

**UNITED STATES DISTRICT COURT
IN 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 Class Actions	:	

**DIRECT PURCHASER PLAINTIFFS’ MOTION FOR FINAL
APPROVAL OF THE CLASS ACTION SETTLEMENTS BETWEEN
PLAINTIFFS AND (1) DEFENDANT MIDWEST POULTRY
SERVICES, LP, (2) DEFENDANT NATIONAL FOOD
CORPORATION, AND (3) DEFENDANTS UNITED EGG
PRODUCERS AND UNITED STATES EGG MARKETERS**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs move the Court for final approval of the Settlement Agreement between the Direct Purchaser Class Plaintiffs (“Plaintiffs”) and Defendant Midwest Poultry Services, LP (“MPS”), the Settlement Agreement between Plaintiffs and Defendant National Food Corporation (“NFC”), and the Settlement Agreement between Plaintiffs and Defendants United Egg Producers (“UEP”), and United States Egg Marketers (“USEM”), and to certify the Classes for the purpose of Settlement pursuant to Federal Rules 23(a) and 23(b)(3). This Motion is based upon Plaintiffs’ Memorandum of Law, Declarations of James J. Pizzirusso, and Supplemental Affidavit of Jennifer M. Keough submitted herewith, and is made on the following grounds:

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

2. The Settlements are fair, reasonable, and adequate, and the nine *Girsh* factors strongly support approval. *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975). The Settlements are fair, reasonable and adequate given the complexity, expense, and likely duration of the litigation, the stage of the proceedings, and the costs and risks involved in the litigation for Plaintiffs absent MPS's, NFC's, and UEP/USEM's settlement and cooperation. Moreover, the likelihood of further recoveries for Plaintiffs is enhanced by Defendants' cooperation, and the reaction of the class has been overwhelmingly positive, with no objections to the Settlements.

3. As set out in the Court's July 30, 2014 Order (ECF No. 1027), the Settlement Classes, as defined in the Settlement Agreements, meets the requirements of Rule 23(a) and Rule 23(b)(3). Fed. R. Civ. P. 23(a), (b)(3).

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

Dated: March 20, 2015

Respectfully submitted,

/s/ Steven A. Asher

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I. INTRODUCTION

The Direct Purchaser Class Plaintiffs (“Plaintiffs”) respectfully submit this memorandum in support of their motion for final approval of Plaintiffs’ settlements with Midwest Poultry Services, LP (“MPS”), National Food Corporation (“NFC”), United Egg Producers (“UEP”), and United States Egg Marketers (“USEM”) (collectively “Defendants”), and for final certification of the Settlement Classes pursuant to Federal Rule of Civil Procedure 23. The Court granted preliminary approval of the settlements on July 30, 2014. (ECF No. 1027.)

Plaintiffs seek final approval of three separate settlement agreements: (1) the NFC Settlement; (2) the MPS Settlement, and (3) the UEP/USEM Settlement.¹ The settlement agreements were negotiated and executed completely separate and independent from one another and were all achieved after months of intense arm’s length negotiations by capable counsel. In light of the uncertainty, complexity, and expense inherent in litigation, the proposed settlements are fair, reasonable, and adequate and should be finally approved.

II. BACKGROUND

A. THE LITIGATION

This is a class action alleging a conspiracy among the nation’s largest egg producers. Plaintiffs allege that Defendants, along with other Shell Egg and Egg Products producers, violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce the output of Shell Eggs and Egg Products and thereby artificially fix, raise, maintain and/or stabilize the prices of Shell Eggs and Egg Products in the United States. Plaintiffs allege that, as a result of Defendants’ conduct, Plaintiffs and members of the Class paid

¹ Plaintiffs submit one brief in support of final approval for efficiency and because the same legal standard applies to the settlements. Also, Plaintiffs combined notice of the settlements with MPS, NFC, and UEP/USEM in order to minimize expense to the Class.

prices for Shell Eggs and Egg Products that were higher than they otherwise would have been absent the conspiracy. The lawsuit seeks injunctive relief, treble damages, attorneys' fees and costs from Defendants. MPS, NFC, UEP, and USEM 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, the Court granted final approval of the settlement. (ECF No. 698.) On May 21, 2010, Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. (collectively "Moark Defendants") entered into a settlement agreement with Plaintiffs providing for both continued cooperation and a cash settlement of \$25,000,000.00. The Court granted final approval of the settlement on July 16, 2012. (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.) The Court granted final approval of the Cal-Maine settlement agreement on October 10, 2014. (ECF No. 1082.) On March 28, 2014, Plaintiffs entered into a settlement with NFC providing for continued cooperation and a cash settlement of \$1,000,000.00. (ECF No. 952-2.) On March 31, Plaintiffs entered into a settlement with MPS providing for continued cooperation and a cash settlement of \$2,500,000.00. (952-3.) On May 21, 2014, Plaintiffs entered into a settlement with UEP and USEM providing for cooperation and a cash settlement of \$500,000. (ECF No. 997-2.) The Court granted preliminary approval of Plaintiffs' settlement agreements with NFC, MPS, and UEP/ USEM on July 30, 2014. (ECF No. 1027.)

On August 1, 2014, Plaintiffs entered into a settlement agreement with NuCal Foods, Inc. (“NuCal”) providing for continued cooperation and a cash settlement of \$1,425,000. (ECF No. 1041.) The Court granted preliminary approval of the NuCal settlement agreement on October 3, 2014. (ECF. No. 1073.) On October 22, 2014 Plaintiffs entered into a settlement agreement with Hillandale Farms of Pa., Inc. (“Hillandale Pa.”) and Hillandale-Gettysburg, L.P. (“Hillandale-Gettysburg”) providing for cooperation and a cash settlement of \$3,000,000. (ECF No. 1093.) The Court grant preliminary approval of Plaintiffs’ settlement agreement with the Hillandale defendants on December 19, 2014. (ECF No. 1108.)

C. THE SETTLEMENT NEGOTIATIONS

1. The MPS Settlement Agreement

Interim Co-Lead Counsel for Plaintiffs (“Class Counsel”) and MPS’s counsel, Faegre Baker Daniels LLP, engaged in arm’s length negotiations over a period of roughly two months to reach the settlement. The scope and details of the negotiations are described in the Pizzirusso Declaration (Midwest Poultry) filed herewith. Class Counsel and MPS’s counsel are both highly experienced and capable, and both vigorously advocated their respective client’s positions in the settlement negotiations.

MPS attended the global mediation session in October 2013. Although unsuccessful, Class Counsel decided to approach MPS about reaching a possible resolution. The parties began substantive negotiations in January 2014. Pizzirusso Decl. (Midwest Poultry) ¶ 8. After several rounds of telephone calls and email exchanges, the parties eventually agreed to a settlement requiring that MPS pay \$2,500,000 and cooperate with Plaintiffs in the continued litigation of the case. *Id.* The amount of money damages was based primarily on MPS’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

MPS's production—consisting of over 40,000 documents, of which approximately 20% had been reviewed when the parties reached an agreement—and had deposed MPS's CEO in his personal capacity and in his capacity as the corporate representative of MPS. *Id.* at ¶ 12. This, along with comprehensive review of the other Defendants' productions, provided Class Counsel with extensive knowledge of Defendants' antitrust conspiracy and the strengths and weaknesses of Plaintiffs' claims and Defendants' asserted defenses.

Plaintiffs and MPS reached an agreement in principle on February 10, 2014, and executed the Settlement Agreement on March 31, 2014. *Id.* at ¶¶ 9–10. After factual investigation and legal analysis, it is the opinion of Class Counsel that the Settlement Amount of \$2,500,000.00, combined with MPS's obligation to cooperate with Plaintiffs, is fair, reasonable, and adequate to the Class.

2. The NFC Settlement Agreement

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 settlement. The scope and details of the negotiations are described in the Pizzirusso Declaration (NFC) filed herewith. Class Counsel and NFC's counsel, both highly experienced and capable, vigorously advocated their respective client's positions in the settlement negotiations.

Preliminary settlement discussions began in late 2012 and early 2013, but quickly stalled. Pizzirusso Decl. (NFC) ¶ 7. The parties renewed discussions in May 2013, and by July 2013 were working towards a joint mediation. *Id.* at ¶¶ 8–9. 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 ¶ 10. NFC also produced a new round of financial statements showing that NFC's financial condition was not improving. *Id.* at 11.

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 ¶ 13. 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. *Id.* at ¶ 17.

The parties reached an agreement in principle on February 28, 2014. *Id.* at ¶ 14. The Settlement Agreement was fully executed by Class Counsel and NFC's counsel on March 28, 2014. *Id.* at ¶ 15. 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.

3. The UEP/USEM Settlement Agreement

Class Counsel and UEP's and USEM's counsel, Pepper Hamilton LLP, engaged in extensive arm's-length negotiations over the course of many months to reach a settlement. The scope and details of the negotiations are described in the Pizzirusso Declaration (UEP/USEM)

filed herewith. Class Counsel and UEP/USEM's counsel, who are highly experienced and capable, vigorously advocated their respective clients' positions in the settlement negotiations.

Preliminary settlement discussions involving a global mediation occurred during the summer of 2013. Pizzirusso Decl. at ¶¶ 7–8. In August 2013, the parties sought to stay the litigation to attend a joint mediation session in October. *Id.* at ¶ 8.

In January 2014, after the joint mediation appeared to be unsuccessful, Class Counsel decided to approach several individual Defendants, including UEP/USEM, about a potential resolution. *Id.* These discussions led to substantive negotiations with UEP/USEM. *Id.* at ¶ 9. After several rounds of telephone calls and email exchanges, the parties eventually agreed to a tentative \$500,000.00 settlement, based primarily on UEP/USEM's financial condition and the fact that it was not a producer. *Id.* In addition, UEP/USEM agreed to produce certain documents that had been previously withheld on the grounds of attorney-client privilege and provide other cooperation. *Id.*

On March 12, 2014, the parties reached an agreement in principle and signed a term sheet laying out the terms of their settlement. *Id.* at ¶ 10. Because UEP/USEM were unwilling to provide a proffer or allow Class Counsel to preview the documents that they would produce as a term of the settlement, and because Class Counsel wanted to ensure that Direct Purchasers were obtaining valuable consideration in exchange for the negotiated release, the parties agreed to allow Magistrate Judge Rice to facilitate the settlement by previewing the documents in camera and ensuring that they did provide value to the Class. *Id.*

On March 13, 2014, the parties discussed their proposal with Judge Rice who agreed to preview the materials. *Id.* at ¶ 11. On March 19, 2014, Class Counsel sent a letter to Judge Rice advising him of the types of materials that, if found in the UEP/USEM documents, they believed

would provide value to the Class. *Id.* On March 25, 2014, Judge Rice called Interim Co-Lead Counsel to confirm that the UEP documents provided material value to the Class. *Id.* As such, the parties proceeded with a final agreement. *Id.*

On May 21, 2014, the Settlement Agreement was fully executed by Class Counsel and UEP/USEM's Counsel. *Id.* at ¶ 12. Pursuant to ¶ 46 of the Settlement Agreement, UEP/USEM have also agreed to provide other cooperation relating to the production of materials (under certain conditions) produced in the Kansas state action that were not produced in this action, assisting with questions regarding transactional data, authenticating documents, and making witnesses available to testify at trial, among other things. *Id.* at ¶ 13.

After factual investigation and legal analysis, it is the opinion of Class Counsel that the Settlement Amount of \$500,000.00, combined with UEP's and USEM's obligation to cooperate with Plaintiffs, including by producing certain documents that had been previously withheld on the grounds of attorney-client privilege, is fair, reasonable, and adequate to the Class.

III. THE PROPOSED SETTLEMENTS

A. THE SETTLEMENT CLASS

Plaintiffs and Defendants agreed to a Settlement Class that provides for two subclasses, Shell Egg and Egg Products. The MPS, NFC, and UEP/USEM Settlement Agreements 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.

See Settlement Agreement ¶ 23 (Pizzirusso Decl. (MPS) Ex. 1); Settlement Agreement ¶ 22 (Pizzirusso Decl. (NFC) Ex. 1); Settlement Agreement ¶ 25 (Pizzirusso Decl. (UEP/USEM) Ex. 1).

B. MONETARY PAYMENTS AND COOPERATION PROVISIONS

1. The MPS Settlement Agreement

MPS agreed to pay the Settlement Class \$2,500,000 in cash within twenty days of execution of the Settlement Agreement. Settlement Agreement ¶¶ 19, 38 (Pizzirusso Decl. (MPS) Ex. 1). The Settlement Agreement also requires MPS to provide an attorney proffer of up to eight hours with information concerning MPS's knowledge of the facts and events at issue in this case. *Id.* at ¶ 44. MPS must also make available for interview with Class Counsel each of the current directors, officers, and employees of MPS whom Class Counsel believe would assist Plaintiffs in prosecuting this case. *Id.* The Agreement also requires that MPS: (1) clarify transactional data; (2) establish the authenticity of and/or admissibility as business records of documents produced by MPS and, to the extent possible, documents produced by Non-Settling Defendants that were sent to or received by MPS; 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.*

2. The NFC Settlement Agreement

NFC agreed to pay the Settlement Class \$1,000,000 in cash within five days of execution of the Settlement Agreement. Settlement Agreement ¶¶ 19, 37 (Pizzirusso Decl. (NFC) Ex. 1). The Settlement Agreement also requires NFC to provide an attorney proffer of up to five hours with information concerning, *inter alia*, NFC, its operations, and the identification of potential NFC witnesses with knowledge of the matters at issue in this case. *Id.* at ¶ 43. NFC must also 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.*

3. The UEP/USEM Settlement Agreement

UEP and USEM agreed to pay the Settlement Class \$500,000 in cash. The Settlement Agreement required UEP and USEM to pay \$300,000 within five days of execution of the Settlement Agreement and the remaining \$200,000 before January 5, 2015. Settlement Agreement ¶¶ 22, 40 (Pizzirusso Decl. (UEP/USEM) Ex. 1). UEP and USEM also agreed to (1) produce certain documents withheld on grounds of attorney-client privilege or work product protection; (2) not oppose the production of documents produced in and deposition transcripts taken in the Kansas state action; (3) clarify transactional data produced by UEP and/or USEM in

discovery; (4) establish the authenticity of and/or admissibility as business records of documents produced by UEP and USEM and, to the extent possible, documents produced by Non-Settling Defendants that were sent to or received by UEP or USEM; and (5) make available their current employees who are designated by Class Counsel to testify at trial regarding the facts and issues in dispute. *Id.* at ¶ 46. The Agreement also requires that UEP and USEM allow Class Counsel to participate in any UEP or USEM depositions, but not lead such depositions or question witnesses. *Id.*

C. RELEASE OF CLAIMS

In exchange for the consideration described above, Plaintiffs have agreed to release MPS, NFC, UEP and USEM from any and all claims arising out of or resulting from the conduct asserted in this lawsuit. *See* Settlement Agreement ¶¶ 30–33 (Pizzirusso Decl. (MPS) Ex. 1); Settlement Agreement ¶¶ 29–33 (Pizzirusso Decl. (NFC) Ex. 1); Settlement Agreement ¶¶ 32–36 (Pizzirusso Decl. (UEP/USEM) Ex. 1).

IV. DISTRIBUTION OF THE SETTLEMENT FUND

The above described cash settlement payments, together with any interest earned thereon, less any administrative expenses, and less any escrow expenses and taxes incurred, will be distributed on a *pro rata* basis to the Settlement Class Members who timely and properly submit a valid claim form.² *See* Notice at 5 (Keough Aff. Ex. 1). Each Class Members' *pro rata* share will be based on the dollar amount of their direct purchases of Shell Eggs and Egg Products in the United States.³ *Id.* This actual distribution of funds will take place at a later date, but only after submission and approval by the Court of an appropriate Plan of Allocation. And as

² The Notice is attached as Exhibit 1 to the Supplemental Affidavit of Jennifer M. Keough (“Keough Aff.”).

³ Because the alleged overcharge is only a portion of the price paid for eggs and egg products, recovery will be less than the total amount paid.

explained in the Notice, Class Members will have an opportunity to comment and/or object to the proposed allocation plan. *Id.*

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

V. PRELIMINARY APPROVAL ORDER AND CLASS CERTIFICATION

On July 30, 2014, this Court preliminarily approved the MPS, NFC, and UEP/USEM settlements, certified the classes for settlement purposes, and authorized Class Counsel to disseminate Notice by direct mail and publication. (ECF No. 1027.) A final fairness hearing is scheduled for May 6, 2015. *Id.* at 17.

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

The Settlement Class Members are entitled to notice of the proposed Settlement and an opportunity to be heard. *See Fed. R. Civ. P. 23(e); Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). The mechanics of the notice process “are left to the discretion of the court subject only to the broad ‘reasonableness’ standards imposed by due process.” *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975).

Plaintiffs combined notice of the MPS, NFC, and UEP/USEM settlements. In doing so, Plaintiffs utilized the same Notice Plan that the Court found to “constitute[] adequate notice in

satisfaction of the demands of Rule 23” when used to provide notice of Plaintiffs’ settlements with Cal-Maine and the Moark Defendants. *See In re Processed Eggs Prods. Antitrust Litig.*, 302 F.R.D. 339, 354 (E.D. Pa. 2014) (Pratter, J.); *In re Processed Eggs Prods. Antitrust Litig.*, 284 F.R.D. 249, 266 (E.D. Pa. 2012) (Pratter, J.). The Notice of the MPS, NFC, and UEP/USEM settlements apprised Settlement Class Members of the existence of the action (Notice at 1-3), the settlement agreements (Notice at 4-5), information concerning Class Members’ rights to object to, or exclude themselves from the Settlement (Notice at 1, 7-9), as well as information needed to make informed decisions about their participation in the settlement (Notice at 1, 9). As when used for the Cal-Maine and Moark settlements, the Notice Plan satisfies due process and the requirements set forth in Rule 23(c) and (e).

A. THE NOTICE

On October 27, 2014, Garden City Group, LLC. (“GCG”), the Settlement Claims Administrator retained by Class Counsel, mailed the long-form notice (the “Mailed Notice”) to approximately 19,502 direct purchasers of Shell Eggs and Egg Products identified using the sales data produced by Defendants. *See Keough Aff.* ¶ 8. As of March 18, 2015, the date the Keough Affidavit was executed, GCG has received 40 Mailed Notices returned by the U.S. Postal Service with forwarding address information and 3,124 Mailed Notices returned by the U.S. Postal Service without forwarding address information.⁴ *Id.* at ¶¶ 9–10. No objections have been filed to the MPS, NFC, or UEP/USEM settlements either before or after the March 6, 2015 deadline to file an objection set forth in the Notice. *See id.* at ¶ 16. GCG received 197 requests

⁴ Mailed Notices returned by the U.S. Postal Service with forwarding address information were promptly re-mailed to the updated addresses provided.

for exclusion from the MPS Settlement, 197 requests for exclusion from the NFC Settlement, and 197 requests for exclusion from the UEP/USEM Settlement.⁵ *Id.* at ¶ 15.

B. SUMMARY NOTICE, PRESS RELEASES AND WEBSITE

Summary Notice was published in the following trade magazines: *Restaurant Business* (October 2014 issue), *Convenience Store News* (October 2014 issue), *Hotel F&B* (November/December 2014 issue), *Nation's Restaurant News* (October 20, 2014 issue), *FoodService Director* (October 2014 issue), *Progressive Grocer* (November 2014 issue), *Food Manufacturing* (November/December 2014 issue), *Supermarket News* (November 3, 2014 issue), *Stores* (November 2014 issue), *Egg Industry* (October 2014 issue), *Bake* (October 2014 issue), *Food Processing* (November 2014 issue), *Long Term Living* (October/November 2014 issue), *PetFood Industry* (November 2014 issue), and *School Nutrition* (November 2014 issue). *Id.* at ¶ 11. Moreover, GCG arranged for publication on October 28, 2014 of the Summary Notice in the *Wall Street Journal*. *Id.* In addition, GCG coordinated press releases, containing substantially the same language as the Summary Notice, on October 27, 2014. *Id.* at ¶ 12. The releases were distributed over the US1 Newline and the Hispanic Newline and included distribution to over 1,000 journalists in the restaurant and food industries. *Id.*

GCG also maintains a website dedicated to this settlement to provide additional information to class members and to answer frequently asked questions.⁶ The Settlement website has been operational since August 30, 2010, and is accessible twenty-four hours a day, seven days a week. Website visitors can download a Notice, the Court's preliminary approval order, the Settlement Agreement, and other relevant documents. *Id.* at ¶ 13. The website was updated to

⁵ The 197 requests for exclusion include requests by related entities. For example, there are 12 "Kraft" entities, 14 "Unilever" entities, 5 "Kroger" entities, and 5 "Nestle" entities. *See* Keough Aff. ¶ 5.

⁶ www.EggProductsSettlement.com

contain information about the MPS, NFC, and UEP/USEM Settlements on October 10, 2014. *Id.* Between October 10, 2014, and March 18, 2015, the Settlement website received 4,342 hits. *Id.*

C. TOLL-FREE TELEPHONE NUMBER

In addition to the Settlement website, GCG maintains an automated toll-free telephone number that potential Class Members can call for information about the MPS, NFC, and UEP/USEM settlements.⁷ *Id.* at ¶ 14. The number is operational twenty-four hours a day and seven days a week. Callers have an option to leave a voice message requesting a return call from a call center representative. *Id.* The automated number was updated with information about the MPS, NFC, and UEP/USEM settlements on October 10, 2014. *Id.* Between October 10, 2014 and March 18, 2015 there have been 639 calls to the automated number. *Id.*

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

The notice plan utilized by GCG included a combination of direct mail, publication, press releases, a website, and a toll-free telephone number. *Id.* at ¶ 5. “In order to satisfy due process, notice to class members must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 119 (D.N.J. 2002) (internal quotation marks omitted). For those whose names and addresses cannot be determined by reasonable efforts, notice by publication suffices under both Rule 23(c)(2) and the due process clause. *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 325 (E.D. Pa. 1993) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317–18 (1950)). The content of the Notice and Plaintiffs’ use of direct mail and various publication methods satisfies due process. *See Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir. 1985) (“It is well

⁷ 1-866-881-8306

settled that in the usual situation first-class mail and publication in the press fully satisfy the notice requirement of both Fed. R. Civ. P. 23 and the due process clause.”).

The Class Action Fairness Act (“CAFA”) mandates that “[a]n order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).” 28 U.S.C. § 1715(d). The responsibility for providing CAFA Notice belongs to settling defendants. 28 U.S.C. § 1715(b).

MPS filed a declaration of CAFA compliance on May 9, 2014. (ECF No. 958.) The declaration states that MPS satisfied CAFA’s notice requirement by serving notice to the appropriate state and federal officials on May 2, 2014. *Id.* NFC filed its declaration of CAFA compliance on August 4, 2014. (ECF No. 1029.) The declaration states NFC satisfied CAFA’s notice requirements by serving notice to the appropriate state and federal officials on May 5, 2014 and August 1, 2014. *Id.* UEP and USEM filed a declaration of CAFA compliance on October 24, 2014. (ECF No. 1086.) The declaration states that notice complying with CAFA’s notice requirements was served on July 16, 2014. *Id.*

VII. THE PROPOSED SETTLEMENT CLASSES SATISFY RULE 23 AND SHOULD BE CERTIFIED

In its preliminary approval order, this Court certified the Settlement Classes for the limited purpose of Settlement. The Court determined that the Settlement Classes satisfied the Rule 23(a) requirements of numerosity, commonality, typicality and adequacy. (*See* ECF No. 1027 at 7, 10–11.) The Court also found that the Settlement Classes satisfied the Rule 23(b)(3) requirements of predominance and superiority. *Id.* at 7, 11. There is no need for the Court to revisit any of the Rule 23(a) or (b)(3) requirements with respect to the Settlement Classes. The

sole remaining consideration to be assessed prior to final approval of the MPS, NFC, and UEP/USEM settlements is whether the Settlements are fair, reasonable and adequate.

VIII. THE SETTLEMENTS ARE FAIR, REASONABLE AND ADEQUATE

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

A. THE SETTLEMENTS ARE ENTITLED TO AN INITIAL PRESUMPTION OF FAIRNESS

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

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

The Third Circuit affords an initial presumption of fairness to a settlement “if the court finds that: (1) the negotiations occurred at arm’s-length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *Id.* at 232 n.18; *see also In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) (“A presumption of correctness is said to attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” (quoting *Hanrahan v. Britt*, 174 F.R.D. 356, 366 (E.D. Pa. 1997))); *Lake v. First Nationwide Bank*, 156 F.R.D. 615, 628 (E.D. Pa. 1994) (giving “due regard to the recommendations of the experienced counsel in this case, who have negotiated this settlement at arm’s length and in good faith”). As illustrated below, these criteria are satisfied here.

There can be no doubt that the settlement negotiations, described above and in the attached declarations of James Pizzirusso, were undertaken at arm’s length. Class Counsel and MPS’s counsel, Faegre Baker Daniels LLP, did not begin substantive settlement discussions until January 2014, after a failed global mediation session and over five years after the case began. Pizzirusso Decl. (MPS) ¶¶ 5, 6. The settlement negotiations spanned a period of roughly two months and consisted of several rounds of telephone calls and email exchanges. *Id.* at ¶¶ 4, 6. Both Class Counsel and MPS’s counsel vigorously advocated their clients’ positions in reaching the Settlement Agreement, which was executed on March 31, 2014. *Id.* at ¶ 8.

Plaintiffs’ Settlement Agreement with NFC was achieved after vigorous settlement negotiations lasting nearly a year. Pizzirusso Decl. (NFC) ¶ 4. Class Counsel and NFC’s counsel, Davis Wright Tremaine LLP, began preliminary settlement discussions in late 2012 and early

2013. *Id.* at ¶ 5. The parties were unable to make meaningful progress and the discussions quickly fizzled out. In May 2013 the parties resumed discussions, which continued through July 2013 and involved numerous teleconference discussions and e-mail exchanges. *Id.* at ¶¶ 6, 7. In mid-2013 settlement discussions with NFC were put on hold for a number of reasons, including a potential global mediation, and Plaintiffs continued pursuing discovery from NFC by attempting to schedule NFC depositions and pursuing additional NFC transactional data, among other things. *Id.* at ¶ 8. After the unsuccessful mediation, which NFC did not attend, Plaintiffs decided to approach NFC about a potential resolution. *Id.* at ¶ 10. The parties resumed substantive negotiations in November 2013 and eventually reached an agreement in principle in February, 2014. *Id.* at ¶¶ 11, 12. The Settlement was based primarily on NFC's precarious financial status—as indicated by the two sets of audited financial statements Plaintiffs received during the negotiations—and the amount of NFC's commerce in the case. *Id.* at ¶¶ 6, 9.

