plan for notice and a Fairness Hearing, falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to the following settlement class (the “Settlement Class”), for settlement purposes only:

All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, 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. 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 requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Class is 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. In accordance with the holding in *In re Community Bank*

of Northern Virginia, 418 F.3d 277, 306 (3d Cir. 2005), this Court makes no determination concerning the manageability of this action as a class action if it were to go to trial.

4. Plaintiffs 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 Sensory Effects Flavor Systems (collectively, "Plaintiffs"), will serve as Class Representatives on behalf of the Settlement Class.

5. The Court confirms the appointment of Class Counsel for purposes of the Settlement Class as the law firms 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.

6. Direct Purchaser Plaintiffs' request for leave to file a motion for attorneys' fees, litigation expenses, and incentive awards is hereby approved and shall be filed in accord with the deadline to be proposed by Class Counsel as set forth in paragraph 7 herein which shall be at least 90 days prior to the date on which the final Fairness Hearing is held and at least 45 days prior to the date by which potential Class Members must exclude themselves from or object to the Agreement.

7. Class Counsel shall submit for the Court's approval (a) a Proposed Notice to the Class, including a proposed schedule for Class Members to opt out or object to the proposed Settlement, (b) a proposed Plan of Notice that includes the proposed manner of Notice, a proposed Administrator for Notice and Claims, (c) a proposed date for the Court's Fairness Hearing to determine whether the Settlement is fair, reasonable, and adequate, and whether it

should be finally approved by the Court, (d) a proposed deadline by which Plaintiffs must file their motion for an award of attorneys' fees, reimbursement of litigation expenses, and incentive awards, (e) a proposed deadline by which Plaintiffs must file their Motion for Final Approval of the Settlement Agreement, and (f) proposed deadlines by which Class Members must object to or request exclusion from the Settlement Agreement.

8. Interim Co-Lead Counsel for Direct Purchaser Plaintiffs shall include in the text of their proposed Direct Mail Notice and Publication Notice of the Settlement Agreement the deadline by which Direct Purchaser Plaintiffs must file their motion for an award of attorneys' fees, litigation expenses, and incentive awards, and a statement that Class Members may review the motion at the www.eggproductsettlement.com website prior to the objection and opt-out deadlines set forth below.

9. Within 30 days of entry of this Order, each Defendant shall provide to Garden City Group ("GCG") a supplemental production that shall include the names and addresses of all customers in the United States (i) to whom that Defendant sold Shell Eggs or Egg Products in the United States between the date of that Defendant's most recent customer name and address production to GCG and the date of entry of this Order; and (ii) that were not included in that Defendant's most recent customer name and address production to GCG.

- a. The customer information shall be produced in a mutually agreeable electronic format or, if not available electronically, in the form in which such information is regularly maintained;
- b. The customer information transmitted by Defendants to GCG shall be treated as confidential, and shall only be used by GCG for purposes of

creating and maintaining a customer database and for disseminating notice;
and

- c. The customer information transmitted by Defendants to GCG shall not be shared with Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, their counsel, or their experts.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date:_____

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April 2014, a copy of DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS BETWEEN PLAINTIFFS AND DEFENDANT NATIONAL FOOD CORPORATION AND PLAINTIFFS AND DEFENDANT MIDWEST POULTRY SERVICES, LP, FOR CERTIFICATION OF CLASS ACTION FOR PURPOSES OF THE SETTLEMENTS, AND FOR LEAVE TO FILE MOTIONS FOR FEES, EXPENSES, AND INCENTIVE AWARDS along with copies of the accompanying Memorandum of Law, Declarations of James J. Pizzirusso in support thereof, and Proposed Orders, were filed with the Clerk of the Court, per the Local Rules, 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; and (2) the below-listed Liaison Counsel for Defendants, Indirect Purchaser Plaintiffs, and Direct Action Plaintiffs.

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Direct Action Plaintiffs' Liaison Counsel

Date: April 25, 2014

BY: /s/ Jeremy S. Spiegel
WEINSTEIN KITCHENOFF & ASHER LLC