Class counsel and UEP/USEM's counsel, Pepper Hamilton LLP, began substantive settlement discussions in January 2014, after the unsuccessful global mediation. Pizzirusso Decl. (UEP/USEM) ¶¶ 6, 7. In March 2014, after several months of intense arm's-length negotiations, the parties reached a tentative settlement requiring UEP/USEM to make a \$500,000 cash payment and to provide certain documents previously withheld on the grounds of privilege, along with other cooperation. *Id.* at ¶¶ 4, 7. The Settlement was based primarily on UEP/USEM's financial condition and the fact that it was not a producer. Because UEP/USEM were unwilling to provide a proffer or allow Class Counsel to preview the documents to be produced as part of the Settlement, and because Class Counsel wanted to ensure that Direct Purchasers were getting valuable consideration in exchange for the UEP/USEM's release, the parties agreed to allow Magistrate Judge Rice to facilitate the Settlement by previewing the

documents in camera and ensuring they provided value to the Class. *Id.* at ¶ 8. Class Counsel advised Judge Rice of the types of information in the UEP/USEM documents they believed would provide value to the Class, and Judge Rice confirmed that the documents provided material value. *Id.* at ¶¶ 8, 9. The parties executed the formal Settlement Agreement on May 21, 2014.

There was also sufficient discovery for the presumption of fairness to attach. Collectively, the defendants in this action produced over 1,000,000 documents, much of which had been reviewed by Class Counsel at the time of the settlements. *See* Pizzirusso Decl. (MPS) ¶ 12; Pizzirusso Decl. (NFC) ¶ 17; Pizzirusso Decl. (UEP/USEM) ¶ 14. Plaintiffs had significant knowledge of Defendants' alleged antitrust conspiracy and the strengths and weaknesses of the parties' claims and weaknesses when the Settlements were reached.

As discussed above, when substantive settlement discussions between Plaintiffs and MPS began in January 2014, Class Counsel had already deposed MPS's CEO and was in the process of reviewing the 40,000 documents MPS produced. Pizzirusso Decl. (MPS) ¶ 12. When Plaintiffs and NFC resumed settlement discussions in November 2013, Class Counsel had reviewed over 100,000 documents produced by NFC. Pizzirusso Decl. (NFC) ¶ 17. And at the time of Plaintiffs' Settlement with UEP/USEM, Class Counsel had reviewed over 200,000 documents produced by UEP and USEM, and had deposed past and current UEP Presidents Chad Gregory, Gene Gregory, and Al Pope. Pizzirusso Decl. (UEP/USEM) ¶ 14. Class Counsel had also deposed University of California Poultry Specialist Donald Bell, whose work is sponsored by UEP. *Id.*

Furthermore, the parties have been represented by seasoned class action litigators. Class Counsel is experienced in similar antitrust class actions, and unreservedly recommend the

Settlements.⁸ Counsel for MPS (Faegre Baker Daniels LLP), NFC (Davis Wright Tremaine LLP), and UEP/USEM (Pepper Hamilton LLP) are similarly experienced and likewise support their respective settlement.

Courts recognize “significant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class.” *Lake v. First Nationwide Bank*, 900 F. Supp. 726, 732 (E.D. Pa. 1995) (internal quotation marks omitted); *see also In re Am. Family Enters.*, 256 B.R. 377, 421 (D.N.J. 2000) (“In determining the fairness, adequacy, and reasonableness of a proposed settlement, significant weight should also be given to the belief of experienced counsel that settlement is in the best interest of the class” (internal quotation marks omitted)); *Austin*, 876 F. Supp. at 1457 (when evaluating whether a class action settlement is fair, reasonable, and accurate, “courts have accorded significant weight to the view of experienced counsel who have engaged in arm’s-length negotiations”); *In re Michael Milken and Assocs. Sec. Litig.*, 150 F.R.D. 57, 68 (S.D.N.Y. 1993) (“Experienced counsel’s opinions are entitled to substantial weight by the Court in determining whether to approve [a] settlement.”); *Spring Garden United Neighbors, Inc. v. City of Philadelphia*, No. 83-3209, 1986 WL 1525, at *3 (E.D. Pa. Feb. 4, 1986) (“[T]he professional judgment of counsel involved in the litigation is entitled to significant weight.”).

Finally, there have been no objections to the Settlement and only 197 Class Members have elected to exclude themselves from the Settlements. *See Keough Aff.* ¶¶ 15–16. The

⁸ Interim Counsel respectfully refer the Court to their Supplemental Submission Regarding Rule 23(g) Compliance filed in support of final approval of Plaintiffs’ settlement with Sparboe and Plaintiffs’ settlement with the Moark Defendants. (ECF No. 483.) The submission and its exhibits provides a summary of Interim Counsel’s qualifications and experience. Interim Counsel also refers the Court to the Interim Co-Lead Counsel’s Submission in Support of Permanent Appointment of Interim Leadership Structure and accompanying exhibits, No. 08-cv-4653 (E.D. Pa.), ECF No. 26.

absence of objections and a small percentage of exclusions give rise to a presumption of fairness. *See McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 459 (D.N.J. 2008) (finding that 601 opt-outs and nine objections qualified for a presumption of fairness); *In re Remeron End-Payor Antitrust Litig.*, No. 02-2007, 2005 WL 2230314, at *16–17 (D.N.J. Sept. 13, 2005) (finding that 70 opt outs and eight objections from a class of 850,000 qualified for a presumption of fairness).

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

B. APPLICATION OF THE *GIRSH* FACTORS

District courts have broad discretion in determining whether to approve a proposed class action settlement. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004). However, in determining whether the Settlement is fair and reasonable, courts in the Third Circuit consider the following factors, commonly known as the *Girsh* factors, as set forth in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975):

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

See Girsh, 521 F.2d at 157.

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

C. THE PROPOSED SETTLEMENTS SATISFY THE *GIRSH* CRITERIA FOR FINAL APPROVAL

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

The first *Girsh* factor considers the “probable costs, in both time and money of continued litigation.” *Cendant*, 264 F.3d at 233 (internal quotation marks omitted); *see also In re Ins. Brokerage Antitrust Litig.*, MDL No. 1663, 2007 WL 2589950, at *4 (D.N.J. Sept. 4, 2007). It has often been observed that “[a]n antitrust class action is arguably the most complex action to prosecute.” *Linerboard*, 292 F. Supp. 2d at 639 (internal quotation marks omitted); *see also Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989) (noting that antitrust class actions are “notoriously complex, protracted, and bitterly fought”). Continuing this litigation against MPS, NFC, and UEP/USEM would entail a lengthy and complex battle.

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

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

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

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

2. Class Reaction to the Proposed Settlements

“This factor attempts to gauge whether members of the class support the settlement.” *Prudential*, 148 F.3d at 318. A lack of substantial objections or exclusions by class members is highly significant. *See Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313–14 (3d Cir. 1993); *In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577-78 (E.D. Pa. 2003). There have been no objections to the Settlements. *See Keough Aff.* at ¶ 16. Courts typically approve settlements where no objections have been received. *See, e.g., Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 415 (E.D. Pa. 2010) (approving settlement that received no objections to the fairness or adequacy of the settlement); *In re CIGNA Corp.*, No. 02 Civ. 8088, 2007 WL 2071898, at *3 (E.D. Pa. July 13, 2007) (“The class has been exceptionally supportive in that no objections to the settlement were filed.”); *United States v. Pennsylvania*, 160 F.R.D. 46, 49 (E.D. Pa. 1994) (“The failure of any class member to object to the proposed settlement despite having adequate opportunity to do so demonstrates that the class members assent to the agreement.”).

Additionally, there have only been 197 requests for exclusion from the Settlements from the Classes of thousands of direct purchasers.⁹ See Keough Aff. ¶ 15. These numbers are consistent with Third Circuit precedent and the decisions of other federal courts approving settlements. See *Stoetzner*, 897 F.2d at 118–19 (holding that only 29 objections in 281 member class – or 10% – “strongly favors settlement”); *Prudential*, 148 F.3d at 318 (affirming conclusion of district court that class reaction was favorable when 19,000 class members opted out of class of eight million and 300 objected); *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 175 (E.D. Pa. 2000) (settlement approved where there were 2,500 requests for exclusion from an original notice to 140,000 class members).

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

⁹ As noted above, 19,502 copies of the long-form Notice were mailed by the Claims Administrator. Keough Aff. ¶ 8. Of those, 40 packets were returned with forwarding address information, and 3,124 packets were returned without forwarding address information. *Id.* at ¶¶ 9–10.

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

3. The Stage of Proceedings and Amount of Discovery Completed

As explained by the Third Circuit, this *Girsh* factor is intended to ensure “that a proposed settlement is the product of informed negotiations” and that “the parties . . . have an adequate appreciation of the merits of the case before negotiating.” *Prudential*, 148 F.3d at 319 (internal quotation marks omitted). This factor “captures the degree of case development that class counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.” *General Motors*, 55 F.3d at 813.

All three of the Settlement Agreements were executed in 2014, over five years after this class action litigation was consolidated before the Court. (*See* ECF No. 1.) Even before the litigation was consolidated, Class Counsel had spent significant time assessing the merits of the Class’s claim. Indeed, before filing a complaint Class Counsel conducted “an extensive investigation that involved interviews with industry personnel, analysis of economic data, and a review of both public and non-public materials.” Leadership Submission at 4.¹⁰ As discussed above, by the time the Settlements were reached discovery was well underway. Class Counsel analyzed deposition transcripts, documents produced by Defendants, and other discovery materials, as well the contested legal and factual issues, in order to accurately evaluate Plaintiffs’ and MPS’s, NFC’s and UEP/USEM’s positions and make accurate demands. *Id.* at ¶ 8. Class Counsel concluded that the Settlements are in the best interest of the Classes based on their extensive and in depth investigation of the facts of the case.

¹⁰ (ECF No. 26, 2:08-cv-4653, E.D. Pa.)

Given the stage of proceedings and discovery conducted when Plaintiffs and MPS, NFC, and UEP/USEM reached the settlements, this *Girsh* factor weighs heavily in favor of final approval. *See Wallace v. Powell*, 288 F.R.D. 347, 368–69 (M.D. Pa. 2012) (third *Girsh* factor supports approval of settlement: (1) preliminarily approved almost three years after commencement of litigation; (2) based on negotiations lasting one year; and (3) reached after production and review of over 200,000 pages of documents); *cf. McLennan v. LG Elecs. USA, Inc.*, No. 2:10-cv-03604, 2012 U.S. Dist. LEXIS 27703, at *2, 16 (D.N.J. Mar. 2, 2012) (third *Girsh* factor did not weigh against approval despite only a year of litigation and a lack of formal discovery because the parties’ preliminary investigation and informal discovery was sufficient to establish “an adequate appreciation of the merits of the case”).

4. The Risks of Establishing Liability

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

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

have inherent risks.¹¹ “Here, as in every case, Plaintiffs face the general risk that they may lose at trial, since no one can predict the way in which a jury will resolve disputed issues.” *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 337 (W.D. Pa. 1997), *aff’d sub nom. Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581 (3d Cir. 1999), *see also State of West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743–44 (S.D.N.Y. 1970) (“It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced.”).

5. The Risks of Establishing Damages

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

¹¹ Because Plaintiffs are continuing to prosecute this case against the remaining Defendants, Class Counsel do not wish to highlight potential weaknesses (if any) or emphasize particularly vulnerable points in their case. To do so could prejudice the prosecution of this action. *See Manual for Complex Litigation - Fourth* § 21.651 (2004) (“Given that the litigation might continue against other defendants, the parties may be reluctant to disclose fully and candidly their assessment of the proposed settlement’s strengths and weaknesses that led them to settle separately.”).

6. The Risks of Maintaining a Class Action Through Trial

The sixth *Girsh* factor evaluates the risks of maintaining the class action through a trial. “Because the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the [class] action, this factor measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial.” *Warfarin Sodium*, 391 F.3d at 537 (internal quotation marks and citation omitted). The Settlement Classes have been preliminarily certified for settlement purposes only. (See ECF No. 1027 at 7, 10–11.) However, Class Counsel acknowledges that had MPS, NFC, and UEP/USEM not settled, they would have joined the non-settling Defendants in contesting class certification. This uncertainty further supports approval of the proposed Settlement.

7. The Ability of the Defendants to Withstand a Greater Judgment

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

significant and carefully considered factor in Plaintiffs' decisions to settle. *See* Pizzirusso Decl. (MPS) ¶ 6; Pizzirusso Decl. (NFC) ¶ 11; Pizzirusso Decl. (UEP/USEM) ¶ 7.

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

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

As courts have explained, “[w]hile the court is obligated to ensure that the proposed settlement is in the best interest of the class members by reference to the best possible outcome, it must also recognize that settlement typically represents a compromise and not hold counsel to an impossible standard.” *In re Aetna, Inc. Sec. Litig.*, MDL No. 1219, 2001 WL 20928 at *6 (E.D. Pa. Jan. 4, 2001); *see also General Motors*, 55 F.3d at 806 (noting that “after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.”); *Lazy Oil*, 95 F. Supp. 2d at 338–39 (“The trial court should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and abandoning of highest hopes.” (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977))). The Settlements represent good value for the classes in light of the stage of the

litigation and the risks attendant with its continuing prosecution. Therefore, the eighth and ninth *Girsh* factors are satisfied.

Accordingly, for the reasons stated above, the Settlements satisfy the factors set forth in *Girsh*, 521 F.2d at 157, and are fair, reasonable and adequate.

IX. CONCLUSION

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

Dated: March 20, 2015

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 FINAL APPROVAL OF
CLASS ACTION SETTLEMENT BETWEEN DIRECT PURCHASER
PLAINTIFFS AND DEFENDANT MIDWEST POULTRY SERVICES, INC.**

I, James J. Pizzirusso, declare as follows:

- 1) I am one of the founding partners of the law firm Hausfeld LLP and am 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 Final Approval of the proposed settlement agreement between Midwest Poultry Services, Inc. ("MPS") and Direct Purchaser Class Plaintiffs. This declaration is based on my personal knowledge and conversations with other Interim Counsel.
- 3) This is a class action alleging that MPS and other Shell Egg and Egg Products producers violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce their Shell Egg and Egg Products output and thereby artificially fix, raise, maintain, and/or stabilize the prices of Shell Egg and Egg Products in the United States.
- 4) In the fall and winter of 2008, numerous cases were filed in several federal district courts, including the Eastern District of Pennsylvania, the District of Minnesota, and the District of New

Jersey. The class actions were transferred to, and consolidated in this Court in the above captioned MDL, and pursuant to the Court's December 9, 2008 Order.

5) 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.

6) The settlement negotiations with MPS were conducted by experienced counsel on both sides at arm's length over a period of approximately two months. Interim Counsel and MPS were prepared to fully litigate the case if no settlement could be reached.

7) 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.

8) 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 settlement requiring MPS's continued cooperation and a cash payment of \$2,500,000.00. The Settlement was based primarily on MPS's financial condition and the fact that that a significant percentage of MPS's sales had been made to Direct Action Plaintiffs.

9) On February 10, 2014, the parties reached an agreement in principle and set out to draft the settlement agreement.

10) 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.

11) 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.

12) Fact discovery was well advanced at the time of the Settlement. Collectively, the defendants in this Action produced over 1 million documents, much of which had already been reviewed by Interim Counsel before the Settlement. When substantive settlement discussions began in January 2014, MPS had produced over 40,000 documents, which Interim Counsel were in the process of reviewing. Interim Counsel had also already deposed Midwest Poultry's CEO, both in his individual and corporate capacity.

13) The Court granted preliminary approval of the proposed Settlement on July 30, 2014. (ECF No. 1027.) In the same Order, the Court authorized Interim Counsel to disseminate Notice by direct mail and by publication. A final fairness hearing is scheduled for May 6, 2015.

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

Dated: March 19, 2015

/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 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, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to 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 Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants, including any entities or individuals that may later be added as a defendant to the Action, (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs 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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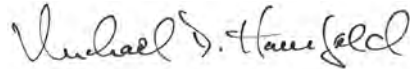

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(On Behalf of Midwest Poultry Services LP)

Dated: March 31, 2014



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(Interim Co-Lead Counsel for the Class)

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(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
	:	
	:	
	:	
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 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: _____

**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	:	
DIRECT PURCHASER ACTIONS	:	
	:	

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

I, James J. Pizzirusso, declare as follows:

- 1) I am one of the founding partners of the law firm Hausfeld LLP and am 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 Final Approval of the proposed settlement agreement between National Food Corp. (“NFC”) and Direct Purchaser Class Plaintiffs. This declaration is based on my personal knowledge and conversations with other Interim Counsel.
- 3) This is a class action alleging that NFC and other Shell Egg and Egg Products producers violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce their Shell Egg and Egg Products output and thereby artificially fix, raise, maintain, and/or stabilize the prices of Shell Egg and Egg Products in the United States.
- 4) In the fall and winter of 2008, numerous cases were filed in several federal district courts, including the Eastern District of Pennsylvania, the District of Minnesota, and the District of New

Jersey. The class actions were transferred to, and consolidated in this Court in the above captioned MDL, and pursuant to the Court's December 9, 2008 Order.

5) 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.

6) The settlement negotiations with NFC were conducted by experienced counsel on both sides at arm's length over a period of nearly a year. Interim Counsel and NFC were prepared to fully litigate the case if no settlement could be reached.

7) Preliminary settlement 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.

8) 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.

9) 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.

10) 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.

11) On August 30, 2013, NFC Counsel circulated a new round of audited financial statements. These showed that NFC's financial condition was not improving.

12) 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.

13) 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 settlement requiring NFC's cooperation and a cash payment of \$1,000,000.00. The settlement was based primarily on NFC's precarious financial condition and its amount of commerce in the case.

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

15) 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.

16) 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.

17) Fact discovery was well advanced at the time of the Settlement. Collectively, the defendants in this Action produced over 1 million documents, much of which had already been reviewed by Interim Counsel before the Settlement. When Interim Counsel and NFC counsel resumed settlement discussions in November 2013, Interim Counsel had reviewed over 100,000 documents produced by NFC.

18) The Court granted preliminary approval of the proposed Settlement on July 30, 2014. (ECF No. 1027.) In the same Order, the Court authorized Interim Counsel to disseminate Notice by direct mail and publication. A final fairness hearing is scheduled for May 6, 2015.

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

Dated: March 19, 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 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, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with

prejudice as to 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. “Releasers” 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 Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including

any Defendants, including any entities or individuals that may later be added as a defendant to the Action, (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs 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:

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

For NFC:

Marvin L. Gray, Jr.
DAVIS WRIGHT TREMAINE LLP
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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(Interim Co-Lead Counsel for the Class)

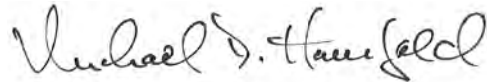

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(On Behalf of National Food Corporation)

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	:	MDL No. 2002
ANTITRUST LITIGATION	:	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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT
BETWEEN DIRECT PURCHASER PLAINTIFFS AND DEFENDANTS UNITED EGG
PRODUCERS AND UNITED STATES EGG MARKETERS**

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 final approval of the proposed settlement agreement between United Egg Producers (“UEP”) and United States Egg Marketed (“USEM”) and Direct Purchaser Class Plaintiffs. This declaration is based on my personal knowledge and conversations with other Interim Counsel.
- 3) This is a class action alleging that UEP and USEM and other Shell Egg and Egg Products producers violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce their Shell Egg and Egg Products output and thereby artificially fix, raise, maintain, and/or stabilize the prices of Shell Egg and Egg Products in the United States.
- 4) In the fall and winter of 2008, numerous cases were filed in several federal district courts, including the Eastern District of Pennsylvania, the District of Minnesota, and the District of New

Jersey. The class actions were transferred to, and consolidated in this Court in the above captioned MDL, and pursuant to the Court's December 9, 2008 Order.

5) I was among the principal negotiators of the proposed Settlement Agreement with UEP/USEM along with other Interim Co-Lead Counsel for Direct Purchasers, who were actively and directly involved in these negotiations.

6) The settlement negotiations with UEP/USEM were conducted by experienced counsel on both sides at arm's length over a period of nearly a year. Interim Counsel and UEP/USEM were prepared to fully litigate the case if no settlement could be reached.

7) Interim Co-Lead Counsel and counsel for UEP/USEM had an initial discussion in the summer of 2013.

8) Interim Co-Lead Counsel then began to discuss a potential global mediation with defense counsel. In August 2013, the parties sought to stay the litigation and attend a joint mediation session in October. In January 2014, after the joint mediation appeared to be unsuccessful, Interim Co-Lead Counsel decided to approach several individual Defendants, including UEP/USEM, about a potential resolution of the claims.

9) These discussions led to substantive negotiations with UEP/USEM. After several rounds of telephone calls and email exchanges, the parties eventually agreed to a tentative \$500,000.00 settlement based primarily on UEP/USEM's financial condition and the fact that it was not a producer. In addition, UEP/USEM agreed to produce certain documents that had been previously withheld on the grounds of attorney-client privilege and provide other cooperation, as well.

10) On March 12, 2014, the parties reached an agreement in principle and signed a term sheet laying out the terms of their settlement. Because UEP/USEM were unwilling to provide a proffer or allow Interim Co-Lead Counsel to preview the documents that they would produce as a term

of the settlement, and because Counsel wanted to ensure that Direct Purchasers were getting valuable consideration in exchange for the broadly negotiated release, the parties agreed to allow Magistrate Judge Rice to facilitate the settlement discussions by previewing the documents in camera and ensuring that they did provide value to the class.

11) On March 13, 2014, the parties discussed their proposal with Judge Rice and Judge Rice agreed to preview the materials, which were provided to him. On March 19, 2014, Interim Co-Lead Counsel sent a letter to Judge Rice advising him of the types of materials that, if found in the UEP/USEM documents, they believed would provide value to the Class. On March 25, 2014, Judge Rice called Interim Co-Lead Counsel to confirm that the UEP documents provided material value to the Class. As such, the parties proceeded with a final agreement.

12) On May 21, 2014, the Settlement Agreement was fully executed by the Co-Leads and UEP/USEM's Counsel. A true and complete copy of this Agreement is attached as Exhibit 1. The cooperation that UEP and USEM have agreed to provide is set forth in Paragraph 46 of this Agreement.

13) UEP/USEM have also agreed to provide other cooperation relating to the production of certain pleadings and transcripts from the Kansas state action, assisting with questions regarding transactional data, authenticating documents, and making witnesses available to testify at trial, among other things.

14) Fact discovery was well advanced at the time of the Settlement. Collectively, the defendants in this Action produced over 1 million documents, much of which had already been reviewed by Interim Counsel before the Settlement. Interim Counsel had also reviewed over 200,000 documents produced by UEP and USEM, and had deposed past and current UEP

Presidents Chad Gregory, Gene Gregory, and Al Pope. Interim Counsel had also deposed University of California Poultry Specialist Donald Bell, whose work is sponsored by UEP.

15) The Court granted preliminary approval of the proposed Settlement on July 30, 2014. (ECF No. 1027.) In the same Order, the Court authorized Interim Counsel to disseminate Notice by direct mail and by publication. A final fairness hearing is scheduled for May 6, 2015.

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

Dated: March 19, 2015

/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 DEFENDANTS UNITED EGG PRODUCERS AND UNITED STATES EGG
MARKETERS**

This Settlement Agreement (“Agreement”) is made and entered into as of this 21st day of May 2014 (the “Execution Date”) by and between United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”) and Direct Purchaser Plaintiffs’ Class representatives (“Plaintiffs”) (as defined herein at Paragraph 18), 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 8 and 24).

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 UEP, USEM and other Defendants (the “Action”);

WHEREAS, Plaintiffs allege that UEP and USEM 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, UEP and USEM deny 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 their belief that they are not liable for, and have good defenses to, the claims alleged in the Action, UEP and USEM desire to settle the Action in view of their financial condition and resources, 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 inability of UEP and USEM to pay a significant judgment and has reached settlement terms reflecting the financial condition of UEP and USEM;

WHEREAS, Class Counsel and Counsel for UEP and USEM 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 UEP and USEM 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 as against UEP and USEM, 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, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to UEP and USEM only, without costs as to Plaintiffs, the Class, UEP or USEM, 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. "Counsel for UEP and USEM" shall refer to the law firm of Pepper Hamilton LLP, 3000 Two Logan Square, Eighteenth and Arch Streets, Philadelphia, Pennsylvania, 19103-2799.
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 25 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. “Direct Action Plaintiffs’ Action” shall mean all actions brought by direct purchasers of Shell Eggs and Egg Products that are not brought on behalf of a class of direct purchasers and are currently pending in the Eastern District of Pennsylvania.

8. “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.

9. “Escrow Account” shall mean the account with the Escrow Agent that holds the Settlement Fund.

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

11. “Escrow Agreement” shall mean Agreement Between Citibank, N. A. as ‘Escrow Agent’ and United Egg Producers and United States Egg Marketers and Bernstein Liebhard LLP, Hausfeld LLP, Susman Godfrey LLP, and Weinstein Kitchenoff & Asher LLC as Interim Co-Lead Counsel for Direct Purchaser Plaintiffs executed contemporaneously with this Agreement.

12. “Fairness Hearing” shall mean 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.

13. “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.

14. “Indirect Purchaser Plaintiff Action” shall mean the action brought by indirect purchasers of Shell Eggs and Egg Products in the Fifth Amended Consolidated Class Action Complaint Filed by Indirect Purchaser Plaintiffs (ECF No. 866) currently pending in the Eastern District of Pennsylvania, and including all indirect purchaser actions transferred for coordination, and all indirect 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 UEP, USEM and other Defendants.

15. “Non-Settling Defendants” shall mean Defendants other than UEP and USEM.

16. “Other Settling Defendants” shall mean Moark LLC, Norco Ranch, Inc., Land O’Lakes, Inc., and Sparboe Farms, Inc.

17. “Parties” shall mean UEP, USEM, and Plaintiffs.

18. “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.

19. “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.

20. “Releasees” shall refer, jointly and severally, and individually and collectively to: UEP; USEM; all current employees of UEP and USEM, and former employees of UEP and USEM during the period January 1, 2000 through the Execution Date that are neither employees of Non-Settling Defendants nor employees of Other Settling Defendants; and each of the foregoing Releasees’ respective past and present officers, directors, parents, subsidiaries, affiliates, partners, agents, attorneys, and insurers, and their predecessors, successors, heirs, executors, administrators, and assigns. In addition, “Releasees” shall include current and former members of UEP and USEM listed on Exhibit A, which are neither Non-Settling Defendants nor Other Settling Defendants.

21. “Releasers” 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, agents, attorneys and insurers, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

22. “Settlement Amount” shall refer to five-hundred thousand (\$500,000) U.S. dollars.

23. “Settlement Fund” shall refer to the funds accrued in the Escrow Account established in accordance with Paragraph 38 below.

24. “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

25. 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 UEP and USEM 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

26. 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 UEP and USEM.

27. Within two (2) business days after the execution of this Agreement by all Parties, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against UEP and USEM in the Action pending approval of this Agreement. Within twenty (20) business days after execution of the Agreement by UEP and USEM, 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 UEP and USEM at least two (2) business days before filing. If UEP and USEM suggest 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 B, 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.

28. 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 any Non-Settling Defendant(s) in the Action or Other Settling Defendants during the Class Period that were previously identified by 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. 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.

29. 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 UEP and USEM, 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 UEP and USEM only, 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 UEP and USEM 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 UEP and USEM.

30. 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 UEP and USEM 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, UEP and USEM shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraph 35 of this Agreement.

31. Should UEP, USEM or Plaintiffs be required to submit any of UEP's or USEM'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

32. In addition to the effect of any final judgment entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have, including any and all known and unknown, foreseen and unforeseen, concealed or hidden, suspected or unsuspected

injuries or damages, and the consequences thereof, on account of, arising out of, or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants and/or their members and any entities or individuals that may later be added as a defendant to the Action, (ii) the reduction, restraint or restriction of supply and/or production capacity of Shell Eggs or Egg Products, 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) in the Complaints filed in the Action (the "Complaints"), that 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 January 1, 2000 to the Execution Date (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.

33. 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.

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

35. The release and discharge set forth in Paragraphs 31 through 33 herein do not include claims relating to payment disputes, physical harm, defective products, or bodily injury (the "Excepted Claims") and do not include any Non-Settling Defendant or Other Settling Defendant.

36. 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

37. 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 30 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 UEP, USEM, 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, and shall, within that same time period, submit written notice to the other Parties and to the Escrow Agent of their decision to rescind the Agreement. If this Agreement is rescinded, UEP and USEM shall submit written instructions to the Escrow Agent regarding wire transfer of the amounts remaining in the Settlement Fund with simultaneous notice of such instructions provided to Class Counsel, and Class Counsel shall, within five (5) business days of receipt of such notice, notify the Escrow Agent of any objections to the instructions of UEP and USEM. The Escrow Agent shall, within ten (10) business days of receipt of written instructions by UEP and USEM to the Escrow Agent regarding wire transfer, wire transfer all amounts in the Escrow Account created pursuant to Paragraph 38 hereof, less any expenses authorized pursuant to this Agreement, pursuant to their instructions; provided, however, no funds shall be wire transferred until expiration of the deadline by which Class Counsel may object to UEP and USEM's instructions to the Escrow Agent, as provided in this paragraph. If Class Counsel object to the wire transfer instructions, the provisions of Article First, subsection H of the Escrow Agreement shall govern.

38. If Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 30 of this Agreement, Class Counsel, UEP and USEM 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 UEP, USEM, 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.

39. In the event of rescission, all documents produced pursuant to Paragraph 44(b) shall be returned to UEP and USEM or destroyed by Class Counsel at their own expense, provided however that such documents may be destroyed rather than returned if an affidavit of such destruction is promptly provided by Class Counsel to Counsel for UEP and USEM. Class Counsel further agree that the fact of the agreement by UEP and USEM to produce, and the production of, documents pursuant to Paragraph 44(b) does not constitute waiver of the attorney-client privilege or work-product protections that UEP or USEM may assert apply to those documents. UEP and USEM further agree that if the Agreement is rescinded, Plaintiffs may seek production of documents produced pursuant to Paragraph 44(b) and any other documents withheld by UEP and/or USEM as privileged or protected on any other basis, and Plaintiffs agree that if they seek such production, they may not use, refer to or rely on in any way information as to those documents' content that was learned by Plaintiffs as a result of their review of the documents produced pursuant to this Agreement.

F. Payment

40. UEP and USEM shall pay or cause to be paid the Settlement Amount in settlement of the Action. Three-fifths of Settlement Amount (\$300,000) shall be wire transferred by UEP and USEM 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. The remaining two-fifths of the Settlement Amount (\$200,000) shall be wire transferred by UEP and USEM or its designee on or before January 5, 2015.

41. 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.

42. Class Counsel may, at a time approved by the Court, seek an award of attorneys' fees and reasonable litigation expenses, not to exceed one-third of the Settlement Amount, 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. UEP and USEM agree not to object to Class Counsel's petition to the Court for payment of attorneys' fees, costs, expenses (in an amount consistent with this Paragraph), and incentive awards for class representatives from the Settlement Amount. In the event the Court does not approve Class Counsel's petition for payment of attorneys' fees, costs, expenses, or awards an amount less than that sought in Class Counsel's petition, such denial or reduction shall have no effect on this Agreement. Except to the extent that the Court may award attorneys' fees and litigation expenses to be paid out of the Settlement Amount, UEP and USEM shall have no obligation to pay any fees or expenses of Class Counsel.

43. 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 UEP and USEM, 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.

44. 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.

45. 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 UEP or USEM in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

G. Cooperation

46. UEP and USEM shall provide cooperation in accordance with the terms and provisions of this Agreement. Cooperation obligations of UEP and USEM 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. **Depositions:** Class Counsel may participate in any depositions of UEP or USEM, but agree that they will not lead such depositions nor question the witnesses. Plaintiffs agree to withdraw their notice of deposition, pursuant to Federal Rule of Civil Procedure 30(b)(6), as to UEP and USEM.

b. **Production of Documents Withheld on Grounds of Attorney-Client Privilege or Work Product Protection:** The parties have agreed that UEP and USEM will, within five (5) business days of the Execution Date and pursuant to the Stipulation and Order Pursuant to Federal Rule of Evidence 502(d) signed by the Court on December 20, 2012, produce or authorize the production of the logged documents on the list agreed to by the Parties and attached to this Agreement as Exhibit C, which include, but are not limited to, the documents created between January 1, 1999 to September 23, 2008 regarding the Capper-Volstead immunity in their possession which include (a) any documents to or from attorneys at Brann & Isaacson; (b) any documents to or from other UEP counsel and; (c) any documents that reference such legal advice provided by attorneys at Brann & Isaacson or other UEP counsel. In addition, Defendants will not oppose the production of such documents in the possession of other non-settling defendants or in the possession of any third-party that has been subpoenaed prior to August 31, 2013. If Plaintiffs identify other privileged UEP or USEM documents that fall within the parameters of this Paragraph 46(b) that were not reflected on privilege logs served prior to the Execution Date, the parties will work in good faith to determine if such documents should be produced to Plaintiffs pursuant to the terms of this Agreement. All such documents shall be marked "Highly Confidential" pursuant to the Case Management Order No. 10 (Protective Order) signed by the Court on February 12, 2009. In exchange, Plaintiffs agree to not to seek relief relating to privilege disputes including the disputes identified in Plaintiffs' letter to UEP and USEM dated July 31, 2013, attached hereto as Exhibit D, until or unless this Agreement is rescinded pursuant to Paragraph 35.

Class Counsel agree that, except upon order of a court or the consent of UEP or USEM, they will neither provide copies of documents produced pursuant to this subparagraph nor share their contents with any person, plaintiff, counsel, class counsel or plaintiffs' counsel in any state or other federal action (other than Plaintiffs' Counsel), including counsel in the Indirect Purchaser Plaintiffs' Action, the Direct Action Plaintiffs' Action, or counsel for any person or entity that elects to exclude themselves from the Agreement, or with any third party not associated with Class Counsel or Plaintiffs' Counsel in prosecuting this action.

Plaintiffs may use documents produced pursuant to this Paragraph in litigating the Action, provided, however, that limitations on the use of material qualifying as Highly Confidential pursuant to the Protective Order in the Action entered on February 12, 2009 (ECF No. 50) shall apply as provided under that Order.

c. **Production of Documents Produced and Deposition Transcripts in the Kansas State Action:** Plaintiffs have served a subpoena seeking production of documents produced by UEP and USEM, Settling Defendants, and Non-Settling Defendants in litigation against Settling Defendants, Non-Settling Defendants, and UEP and USEM, pending in the District Court of Wyandotte County, Kansas ("Kansas Action"), along with pleadings filed in, and deposition transcripts from, the Kansas Action. Plaintiffs agree to withdraw their subpoena as to documents produced by UEP and USEM in the Kansas Action. UEP and USEM agree that, in the event Plaintiffs and Non-Settling Defendants reach agreement providing for, or a court orders, production of pleadings or transcripts from that litigation, UEP and USEM will not oppose the production of such transcripts or pleadings, provided, however, that UEP and USEM may redact, at their election, references in such transcripts or pleadings to documents created by UEP and USEM after September 23, 2008.

d. **Transactional Data:** UEP and USEM shall, upon request by Class Counsel, clarify to the best of its ability transactional and other data produced by them in discovery in the Action, including providing, upon reasonable request by Plaintiffs, follow-up information in response to questions Plaintiffs may reasonably have concerning such data. UEP and USEM will not be required to file a formal response to this request, and Plaintiffs agree to use reasonable efforts to minimize the burdens associated with this request.

e. **Authentication of Documents & Certifications as to Business Records:** Prior to trial in this Action, UEP and USEM 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 UEP and USEM, and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by UEP or USEM or sent to or received by UEP or USEM.

f. **Trial Testimony:** Upon the request of Class Counsel, and with expenses to be borne by UEP and USEM, UEP and USEM shall make available their current employees who are designated by Class Counsel to testify at trial in this Action. UEP and USEM shall use reasonable efforts to assist Class Counsel in arranging for the appearance of their former employees, who are designated by Class Counsel to testify at trial in this Action.

H. Notice of Settlement to Class Members

47. 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.

48. 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. If Notice of the Agreement is combined with dissemination of notice of other settlement agreements as provided for under Paragraph 28, 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 the Notice of the Agreement is combined with notice of one other settlement agreement and UEP and USEM’s Settlement Amount

accounts for ten (10) percent of the combined total amount of the two settlements, then ten (10) percent of such costs shall be paid from the Settlement Amount. In the event that this Agreement is disapproved, rescinded, or otherwise fails to become effective, only the costs of the combined notice and settlement administration that have been apportioned to UEP and USEM will be non-refundable to UEP and USEM.

I. Taxes

49. 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. UEP and USEM shall have no responsibility to make any tax filings relating to this Agreement.

50. 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)).

51. 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.

J. Miscellaneous

52. 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 UEP or USEM, if any, 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.

53. 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, UEP and USEM. 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. UEP and USEM submit to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. UEP and USEM otherwise retain all defenses to the Court's exercise of personal jurisdiction over them.

54. This Agreement and the terms of the settlement embodied in this Agreement represent a compromise of disputed claims, and the negotiations, discussions and communications in connection with or leading up to and including this Agreement are agreed to be confidential, non-discoverable, and within the protection of Federal Rule of Evidence 408 and corresponding state statutes and rules of evidence and shall not be construed as admissions or concessions by the Parties, or any of them, either as to any liability or wrongdoing or as to the merits of any claim or defense. Neither the existence of this Agreement nor any of its provisions shall be offered into evidence by any person or its agents in this or any other action, arbitration or proceeding as admissions or concessions of liability or wrongdoing of any nature on the part of any Party hereto, or as admissions or concessions concerning the merits of any claim or defense.

55. This Agreement constitutes the entire agreement among Plaintiffs (and the other Releasers), UEP, and USEM (and the other Releasees) pertaining to the settlement of the Action against UEP and USEM only, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs, UEP, and USEM in connection therewith. In entering into this Agreement, Plaintiffs, UEP, and USEM have not relied upon any representation or promise made by any of the Parties not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs, UEP, and USEM, and approved by the Court.

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

57. This Agreement may be executed in counterparts by Class Counsel and Counsel for UEP and USEM, and an electronically-scanned (in either .pdf or .tiff format) signature will be considered an original signature for purposes of execution of this Agreement.

58. 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.

59. 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 Plaintiffs, UEP, or USEM 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 UEP and USEM.

60. Neither UEP, USEM, nor Plaintiffs 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.

61. 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, Releasors, and Releasees any right or remedy under or by reason of this Agreement.

62. 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.

63. 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 UEP and USEM:

Jan P. Levine
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, Pennsylvania 19103-2799
levinej@pepperlaw.com

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

Dated: May 21, 2014



Steven A. Asher
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LLC
1845 Walnut Street, Suite 1100
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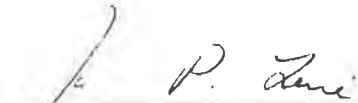


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(212) 336-8340 (fax)
ssusman@susmangodfrey.com

(Interim Co-Lead Counsel for the Class)



Jan P. Levine
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3000 Two Logan Square
Eighteenth and Arch Streets
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(215) 981-4714
(215) 981-4750 (fax)
levinej@pepperlaw.com

(On Behalf of UEP and USEM)

Exhibit A

EXHIBIT A

UEP and USEM Member Entities

Ace Farms, Inc.
Baer's Poultry Company
Berne Hi-Way Hatchery, Inc.
Big Stone Colony, Inc.
Boeckner Enterprises, Inc.
Bowden Egg Farm
Braswell Egg Company, Inc.
Brown Brothers Produce Company, Inc.
Caldwell Foods LLC
Cashton Farm Supply
Cedar Valley Egg Farm, LLP
Center Fresh Egg Farm, LLP
Centrum Valley Farms, LLP
Centurion Poultry, Inc.
Chestnut Mtn. Egg Farms, Inc.
Chickenville USA, Inc.
CHS, Inc.
Coffee Street Acres
Colorado Egg, LLC
Cooper Farms, Inc.
Country Charm Eggs, LLC
Creighton Bros.LLC
Dakota Layers, LLP
Demler Enterprises
Deweerd Poultry Farm, LLC
Dooyema & Sons, Inc.
Eagle Creek Colony, Inc.
Egg Innovations, LLC
Farm Crest Foods, Inc.
Fassio Egg Farms, Inc.
Feather Crest Farms, Inc.
Featherland Egg Farms, Inc.
Featherland Farms, Inc.
Flieg's Poultry Farm
Forsman Farms, Inc.
Freitas Fresh Eggs, Inc.
Fremont Farms of Iowa, LLP
Fremont Farms, LC
Ft. Recovery Equity Exchange Co.
GCB Foods, LLC
Gemperie Enterprises
Girard Brothers, LLC
Giroux's Poultry Farm, Inc.
Green Valley Poultry Farm, Inc.
Harold Heins & Sons, Inc.
Hawkeye Pride Egg Farm, LLP
Hemmelgarn & Sons, Inc.
Herbruck's Poultry Ranch, Inc.
Hertzfeld Poultry Farms, Inc.
Hickman's Egg Ranch, Inc.
Hickman's Family Farms of CA, LLC
Hidden Villa Ranch
Hillside Poultry Farms, Inc.
Hy-Line North America, LLC
Iowa Cage Free, LLP
ISE America, Inc.
ISE Newberry, Inc.
J&A Farms, LLC
James Farm, Inc.
JEM Eggs, LLC
Jenkins Poultry Farms
Jordan Egg Farm, Inc.
Junction Farms, Inc.
King, Elmer J.
Konos, Inc.
Kreher's Farm Fresh Eggs, LLC
L. R. F., Inc.
Larkin Poultry, LLC
Lathem Farms, Inc.
Latta's Egg Ranch, Inc.
Layer's, Inc.
Ledge Farms
M&C Anderson Pullets, Inc.
Mahard Egg Farm, Inc.
MCM Poultry Farm
Mercer Landmark, Inc.
Merrill's Poultry Farm, Inc.
Michael Farms
Minnich Poultry, LLC
Missouri Egg Farm LLC
MJ Homan Poultry Farm
Mobo Farms, Inc.
Morning Fresh Farms Inc.
Mussman's Back Acres, Inc.

Nature Pure, LLC
Nature's Best Egg Company, LLC
NC Layer Performance & Mgmt Program
Nebraska Eggs, LTD
Nelson Poultry Farms, Inc.
Novus International, Inc.
Oakdell Egg Farms, Inc.
Old Pike Farm, LLC
Olivera Egg Ranch, LLC
P & R Farms, Inc.
PCF Poultry, LLC
Pearl Valley Farms, Inc.
Phil Overdorf Farms, Inc.
Phil's Fresh Eggs, Inc.
Pollock Poultry
Powl Associates
Premier Eggs
Prime Foods, LLC
Puglisi Egg Farms of Delaware, LLC
Puglisi Egg Products, Inc.
R & S Farms
Railside Farms, LLC
Rembrandt Enterprises, Inc.
Rigtrup Egg Farm, LLC
Rindler Poultry, LLC
Ritewood, Inc.
Riverview Farms, Inc.
Ross-Medford Farms, LLC
S & R Egg Farms, Inc.
Schipper Eggs, LLC
Schmidt Poultry
Shepherd Poultry Farm, LLC
Simpson's Eggs, Inc.
Sioux County Egg Farm, LLP
SKS Enterprises, Inc.
Smith Quality Eggs, LLC
Soncrest Egg Company
Sperry Farm, Inc.
Sterup Poultry Farms, LLC
Stiebrs Farms, Inc.
Stoller Farms, Inc.
Strickland Partnership
Sunny Side Farms, Inc.
Sunny Yolk Egg Ranch, LLC
Sunrise Acres, Inc.
Sunrise Farms, LLC

The Country Hen
Thomas Poultry Farm of Schoylerville, Inc.
Trillium Farm Holdings, LLC
United Egg Marketing Corp.
Valley Fresh Foods, Inc.
Vermont Egg Farms, Inc.
Vorderstrasse Farms, LLC
Warnock, Melvin (Al)
Warren Farms, LLP
Wayne County Eggs, LLC
Weaver Brothers, Inc.
Wharton County Foods, LLC
Whitesville Poultry, LLC
Wilcox Farms, Inc.
Willamette Egg Farms, Inc.
Winchester Egg Farms, LLC
Wuebker Poultry, Inc.
Wuebker, Melvin
Zeilinger Farms, LLC
Zoet Poultry, Inc.

Exhibit B

**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 :
ALL DIRECT PURCHASER ACTIONS :**

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT WITH UNITED EGG PRODUCERS AND UNITED STATES EGG
MARKETERS, 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 Defendants United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”) do not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with UEP and USEM, 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.eggproductsettlemnt.com website prior to the objection and opt-out deadlines set forth below.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date: _____

Exhibit C

EXHIBIT C

Entries on 5.13.13 UEP/USEM/UEA Hard Copy Document Privilege Log
1-3
7-29
31-32
35-38
43-44
50-54
57
120-130
132
134-142
144-146
158-162
Entries on 5.13.13 UEP/USEM/UEA Electronic Document Privilege Log
1-5
7-12
14
18
46-48
92-94
97-98
100-102

111-112
121-122
135-139
143-163
208-210
225-228
231-242
276-280
282-286
292-294
386
Entries on 5.13.13 UEP/USEM/UEA Privilege Log for Documents in Possession of UEP and USEM's Co- Defendants
2-9
12
18-22
25-27
45
68
122-163
165-171
194
Entries on UEP Privilege Log for Documents in Possession of Golden Oval

4
7-15

Exhibit D

EXHIBIT D

quinn emanuel trial lawyers | new york

51 Madison Avenue, 22nd Floor, New York, New York 10017-1601 TEL: (212) 849-7000 FAX: (212) 849-7100

WRITER'S DIRECT DIAL NO.
(212) 849-7152

WRITER'S INTERNET ADDRESS
steigolson@quinnemanuel.com

July 31, 2013

VIA E-MAIL

Eli Segal
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799

Re: In re Processed Egg Products Antitrust Litigation

Dear Eli:

I write on behalf of the Direct Purchaser Plaintiffs ("Plaintiffs") regarding documents that Defendants UEP, USEM, and UEA (together for the purposes of this letter "UEP") have either withheld or redacted on the grounds of attorney-client privilege or work-product doctrine. Based on a review of UEP's privilege logs and the redacted documents produced by UEP, Plaintiffs have determined that UEP's assertion of privilege or protection over certain documents, portions of documents, and categories of documents, appears unjustified, as detailed below.

A. Documents concerning the "Compassion Over Killing" lawsuit against UEP

UEP has withheld or redacted numerous documents concerning the lawsuit brought by Compassion Over Killing against UEP. UEP's own description of many of these documents facially indicates that they are not privileged. For example:

quinn emanuel urquhart & sullivan, llp

LOS ANGELES: 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 TEL: (213) 443-3000 FAX: (213) 443-3100
SAN FRANCISCO: 150 California Street, 22nd Floor, San Francisco, California 94111-4788 TEL: (415) 875-6600 FAX: (415) 875-6700
REDWOOD SHORES: 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2130 TEL: (650) 801-5000 FAX: (650) 801-5100
CHICAGO: 140 Madison Street, Suite 2450, Chicago, Illinois 60661-2510 TEL: (312) 705-7400 FAX: (312) 705-7400
WASHINGTON, DC: 11299 Pennsylvania Avenue NW, Suite 825, Washington, District of Columbia 20004-2400 TEL: (202) 538-8000 FAX: (202) 538-8100
LONDON: 16 Old Broad Street, London EC4M 7EG, United Kingdom TEL: +44 20 7653 2000 FAX: +44 20 7653 2100
TOKYO: NBF Hibuya Building, 25F, 1-1-7, Uchikawachiba, Chiyoda-ku, Tokyo 100-0011, Japan TEL: +81 3 5510 1711 FAX: +81 3 5510 1712
MANNHEIM: Mittelstraße 42, 68165 Mannheim, Germany TEL: +49 621 43298 6000 FAX: +49 621 43298 6100
MOSCOW: Visionary Building, 3rd Floor, 10 Yuzvichenska Street, Moscow 125009, Russia TEL: +7 495 797 3666 FAX: +7 495 797 3667
HAMBURG: Andler Allee 3, 20099 Hamburg, Germany TEL: +49 40 89728 7000 FAX: +49 40 89728 7100

EXHIBIT D

- Document No. 60 on UEP's Electronic Document Privilege Log (dated May 13, 2013) ("Electronic Privilege Log") is an email from Gene Gregory of UEP to Howard Magwire of UEP, copying Al Pope of UEP, which UEP describes as a "Confidential email discussing defense of COK lawsuit regarding UEP animal welfare program." No attorney were copied on the email, which does not purport to contain the advice of counsel, yet UEP has withheld this document on the grounds of "UEP Work Product."
- Document No. 76 on UEP's Privilege Log for Documents in Possession of UEP and USEM's Co-Defendants (dated May 13, 2013) ("Co-Defendant Privilege Log") is a memorandum from Gene Gregory of UEP to the members of UEP's Executive Committee Members. No attorneys are listed in the author or recipient fields for this memorandum, which UEP describes as a "Confidential memorandum reporting on mediation conference in COK lawsuit regarding UEP animal welfare program and containing UEP counsel's legal advice regarding the same." UEP has withheld this document on the grounds of "Attorney-Client" privilege and "Work Product."
- Document No. 172 on UEP's Co-Defendant Privilege Log is a document authored by Gene Gregory of UEP, which UEP describes as "Confidential notes regarding NAD Review Board hearing and NAD action initiated by COK regarding UEP animal welfare program." Although an attorney did not prepare these notes, UEP has withheld them on the grounds of "UEP Work Product."

None of these documents appear to be communications with counsel requesting or reflecting legal advice that would fall within the bounds of the attorney-client privilege. (*See* Docket Entry No. 585, Mem. & Opinion in Support of Order re: Direct Purchaser Plaintiffs' Motion to Compel Production of Sparboe Documents and Other Information [hereinafter "Magistrate Judge Rice Privilege Order"], Oct. 19, 2011, at 2 ("Were any of the communications at issue made for the purpose of obtaining or providing legal advice? If not, they cannot fall within the bounds of the attorney-client privilege".) Merely discussing a lawsuit does not make the content of that discussion privileged.

Moreover, Gene Gregory of UEP is not an attorney and his notes, mental impressions, and/or communications with other non-attorneys cannot be withheld as Attorney Work Product. As Magistrate Judge Rice explained: "The work-product doctrine 'is designed to protect material prepared by an attorney acting for his client in anticipation of litigation.'" (*See* Magistrate Judge Rice Privilege Order at 9 (quoting *United States v. Rockwell Int'l*, 897 F.2d 1255, 1265 (3d Cir. 1990).)

Plaintiffs have the same concerns about the following entries on UEP's privilege logs: Document Nos. 36, 37, 38, 42, 43, 49, 50, 59, 60, 69, 87, 88, 117-119, 124, 125, and 128 on UEP's Electronic Privilege Log; Document Nos. 34, 45-48, 61, 96, 97, 103, and 104 on UEP's Hard Copy Document Privilege Log (dated May 13, 2013) ("Hard Copy Privilege Log"); Document Nos. 11, 13, 16, 24, 33, 50-52, 60-63, 76-81, 92-99, and 172-190 on UEP's Co-Defendant Privilege Log.

EXHIBIT D

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

B. Privilege log entries for withheld email chains involving multiple parties

UEP also has withheld numerous documents that are described as “Confidential email exchange[s]” among various individuals, some of whom are counsel and some of whom are not. However, Plaintiffs are unable to evaluate the basis for UEP’s assertion of privilege over these documents based on the minimal information provided by UEP. For example:

- Document No. 118 on UEP’s Electronic Privilege Log is described as an email from Howard Magwire of UEP to Gene Gregory of UEP. The privilege log entry indicates that no other person was copied on this particular email. However, the description of the document states that this document is a “confidential email exchange among Gene Gregory, Howard Magwire,” and several other persons, including Kevin Haley (UEP counsel) “containing legal advice of Haley regarding petition filed by COK with FDA regarding egg labeling requirements and attaching draft UEP response prepared by Haley.” UEP has withheld this email exchange on the grounds of “Attorney-Client” privilege.
- Document No. 166 on UEP’s Co-Defendant Privilege Log is an email from UEP Long Range Planning Committee Chairman Roger Deffner to Chad Gregory of UEP. The privilege log entry indicates that no other person was copied on this particular email. However, the description of the document provided by UEP states that this document is a “confidential email exchange among Roger Deffner, Chad Gregory, Kevin Haley (UEP counsel), Gene Gregory (UEP President) and Mike McGriff (UEP Dir. Member Services) requesting and discussing request for legal advice regarding Capper-Volstead.” UEP has withheld this email exchange on the grounds of “Attorney-Client” privilege.

It is unclear from these privilege log entries how many emails the “exchanges” contain, who if anyone was copied on each email in the chain and, most importantly, whether counsel was copied on all or only some of the emails in the exchange. No attorneys are identified in the “Author/From” or “To” fields provided for these email exchanges, suggesting that counsel was not on every single email in the chain. An entire series of email exchanges cannot be withheld as privileged merely because one or multiple emails in the chain constitute privileged communications with counsel; rather, the emails should be produced with any privileged communications redacted. *See, e.g., Rhoads Indus. v. Bldg. Materials Corp. of Am.*, 254 F.R.D. 238, 242 (E.D. Pa. 2008)

In addition to the specific examples provided, Plaintiffs have the same concern about the following entries on UEP’s privilege logs: Document Nos. 33, 118, 119, 124-25, 128, and 371-73 on UEP’s Electronic Privilege Log; Document Nos. 92-99, 161, 165, 166, 168, and 169 on UEP’s Co-Defendant Privilege Log. Please review these documents and either produce the email exchanges, with any appropriate redactions, or provide amended privilege log entries that adequately explain with specificity UEP’s basis for withholding each of these email exchanges in full and not only the privileged portions. *See Rhoads Indus., supra.*

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C. Communications with nonmembers

UEP has withheld or redacted communications with individuals who were apparently not members of UEP at the time of the communication. For example:

- Document No. 43 (UE0142186-89) on UEP's Hard Copy Privilege Log is a redacted email from Justin Whaley of Country Creek Farms to Gene Gregory, copying other employees of Country Creek Farms. UEP has redacted this document on the grounds of "UEP Attorney-Client Privilege" and identifies Justin Whaley as a UEP member on the privilege log. Yet UEP stated in response to DPP's Joint Interrogatory No. 7 that Country Creek Farms never was a member of UEP. Thus, communications with representatives of Country Creek Farms are not privileged.
- Document No. 82 on UEP's Co-Defendant Privilege Log is identified as a "confidential email forwarding and discussing confidential memorandum from Brann & Isaacson (UEP counsel) providing legal advice regarding settlement of COK lawsuit." However, the email recipients include "UEP Animal Welfare Committee Observers" such as nonmembers Kevin Whaley of Country Creek Farms and Jason Wadsworth of Wegman's Food Markets, Inc. Communications with these nonmember "observers" are not privileged.

It is well-established that communications with third-parties are not privileged, and that disclosing otherwise privileged communications to third-parties waives any claim of privilege. *In re Teleglobe Commcn's Corp.*, 493 F.2d 345, 361 (3d Cir. 2007). UEP has no basis for withholding communications with nonmembers under the purview of the "UEP Attorney-Client Privilege." Nor can UEP withhold minutes of meetings that were attended by nonmembers or otherwise privileged communications that have been disclosed to nonmembers.

In addition to the specific examples provided, Plaintiffs have the same concerns about the following entries on UEP's privilege logs: Document Nos. 82-93, 95, 98, 109-122, 129-33, 134-40, 147, 150-53, 191, and 192 on UEP's Co-Defendant Privilege Log; Document Nos. 137-139, and 143 of UEP's Electronic Privilege Log; Document Nos. 120 and 162 on UEP's Hard Copy Privilege Log.

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

D. Meeting minutes and related documents

UEP has redacted certain portions of the minutes of various UEP committee meetings, as well as other documents related to those meetings. For example:

- Document No. 53 (UE0944732-33) on UEP's Hard Copy Privilege Log are minutes from an undated meeting held by the UEP Committee for Egg Products Market

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Discovery. Attendees at this meeting included UEA Chairman Toby Catherman. UEP's privilege log states that this was a confidential meeting, and that the redacted portion of the document "reflect[s] request for legal advice from and provision of legal advice by Martin Eisenstein (UEP counsel) regarding Capper-Volstead."

- Document No. 122 (MOARK0039248-251) on UEP's Co-Defendant Privilege Log are minutes from a February 27, 2007 meeting of the Long Range Planning Committee. The minutes identify nonmember Kevin Whaley of Country Creek Foods as a participant in this meeting, and thus any communications that took place at this meeting could not have been privileged.
 - ◆ Document UE0144760-68 identified in UEP's clawback letter dated April 29, 2013 ("Clawback Letter") appears to be a copy of Chad Gregory's handwritten minutes and notes the same Long Range Planning Committee meeting. Various portions of the handwritten notes are redacted, but nothing in this document suggests that it contains anything more than Chad Gregory's own mental impressions of what transpired at this meeting. As explained above, the presence of a nonmember at this meeting eliminates any claim of privilege over the communications that took place at the meeting, as well as any related documents.
 - ◆ Documents Nos. 129 (MFI0633678-81) and 150 (MFI0633682-85) on UEP's Co-Defendant Privilege Log are emails sent by Chad Gregory forwarding the same minutes of the Long Range Planning Committee to various recipients, including UEP's public relations firm Golin Harris). Comments from these recipients, none of whom were counsel, were requested, and counsel was only copied. These emails do not contain "confidential" or "attorney-client" markings, nor does the content of these emails otherwise suggest that the attached meeting minutes should be kept confidential.

UEP has no basis for asserting privilege over minutes taken at UEP committee or board meetings, or over the handwritten notes and mental impressions of a non-attorney from those open meetings. Both Gene Gregory and Al Pope of UEP testified that UEP meetings were open meetings (*see* Tr. of June 22, 2013 Dep. of Gene Gregory at 781; Tr. of May 21, 2013 Dep. of Al Pope at 79-80.) and, as set forth above, both UEP's privilege log entries and the meeting minutes that have been produced in this litigation make clear that nonmembers participated in many of these meetings. Moreover, Magistrate Judge Rice has held previously that UEP meetings were open to the public and the trade press until at least 2009. (*See* Magistrate Judge Rice Privilege Order at 21.) The fact that the meeting minutes of the Long Range Planning Committee identified above were circulated to various non-attorneys for comments, without any indication that they should be kept confidential, only further demonstrates that they are not protected communications.

In addition to the specific examples provided, Plaintiffs have the same concerns about the following entries on UEP's privilege logs: Document Nos. 90, 137, 138, 143, and 145 on UEP's

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Electronic Privilege Log; Document Nos. 120, 139, 158, and 162 on UEP's Hard Copy Privilege Log; Document Nos. 19, 129, 134, 136, 147, 150, and 155 on UEP's Co-Defendant Privilege Log.

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

E. Communications to which counsel was not a party and which do not otherwise appear to be contain privileged information

UEP has redacted numerous communications to which no counsel was a party and which contain no other "attorney-client privilege" or "confidential" markings or other indications that they contain privileged communications. None of these documents appear to have been prepared for the purpose of obtaining or providing legal advice. For example:

- Documents UE0200467-69 and UE0661331-33, identified in UEP's Clawback Letter are copies of a letter from Gene Gregory of UEP to the President of Moark's Egg Products Division explaining the role and goals of UEP's Price Discovery Committee. The letter does not request or contain legal advice and contains no "confidential" or "attorney-client privilege" markings. The letter appears to be a non-privileged communication from one executive to another with no apparent involvement of an attorney, and no indication that it was prepared for the purpose of obtaining or providing legal advice. UEP has not produced a privilege log setting forth the basis for this redaction, and on its face the document does not appear to contain any privileged information.
- Document No. 2 (UE0946358) on UEP's Electronic Privilege Log is a one-page email from Gene Gregory of UEP to Mike Bynum and Paul Bahan. The unredacted portions of the email provide an update of recent developments concerning the Certified program. The privilege description provided by UEP states that the redacted portion reflects a "request for legal advice from Irving Isaacson," but Isaacson is not copied on the email, nor is any other attorney.
- Document No. 10 (UE0945198) on UEP's Electronic Privilege Log is an email exchange between Chad Gregory of UEP and Linda Reickard of UEP regarding a "Producer Questionnaire." UEP's privilege log describes the document as a "redacted portion of a confidential email exchange between Chad Gregory and Linda Reickard reflecting request for legal advice from Irving Isaacson (UEP counsel) regarding UEP membership agreement." However, counsel was not copied on this email exchange, and nothing about the email exchange suggests it was prepared for the purpose of obtaining or providing legal advice.
- Document No. 14 (UE0945158-60) on UEP's Electronic Privilege Log is a memorandum from Gene Gregory to members of the Producer Committee for Animal Welfare. UEP's privilege log describes the document as a "redacted portion of a confidential memorandum reflecting legal advice of and request for legal advice from

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Irving Isaacson (UEP counsel) regarding UEP animal welfare program.” However, the unredacted portions of the memorandum merely update the committee on pending issues and motions requiring a vote; it thus seems unlikely that the redacted portion of the document reflects legal advice by or a request for legal advice from counsel, particularly in light of the fact that the memorandum contains no “confidential” designations and because of the fact that counsel was not copied on the memorandum.

- Document No. 88 (UE0946956-57) on UEP’s Electronic Privilege Log is an email exchange between Gene Gregory of UEP and Linda Reickard of UEP regarding invoices and income. UEP’s privilege log describes the document as a “redacted portion of a confidential email exchange between Gene Gregory and Linda Reickard discussing potential settlement of legal challenges to UEP animal welfare program.” Internal discussions of legal matters are not privileged, and counsel was not involved in this email exchange.
- Document No. 6 (CM00717798-804) on UEP’s Co-Defendant Privilege Log appears to be a packet of materials that was faxed by UEP to Cal-Maine Foods. One of the redacted pages is a fax cover sheet. The unredacted portion indicates that the fax was sent by Gene Gregory of UEP to Dolph Baker and Ken Looper of Cal-Maine Foods. No attorney was a recipient of the fax, yet the fax description box is redacted and stamped “attorney-client privilege.” Moreover, the faxed material appears to contain the type of non-privileged material regularly sent to UEP members, including a letter calling for a voluntary flock reduction, supply/demand statistics, and a commitment sheet. Nothing about the documents suggests they were prepared for the purpose of obtaining or providing legal advice.
- Document No. 11 (CM00717700-03) on UEP’s Co-Defendant Privilege Log is a set of documents that includes an email from Gene Gregory to the members of the UEP Animal Welfare Committee. Counsel was not copied on the email, but UEP’s Co-Defendant Privilege Log described it as a “redacted portion of confidential email within document compilation, containing legal advice of Kevin Haley (UEP counsel) and providing an update regarding NAD action initiated by COK regarding UEP animal welfare program.” None of the other documents in the set of documents – an egg advertisement/coupon, a non-privileged UEP letter to a third-party price discovery entity, and a memorandum on Urner Barry PCT Survey findings – were prepared for the purposes of obtaining or providing legal advice, but instead were of the type that were widely distributed and populate the Joint Document Depository.

In addition to the specific examples provided, Plaintiffs have the same concerns about the following entries on UEP’s privilege logs: Document Nos. 47 and 147 on UEP’s Electronic Privilege Log; and Document Nos. 31 and 43 on UEP’s Hard Copy Privilege Log.

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

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F. Communications to which counsel is a party but that do not appear to request or seek legal advice

UEP has also redacted documents that are communications copying counsel but do not appear to be the type of communication that is protected by the attorney-client privilege:

- Document NL000819-21, identified in UEP's Clawback Letter, is an email exchange between Gene Gregory and the employees of several Defendants regarding the marketing of certified products by non-certified producers. UEP counsel Irving Isaacson is copied on only the last email in the exchange, but nothing about the email suggests it was prepared for the purpose of requesting or obtaining legal advice or reflects any legal advice previously given. Various portions of the email chain are redacted, including portions of an email to which counsel was not a party and which appear to be merely discussions of one member's views. There are no "confidential" or "attorney-client privilege" markings on this email chain.
- Document No. 21 (MOARK0039217-22) in UEP's Co-Defendant Privilege Log is a near-duplicate of NL000819-21 and does not appear privileged for the same reasons.

As the Court previously has explained, "merely copying an attorney on a communication does not establish that the communication is privileged." (Magistrate Judge Rice Privilege Order at 10-11 (quotation and alterations omitted).) Magistrate Judge Rice rejected UEP's claim of privilege over a memorandum from Sparboe's president to Gene Gregory of UEP and certain producers even though Irving Isaacson was one of the recipients of the memorandum, because nothing in the document suggested that it was prepared in connection with a request for or the provision for legal advice. (*Id.* at pp. 11-13.) Like the non-privileged Sparboe documents addressed in Magistrate Judge Rice's Privilege Order, the documents above contain no indication that they were prepared for the purpose of obtaining or providing legal advice. To the contrary, the unredacted portions suggest that Irving Isaacson was merely copied on the final email of a chain that discussed UEP's policies for permitting non-certified companies to market certified eggs.

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

G. Documents not available on the JDD

UEP has provided bates numbers in its privilege logs for certain documents that have been redacted on grounds of privilege, but which are not available at the identified bates numbers on the Joint Document Depository. Plaintiffs request that UEP clarify whether it intends to withhold these documents in their entirety or will produce them in redacted form. If a redacted document should have been produced, please produce it promptly. The following documents identified on UEP's Co-Defendant Privilege Log are not available:

EXHIBIT D

<u>Begbates</u>	<u>Endbates</u>
RA85520	RA85542
NL012000455	
NL012000453	NL012000454
NL012000448	NL012000452
NL012000456	NL012000458
NL012000437	NL012000443
NL012000429	NL012000432
NL012000422	NL012000424
NL012000495	NL012000497
NL012000498	NL012000500
RA85543	RA85545

In addition, the following two documents identified on UEP's Electronic Privilege Log not only have been entirely redacted, but appear to have been redacted without legitimate grounds. Plaintiffs request that UEP produce these documents:

- Document No. 1 (UE0753734) on UEP's Electronic Privilege Log is a one-page document that has been entirely redacted. The document is described in UEP's Electronic Privilege Log as the "redacted portion of a confidential letter reflecting legal advice from Irving Isaacson (UEP counsel) regarding Capper-Volstead," but it was sent by Al Pope to Bob Dominic, Board member of Dissolving UEP Member Northwest Egg Producers. Counsel was not a party to the communication. Based on UEP's own description of the document, it appears it was not a document prepared for the purpose of obtaining or providing legal advice.
- Document No. 151 (UE0619325-26) on UEP's Electronic Privilege Log also is entirely redacted. The document is described in UEP's Electronic Privilege Log as a "confidential email exchange reflecting provision of and request for legal advice from Kevin Haley (UEP counsel) regarding Capper-Volstead," but the email was from McGriff to Gene Gregory, copying Chad Gregory. Again, counsel was not a party to the communication. Based on UEP's own description of the document, it appears it was not a document prepared for the purpose of obtaining or providing legal advice.

H. Documents regarding the Capper-Volstead Act

UEP has withheld and redacted many documents on the grounds that they purportedly request, provide, or reflect legal advice from counsel regarding the Capper-Volstead Act. This position is, however, inconsistent with UEP's defense in this action that UEP and its members had a good faith belief that their conduct was exempt from the federal antitrust laws under the Capper-Volstead Act. (*See* Docket Entry No. 748, Defs.' Statement of Law, at 47.)

Since Defendants undeniably received legal advice from UEP counsel about this issue, the nature of that advice is necessarily relevant to the question of whether Defendants, in fact, had a good-faith belief that their conduct was protected by the Capper Volstead Act. Indeed, several

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Defendants expressly represented in response to Plaintiffs' Joint Interrogatory No. 6 that their purported good-faith belief in Capper-Volstead immunity was based on communications that UEP had with its counsel on this issue – some of which admittedly have been withheld as privileged. (See, e.g., National Food Corp.'s Response to Joint Interrogatory No. 6 (“NFC personnel were aware that UEP and USEM regularly consulted their attorneys on antitrust and Capper-Volstead issues. . . . These communications, some of which have been produced while others have been withheld by UEP or USEM as privileged, formed a significant part of the basis for [NFC's] belief.”).)

UEP cannot use the attorney-client privilege as both “a sword” and “a shield” by arguing that it had a good-faith belief that its actions were protected by Capper-Volstead, and then refusing to disclose communications with counsel that bear directly on that issue. See, e.g., *Merck Sharp & Dohme Pharmaceuticals SRL v. Teva Pharmaceuticals USA*, 2008 U.S. Dist. LEXIS 89661, at *2 (D.N.J. Nov. 5, 2008); *Moran v. Davita, Inc.* 2008 U.S. Dist. LEXIS 74326, at *2-3 (D.N.J. Sept. 26, 2008) (“Defendants cannot claim that all of their actions with respect to Plaintiff were taken for legitimate business reasons related to [an applicable statute] . . . and then refuse to disclose the opinion sought regarding the application of [that statute]. . . . Defendants seek to use the privilege as a shield, by refusing to disclose the [] opinion letter authored by [their outside counsel], and as a sword, by arguing that they acted upon a good faith business reason . . .”).

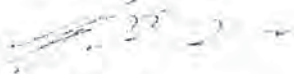
Accordingly, to the extent UEP intends to maintain its “good faith” defense, UEP must produce all documents regarding legal advice from counsel regarding Capper-Volstead that have been withheld or redacted as privileged. Please let us know whether UEP will agree to do so, or whether it will agree to withdraw its good faith defense.

* * *

In addition, please let us know when UEP will be providing an updated Log reflecting the clawed-back documents identified in your April 29, 2013 letter.

Finally, we confirm Plaintiffs' understanding that the parties are at an impasse regarding UEP's claim of privilege over document UE0153457 (which is Pope Exhibit 14). We trust there is no disagreement about this given our extensive correspondence.

Very truly yours,



Steig D. Olson

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS
ANTITRUST LITIGATION

MDL No. 2002

THIS DOCUMENT APPLIES TO ALL
DIRECT PURCHASER ACTIONS

Case No. 08-md-02002

**AFFIDAVIT OF JENNIFER M. KEOUGH
REGARDING NOTICE DISSEMINATION**

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

JENNIFER M. KEOUGH, being duly sworn, states:

1. I am Chief Operating Officer of Garden City Group, LLC¹ (“GCG”). I have over 25 years of experience working in the legal field. The overwhelming majority of that time has been spent managing complex projects and class action administration. The following statements are based on my personal knowledge and information provided by other experienced GCG employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

2. GCG is a recognized leader in legal administration services for class action settlements, bankruptcy cases and legal noticing programs. GCG has operational offices in the following locations: Lake Success, New York; New York, New York; Seattle, Washington; Chicago, Illinois; Dublin, Ohio; Tallahassee, Florida; Lake Oswego, Oregon;

¹ Please note that The Garden City Group, Inc. is now Garden City Group, LLC.

New Orleans, Louisiana; and Hammond, Louisiana. GCG has a staff of more than 1,000, including lawyers, a team of software engineers, call center professionals, notice and media experts, in-house legal advertising specialists and graphic artists with extensive website design experience.

3. GCG has a considerable amount of expertise in class action administration and the development of notice programs. In its history of over 30 years, our team has served as administrator for over 3,000 cases. GCG has mailed over 290 million notices, disseminated over 800 million emails, handled over 31 million phone calls, processed over 50 million claims, and distributed over \$37 billion in benefits. GCG's legal notices have appeared in more than 40 languages in approximately 170 countries.

4. Pursuant to Paragraph 35(a) of the Court's July 30, 2014 Order (1) Granting Preliminary Approval of the Proposed Settlement Agreement Between Direct Purchaser Plaintiffs and National Food Corporation and Direct Purchaser Plaintiffs and Midwest Poultry Services, LP; (2) Granting Preliminary Approval of the Proposed Settlement Agreement Between Direct Purchaser Plaintiffs and United Egg Producers and United States Egg Marketers; (3) Certifying the Classes for Purposes of Settlement; (4) Granting Leave to File Motion(s) for Fees and Expenses; (5) Granting Preliminary Approval of the Proposed Second Amendment to Settlement Agreement Between Direct Purchaser Plaintiffs and Sparboe Farms, Inc.; and (6) Approving the Notice Plan for the Preliminarily Approved Settlement Agreements and the Second Amendment to the Sparboe Agreement (the "Order"), GCG was appointed by the Court in the above-captioned litigation (the "Litigation") to act as Claims Administrator and to implement a legal notice program ("Notice Plan") to inform Class Members of proposed class action settlements between Plaintiffs and Defendants National Food Corporation ("NFC"), Midwest Poultry Services, LP ("Midwest"), and United Egg

Producers and United State Egg Marketers (“UEP/USEM”) (together, “the Settlements”), as well as a second amendment to the prior settlement agreement with Sparboe Farms, Inc. (“Sparboe”) expanding the class period (“Second Sparboe Amendment”).

5. Pursuant to Paragraph 35(g) of the Order, I submit this Affidavit to report to the Court and the Parties to the Litigation, that, in compliance with the Court’s Order, all elements of the Notice Plan have been successfully implemented. The Notice Plan elements include:

- Direct long-form notice by first-class mail to over 19,000 Class Members², which includes the long-form notice (the “Mailed Notice”);
- Publication of short-form notice (the “Summary Notice”) in *The Wall Street Journal* and a number of industry publications;
- A press release through PR Newswire;
- A dedicated website through which Class Members can obtain information concerning the Settlements and the Second Sparboe Amendment; and
- A toll-free telephone helpline through which Class Members can obtain information concerning the Settlements and the Second Sparboe Amendment.

DIRECT MAIL NOTICE

6. In 2010, prior to implementing notice relating to the Moark Settlement and the Sparboe Settlement, GCG received approximately 13,900 electronic records from egg producer Defendants. In March and April 2014, GCG received 8,413 supplemental customer records from the egg producer Defendants. Pursuant to Paragraph 35(b) of the Order, Defendants were ordered to provide supplemental records not included in prior productions to GCG. Between August 13, 2014 and October 1, 2014, GCG received various electronic data

² As defined in the Order, the Settlement Class consists of 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 July 30, 2014. Excluded from the Class 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.

files from various named Defendants, and was advised that the files contained the lists of supplemental Class Member names and addresses. In total, GCG received 723 supplemental electronic records from Defendants. Pursuant to Paragraph 35(b) of the Order, these records are treated as confidential and utilized solely for the purpose of disseminating notice and maintaining a customer database.

7. GCG loaded the supplemental data and the prior data into a database created for the Litigation. Prior to mailing the Mailed Notice, mailing addresses of potential Class Members were updated using the National Change of Address database (“NCOA”). The NCOA resulted in 334 address updates. GCG identified and excluded duplicate records. Additionally, GCG excluded known ineligible records including known records for Defendants and Producers. GCG formatted the Notice Packet, and caused it to be printed with the name and address of each known potential Class Member.

8. Pursuant to Paragraph 35(d) of the Order, GCG posted the Mailed Notices for first-class mail, postage pre-paid on October 27, 2014 (the “Notice Date”). On the Notice Date, 19,502 copies of the Mailed Notice were mailed via first-class mail. A copy of the Mailed Notice is attached hereto as Exhibit 1.

UNDELIVERABLES

9. As of the date of this Affidavit, GCG has received 40 Mailed Notices returned by the U.S. Postal Service with forwarding address information. Mailed Notices returned by the U.S. Postal Service with forwarding address information were promptly re-mailed to the updated addresses provided.

10. As of the date of this Affidavit, GCG has received 3,124 Mailed Notices returned by the U.S. Postal Service without forwarding address information.

NOTICE BY PUBLICATION

11. Pursuant to Paragraph 35(f)(i) of the Order, GCG caused the Summary Notice to be published on October 28, 2014 in *The Wall Street Journal*. Additionally, pursuant to Paragraph 35(f)(ii) of the Order, the Summary Notice was published in a variety of trade magazines that specifically cater to the restaurant and food industries. The Summary Notice published in the following trade magazines: *Restaurant Business* (October 2014 issue), *Convenience Store News* (October 2014 issue), *Hotel F&B* (November/December 2014 issue), *Nation's Restaurant News* (October 20, 2014 issue), *FoodService Director* (October 2014 issue), *Progressive Grocer* (November 2014 issue), *Food Manufacturing* (November/December 2014 issue), *Supermarket News* (November 3, 2014 issue), *Stores* (November 2014 issue), *Egg Industry* (October 2014 issue), *Bake* (October 2014 issue), *Food Processing* (November 2014 issue), *Long Term Living* (October/November 2014 issue), *PetFood Industry* (November 2014 issue), and *School Nutrition* (November 2014 issue). Summary Notice tear sheets from the publications are attached hereto as Exhibit 2.

PRESS RELEASES

12. Pursuant to Paragraph 35(f)(iii) of the Order, GCG coordinated the release of press releases, consisting of substantially the same language as the Summary Notice, on October 27, 2014. The releases were distributed over the US1 Newswire and the Hispanic Newswire and included distribution to over 1,000 journalists in the Restaurant and Food Industries.

WEBSITE

13. Pursuant to Paragraph 35(e) of the Order, GCG established and maintains a website dedicated to this Settlement (www.EggProductsSettlement.com) to provide additional

information to the Class Members and to answer frequently asked questions. Users of the website can download a Mailed Notice as well as review the Order, Settlement Agreements and other relevant Court documents. The web address is set forth in the Mailed Notice. The Settlement website has been operational since August 30, 2010, and is accessible 24 hours a day, 7 days a week. The website was updated to include information about the Settlements and the Second Sparboe Amendment on October 10, 2014. Between October 10, 2014 and the date of this Affidavit, the website has received 4,342 visits.

TOLL-FREE TELEPHONE HELPLINE

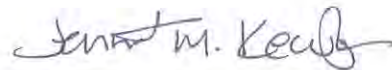
14. Pursuant to Paragraph 35(c) of the Order, beginning on August 30, 2010, GCG set up and continues to maintain an automated toll-free telephone number (1-866-881-8306), where potential Class Members can obtain information about the Settlement. This toll-free number is accessible twenty-four hours a day, seven days a week. Class Members who call the toll-free number have the option of leaving a voice message requesting a return call from a call center representative. The automated toll-free number was updated to include information about the Settlements and the Second Sparboe Amendment on October 10, 2014. Between October 10, 2014 and the date of this Affidavit, there have been 639 calls to the automated number. GCG has and will continue to expeditiously handle Class Member inquiries.

OBJECTIONS AND EXCLUSIONS

15. Pursuant to Paragraph 35(j) and Paragraph 35(l) of the Order, any Class Member who wished to be excluded from the Settlements and/or the Second Sparboe Amendment was required to submit their exclusion request to GCG postmarked or hand-delivered no later than March 6, 2015. As of the date of this Affidavit, GCG has received 197 timely Midwest Settlement exclusion requests, 197 timely NFC Settlement exclusion requests, and 197 timely UEP/USEM Settlement exclusion requests from Class Members.

Many of those who requested exclusion appear to be related entities with similar names and shared counsel. Of the entities who have requested exclusion, there are, for example, 12 “Kraft” entities, 14 “Unilever” entities, 5 “Kroger” entities, and 5 “Nestle” entities. As of the date of this Affidavit, GCG has not received any valid exclusion requests relating to the Sparboe Settlement as amended by the Second Sparboe Amendment. Attached as Exhibit 3 is a list of Class Members requesting exclusion.

16. Pursuant to Paragraph 35(k) and Paragraph 35(m) of the Order, any Class Member who wished to object to the approval of the Settlements and/or the Second Sparboe Amendment was required to submit their objection to the Court and the Parties, postmarked or hand-delivered no later than March 6, 2015. As of the date of this Affidavit, GCG has not directly received any objections from Class Members relating to the Midwest Settlement, the NFC Settlement, the UEP/USEM Settlement, or the Sparboe Settlement as amended by the Second Sparboe Amendment.



JENNIFER M. KEOUGH

Sworn to before me in Seattle, Washington,
this 18th day of March 2015.



Exhibit 1

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

If you purchased Shell Eggs or Egg Products, produced in the United States directly from any Producer from January 1, 2000 through July 30, 2014, you could be a Class Member in a proposed class action settlement.

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

The purpose of this notice is to inform you that Plaintiffs in the *In re Processed Egg Products Antitrust Litigation* reached settlements with Defendants Midwest Poultry Services, LP, National Food Corporation, United Egg Producers and United States Egg Marketers, together with their past and present parents, subsidiaries, and affiliates. If you fall within the definition of the "Settlement Class" as defined herein, you will be bound by the settlements unless you expressly exclude yourself in writing pursuant to the instructions below. This notice is also to inform you of the nature of the action and of your rights in connection with it.

This notice also informs you that the Settlement Class for the prior settlement agreement with Sparboe Farms, Inc. ("Sparboe Settlement") has been amended for a second time. The original Sparboe Settlement included direct purchases of Shell Eggs and Egg Products between January 1, 2000 and October 23, 2009, as described in the notice dated July 15, 2010. The first amendment to the Sparboe Settlement extended the Class Period to include direct purchases of Shell Eggs and Egg Products between October 24, 2009 through February 28, 2014 (the "First Sparboe Amendment"), as described in the notice dated February 28, 2014. The Sparboe Settlement now has been amended a second time to include direct purchases of Shell Eggs and Egg Products between March 1, 2014 and July 30, 2014 ("Second Sparboe Amendment"). If you become a member of the Sparboe Settlement Class solely because of this second extension of the Class Period (i.e., you purchased Shell Eggs or Egg Products between March 1, 2014 and July 30, 2014 but not before this period), you will be bound by the terms of that agreement unless you expressly exclude yourself in writing pursuant to the instructions below. If you were a member of the prior Sparboe Class, either under the original Sparboe Settlement class definition or the expanded definition in the First Sparboe Amendment, and took no action in response to the previous notice of the Sparboe Settlement dated July 15, 2010 or the notice of the First Sparboe Amendment dated February 28, 2014, you may not now exclude yourself and you remain bound by the Settlement.

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

This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the Settlements with Midwest Poultry Services, LP ("Midwest"), National Food Corporation ("NFC"), United Egg Producers ("UEP") and United States Egg Marketers ("USEM") (collectively, the "Midwest, NFC, and UEP/USEM Settlements") and of the Second Sparboe Amendment, and of your rights with respect to them, including, but not limited to, the right to remain a member of these Settlement Classes or to exclude yourself from them.

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

YOUR LEGAL RIGHTS AND OPTIONS REGARDING THE MIDWEST, NFC, AND UEP/USEM SETTLEMENTS:	
TAKE NO ACTION	You will receive the non-monetary benefits of the Midwest, NFC, and UEP/USEM Settlements and give up the right to sue Midwest, NFC, UEP and USEM with respect to the claims asserted in this case. You may be eligible to submit a claim at a later date to receive money from these Settlements.
EXCLUDE YOURSELF FROM THE MIDWEST, NFC, OR UEP/USEM SETTLEMENT CLASSES BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, March 6, 2015	This is the only option that allows you to ever be a part of any other lawsuit against Midwest, NFC, UEP or USEM with respect to the claims asserted in this case. You will not become a member of the Settlement Classes. If you exclude yourself, you will be able to bring a separate lawsuit against Midwest, NFC, UEP or USEM with respect to the claims asserted in this case.
OBJECT TO THE MIDWEST, NFC, OR UEP/USEM SETTLEMENTS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, March 6, 2015	You will remain a member of the Midwest, NFC, and UEP/USEM Settlement Classes, but you also have the right to comment on the terms of the Settlements.
GO TO THE FAIRNESS HEARING ON May 6, 2015 AFTER FILING A TIMELY OBJECTION TO THE MIDWEST, NFC, OR UEP/USEM SETTLEMENTS	If you file a timely objection, you may speak in court about the fairness of the Midwest, NFC, or UEP/USEM Settlements.

YOUR LEGAL RIGHTS AND OPTIONS REGARDING THE SECOND SPARBOE AMENDMENT:	
TAKE NO ACTION	<p>If you become a member of the Sparboe Settlement Class solely because of the expanded Class Period under the Second Sparboe Amendment (i.e., you did not purchase Shell Eggs or Egg Products prior to March 1, 2014), you will receive the benefits of the Sparboe Settlement and give up the right to sue Sparboe.</p> <p>If you were a member of the original Sparboe Settlement Class (i.e., you purchased Shell Eggs or Egg Products on or before October 23, 2009) and took no action in response to the prior notice of that Settlement dated July 15, 2010, you remain bound by the Sparboe Settlement.</p> <p>If you were a member of the Sparboe Settlement Class solely because of the expanded Class Period under the First Sparboe Amendment (i.e., you purchased Shell Eggs or Egg Products between October 24, 2009 and February 28, 2014, but not before this period), and took no action in response to the prior notice of the First Sparboe Amendment dated February 28, 2014, you remain bound by the Sparboe Settlement.</p>
EXCLUDE YOURSELF FROM THE EXTENDED SPARBOE SETTLEMENT CLASS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, March 6, 2015	<p>If you become a member of the Sparboe Settlement Class solely because of the expanded Class Period under the Second Sparboe Amendment (i.e., you did not purchase Shell Eggs or Egg Products prior to March 1, 2014), this is the only option that allows you to ever be a part of any lawsuit against Sparboe with respect to the claims asserted in this case.</p> <p>If you purchased Shell Eggs or Egg Products on or before February 28, 2014, you may not now exclude yourself from the Sparboe Settlement Class.</p>
OBJECT TO THE SECOND SPARBOE AMENDMENT BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, March 6, 2015	<p>You will remain a member of the expanded Sparboe Class, but you also have the right to comment on the terms of the Second Sparboe Amendment.</p>
GO TO THE FAIRNESS HEARING ON May 6, 2015 AFTER FILING A TIMELY OBJECTION TO THE SECOND SPARBOE AMENDMENT	<p>If you file a timely objection, you may speak in court about the fairness of the Second Sparboe Amendment.</p>

ABOUT THIS NOTICE & LITIGATION

1. Why did I receive this notice?

This legal notice is to inform you of the Midwest, NFC, and UEP/USEM Settlements that have been reached in the class action lawsuit, *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania, and of the expanded Class Period under the Second Sparboe Amendment. You are being sent this notice because you have been identified as a potential customer of one or more of the Defendants in the lawsuit.

2. What is this lawsuit about?

In this lawsuit, Plaintiffs allege that Defendants, certain Producers of Shell Eggs and Egg Products, conspired to decrease the supply of eggs. Plaintiffs allege that this supply conspiracy limited, fixed, raised, stabilized, or maintained the price of eggs, which caused direct purchasers to pay more for eggs than they would have otherwise paid. The term "eggs" refers to both Shell Eggs and Egg Products (which are eggs removed from their shells for further processing into a dried, frozen, or liquid form), but do not include specialty Shell Eggs, such as cage-free, organic, or nutritionally enhanced eggs, eggs used for growing, or Egg Products produced from such eggs.

In the fall and winter of 2008, lawsuits were filed in several federal courts generally alleging this conspiracy to depress egg supply. On December 2, 2008, the Judicial Panel on Multidistrict Litigation transferred those cases for coordinated proceedings before the Honorable Gene E. K. Pratter, United States District Judge in the United States District Court for the Eastern District of Pennsylvania. On January 30, 2009, Plaintiffs filed their first consolidated amended complaint alleging a wide-ranging conspiracy to fix egg prices that injured direct egg purchasers.¹ In December 2009, Plaintiffs filed their second consolidated amended complaint adding new allegations against the Defendants. On September 26, 2011, the Court dismissed claims against certain Defendants, but permitted Plaintiffs to proceed against all other Defendants. Plaintiffs filed their third consolidated amended class action complaint on January 4, 2013. On August 23, 2013, the Court dismissed claims under the third amended complaint for damages incurred by the Class prior to September 24, 2004. Claims for damages incurred after that date are proceeding.

To date, seven Defendants have settled with Plaintiffs in this matter, as described below:

The Sparboe Settlement. On June 8, 2009, Plaintiffs and Defendant Sparboe Farms Inc. (“Sparboe”) reached a settlement. A notice dated July 15, 2010 regarding the Sparboe Settlement was sent to potential Class Members in September 2010. The original Sparboe Settlement Agreement released all claims arising from this action between January 1, 2000 and June 8, 2009 in exchange for cooperation that substantially assisted Plaintiffs in prosecuting the claims in this Action. The Sparboe Agreement was finally approved by the Court on July 16, 2012. Since that time, Plaintiffs and Sparboe have amended the Sparboe Agreement twice. It was first amended to expand the Class Period from January 1, 2000 through October 23, 2009, to include claims arising from this action between October 24, 2009 and February 28, 2014 (“First Sparboe Amendment”). A notice dated February 28, 2014 regarding the First Sparboe Amendment was sent to potential Class Members in April 2014. The Court will hold a Fairness Hearing on September 18, 2014 to consider whether to approve the First Sparboe Amendment. The Sparboe Agreement was amended a second time to expand the Class Period from January 1, 2000 through February 28, 2014, to include claims arising from this action between March 1, 2014 and July 30, 2014 (“Second Sparboe Amendment”).

The Moark Settlement. Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. (“Moark Defendants”) entered into a settlement on May 21, 2010 providing \$25 million to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants. Notice of the Moark Agreement was sent to potential Class Members in September 2010. The Court approved the Moark Settlement on July 16, 2012, and checks were mailed to eligible Moark Settlement Class Members on July 3, 2013.

The Cal-Maine Settlement. Plaintiffs and Defendant Cal-Maine Foods, Inc. (“Cal-Maine”) entered into a settlement on August 2, 2013, to provide \$28 million to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants. A notice dated February 28, 2014 regarding the Cal-Maine Settlement was sent to potential Class Members in April 2014. The Court held a Fairness Hearing on September 18, 2014 to consider whether to approve the Cal-Maine Settlement.

The NFC Settlement. Plaintiffs and Defendant National Food Corporation (“NFC”) entered into a settlement agreement on March 28, 2014 to provide \$1 million to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants.

The Midwest Settlement. Plaintiffs and Defendant Midwest Poultry Services, LP (“Midwest”) entered into a settlement on March 31, 2014 to provide \$2.5 million to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants.

The UEP/USEM Settlement. Plaintiffs and Defendants United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”) entered into a settlement agreement on May 21, 2014 to provide \$500,000 to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants.

The Court will hold a Fairness Hearing on May 6, 2015 to consider whether to approve the Midwest, NFC and UEP/USEM Settlements and the Second Sparboe Amendment.

Plaintiffs represent both themselves (the named plaintiffs) and the entire Class of direct egg purchasers across the United States. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the Class present and share common questions

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

of law and fact. Plaintiffs claim that Defendants' actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from the year 2000 to the present. Plaintiffs allege that Defendants and unnamed co-conspirators controlled the egg supply through various methods that were all part of a wide-ranging conspiracy. These methods allegedly include, but are not limited to, agreements to limit or dispose of hen flocks, a pre-textual animal welfare program that was a cover to further reduce egg supply, agreements to export eggs in order to remove eggs from the domestic supply, and the unlawful coercion of producers and customers to ensure compliance with the conspiracy. Plaintiffs allege that by collectively agreeing to lower the supply of eggs, Defendants caused Shell Egg and Egg Product prices to be higher than they otherwise would have been. Midwest, NFC, UEP and USEM and the other Defendants deny all of Plaintiffs' allegations.

The Defendants remaining in this case include: Michael Foods, Inc.; Rose Acre Farms, Inc.; Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; NuCal Foods, Inc.; and R.W. Sauder, Inc.

THE MIDWEST, NFC, AND UEP/USEM SETTLEMENTS

3. Who is included in the Midwest, NFC, and UEP/USEM Settlements?

Midwest, NFC, and UEP/USEM entered into separate Settlement Agreements with Plaintiffs, but all three agreements include the same Class definition. For purposes of these Agreements, the Settlement Class is defined 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 July 30, 2014.

Excluded from the Settlement Class are:

- a. Midwest, NFC, and UEP/USEM, the Defendants that remain in the case, prior Settling Defendants (Moark Defendants, Sparboe and Cal-Maine), and their respective parents, subsidiaries and affiliates;
- b. Egg Producers, defined as 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 Producers;
- c. 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.
- d. Purchases of "specialty" Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types), purchases of Egg Products produced from specialty Shell Eggs, and purchases of "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat), and any person or entity that purchased exclusively specialty or hatching eggs.

Persons or entities that fall within the definition of the Settlement Class and do not exclude themselves will be bound by the terms of the Settlement Agreements.²

4. Why are there Settlements with Midwest, NFC, and UEP/USEM and what do they provide?

The NFC Settlement. Plaintiffs and Defendant National Food Corporation ("NFC") entered into settlement discussions in late 2012 and early 2013. Those discussions continued on an intermittent basis during 2013 and into 2014, during which time Plaintiffs' counsel reviewed more than 100,000 NFC documents and NFC's financial statements. After extensive arm's-length negotiations, on March 28, 2014, Plaintiffs and NFC reached a settlement providing \$1 million to a fund to compensate Class Members. The Settlement Amount was based primarily on NFC's uncertain financial condition and limited egg sales volume. Under the Settlement, NFC also will provide information concerning NFC's knowledge of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action, and as many as two witnesses to testify at trial. It is the opinion of Plaintiffs' attorneys that these nonmonetary benefits will materially assist Plaintiffs in further analyzing and prosecuting this Action against the remaining Defendants. Pursuant to the terms of the NFC Settlement, Plaintiffs will release NFC from all pending claims.

The Midwest Settlement. Plaintiffs and Defendant Midwest Poultry Services, LP ("Midwest") entered into settlement discussions beginning in January 2014. After approximately two months of extensive arm's-length negotiations, on

² For all three agreements, the Settlement Class consists of two subclasses. The first subclass, called the "Shell Egg Subclass," is made up of "[a]ll 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 July 30, 2014." The second subclass, called the "Egg Products Subclass," is comprised of "[a]ll 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 July 30, 2014."

March 28, 2014, Plaintiffs and Midwest reached a settlement providing \$2.5 million to a fund to compensate Class Members. The Settlement Amount was based primarily on Midwest's uncertain financial condition and the fact that the great majority of its egg sales were made to entities that are not members of the Settlement Class. Under the Settlement, Midwest also will provide information concerning Midwest's knowledge of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action, and a witness to testify at trial. It is the opinion of Plaintiffs' attorneys that these nonmonetary benefits will materially assist Plaintiffs in further analyzing and prosecuting this Action against the remaining Defendants. Pursuant to the terms of the Midwest Settlement, Plaintiffs will release Midwest from all pending claims. If Class Members whose combined purchases equal or exceed a threshold percentage of Midwest's Total Sales, agreed to by Plaintiffs and Midwest under a separate agreement provided to the Court for review, choose to exclude themselves from the Settlement Agreement, Midwest has the right to terminate the Settlement.

The UEP/USEM Settlement. Plaintiffs and Defendants United Egg Producers ("UEP") and United States Egg Marketers ("USEM") entered into settlement discussions beginning in July 2013. Those discussions continued on an intermittent basis during 2013 and into 2014. After extensive arm's length negotiations, on May 21, 2014, Plaintiffs and UEP/USEM reached a settlement providing \$500,000 to a fund to compensate Class Members. The Settlement Amount was based primarily on the limited financial resources of UEP and USEM and the fact that neither UEP nor USEM is a Producer of eggs or Egg Products. Under the Settlement, UEP and USEM agree to produce documents previously withheld on the ground of privilege and which pertain to one of Defendants' primary defenses in this Action. Prior to entering into the Settlement Agreement, a selection of such documents was reviewed by a magistrate judge, who confirmed to Plaintiffs' counsel that the documents were likely to provide material value in prosecuting this Action. UEP and USEM also will provide witnesses selected by Plaintiffs' counsel to testify at trial. It is the opinion of Plaintiffs' attorneys that these nonmonetary benefits will materially assist Plaintiffs in further analyzing and prosecuting this Action against the remaining Defendants. Pursuant to the terms of the UEP/USEM Settlement, Plaintiffs will release UEP and USEM from all pending claims.

The Midwest, NFC, and UEP/USEM Settlements should not be taken as an admission by any of Midwest, NFC, UEP or USEM of any allegation by Plaintiffs or of wrongdoing of any kind. These settlements are between Plaintiffs and Midwest, NFC, and UEP/USEM only; they do not affect any of the remaining Non-Settling Defendants, against whom this case continues. Finally, the Court ordered that Plaintiffs shall provide notice of the Midwest, NFC, and UEP/USEM Settlements to all members of the Settlement Class who can be identified through reasonable effort.

5. When will the Midwest, NFC, and UEP/USEM Settlement Funds be distributed?

At an appropriate time, possibly in conjunction with future settlements, Plaintiffs' Counsel may propose, subject to the Court's approval, a plan to allocate and distribute the Midwest, NFC, and UEP/USEM Settlement Funds, net of the costs of notifying the Settlement Class and administering the Settlement, and any attorneys' fees, incentive awards and/or expense reimbursement awarded by the Court, among Settlement Class Members. It is common in cases like this one for the proceeds of settlements to be distributed on a pro rata basis among the members of the Class who timely and properly submit a valid Claim Form. This was the approach proposed for distribution of the Cal-Maine Settlement Fund, as described in the notice dated February 28, 2014. As part of the Court's later consideration of any proposed plan of allocation and distribution, Settlement Class Members will have an opportunity to comment on and/or object to the proposed plan.

Please keep all documentation that shows your purchases of Shell Eggs and Egg Products during the relevant time period for use in filing a claim later. Having documentation may be important to filing a successful claim.

6. What is the effect of the Court's final approval of the Midwest, NFC, and/or UEP/USEM Settlements?

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

THE SECOND AMENDMENT TO THE SPARBOE SETTLEMENT CLASS PERIOD

7. Who is included in the Sparboe Settlement as Amended?

The original Sparboe Settlement executed on June 8, 2009 defined the Sparboe Settlement Class substantially the same as the Classes under the Midwest, NFC, and UEP/USEM Settlements, as described above, except that the original Sparboe Class Period included only those persons or entities that purchased Shell Eggs or Egg Products directly from

any Producer between January 1, 2000 and October 23, 2009. On August 28, 2013, Plaintiffs and Sparboe amended the Class Period of the Sparboe Settlement to also include purchases of Shell Eggs and Egg Products from October 24, 2009 through February 28, 2014 (the "First Sparboe Amendment"), providing for an extended Class Period. On February 28, 2014, the Court granted preliminary approval to the First Sparboe Amendment, and a notice of the First Sparboe Amendment, dated February 28, 2014, was disseminated to the Class in April 2014.

On June 16, 2014, Plaintiffs and Sparboe agreed to a second amendment to the Sparboe Settlement to further extend the Class Period by including purchases of Shell Eggs and Egg Products from March 1, 2014 through July 30, 2014 (the "Second Sparboe Amendment"). On July 30, 2014, the Court granted preliminary approval to the Second Sparboe Amendment. All other provisions of the Sparboe Agreement are unchanged and remain binding on the Plaintiffs.

A copy of the Second Sparboe Amendment is available on the Settlement website at www.eggproductssettlement.com.

8. What does the Sparboe Settlement provide?

The Sparboe Settlement is between Plaintiffs and Defendant Sparboe only; it does not affect any of the remaining Non-Settling Defendants, against whom this case continues. Under the Sparboe Settlement, Plaintiffs released Sparboe from all claims arising from the facts in Plaintiffs' complaint. In exchange, Sparboe agreed to provide substantial and immediate cooperation with Plaintiffs, which the Court determined, in granting final approval to the Sparboe Settlement, conferred real and substantial benefits upon the Class. Plaintiffs included details obtained from Sparboe's cooperation and relating to the conspiracy in their second amended consolidated complaint filed in December 2009 and the third amended consolidated complaint filed in January 2013. The Sparboe Settlement is based entirely on cooperation; there is no financial compensation component to the Sparboe Settlement.

Notice of the original Sparboe Settlement was sent to potential Class Members in September 2010. Objections to and exclusions from the Sparboe Settlement were due on November 16, 2010. The Court granted final approval to the Sparboe Settlement on July 16, 2012, finding the Settlement to be sufficiently fair, reasonable, and adequate to the Sparboe Settlement Class.

The Original Sparboe Settlement, the Class Notice of that Settlement, and the Order granting final approval of the Settlement are available on the Settlement website at www.eggproductssettlement.com.

9. What is the effect of the Court's final approval of the Second Sparboe Amendment?

If the Court grants final approval to the Second Sparboe Amendment and you became a member of the Sparboe Settlement Class solely because of the extended Class Period under the Second Sparboe Amendment (i.e., you made no purchases of Shell Eggs or Egg Products directly from any Producer between January 1, 2000 and February 28, 2014, but purchased Shell Eggs or Egg Products between March 1, 2014 and July 30, 2014), and if you do not exclude yourself from the Class, you will be bound by the Sparboe Settlement. By remaining part of the Sparboe Settlement Class as amended you will give up any claims against Sparboe relating to the claims made or which could have been made in this lawsuit as provided in the Settlement Agreement, but you will retain all claims against all other Non-Settling Defendants.

If you were included in the Settlement Class as originally defined under the Sparboe Settlement, or as defined under the First Sparboe Amendment, and you did not exclude yourself, you are already bound by the terms of the Sparboe Agreement and have given up any claims you may have had against Sparboe relating to the claims made or which could have been made in this lawsuit as provided in the Settlement Agreement. You may not now exclude yourself.

WHO REPRESENTS THE SETTLEMENT CLASSES AND HOW WILL THEY BE PAID?

10. Who represents the Midwest, NFC, and UEP/USEM and Sparboe Settlement Classes?

The Midwest, NFC, and UEP/USEM and Sparboe Settlement Classes are represented by the following attorneys:

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

Michael D. Hausfeld
HAUSFELD LLP
1700 K Street NW, Suite 650
Washington, DC 20006

Stanley D. Bernstein
BERNSTEIN LIEBHARD LLP
10 East 40th Street, 22nd Floor
New York, NY 10016

Stephen D. Susman
SUSMAN GODFREY LLP
560 Lexington Avenue, 15th Floor
New York, NY 10022-6828

11. How will the lawyers be paid?

These attorneys and their respective firms are referred to as Class Counsel. The Court will decide how much Class Counsel will be paid. Class Counsel, in compensation for their time and risk in prosecuting the litigation on a wholly contingent fee basis, intend to apply to the Court for an award, from the Midwest, NFC, and UEP/USEM Settlement Funds, of attorneys' fees in an amount not to exceed thirty percent of \$4 million, as well as the costs and expenses incurred (the "Fee Petition"), including fees and costs expended while providing notice to the Class.

Class Counsel also will request awards be paid to the Class Representatives who worked with Class Counsel on behalf of the entire Class. Class Counsel will request an award not to exceed \$25,000 each or \$225,000 total.

Class Counsel will file their Fee Petition on or before January 15, 2015. The Fee Petition, which will identify the specific amount of fees and incentive awards requested and the expenses to be reimbursed, will be available on the Settlement website, www.eggproductssettlement.com, on that date. Any attorneys' fees, incentive awards and reimbursement of costs will be awarded only as approved by the Court in amounts it determines to be fair and reasonable.

If you are a Class Member and you wish to object to the Fee Petition, you may file with the Court an objection to the Petition in writing. In order for the Court to consider your objection, your objection must be sent according to the instructions provided under Question No. 13.c below.

FINAL FAIRNESS HEARING

12. When and where will the Court hold a hearing on the fairness of the Midwest, NFC, and UEP/USEM Settlements and the Second Sparboe Amendment?

The Court has scheduled a "Fairness Hearing" at 9:30 a.m. on May 6, 2015 at the following address:

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

The purpose of the Fairness Hearing is to: (a) determine whether the Midwest, NFC, and UEP/USEM Settlements are fair, reasonable, and adequate and whether the Court should enter judgment granting final approval of these Settlements; and (b) determine whether the Court should grant final approval to the Second Sparboe Amendment. You do not need to attend this hearing. You or your own lawyer may attend the hearing if you wish, at your own expense. Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind. Class Members are advised to check www.eggproductssettlement.com for any updates.

YOUR LEGAL RIGHTS AND OPTIONS

13. How do I object to the Midwest, NFC, and UEP/USEM Settlements or the Second Sparboe Amendment?

- a. If you are a member of the Midwest, NFC, or UEP/USEM Settlement Classes and you wish to participate in the Settlements but you object to, or otherwise want to comment on, any term of the Settlements (including the Fee Petition), you may file with the Court an objection by following the instructions under Question 13.c below.
- b. If you are a member of the Sparboe Settlement Class as amended,³ and you wish to participate in the Sparboe Settlement or are already a participant under the prior Class definitions, but you object to the Second Sparboe Amendment, you may file with the Court an objection by following the instructions under Question 13.c below.
- c. In order for the Court to consider your objection to either the Midwest, NFC, or UEP/USEM Settlements or the Second Sparboe Amendment, your objection must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, March 6, 2015 to each of the following:

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

³ If you are a member of the Midwest, NFC, and UEP/USEM Settlement Classes, you are also a member of the Sparboe Settlement Class as amended.

Counsel for Plaintiffs:

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

**Counsel for Midwest (if objecting
to the Midwest Settlement):**

Kathy L. Osborn
FAEGRE BAKER DANIELS LLP
300 N. Meridian St., Ste. 2700
Indianapolis, IN 46204

**Counsel for NFC (if objecting to the
NFC Settlement):**

Marvin L. Gray, Jr.
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045

**Counsel for UEP and USEM
(if objecting to the UEP/USEM
Settlement):**

Jan P. Levine
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799

**Counsel for Sparboe
(if objecting to the Second Sparboe
Amendment):**

Troy Hutchinson
HUTCHINSON P.A.
1907 East Wayzata Blvd., Suite 330
Wayzata, MN 55391

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

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

14. How do I exclude myself from the Settlements?

- a. If you are a member of the Midwest, NFC, and UEP/USEM Settlement Classes and you do not wish to participate in one or more of those Settlements, the Court will exclude you if you request exclusion according to the instructions under Question 14.c below.
- b. If your only purchases of Shell Eggs or Egg Products from any Producer were made on or after March 1, 2014, such that you have become a member of the Sparboe Settlement Class solely because of the Second Sparboe Amendment, and you do not wish to participate in the Sparboe Settlement, the Court will exclude you if you request exclusion according to the instructions under Question 14.c below.

If you were a member of the original Sparboe Settlement Class (that is, you purchased Shell Eggs or Egg Products directly from any Defendant between January 1, 2000 and October 23, 2009), you may not exclude yourself from the Sparboe Settlement Class as amended.

If you were a member of the Sparboe Settlement Class because of the First Sparboe Amendment (that is, you purchased Shell Eggs or Egg Products directly from any Defendant between October 24, 2009 and February 28, 2014, but not before that period), you may not exclude yourself from the Sparboe Settlement Class as amended.

- c. Your request(s) for exclusion must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,⁴ March 6, 2015 to the following address:

In re Processed Egg Products Antitrust Litigation– EXCLUSIONS
c/o GCG, Claims Administrator
P.O. Box 9476
Dublin, OH 43017-4576

Your written request should specify that you wish to be excluded from all or some of the Midwest, NFC, or UEP/USEM Settlements or the Sparboe Settlement as amended. Do not request exclusion if you wish to participate in the Midwest,

⁴ If you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: In re Processed Egg Products Antitrust Litigation (EGC), c/o GCG, 1531 Utah Avenue South, Suite 600, Seattle, WA 98134.

NFC, and/or UEP/USEM Settlements and/or the Sparboe Settlement as amended as a member of the Settlement Class. If you intend to bring your own lawsuit against Midwest, NFC, UEP, USEM or Sparboe, you should exclude yourself from the Settlement Classes.

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

15. What happens if I do nothing?

If you do nothing, you will remain a member of the Midwest, NFC, and UEP/USEM Settlement Classes and the Sparboe Settlement Class as amended. As a member of these Settlement Classes, you will be represented by the law firms listed above in Question No. 10, and you will not be charged a fee for the services of such counsel and any other Class Counsel. Rather, counsel will be paid, if at all, as allowed by the Court from some portion of whatever money they may ultimately recover for you and other members of the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

FOR MORE INFORMATION

For more detailed information concerning matters relating to the Midwest, NFC, and UEP/USEM Settlements, you may wish to review the Settlement Agreements and the "Order (1) Granting Preliminary Approval of the Proposed Settlement Agreement between Direct Purchaser Plaintiffs and National Food Corporation and Direct Purchaser Plaintiffs and Midwest Poultry Services, LP; (2) Granting Preliminary Approval of the Proposed Settlement Agreement Between Direct Purchaser Plaintiffs and United Egg Producers and United States Egg Marketers; (3) Certifying the Classes for Purposes of Settlement; (4) Granting Leave to File Motion(s) for Fees and Expenses; (5) Granting Preliminary Approval of the Proposed Second Amendment to Settlement Agreement Between Direct Purchaser Plaintiffs and Sparboe Farms, Inc.; and (6) Approving the Notice Plan for the Preliminarily Approved Settlement Agreements and the Second Amendment to the Sparboe Agreement (entered July 30, 2014).

For more detailed information concerning matters relating to the Sparboe Settlement, you may wish to review the "Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc." (signed June 8, 2009), the "Order Granting Final Approval of the Class Action Settlement between Direct Purchaser Plaintiffs and Defendant Sparboe Farms, Inc." (entered July 16, 2012), the "Amendment to Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc." (signed August 28, 2013), and the "Second Amendment to Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc." (signed June 16, 2014).

These documents are available on the Settlement website, www.eggproductssettlement.com, which also contains answers to "Frequently Asked Questions," as well as more information about the case. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 13. You may also obtain more information by calling the toll-free helpline at (866) 881-8306.

If your present address is different from the address on the envelope in which you received this notice, or if you did not receive this notice directly but believe you should have, please call the toll-free helpline.

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

Dated: July 30, 2014

The Honorable Gene E. K. Pratter

Exhibit 2

BIGGEST 1,000 STOCKS

WSJ.com/stocks

How to Read the Stock Tables
The following explanations apply to NYSE, NYSE Arca, NYSE MKT and Nasdaq Stock Market listed securities. Prices are composite quotations that include primary market trades as well as trades reported by Nasdaq OMX BSM (formerly Boston), Chicago Stock Exchange, CBOE, National Stock Exchange, ISE and BATS.

Table with columns: Stock, Sym, Close, Net Chg. Lists top 1,000 stocks by market cap.

New Highs and Lows

Table with columns: STOCK, SYM, HI/LO, CHG. Lists stocks that reached new 52-week highs or lows.

Nasdaq lows - 66

Table with columns: STOCK, SYM, HI/LO, CHG. Lists 66 stocks that hit new 52-week lows on Nasdaq.

Wall Street Journal stock tables reflect composite regular trading as of 4 p.m. and changes in the closing prices from 3 p.m. the previous day.

Table with columns: Stock, Sym, Close, Net Chg. Lists a wide range of stocks.

Continued from Page C8

Table with columns: STOCK, SYM, HI/LO, CHG. Continuation of the Nasdaq lows table.

NYSE

Table with columns: Stock, Sym, Close, Net Chg. Lists NYSE-listed stocks.

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BANKRUPTCIES

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

Re: ABOVE SOLAR MANUFACTURING, LLC, et al. Case No. 12-11974 (PJW) Debtors. (Jointly Administered)

Objection Deadline: November 10, 2014 at 4:00 p.m. Hearing Date: November 20, 2014 at 2:00 p.m.

PLEASE TAKE NOTICE

That Jeffrey L. Borch, Chapter 7 Trustee has filed the Motion of Chapter 7 Trustee To Approve Agreement Among the Trustee, The United States Department Of Energy, And Schenker (the "Motion") which seeks the following relief:

To approve an agreement among the Trustee, the United States Department of Energy, and Schenker B.V., DB Schenker-Romtrans SA, and Schenker, Inc. ("Schenker") with respect to approximately 151,000 solar panels (the "Solar Panels") located in the Netherlands and Romania, at Schenker warehouses.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: October 23, 2014

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CLASS ACTIONS

Legal Notice

If you purchased Shell Eggs or Egg Products produced in the United States directly from any producer from January 1, 2000 through July 30, 2014, you could be a Class Member in a proposed class action settlement.

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Continued from Page C8

Table with columns: STOCK, SYM, HI/LO, CHG. Continuation of the Nasdaq lows table.

NYSE

Table with columns: Stock, Sym, Close, Net Chg. Lists NYSE-listed stocks.

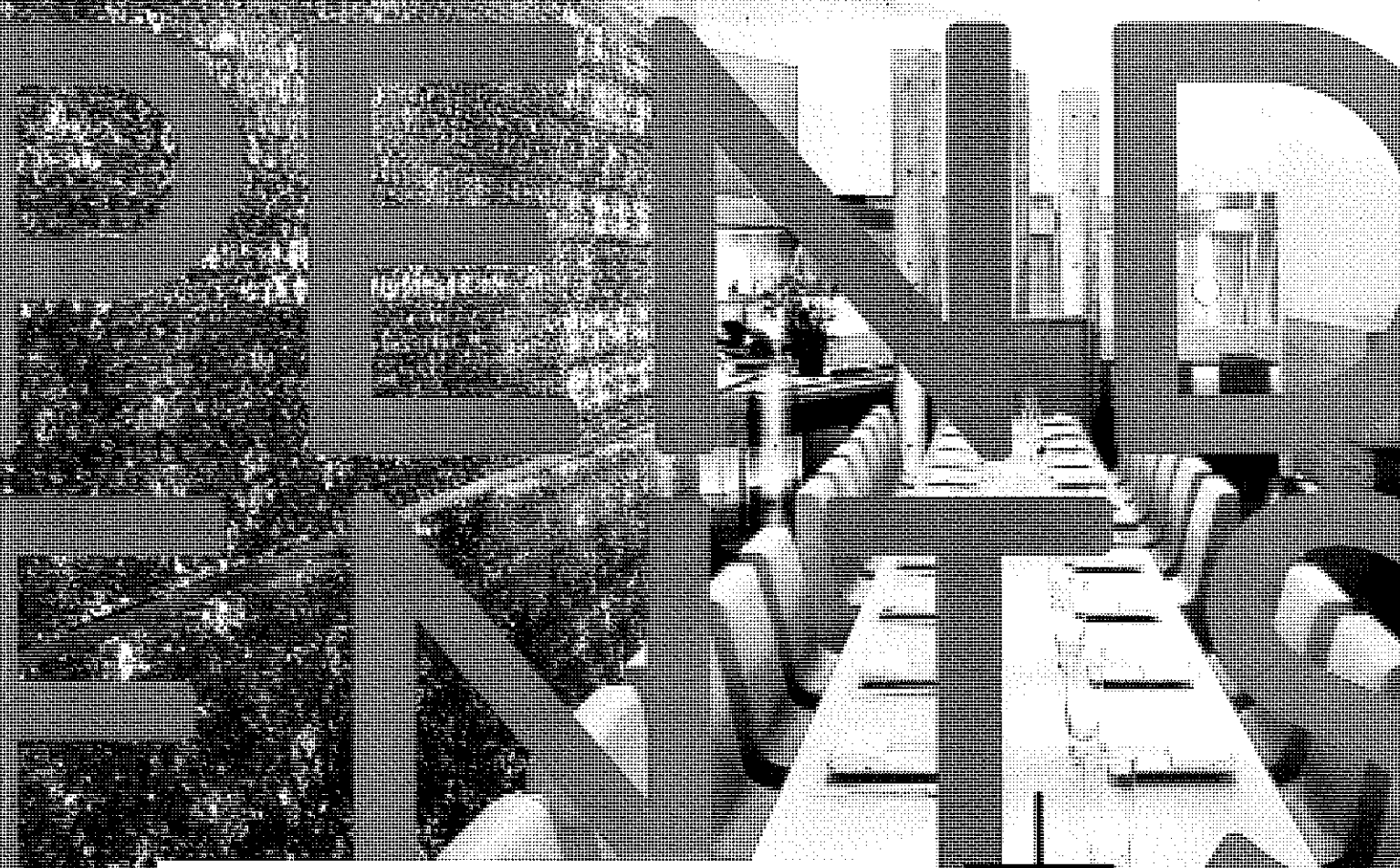
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No. 96
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(Full ranking on
Page 69)



**THE BEST & WORST
PLACES TO OPEN A
RESTAURANT P.74**

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OCTOBER 2014

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NEWS



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STORESPOTLIGHT

Handy Mart



The two prototype stores that have opened to date emphasize fresh food and have a lower merchandising profile.

chain — one with a more open feel, lower merchandising profile, larger emphasis on fresh food to go and a bigger focus on beverages to go.

"Opening these stores was a big deal for us. We don't do that a lot," Noonan told *Convenience Store News*.

A third prototype store will open next year, and Handy Mart also has its first retrofit design in progress. As of early September, the retrofit was expected to be completed in 45 days.

Handy Mart is anxious to conduct more surveys to glean valuable shopper insights and continually improve its business. Noonan was originally thinking of doing another one this August, one year since the original survey, but decided against it since not all of the new store operating procedures have been implemented yet. The retailer is now looking at spring or summer 2015 to conduct a follow-up shopper survey.

"We haven't finished all of the action items from the results of the first survey," he said. "However, we know we want to keep doing [shopper surveys]." **CSN**

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Face Time

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to refer them to other cities, keeping business within the brand."

In Meriden, Connecticut, Four Points' weekly employee presence may include sales reps, the office manager, the F&B director, and/or a general manager, who personally pour beers. GM Yvonne deAngeli-Fontanez believes the informal environment offers guests the chance to comfortably socialize with staff away from the front desk, enticing them to share their likes and dislikes. Positive comments regarding Brews & BBQ are racking up, and the reception has secured small-scale, but specific, wins—luring business travelers from a nearby competitor or spurring them to rearrange plans just to experience the reception. "It's become a great sales tool and offers bonding time with guests," deAngeli-Fontanez asserts.

Indeed, chatting with guests is crucial, engaging them to find out what Four Points can improve upon, pinpointing additional business opportunities, and introducing the hotel team. Meanwhile, guests in Meriden discover what the hotel offers, so they're more likely to segue from the reception to the onsite sports bar and grill.

DeAngeli-Fontanez advertises the program through invitations in key packets, then brands the event with koozies, buttons, coasters, glasses, and aprons. In Asheville, Best Brews is advertised through PowerPoint presentations on two TV screens in the lobby, a pop-up banner at the front desk, and staff communication. "Everyone's eyes get huge when they hear about it; they love getting a taste of Asheville right here," says Bryant. "And most guests prefer free beer to breakfast any day."

At Four Points by Sheraton Manhattan Chelsea in New York, first-timers appreciate feeling welcomed in a big-city environment, while return travelers enjoy F&B freebies without having to leave the hotel, says GM Lee Berthelsen-Leon. He attends the receptions, serving guests personally, and F&B is supplied by a third-party operator.

"It's more costly, but worth it for what we get: more time with guests," Berthelsen-Leon says. "We learn how to do better, find more business, and create conversation in a more meaningful way. It's a nice surprise and a major goodwill opportunity." ©

Tracy Morin is a freelance writer and editor based in Oxford, Mississippi.

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NATION'S Restaurant News

WWW.NRN.COM

OCTOBER 20, 2014

A PENTON® PUBLICATION



Getting engaged

Three brands with highly active social media fans share their relationship-building tactics

BY RON RUGGLESS

As the influence of social media continues to grow, restaurant companies are finding it has moved beyond a simple marketing tool to become the focal point of a company's entire customer relationship management strategy. Some organizations currently outperform on this front.

Whataburger, Potbelly Sandwich Shop and Legal Sea Foods are among the restaurant chains that have consistently excelled in incorporating social marketing strategy into their operations, according to the NRN Social 200.

The NRN Social 200, a real-time ranking of the social media activities of the nation's largest restaurant chains, quantifies brand efforts and consumer engagement through data provided by social analytics firm Sprinklr.

At the end of the third quarter, the brands with the highest Engagement Ratio rankings tended to be

smaller, regional groups. The Engagement Ratio figure measures all social activity, such as Tweets, likes, comments, shares and @mentions against a brand's overall audience.

On that measure, San Antonio, Texas-based Whataburger ranked No. 1, followed by: Chicago-based Potbelly at No. 2; Dedham, Mass.-based Papa Gino's at No. 3; Boston-based Legal Sea Foods at No. 4; and Bonefish Grill, owned by Tampa, Fla.-based Bloomin' Brands Inc., at No. 5.

Whataburger finessed its way to the top spot in the engagement rankings by employing a social-media strategy that weighs existing fans with new customers.

San Antonio, Texas-based Whataburger has a total audience of 1.9 million across three major social-media platforms, including Facebook, Twitter and LinkedIn. The brand, which has restaurants in 10 states, has minimal presence on Google+ and YouTube.

CONTINUED ON PAGE 14

Loyalty goes mobile

App-based rewards programs improve guest experience, capture valuable customer data
Story begins on page 10



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Survey: Never Ending Pasta Pass hurts Olive Garden's brand image

BY RON RUGGLESS

Olive Garden's promotion of its Never Ending Pasta Pass last month may have unwittingly soured brand perceptions among the general public, according to a new survey by market research firm YouGov BrandIndex.

Olive Garden's offer — an option for endless pasta for seven weeks, priced at \$100 — drove ad awareness and word-of-mouth scores among casual diners, BrandIndex said. But discontent over the limited number of passes "brought the embattled chain to its lowest consumer perception levels in more than two months," the report said.

An Olive Garden spokesman said Tuesday the company had no comment on the YouGov BrandIndex report.

The 1,000 Never Ending Pasta Passes sold out within 45 minutes of their Sept. 8 online release. Some passes were given away on social media, including Facebook, through the start of Olive Garden's Never Ending Pasta Bowl promotion on Sept. 22.

Customers expressed frustration with the online sales and in learning that the passes were non-transferrable.

BrandIndex, which researches consumer brand perception in weekday interviews, found the 840-unit division of Orlando, Fla.-based Darden Restaurants Inc. had lost recent gains it had made over the summer in the "purchase consideration" metric.

Since mid-July, BrandIndex said Olive Garden worked its way up from 40 percent of casual diners saying they would consider the chain the next time they were dining out to 48 percent just prior to the pasta promotion announced on Sept. 8. Scores are based on a 100-percent scale.

By Sept. 25, Olive Garden's BrandIndex gains in "purchase consideration" had slipped back to 40 percent.

While the purchase consideration metric had fallen, BrandIndex said Olive Garden's other metrics remained above the averages for major casual-dining chains, even despite the brand's negative publicity surrounding the Darden corporate proxy battle with activist investors, and an ongoing brand overhaul designed to improve sales.

Ted Marzilli, chief executive of YouGov BrandIndex, said the BrandIndex saw inflection points in the data "right around the time that the promotion was launched."

Brands do have options for avoiding similar

negative customer experiences and "spreading the wealth around a bit," Marzilli said.

"If [Olive Garden] were to do this next year," he said, "they would think about some of the things that music or sports venues might do to try to limit some of this."

"There might be more of a lead time for when the passes become available so people can plan,"



The 1,000 unlimited-pasta passes sold out within 45 minutes of their release. Olive Garden gave some away through its Facebook page as well, but the scarcity left many consumers frustrated.

he said. "Maybe they have certain people who are regular customers get early notification so they might be in a special drawing before passes become available to everybody. Maybe there's a way to control the way the passes are given out, rather than all at once where they sell out in 15 minutes."

Marzilli also suggested a brand could sell 50 of the passes a day for a week or two "to try to lengthen the demand," and lessen "the flood" of initial applicants.

BrandIndex said 15,000 casual-dining customers were interviewed for this research, with a margin of error of plus or minus 1.4 percent. Respondents were drawn from an online panel of two million people, the company said. All respondents were 18 or older and had eaten at a casual-dining restaurant in the past three months.

YouGov BrandIndex said Olive Garden is not a client. ■

ronald.ruggless@penton.com

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INGREDIENTS

{creating healthier menus}

Healthy choice

Nutritional signage is commonplace. But how do you get customers to actually buy lighter fare?

By Marygrace Taylor

Rather than bore students with dry stats on calories and fat, Wesley Delbridge, R.D., food & nutrition director for Phoenix's Chandler Unified School District, is turning healthy eating into a game. In August, he launched lunchtime contests that pit boys against girls in a battle over who can eat more fruits and vegetables before recess. They've been a rousing success, doubling the amount of produce the cafeteria served on contest days.

Faculty members patrol the cafeteria, using their smartphones to tally the number of boys and girls spotted eating fruits or vegetables. To fuel the competition, the score is tracked in real time and displayed on TV monitors. And in between score updates, the TV runs a presentation with slides that tout the virtues of healthy eating through funny videos, surprising facts and interactive games.

"We've always had nutrition education, but now we're bringing the socialization aspect into it. I really think it's the future of the lunchroom," Delbridge says.

But by the time students reach college they're usually more concerned with studying and socializing than learning about nutrition. "A lot of students come in wanting to learn how to eat healthier on campus, they just don't have the knowledge base to do it well," says Ashton Jackson, R.D., university dining nutrition assistant at North Carolina State University (NCSU), in Raleigh.

The idea, then, is to keep it simple. At NCSU, nutrition information is available online and is also displayed on iPads at the point of sale. Dining hall tables, too, are peppered with eye-catching napkin cards that serve up

unexpected tips for eating well, like a formula for building an energizing breakfast (fiber plus protein) or how choosing the right foods can help students eat their way to better grades.

And for students who want to delve deeper, options abound. Starting this year, dining staff will launch a Nutrition Education Series for Residential Advisors, with sessions like Avoiding the Freshman 15, Nutrition 101 and Healthy Residence Hall Cooking, all designed to empower students to navigate the college's unique environment and eat well.

Catchy labels or color-coding systems nix the eye glazing that can come from traditional nutrition displays, plus make it easy for busy customers to make good-for-them choices quickly. At WakeMed Health & Hospitals, in Raleigh, N.C.,

grab-and-go fare like turkey and cheddar sandwiches with nonfat mayonnaise display WakeWell stickers to indicate a healthy option. And Florida Blue, in Jacksonville, features digital menu signage with green, yellow or red color coding to signify nutritional value (or a lack thereof).

Still, logos and colors can only do so

much. To offer more incentive, WakeMed Café Manager Chris Carr recently debuted a reduced cost veggie plate to encourage produce consumption. And during Florida Blue's annual health assessments, employees who have lost weight can earn more money for their personal health savings accounts. "We're all adults and we trust you as wanting to be on this wellness journey with us," says Corporate Hospitality Services Manager Damian Monticello. "Employees know that if they eat well over the year and weigh less than last year, they're going to earn more points."

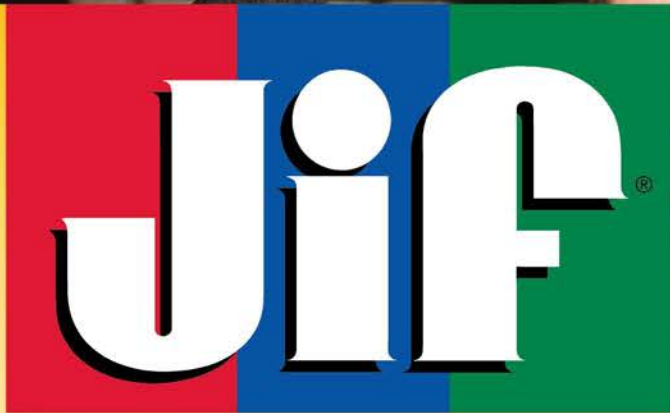


WakeWell signifies healthy options at WakeMed.

PLUS! 2014 CATEGORY CAPTAINS P. 35

2014
CATEGORY
CAPTAIN
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PROGRESSIVE GROCER



The good news is spreading.

Discover how Jif is driving innovative growth in the peanut butter & specialty spreads aisle.



Legal Notice



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FIXED-WEIGHT PRODUCE**

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**Category Captain
Fresh-cut Fruit**

Del Monte Fresh Produce

In fiscal year 2013, Del Monte Fresh made a significant difference for a Midwestern grocer’s fresh-cut fruit category. The retailer’s sales had been flat compared with the previous year — and, to compound matters, the cut fruit segment’s sales were underperforming compared with the market.



Del Monte Fresh suggested a new program, based primarily on its products, to replace the retailer’s in-house program. To help facilitate the changeover, Del Monte Fresh’s category manager used several tools. Spectra categorized each store, based on demographic attributes, into cluster groups to determine what size each store’s fresh-cut fruit section should be. In addition, the data provider identified the stores with the greatest sales potential, determined by store size and shopper demographics, to optimize promotions and in-store displays. Meanwhile, Del Monte Fresh developed new planograms. The vendor is regularly evaluating the program, including the retailer’s POS and pitch data, which helps to identify slow-selling items, under- and overperforming stores, and, with respect to shrink, items experiencing heavy losses. Not surprisingly, the retailer has experienced solid category growth, with year-to-date sales through nine periods up 6 percent.

**Category Captain
Fresh-packed Vegetables**

Dole Fresh Vegetables

Based on its landmark 2014 “Lettuce Interaction Study,” Dole Fresh Vegetables made significant changes in its fresh-packed business to address how consumers shop the category. Specifically, Dole relied on three key solutions: 1) redefining category roles, definitions, synergies and strategies on fresh-packed vegetables; 2) technology and data-driven solutions with new capabilities to use insights across retail; and 3) transportation and logistics solutions. The company helped retailers develop their strategies to better manage commodity vegetables alongside value-added offerings with integrated pricing, promotion and new product initiatives. Retailers employing Dole’s pricing initiatives demonstrated above-average returns (4.5 percent increase in shipments and 5.2 percent increase in retail sales dollars).



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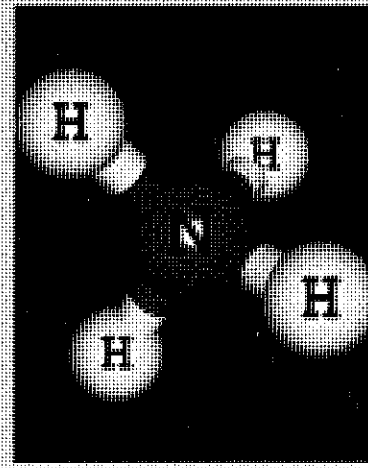
Advantage

Vol. 27, No. 7

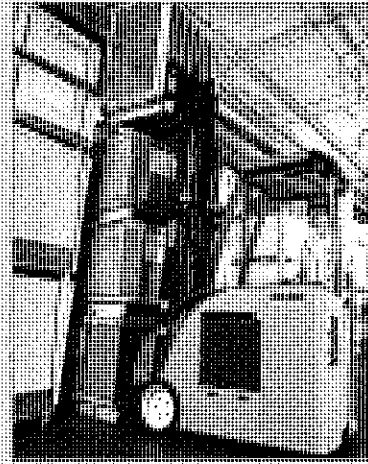
Wearing its Labels With Pride

Berner Food & Beverage is a leading contract manufacturer of private label and store brand beverages, cheese products and other dairy-based foods.

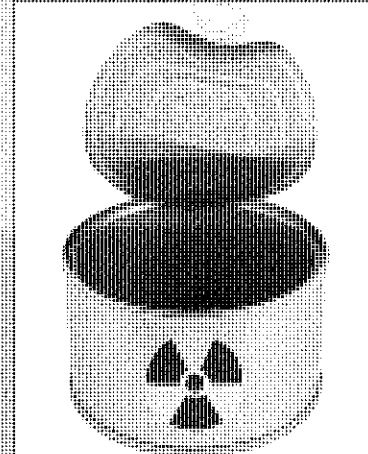
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● Safe, Compliant Ammonia Management Reduces Risk p. 22



● Improving Material Handling Efficiency in 2015 p. 24



● Metal Detection: Staying in Tune With Your Plant's Needs p. 36

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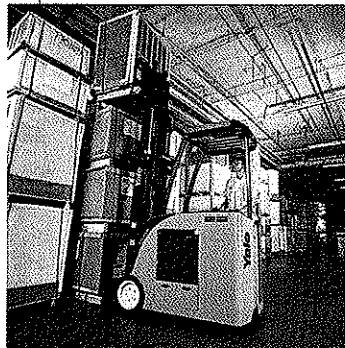
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well. Facility managers should work with their materials handling dealer to determine the proper equipment that best fits their facility and function.

Analyze the Use of Space

Space is at a premium in manufacturing facilities with more product needing to be moved and stored within a given space. To maximize efficiency within a constrained space, facility managers need to select the right lift truck for the job. In addition, they also need to understand the rate at which the warehouse needs to receive or deliver the product. Inefficiencies can develop when the relationship between time and motion and density and throughput

are not all evaluated at once. With a more complete picture of these relationships, materials handling solutions can be better integrated into the operation.



Account for Environmental Obstacles

Freezers and coolers, floor drains and food byproducts can all affect the sustained operation, day-to-day condition and maintenance intervals each lift truck. Outfitting the lift truck

with the proper environmental options such as a freezer package, corrosion package or a galvanized frame, will extend the truck's operational life.

Protect the Equipment

The proper cleaning of lift trucks is paramount in food manufacturing environments. With daily washes and frequent exposure to water, selecting lift trucks with sealed electrical connections and bearings, effectively positioned motors and solid state components aid in the protection of critical parts.

Consider Attachments

Lift truck attachments can add efficiency to operations. Attachments that are ideally suited for food manufacturing facilities include scales, cameras, side-shifting fork positioners (for handling various size loads) and tilting and dumping attachments (for food processing delivery).

Focus on Training

Operator training is critical to the success of all applications, including those for the food manufacturing industry. As outlined in OSHA B56.1, lift truck operators should be trained in both the application and on the specific piece of equipment they will be operating. Properly trained lift truck operators can help reduce lift truck downtime and accidents, limit lost-time injuries, improve driver effectiveness and minimize product damage — making them key to improving the overall efficiency of a facility.

Service training also contributes to efficiency. Teaching technicians how to effectively maintain lift trucks can reduce unplanned repairs and equipment downtime. A common control system for electric fleets can simplify diagnosis, functionality adjustment and

fresh

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Makin' (better) bacon

Continued from page 54

sausage for a long time, and now the turkey industry has found a way to do that."

Demand for health

At Dorothy Lane Market in Dayton, Ohio, Jack Gridley, VP of meat and seafood, said specialty processed meats with health attributes, whether they are made from turkey,

"We're also doing organic bacon," Gridley said, "and we have had a sugar-free bacon for about a year now, which is very popular for the Paleo crowd."

The "Paleo" diet — modeled after the eating patterns of our Stone Age ancestors and increasingly popular in the last few years — requires adherents to abstain from refined

York, a duck bacon product from gourmet meat purveyor D'Artagnan retails for twice as a much per pound as its turkey counterpart, however. Fairway also offers a variety of turkey bacon products from more mainstream vendors, including Butterball and Oscar Mayer.

Chicken sausage, as well as other non-traditional processed meat products, has seen strong demand among online shoppers, according

Schnucks
@SchnuckMarkets

Following

Sausage Dinner for \$4.50! Purchase bundle, show coupon from phone for discount today only 9-26-14 from 3-8pm.

STORE COUPON

\$4.50 Simple Sausage Dinner

ONE OF EACH:
(A) One Hillshire Farm Smoked Sausage (13-14 oz. pkg. in ad)
(B) One Pillsbury Golden Layer Biscuits (11-12 oz. pkg.)
(C) One Green Giant Steamers (11-12 oz. pkg. in ad)

Valid only on Friday, September 26, 2014 from 3:00 p.m. - 8:00 p.m.

CHECKER - Please scan barcode or manually enter 4 digit code to apply discount.

Schnucks
at all Schnucks - excludes Culinary. Limit one offer per customer. Cannot be combined with any other offer or coupon.

#6787

This Schnuck Markets offer highlights processed meat as a **QUICK-AND-EASY MEAL OPTION**.

chicken, pork or beef, are enjoying more consumer demand recently.

"People are looking for grass-fed, people are looking for organic, people are looking for nitrate-free," he said. "It has grown very rapidly in the last few years."

The bacon flavor profile continues to be "very much" a hit with shoppers, Gridley noted.

"At our stores, it's the nitrate-free, antibiotic-free, certified humane and unique flavors — things like the cherry wood flavor, peppered bacon and duck bacon. That's just the kind of store we are. We've been doing these kinds of things for a long time.

sugars, among other foods and ingredients commonly found in the modern food supply.

Gridley noted that duck bacon, a relatively new product for many retailers, has been "doing OK" at Dorothy Lane.

"It's not going to be a huge product for us," he said.

At Skogen's, the company rolled out a duck bacon from Maple Leaf Farms about a month ago, and the company has high hopes for its success.

"It is amazing how good that product is, with a real smoky flavor," Zimmerman of Skogen's said, "You absolutely would not have known it was duck unless someone told you."

At Fairway Market in New

to recent research from MyWebGrocer, which provides online grocery services for retailers. The company noted a 24% growth in sales of non-traditional proteins — which include bison/buffalo, chicken (sausage or meatballs), duck (bacon), turkey (bacon or sausage), veggie (sausage) and venison — for the 12 months through September 2014.

Among the standout products were buffalo sausage, with sales up 78%, chicken breakfast/sweet sausage, up 36%, and turkey bacon, up 27%.

Going mainstream

While some specialty processed meat products appear

Continued on page 58

STORES[®]

The Magazine of NRF

NOVEMBER 2014 SECTION 1

EXPANSION FAR AND NEAR



Opportunities and obstacles for U.S. retailers
in China and Canada

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AirQ’s micro-droplet technology “uniformly treats the air of large or small spaces using ultra-low concentrations of liquid scent that outputs like a dry vapor,” explains AirQ Executive Vice President Roger Bensinger.

That compares favorably to other technologies in the marketplace, notably because users are able to control the amount of ambient scent, eliminating any concerns for customers with fragrance sensitivities. Micro-droplets are also hypoallergenic and will not leave a residue the way larger particles could. Using less fragrance concentrate is also more economical.

AirQ’s Premium Scenting units offer an on-board computer that can be used to control both the intensity and the duration of custom scent effects, up to and including programmable start and stop times. AirQ delivery systems meet and exceed all consumer product safety standards and use no propellants or any other volatile organic compounds.

Scenting technology has come a long way from the early days of blasting a space with scent and allowing it to dissipate, Bensinger says. Today, it’s possible to zone stores, which allows retailers to do a “warm welcome” — scenting only at the entrance, which is a popular option. Other companies choose to scent specific departments; Boston Proper opted to evenly scent the entire space.

Boston Proper conducted initial testing in its corporate offices. Using AirQ’s wall-mounted units in different offices, they were able to experience first-hand what its customers would experience. For the first two weeks, they tested the appropriate amount of scent distribution — also called a “scent map” — to determine the perfect volume per square foot.

“Our delivery systems are able to control the intensity of scent, which is essential because you need more scent when there’s higher traffic flow ... due to air being replaced when entrance doors open and close,” Bensinger says.

SWEET SMELL OF SUCCESS

“There haven’t been any changes made to the scenting plan since we’ve opened boutiques,” says Diaz. “We approved [the plan], where the level is recorded and maintained.”

“Our partnership with AirQ has been great,” he says. “They are easy to work with, reliable and delivered what we asked for on time and on budget.” Additionally, he notes, “They understand customer service.”

Customer response has been positive, Diaz says. “We wanted a scent that would resonate with our customer, yet could take her to another place while wowing her,” he says.

In fact, the warm and inviting scented air is definitely a key sales driver. Not only do customers stay in the store longer, they’ve responded by purchasing the signature room sprays and candles.

“The scent is an integral part of the detailed touches that provide a luxurious shopping experience like nowhere else,” Diaz says. **STORES**

Egg Industry

News for the Egg Industry Worldwide

WATT

Inside

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- 10** Lessons to be learned from European Union's cage ban
- 14** US egg consumption rising because of health benefits
- 18** Feed management for layers in enriched colonies
- 20** News
- 22** Products

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Feed management for layers in enriched colonies

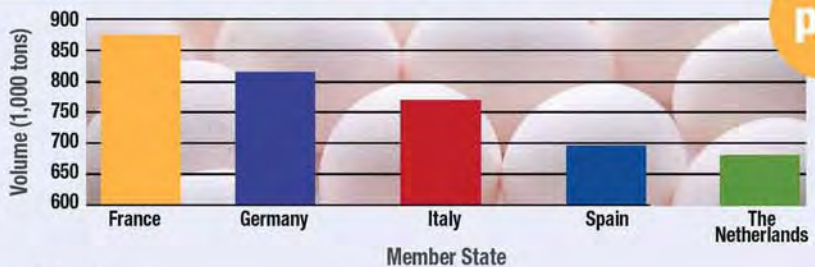
AEB tests if premium packaging designs can increase egg sales

p4



TOP FIVE EUROPEAN UNION EGG PRODUCERS BY VOLUME 2012

p10



Source: EJ Commission

Of the major European egg producers in 2012, two were located in the south of Europe, where greatest difficulties were experienced in transitioning out of conventional cages.

AD SPENDING CAN'T STOP CEREAL SALES DECLINE

	2013 media spending *	Change from 2012
General Mills Cereal	\$297	-7%
Kashi Cereal	\$22	30%
Kellogg's Cereal	\$241	-3%
Post Cereal	\$75	-5%
Total	\$635	-5%

* Millions

Cereal sales in the U.S. continue to decline in spite of over \$600 million of advertising spent each year by cereal makers.

The interest in protein is fueled by research that has shown that eating protein-rich foods can provide a feeling of satiety and reduce total calorie consumption compared to eating high-carbohydrate foods. Dr. Mitch Kanter,



Joanne Ivy, president, American Egg Board, said, "We are in the beginning stages of one of the most positive long-term growth eras for eggs that we have seen in decades."

executive director, Egg Nutrition Center, said, "Carbohydrates are taking a beating in the scientific literature." He said that the current trend for more protein in diets has staying power; it is different from the Atkins diet fads of the past, because it is based on science and has research to back it up, and much of the Atkins diet hoopla was anecdotal. In short, the current move towards eating more protein-rich foods as a way to control weight and prevent obesity and diabetes is more

about balanced healthy eating and doesn't have the extreme exclusion of carbohydrates from the diet like Atkins.

Ivy said, "Orange is not the new black, protein is the new black. Protein has driven egg sales in the last three years and we see this continuing for the next five to ten years. We see

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"For the five minutes in line, the customer needs to be inspired by the environment and all of their senses aroused."

Farnaz Mansuri, founder and principal designer of de-spec

Design an Experience

A bakery should not just be a place where items are bought and sold. It should offer an experience to every customer that comes through. Veronica Koituniak, owner of Verokoit, believes when a customer walks away with a baguette tucked under their arm, they should feel connected to that item via the experience they had in the bakery. Create this moment by emphasizing your bakery's unique qualities. Be true to your brand, and do not fall victim to trends that will die out in a year.

Oronza tries to steer his clients away from trends, but will incorporate certain items when necessary. A design trend can be a helpful starting point, but you want your bakery to feel incomparable to competitors.

Balancing function and design can also be a difficult task. When designing the layout of the space, let there be enough room for displays and customers, but give employees an area to work efficiently and at ease. "It is not fun, nor appetizing, to see frantic, hot, sweaty workers behind the counter. So if necessary they need more space, the customer does not. For the five minutes in line, the customer needs to be inspired by the environment and all of their senses aroused," says Mansuri.

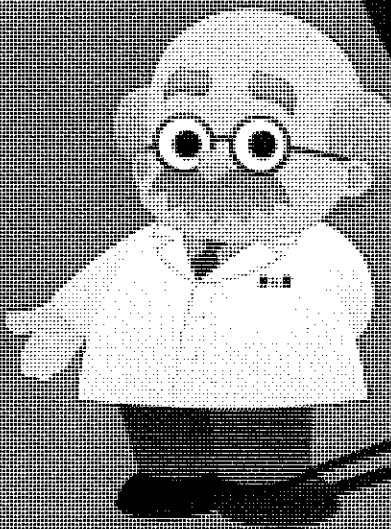
Choosing the correct color palette for your store will help shape the atmosphere and mood for the customer. If your shop sells playful cupcakes and cakes, you may want to go with whimsical and airy colors that reflect a fun and fresh environment. If your shop focuses on breads, you may want to go with colors that are rich and warm.

FOOD PROCESSING

DELIVERY • FOOD PROCESSING TOP

Why is **BIG** **FOOD** Bad?

Why is Big Food bad? It's a question that's been asked many times over the years. But what does it mean? Is it just about size? Or is it about power? And what are the consequences of a few big companies controlling so much of the food supply?



CLEAN LABELS

PERSONNEL SAFETY

ORGANIC FOODS

BEAT THE BATTLE

WORLD WITH GREAT LIGHT CLARITY

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INGREDIENTS

Pea protein alternative

The company's pea protein powder is highly purified and offers a smooth, mild taste while being hypo-allergenic and rating well in digestibility. Containing all nine essential amino acids, the ingredient is said to be ideal for athletes and active adults. The GMO-free 80 percent pea powder was developed for growing demand of plant-based high protein sources and can be used in smoothies, shakes, baked goods, energy bars, confectionary products, soups, stews, snacks, waffles, pancakes and more.

NP Nutra; Gardena, Calif.

310-606-2069; www.npnutra.com

Mints are cool

From its ancient Mediterranean roots, mint throughout history has been used for its medicinal properties; it's also rich in vitamins A and C and other minerals. The versatility and popularity of mint is found in countless foods, beverages and nutraceutical



products. From teas and spirits to jelly and candy, it's a consumer favorite because of its fresh taste and association with good health. After partnering with some of the most renowned growers of mint, the vendor announces new peppermint and spearmint oils, which are pure and natural with profiles from cooling agents to candy-like notes.

Flavorchem Corp.; Downers Grove, Ill.

800-435-2867; www.flavorchem.com

Non-GMO proteins and starches

The company's specialty proteins and starches are all derived from non-GMO wheat, and each matches specific functional, nutritional and sensory needs across bakery and prepared food applications. The proteins and starches are the only commercially available ones of their kind in the U.S., the company claims, and provide manufacturers a non-GMO option for creating products currently void of GMO-free options. Current common GMO grain crops only include corn and soy varieties.

MGP Ingredients; Atchison, Kan.

913-637-1480; www.mgpingredients.com

Drum-dried cranberry

Add a distinctive, tart flavor to foods all year round with drum-dried cranberry. Cranberries are high in vitamin C, fiber and antioxidants, making them popular all year round instead of just fall and winter. Drum-dried cranberry is available in flake and powder form, and can be used in nutritional bars, supplements and smoothies as well as fruit-filled breakfast bars, toaster pastries, cookies, cakes, relishes, sauces, instant foods and even pet foods.

Van Drunen Farms; Mornence, Ill.

815-472-3100; www.vandrunenfarms.com

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FOODPROCESSING.COM

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TECHNOLOGY MATTERS

ity and moving Dad in, but I wouldn't necessarily have continued to interact with people like the activities director or the nurses if it had not been for the Smile program."

ENHANCING MEMORY CARE, MARKETING

The platform also has supported the community's memory care center, called Emily's House, by ensuring that residents with memory issues are scheduled for and attend a balance of activities that support their overall well-being. Those include social, cognitive, spiritual and physical activities.

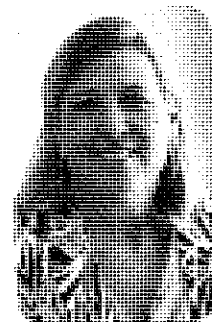
For the families of residents who have dementia, the platform has been a boon, as they get to see a parent doing things they may not have known he or she could do. "Mom is painting?" We get that response a lot. Many people think, "Dad doesn't remember if I visit or not," but if they see how engaged he is in events, it may become, "I want to be part of this."

The platform also has enhanced our marketing efforts. It provides us with a way to record contacts, set reminders for phone calls and visits and identify a referral's level of interest. "It is just the right tool to help us be more alert and diligent in capturing information and doing follow up," Mierau says. "Overall, it has improved our customer satisfaction, so family members wind up doing our marketing for us."

For Rose Stutzman, whose parents, James and Ruby, live at Waterford, the platform has allowed her to keep abreast of their progress, despite an erratic work schedule in retail. "I want to know how they are doing, at my convenience, without interfering with their independence. My real focus has been on activities. My parents lived out in the country and did everything as a couple. I know that at some point I am going to lose one of them, and I want the one who is left to have some interests of their own."

Adds Blosser: "If we are fortunate enough to have parents who live long enough, most of us will be in a position to have to find the next place for them to live, a place where they are safe and are cared for, where all the pieces fit together as they should. There is kind of a role reversal that goes on: parents become children, and children become parents."

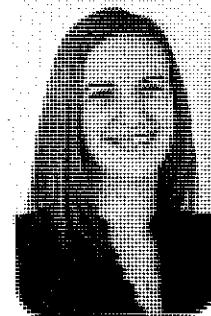
Technology enabling communication can help in that transition, Blosser adds, and can be a factor in families' decisions about where loved ones should live. "I am a very busy person, with a career and young kids of my own, so this is one way for me to easily stay connected with my dad and help to reassure me that he is doing all right." LTL



Sharon Risser, BSN



Bryan Mierau



Carol Srun

Sharon Risser, BSN, is Managing Owner of Waterford Crossing Senior Village, which includes a privately held assisted living facility with 80 apartments, a memory care group home and 66 condominiums located in Goshen, Ind.

11/2014

Petfood Industry WATT

www.PetfoodIndustry.com



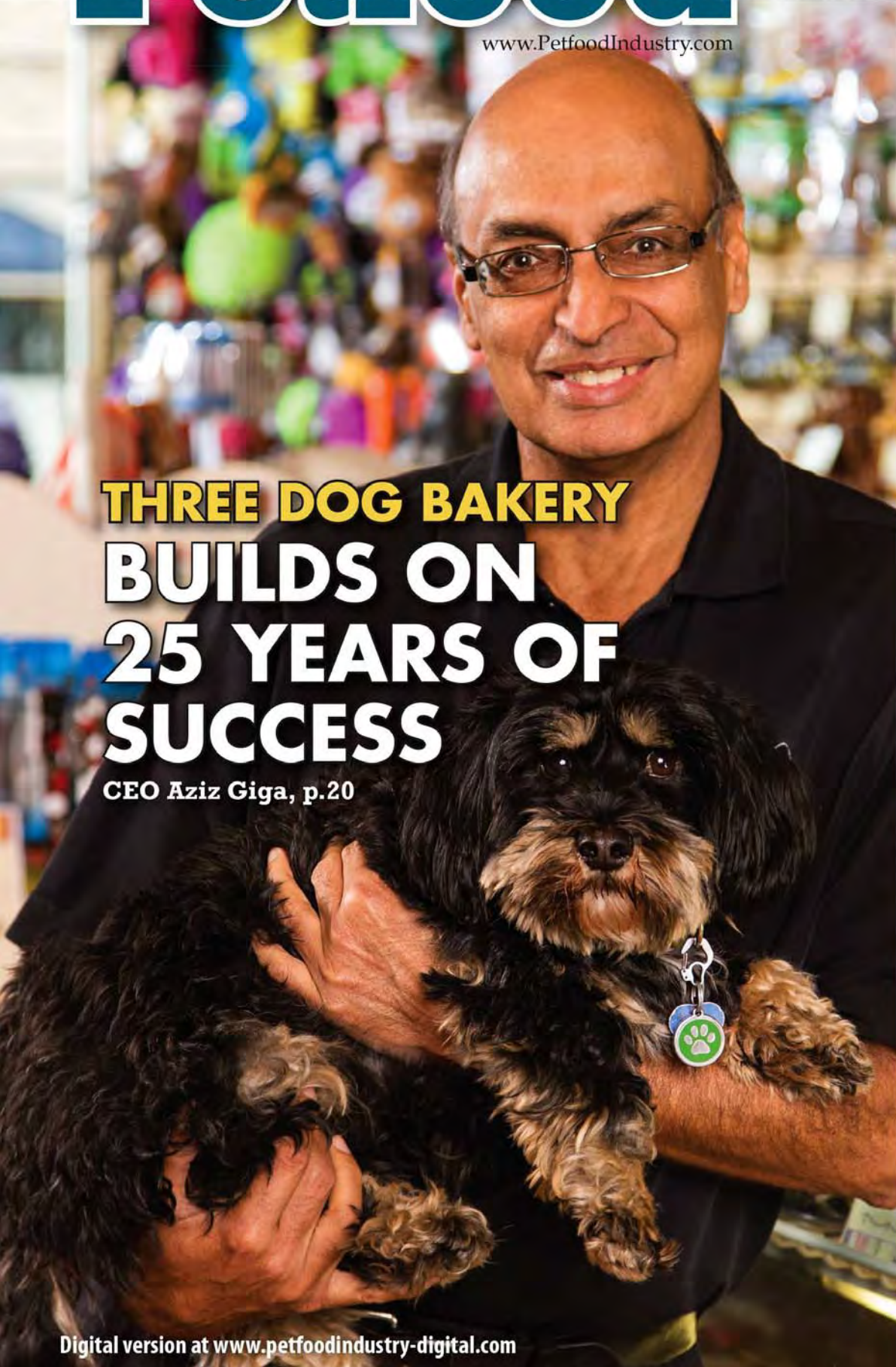
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Breed-specific and lifestage petfood formulas

Reinventing the shelf with petfood-enhancing products

THREE DOG BAKERY **BUILDS ON** **25 YEARS OF** **SUCCESS**

CEO Aziz Giga, p.20



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This legal notice is to inform you of proposed Settlements between Plaintiffs and Defendants Midwest Poultry Services, LP ("Midwest"), National Food Corporation ("NFC"), and United Egg Producers/United States Egg Marketers ("UEP/USEM"), reached in the class action lawsuit, *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania, and also to inform you of a second amendment to the Sparboe Settlement.

Who is included in the Settlements & Second Sparboe Amendment?

The Settlement "Classes" include all persons and entities in the United States that purchased Shell Eggs and Egg Products, in the United States directly from any producer from January 1, 2000 through July 30, 2014. Due to the recent Settlements, the prior Sparboe Settlement is amended to add to the Sparboe Settlement Class direct purchases of Shell Eggs and Egg Products from March 1, 2014 through July 30, 2014, expanding the Class Period to make it comparable to the more recent Settlement Classes.

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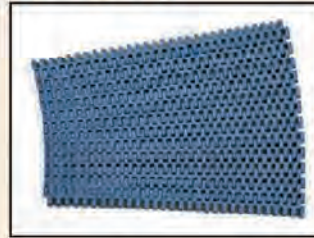
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PRODUCTS

For Manufacturers

System Plast 2257 Series modular plastic belt



Emerson's Power Transmission Solutions business offers the System Plast 2257 Series side-flexing modular plastic belt for unit handling. The belt features a patent-pending universal design that allows both left and right

turns, and S-curves. The Series 2257 belt is injection molded with the new proprietary NG Evo thermoplastic or long wearing XPG low-friction acetal. It is available in a 1 inch (25.4 mm) pitch, in standard widths of 9 to 24 inches, with four different clip styles to meet the retention requirements of the application. Rated for a maximum working load of 450 lb., it is ideal for unit handling applications where it can maintain product orientation through turns.

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School Nutrition

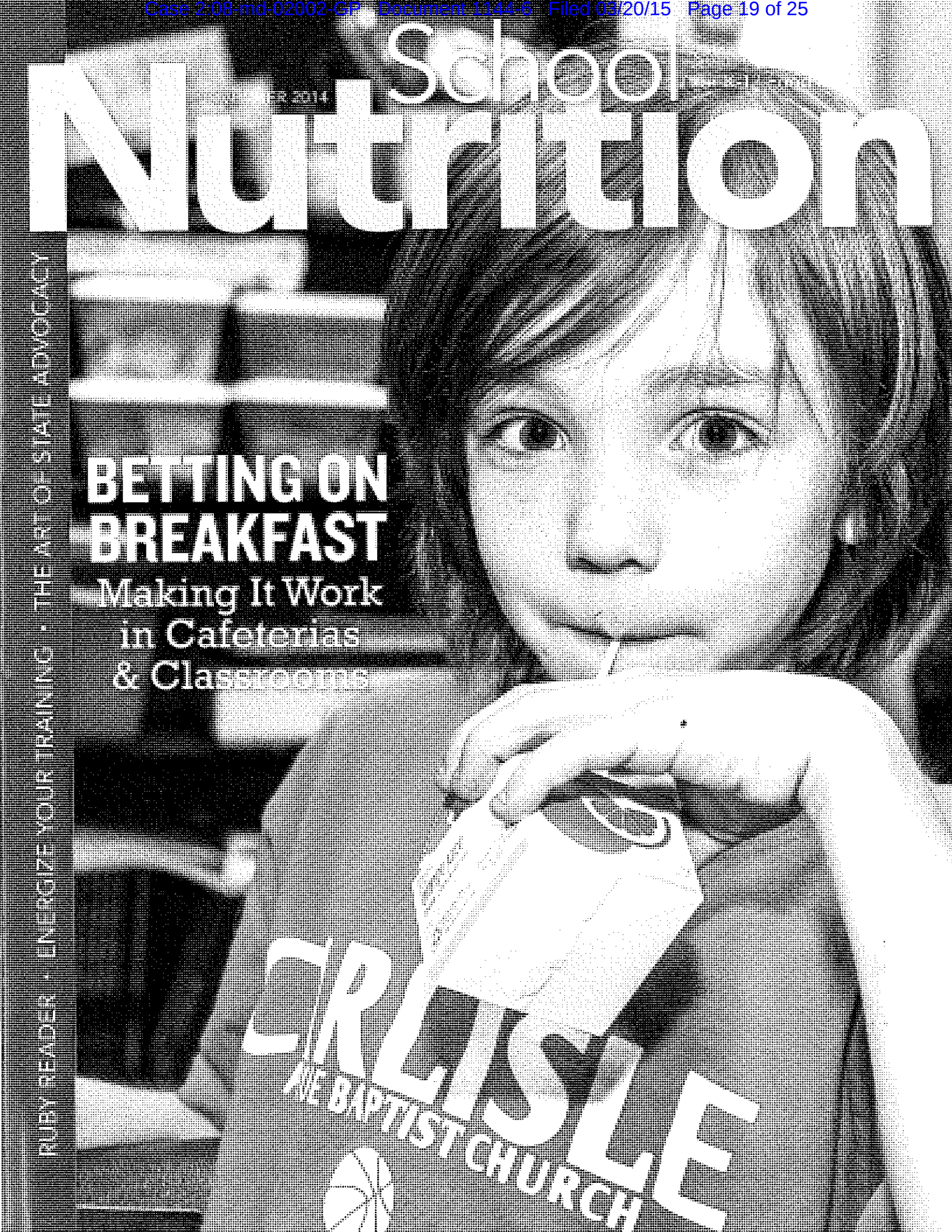
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Making It Work in Cafeterias & Classrooms

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producers and school districts understand shared customers. "We look for ways to increase dairy consumption, because we know kids need dairy's nutrients for growth and development," says Rusnak. "This also helps our farmers and allows us to continue to offer programs."

Rusnak offers just a few examples of how research findings from the American Dairy Association and Dairy Council were applied successfully in school nutrition operations:

- Kids like milk better in plastic bottles than in cartons. The Council connected local schools with a provider who uses this kind of packaging.
- Kids love flavored milk, and want as much variety as possible.
- Kids prefer yogurt smoothies to cups of yogurt. The Council offered grant money to help area schools purchase institutional-sized blenders to make smoothies.

Rusnak also works to disseminate research issued by various local anti-hunger groups. This information can help school nutrition directors when trying to make the case for change, such as the expansion of school breakfast service.

Welcome a New Century

Throughout its centennial year, NDC and its regional dairy councils are planning celebrations; these include a birthday bash during June Dairy Month and some special surprises at SNA's Annual National Conference. And this 100th anniversary is the perfect occasion for you to reach out to your local dairy council, make that connection and discover the many opportunities it offers for training, grants, research and resources.

After all, there's more to a centennial than celebrating the organization's past, says NDC's Erin Coffield: "We're going to use the centennial as a milestone, and also as the right time to pave a path forward into the next century. When we think about the next 100 years, we still see children and youth front and center in everything we do." **SN**

Susan Davis Gryder is a freelance writer in Silver Spring, Md. Photography by Photodisc/Thinkstock.

Exhibit 3

Count	GCG No.	Primary GCG No.	Name Address 1	Name Field 2	City	State
1	194	194	KRAFT FOODS GLOBAL INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
2	203	203	NESTLE USA INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
3	204	204	THE KROGER CO.	C/O KENNY NACHWALTER	MIAMI	FL
4	215	215	THE KELLOGG COMPANY	C/O JENNER & BLOCK LLP	CHICAGO	IL
5	222	222	GENERAL MILLS INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
6	239	239	SAFeway INC	C/O KENNY NACHWALTER	MIAMI	FL
7	271	271	WALGREEN CO.	C/O WILLIAM BLECHMAN & DOUGLAS PATTON	MIAMI	FL
8	279	279	CONOPCO INC	C/O KENNY NACHWALTER	MIAMI	FL
9	280	280	HY-VEE, INC.	C/O KENNY NACHWALTER	MIAMI	FL
10	286	286	ALBERTSONS LLC	C/O KENNY NACHWALTER	MIAMI	FL
11	290	290	THE GREAT ATLANTIC & PACIFIC TEA COMPANY	C/O KENNY NACHWALTER	MIAMI	FL
12	312	312	H.E. BUTT GROCERY COMPANY	C/O KENNY NACHWALTER	MIAMI	FL
13	358	358	MARSH SUPERMARKETS LLC	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
14	493	493	PUBLIX SUPER MARKETS, INC.	DAVID P. GERMAINE	CHICAGO	IL
15	515	515	SUPERVALU INC	C/O DAVID P. GERMAINE	CHICAGO	IL
16	873	873	MCDONALD'S CORPORATION	C/O HAL B. MERCK	OAK BROOK	IL
17	1003355	1003355	GIANT EAGLE, INC.	C/O MOIRA CAIN-MANNIX	PITTSBURGH	PA
18	1015302	1015302	K & K ISLAND PRIDE SUPERMARKET	PO BOX 1782	MARSHALL	MH
19	189	194	KRAFT	C/O JENNER & BLOCK LLP	CHICAGO	IL
20	190	194	KRAFT INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
21	192	194	KRAFT FOODS	C/O JENNER & BLOCK LLP	CHICAGO	IL
22	193	194	KRAFT FOODS INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
23	195	194	KRAFT FOODS HOLDINGS INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
24	197	194	KRAFT FOODS MANUFACTURING INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
25	198	194	KRAFT FOODS NORTH AMERICA	C/O JENNER & BLOCK LLP	CHICAGO	IL
26	199	194	KRAFT GENERAL FOODS	C/O JENNER & BLOCK LLP	CHICAGO	IL
27	200	194	KRAFT GENERAL FOODS INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
28	201	204	KROGER	C/O KENNY NACHWALTER	MIAMI	FL
29	202	194	KRAFT NORTH AMERICA COMMERCIAL	C/O JENNER & BLOCK LLP	CHICAGO	IL
30	205	203	NESTLE PREPARED FOODS CO	C/O JENNER & BLOCK LLP	CHICAGO	IL
31	206	204	KROGER LIMITED PARTNERSHIP I	C/O KENNY NACHWALTER	MIAMI	FL
32	207	203	NESTLE PREPARED FOODS CO	SUCCESSOR TO CHEF AMERICA	CHICAGO	IL
33	208	204	KRGP INC.	C/O KENNY NACHWALTER	MIAMI	FL
34	209	204	KROGER TEXAS L.P.	C/O KENNY NACHWALTER	MIAMI	FL
35	210	203	NESTLE BUSINESS SERVICES	C/O JENNER & BLOCK LLP	CHICAGO	IL
36	211	204	THE KROGER CO. OF MICHIGAN	C/O KENNY NACHWALTER	MIAMI	FL
37	212	203	DREYER'S GRAND ICE CREAM INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
38	213	204	CITY MARKET	C/O KENNY NACHWALTER	MIAMI	FL
39	214	204	DILLON	C/O KENNY NACHWALTER	MIAMI	FL
40	216	204	DILLON COMPANIES, INC.	C/O KENNY NACHWALTER	MIAMI	FL
41	217	215	KELLOGG USA, INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
42	218	204	FRED MEYER	C/O KENNY NACHWALTER	MIAMI	FL
43	219	215	KELLOGG NORTH AMERICA COMPANY	C/O JENNER & BLOCK LLP	CHICAGO	IL
44	220	204	FRED MEYER, INC.	C/O KENNY NACHWALTER	MIAMI	FL
45	221	204	FRED MEYER JEWELERS, INC.	C/O KENNY NACHWALTER	MIAMI	FL
46	223	204	FMJ, INC.	C/O KENNY NACHWALTER	MIAMI	FL
47	224	222	GENERAL MILLS MARKETING INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
48	225	204	FRED MEYER STORES, INC.	C/O KENNY NACHWALTER	MIAMI	FL
49	226	222	GENERAL MILLS OPERATIONS INC	C/O JENNER & BLOCK LLP	CHICAGO	IL
50	227	204	FRY'S	C/O KENNY NACHWALTER	MIAMI	FL

51	228	222	GENERAL MILLS OPERATIONS, LLC	C/O JENNER & BLOCK LLP	CHICAGO	IL
52	229	204	GERBES	C/O KENNY NACHWALTER	MIAMI	FL
53	230	204	HEALTHY OPTIONS, INC.	C/O KENNY NACHWALTER	MIAMI	FL
54	231	204	JAY C FOOD STORES	C/O KENNY NACHWALTER	MIAMI	FL
55	232	204	JUNIOR FOOD STORES OF WEST FLORIDA, INC.	C/O KENNY NACHWALTER	MIAMI	FL
56	233	204	KESSEL	C/O KENNY NACHWALTER	MIAMI	FL
57	234	204	KESSEL FOOD MARKETS, INC.	C/O KENNY NACHWALTER	MIAMI	FL
58	235	204	KING SOOPERS	C/O KENNY NACHWALTER	MIAMI	FL
59	236	204	KWIK SHOP, INC.	C/O KENNY NACHWALTER	MIAMI	FL
60	237	239	SAFeway	C/O KENNY NACHWALTER	MIAMI	FL
61	238	204	LOAF 'N JUG	C/O KENNY NACHWALTER	MIAMI	FL
62	240	204	MINI MART	C/O KENNY NACHWALTER	MIAMI	FL
63	241	239	SAFeway FOOD & DRUG	C/O KENNY NACHWALTER	MIAMI	FL
64	242	204	MINI-MART, INC.	C/O KENNY NACHWALTER	MIAMI	FL
65	243	239	CARR-GOTTSTEIN FOODS CO	C/O KENNY NACHWALTER	MIAMI	FL
66	244	204	QFC	C/O KENNY NACHWALTER	MIAMI	FL
67	245	204	QUIK STOP	C/O KENNY NACHWALTER	MIAMI	FL
68	246	239	DOMINICK'S	C/O KENNY NACHWALTER	MIAMI	FL
69	247	204	QUIK STOP MARKETS, INC.	C/O KENNY NACHWALTER	MIAMI	FL
70	248	239	DOMINICK'S FINER FOODS LLC	C/O KENNY NACHWALTER	MIAMI	FL
71	249	204	FOOD 4 LESS	C/O KENNY NACHWALTER	MIAMI	FL
72	250	239	GENUARDI'S	C/O KENNY NACHWALTER	MIAMI	FL
73	251	204	FOOD 4 LESS HOLDINGS, INC.	C/O KENNY NACHWALTER	MIAMI	FL
74	252	239	GENUARDI'S FAMILY MARKETS LP	C/O KENNY NACHWALTER	MIAMI	FL
75	253	204	RALPHS	C/O KENNY NACHWALTER	MIAMI	FL
76	254	239	RANDALL'S	C/O KENNY NACHWALTER	MIAMI	FL
77	255	204	RALPHS GROCERY COMPANY	C/O KENNY NACHWALTER	MIAMI	FL
78	256	239	RANDALL'S FOOD & DRUGS LP	C/O KENNY NACHWALTER	MIAMI	FL
79	257	204	SMITH'S	C/O KENNY NACHWALTER	MIAMI	FL
80	258	239	TOM THUMB FOOD & DRUGS	C/O KENNY NACHWALTER	MIAMI	FL
81	259	204	SMITH'S FOOD & DRUG CENTERS, INC.	C/O KENNY NACHWALTER	MIAMI	FL
82	260	204	TOM THUMB	C/O KENNY NACHWALTER	MIAMI	FL
83	261	239	SIMON DAVID	C/O KENNY NACHWALTER	MIAMI	FL
84	262	239	VONS	C/O KENNY NACHWALTER	MIAMI	FL
85	263	204	TURKEY HILL	C/O KENNY NACHWALTER	MIAMI	FL
86	264	239	VONS GROCERY COMPANY	C/O KENNY NACHWALTER	MIAMI	FL
87	265	204	TURKEY HILL, L.P.	C/O KENNY NACHWALTER	MIAMI	FL
88	266	239	THE VONS COMPANIES INC	C/O KENNY NACHWALTER	MIAMI	FL
89	267	204	THGP CO., INC.	C/O KENNY NACHWALTER	MIAMI	FL
90	268	239	PAK N SAVE FOODS	C/O KENNY NACHWALTER	MIAMI	FL
91	269	271	WALGREEN	C/O DOUGLAS H. PATTON	MIAMI	FL
92	270	239	PAVILIONS	C/O KENNY NACHWALTER	MIAMI	FL
93	272	239	PAVILIONS PLACE	C/O KENNY NACHWALTER	MIAMI	FL
94	273	271	DUANE READE	C/O DOUGLAS H. PATTON	MIAMI	FL
95	274	239	JERSEYMAID MILK PRODUCTS	C/O KENNY NACHWALTER	MIAMI	FL
96	275	271	DUANE READE, INC.	C/O DOUGLAS H. PATTON	MIAMI	FL
97	276	239	EXTREME VALUE	C/O KENNY NACHWALTER	MIAMI	FL
98	277	239	EXTREME VALUE CENTERS	C/O KENNY NACHWALTER	MIAMI	FL
99	278	280	HY-VEE	C/O KENNY NACHWALTER	MIAMI	FL
100	281	280	PERISHABLE DISTRIBUTORS OF IOWA,	C/O KENNY NACHWALTER	MIAMI	FL
101	282	279	ADOLPH'S LTD	C/O KENNY NACHWALTER	MIAMI	FL
102	283	279	ALATHIA US LIMITED	C/O KENNY NACHWALTER	MIAMI	FL
103	284	286	ALBERTSONS	C/O KENNY NACHWALTER	MIAMI	FL
104	285	279	BBJ PRODUCTS INC	C/O KENNY NACHWALTER	MIAMI	FL

105	287	279	BEN & JERRY'S	C/O KENNY NACHWALTER	MIAMI	FL
106	288	290	A & P	C/O KENNY NACHWALTER	MIAMI	FL
107	289	279	BEN & JERRY'S FRANCHISING INC	C/O KENNY NACHWALTER	MIAMI	FL
108	291	279	BEN & JERRY'S GIFT CARD LLC	C/O KENNY NACHWALTER	MIAMI	FL
109	292	290	PATHMARK	C/O KENNY NACHWALTER	MIAMI	FL
110	293	279	BEN & JERRY'S HOMEMADE INC	C/O KENNY NACHWALTER	MIAMI	FL
111	294	290	PATHMARK STORES, INC.	C/O KENNY NACHWALTER	MIAMI	FL
112	295	279	BESTFOODS	C/O KENNY NACHWALTER	MIAMI	FL
113	296	279	BROOKE-BOND INVESTMENTS INC	C/O KENNY NACHWALTER	MIAMI	FL
114	297	290	WALDBAUM'S	C/O KENNY NACHWALTER	MIAMI	FL
115	298	290	THE FOOD EMPORIUM	C/O KENNY NACHWALTER	MIAMI	FL
116	299	279	CHESEBROUGH PONDS MANUFACTURING COMPANY	C/O KENNY NACHWALTER	MIAMI	FL
117	300	290	SUPER FRESH	C/O KENNY NACHWALTER	MIAMI	FL
118	301	279	CORE MARKETS INC	C/O KENNY NACHWALTER	MIAMI	FL
119	302	290	FARMER JACK	C/O KENNY NACHWALTER	MIAMI	FL
120	303	279	EMERALD MANUFACTURING CO	C/O KENNY NACHWALTER	MIAMI	FL
121	304	290	SAV-A-CENTER	C/O KENNY NACHWALTER	MIAMI	FL
122	305	279	LEVER	C/O KENNY NACHWALTER	MIAMI	FL
123	306	290	FOOD BASICS	C/O KENNY NACHWALTER	MIAMI	FL
124	307	279	LIPTON	C/O KENNY NACHWALTER	MIAMI	FL
125	308	279	LIPTON INDUSTRIES	C/O KENNY NACHWALTER	MIAMI	FL
126	309	312	H-E-B	C/O KENNY NACHWALTER	MIAMI	FL
127	310	279	MLT ACQUISITION CORP	C/O KENNY NACHWALTER	MIAMI	FL
128	311	279	SPECTRUM LAND COMPANY	C/O KENNY NACHWALTER	MIAMI	FL
129	313	279	TIGI LINEA CORP	C/O KENNY NACHWALTER	MIAMI	FL
130	314	312	CENTRAL MARKET	C/O KENNY NACHWALTER	MIAMI	FL
131	315	279	TIGI DE PUERTO RICO INC	C/O KENNY NACHWALTER	MIAMI	FL
132	316	279	UNATRAC US INC	C/O KENNY NACHWALTER	MIAMI	FL
133	317	279	UNILEVER	C/O KENNY NACHWALTER	MIAMI	FL
134	318	279	UNILEVER BESTFOODS	C/O KENNY NACHWALTER	MIAMI	FL
135	319	279	UNILEVER BESTFOODS ROBERTSONS (HOLDINGS) LIMITED LLC	C/O KENNY NACHWALTER	MIAMI	FL
136	320	279	UNILEVER CAPITAL CORPORATION	C/O KENNY NACHWALTER	MIAMI	FL
137	321	279	UNILEVER ILLINOIS MANUFACTURING CO LLC	C/O KENNY NACHWALTER	MIAMI	FL
138	322	279	UNILEVER HOME & PERSONAL CARE USA	C/O KENNY NACHWALTER	MIAMI	FL
139	323	279	UNILEVER HPC	C/O KENNY NACHWALTER	MIAMI	FL
140	324	279	UNILEVER HPCNA	C/O KENNY NACHWALTER	MIAMI	FL
141	325	279	UNILEVER NORTH AMERICA	C/O KENNY NACHWALTER	MIAMI	FL
142	326	279	UNILEVER SUPPLY CHAIN, INC	C/O KENNY NACHWALTER	MIAMI	FL
143	327	279	UNILEVER TRUMBULL HOLDINGS INC	C/O KENNY NACHWALTER	MIAMI	FL
144	328	279	UNILEVER TRUMBULL RESEARCH SERVICES, INC	C/O KENNY NACHWALTER	MIAMI	FL
145	329	279	UNILEVER UNITED STATES INC	C/O KENNY NACHWALTER	MIAMI	FL
146	330	279	UNILEVER UNITED STATES FOUNDATION, INC.	C/O KENNY NACHWALTER	MIAMI	FL
147	494	493	MORNING SONG LLC	C/O DAVID P. GERMAINE	CHICAGO	IL
148	502	515	ALBERTSON'S, INC	C/O DAVID P. GERMAINE	CHICAGO	IL
149	503	515	AMERICAN DRUG STORES, INC	C/O DAVID P. GERMAINE	CHICAGO	IL
150	504	515	AMERICAN STORES COMPANY	C/O DAVID P. GERMAINE	CHICAGO	IL
151	505	515	BRISTOL FARMS	C/O DAVID P. GERMAINE	CHICAGO	IL
152	506	515	JEWEL FOODS, INC	C/O DAVID P. GERMAINE	CHICAGO	IL
153	507	515	NEW ALBERTSON'S, INC	C/O DAVID P. GERMAINE	CHICAGO	IL
154	508	515	PREFERRED PRODUCTS, INC	C/O DAVID P. GERMAINE	CHICAGO	IL
155	509	515	SAVE-A-LOT FOOD STORES, LTD	C/O DAVID P. GERMAINE	CHICAGO	IL

156	510	515	SCOTT'S FOOD STORES, INC	C/O DAVID P. GERMAINE	CHICAGO	IL
157	511	515	SHAWS SUPERMARKETS, INC.	C/O DAVID P. GERMAINE	CHICAGO	IL
158	512	515	SHOP-N-SAVE WAREHOUSE FOODS, INC	C/O DAVID P. GERMAINE	CHICAGO	IL
159	513	515	SHOPPERS FOOD WAREHOUSE CORP	C/O DAVID P. GERMAINE	CHICAGO	IL
160	514	515	SOUTHSTAR, LLC	C/O DAVID P. GERMAINE	CHICAGO	IL
161	516	515	W NEWELL & CO	C/O DAVID P. GERMAINE	CHICAGO	IL
162	560	222	GENERAL MILLS OPERATIONS LLC	ONE GENERAL MILLS BLVD	MINNEAPOLIS	MN
163	561	215	KELLOGG COMPANY	ONE KELLOGG SQUARE	BATTLE CREEK	MI
164	705	493	PUBLIX SUPER MARKETS, INC.	3300 PUBLIX CORPORATE	LAKELAND	FL
165	706	515	ACME MARKETS, INC.	C/O DAVID P. GERMAINE	CHICAGO	IL
166	707	515	MORAN FOODS	C/O DAVID P. GERMAINE	CHICAGO	IL
167	709	515	AMERICAN PROCUREMENT & LOGISTICS CO LLC	C/O DAVID P. GERMAINE	CHICAGO	IL
168	710	515	FF ACQUISITION LLC	C/O DAVID P. GERMAINE	CHICAGO	IL
169	711	515	NC&T SUPERMARKETS, INC.	C/O DAVID P. GERMAINE	CHICAGO	IL
170	712	515	RICHFOOD, INC.	C/O DAVID P. GERMAINE	CHICAGO	IL
171	713	515	SAVE-A-LOT TYLER GROUP, LLC	C/O DAVID P. GERMAINE	CHICAGO	IL
172	714	515	SUPER RITE FOODS, INC.	C/O DAVID P. GERMAINE	CHICAGO	IL
173	715	515	SUPERMARKET OPERATORS OF AMERICA, INC.	C/O DAVID P. GERMAINE	CHICAGO	IL
174	716	515	SUPERVALU HOLDINGS, INC.	C/O DAVID P. GERMAINE	CHICAGO	IL
175	717	515	VALU VENTURES 2, INC.	C/O DAVID P. GERMAINE	CHICAGO	IL
176	718	515	SUPERVALU, INC.	7075 FLYING CLOUD DRIVE	EDEN PRAIRIE	MN
177	738	1003355	RISER FOODS COMPANY	TRADING AS AMERICAN SEAWAY FOODS	PITTSBURGH	PA
178	759	358	BUTTERFIELD FOODS, LLC	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
179	760	358	BF PROPERTY, LLC	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
180	761	358	CRYSTAL FOOD SERVICES, LLC	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
181	762	358	CF PROPERTY, LLC	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
182	763	358	CRYSTAL FOOD MANAGEMENT SERVICES, LLC	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
183	764	358	CRYSTAL CAFE MANAGEMENT GROUP,	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
184	765	358	O'MALIA FOOD MARKETS, LLC	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
185	766	358	LOBILL FOODS, LLC	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
186	767	358	LB PROPERTY, LLC	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
187	768	358	A.L. ROSS & SONS, INC.	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
188	769	358	MARSH SUPERMARKETS OF ILLINOIS, INC.	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
189	872	515	AMERICAN DRUG STORES LLC	C/O DAVID P. GERMAINE	CHICAGO	IL
190	874	358	TOPCO ASSOCIATES, LLC	MARSH SUPERMARKETS, LLC	PITTSBURGH	PA
191	875	1003355	TOPCO ASSOCIATES, LLC	GIANT EAGLE, INC.	PITTSBURGH	PA
192	876	1003355	CONAGRA FOODS, INC.	C/O MARCUS & SHAPIRA LLP	PITTSBURGH	PA
193	877	194	KRAFT FOODS GLOBAL, INC.	THREE LAKES DRIVE	NORTHFIELD	IL
194	878	203	NESTLE USA, INC.	800 NORTH BRAND	GLENDALE	CA
195	1008360	1003355	GIANT EAGLE MARKETS INC-PITTSBURGH	101 KAPPA DR	PITTSBURGH	PA
196	1013675	515	JEWEL FOOD STORES	C/O DAVID P. GERMAINE	CHICAGO	IL
197	7285882	515	SUPERVALU, INC.	C/O THE VANEK, VICKERS & MASINI, P.C.	CHICAGO	IL

**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	:	
DIRECT PURCHASER ACTIONS	:	
	:	

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF THE CLASS
ACTION SETTLEMENTS BETWEEN DIRECT PURCHASER PLAINTIFFS
AND (1) DEFENDANT MIDWEST POULTRY SERVICES, LP, (2)
DEFENDANT NATIONAL FOOD CORPORATION, AND (3) DEFENDANTS
UNITED EGG PRODUCERS AND UNITED STATES EGG MARKETERS**

AND NOW, this ____ day of _____, 2015, upon consideration of the Motion for Final Approval of the Class Action Settlements Between Plaintiffs and (1) Defendant Midwest Poultry Services, LP (“MPS”), (2) Defendant National Food Corporation (“NFC”), and (3) Defendants United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”), and following a final fairness hearing, in accordance with Federal Rule of Civil Procedure 23, it is hereby **ORDERED** that the Motion is **GRANTED** as outlined in this Order and the accompanying Memorandum.

Based on the Court’s review of the proposed Settlement Agreements, the entire record of this case, and having conducted a final fairness hearing, the Court determines as follows:

1. The Court has jurisdiction over the subject matter of this action.
2. Terms used in this Order that are defined in the Settlement Agreements, unless otherwise defined herein, have the same meanings in this Order as in the Settlement Agreements.
3. The following Settlement Class, which is utilized in all three Settlement Agreements and was conditionally certified in the Court’s Order granting preliminary approval of the Settlements, is certified for settlement purposes only 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.

4. The Court finds, as discussed more thoroughly in the accompanying Memorandum, that the Settlement Class satisfies the applicable prerequisites for class action treatment under Rules 23(a) and (b) of the Federal Rules of Civil Procedure. The Settlement Class is adequately defined and ascertainable. 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 the Settlements, 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.

5. Notice of the Settlement Agreements to the Settlement Class required by Rule 23(e) of the Federal Rules of Civil Procedure has been provided in accordance with the Court's Order granting preliminary approval of the Settlements and notice of the Settlements, and such Notice has been given in an adequate and sufficient manner; constitutes the best notice practicable under the circumstances; and satisfies Federal Rules of Civil Procedure 23(c)(2)(B) and 23(e) and due process.

6. Defendants have filed notification of the Settlements with the appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715.

7. As discussed more thoroughly in the accompanying Memorandum, the Court finds that the Settlement Agreements are sufficiently fair, reasonable and adequate to the Settlement Class pursuant to Federal Rule of Civil Procedure 23(e). Specifically, the Court finds that the Settlements meet the standard for an initial presumption of fairness. Additionally, the Court's analysis of the factors set forth in *Girsh v. Jepsen*, 521 F.2d 153 (3d Cir. 1975), and factors set forth in *In re Prudential Insurance Co. American Sales Practice Litigation Agent Actions*, 148 F.3d 283 (3d Cir. 1998), as appropriate, leads to the conclusion that the relevant considerations weigh in favor of finding the Settlements are fair, reasonable and adequate under Federal Rule of Civil Procedure 23(e).

8. The Settlement Agreements are finally approved pursuant to Federal Rule of Civil Procedure 23(e) as fair, reasonable, and adequate, and the parties are directed to consummate the

Settlement Agreements in accordance with their terms.

9. The United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of the Settlement Agreements, and shall have exclusive jurisdiction over any suit, action, motion, proceeding, or dispute arising out of or relating to the Settlement Agreements or the applicability of the Settlement Agreements that cannot be resolved by negotiation and agreement by Plaintiffs and MPS, NFC, UEP, or USEM. The Settlement Agreements 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. MPS, NFC, UEP, and USEM shall submit to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of their respective Settlement Agreement and the implementation, enforcement and performance thereof. Defendants otherwise retains all defenses to the Court's exercise of personal jurisdiction over them.

BY THE COURT:

GENE E.K. PRATTER
United States District Judge

**UNITED STATES DISTRICT COURT
IN 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 Class Actions	:	

CERTIFICATE OF SERVICE

I hereby certify that Direct Purchaser Plaintiffs’ Motion for Final Approval of the Settlements with National Food Corporation, Midwest Poultry Services, and UEP/USEM were served upon the below-listed Liaison Counsel for Defendants, Indirect Purchaser Plaintiffs, and Direct Action Plaintiffs via electronic mail and this Court’s ECF service:

Liaison Counsel

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Defendants’ Liaison Counsel

Indirect Purchaser Plaintiffs’ Liaison Counsel

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Direct Action Plaintiffs’ Liaison Counsel

Date: March 20, 2015

BY: /s/ Mindee J. Reuben
 Mindee J. Reuben