

**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 NUCAL FOODS,
INC. AND (2) DEFENDANTS HILLANDALE FARMS OF PA.,
INC. AND HILLANDALE-GETTYSBURG, L.P.**

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 NuCal Foods, Inc. (“NuCal”) and the Settlement Agreement between Plaintiffs and Defendants Hillandale Farms of PA., Inc. (“Hillandale PA”) and Hillandale-Gettysburg, L.P. (“Hillandale-Gettysburg”), and to certify the Classes for the purpose of Settlement pursuant to Federal Rules 23(a) and 23(b)(3). This Motion is supported by Plaintiffs’ Memorandum of Law, the Declarations of James J. Pizzirusso and Ronald J. Aranoff, and the Supplemental Affidavit of Jennifer M. Keough, 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 NuCal's, Hillandale PA's, and Hillandale-Gettysburg'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 Orders dated October 3, 2104 and December 19, 2014 (ECF Nos. 1073 & 1108), the Settlement Classes, as defined in the Settlement Agreements, meet 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: June 1, 2015

Respectfully submitted,

/s/ Mindee J. Reuben

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IN THE EASTERN DISTRICT OF PENNSYLVANIA**

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ANTITRUST LITIGATION**

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**DIRECT PURCHASER PLAINTIFFS' MEMORANDUM IN SUPPORT
OF MOTION FOR FINAL APPROVAL OF THE CLASS ACTION
SETTLEMENTS BETWEEN PLAINTIFFS AND (1) DEFENDANT
NUCAL FOODS, INC. AND (2) DEFENDANTS HILLANDALE FARMS
OF PA., INC. AND HILLANDALE-GETTYSBURG, L.P.**

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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 the proposed settlements with defendant NuCal Foods, Inc. (“NuCal”) and defendants Hillandale Farms of Pa., Inc. (“Hillandale PA”) and Hillandale-Gettysburg, L.P. (“Hillandale-Gettysburg”), and for final certification of the Settlement Classes pursuant to Federal Rule of Civil Procedure 23. The Settlement Agreements were negotiated and executed separate and independent from one another and were both achieved after months of arm’s length negotiations by capable counsel.¹ 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 NuCal, Hillandale PA, and Hillandale-Gettysburg, 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 prices for Shell Eggs and Egg Products that were higher than they otherwise would have been absent the conspiracy. The lawsuit seeks injunctive relief,

¹ Plaintiffs submit one brief in support of final approval for efficiency and because the same legal standard applies to both settlements. Also, Plaintiffs combined notice of the settlements to minimize expenses to the Class.

treble damages, attorneys' fees and costs from Defendants. NuCal, Hillandale Pa, and Hillandale-Gettysburg 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 Moark 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 National Food Corporation ("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 Midwest Poultry Services, LP ("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 United Egg Producers ("UEP") and United States Egg Marketers ("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 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 PA and Hillandale-Gettysburg providing for cooperation and a cash settlement of \$3,000,000. (ECF No. 1093.) The Court granted preliminary approval of the settlement on December 19, 2014. (ECF No. 1108.)

C. THE SETTLEMENT NEGOTIATIONS

1. The NuCal Settlement Agreement

Interim Co-Lead Counsel for Plaintiffs (“Class Counsel”) and NuCal’s counsel engaged in arm’s length negotiations over a period of roughly seven months to reach the settlement. The scope and details of the negotiations are described in the Declaration of James J. Pizzirusso filed herewith. Class Counsel and NuCal’s counsel are experienced, capable and both vigorously advocated their respective client’s positions in the settlement negotiations.

The parties first discussed a potential resolution soon after the case began. Pizzirusso Decl. ¶ 6. Those discussions were not fruitful and there were no meaningful discussions until after the joint mediation in October 2013. Although the mediation was unsuccessful, Class Counsel decided to approach several individual Defendants, including NuCal, about resolving the case. *Id.* at ¶ 7.

The parties began substantive negotiations in January 2014. *Id.* at ¶ 8. The parties initially were far apart and talks seemed unlikely to be successful. *Id.* However, after several other settlements were reached, the plaintiffs and NuCal began to discuss settlement again in earnest. *Id.* After several rounds of telephone calls and email exchanges, the parties eventually agreed to a settlement requiring a \$1,425,000.00 payment and cooperation. *Id.* The settlement was primarily based on NuCal’s financial condition and its sales data. *Id.* The parties reached an

agreement in principle in May 2014 and executed the final settlement agreement on August 1, 2014. *Id.* at ¶¶ 9, 10.

After factual investigation and legal analysis, it is the opinion of Class Counsel that the Settlement Amount of \$1,425,000.00, combined with NuCal's obligation to cooperate with Plaintiffs, is fair, reasonable, and adequate to the Class.

2. The Hillandale/Gettysburg Settlement Agreement

Class Counsel and counsel for Hillandale PA and Hillandale-Gettysburg (collectively the "Hillandale/Gettysburg Defendants") engaged in arm's length negotiations over a period of approximately four months to reach a settlement. The scope and details of the negotiations are described in the Declaration of Ronald J. Aranoff filed herewith. Class Counsel and counsel for the Hillandale/Gettysburg Defendants are both experienced and capable and both vigorously advocated their respective client's positions in the settlement negotiations.

The parties engaged in preliminary settlement discussions soon after the litigation began and again after the Court ruled on motions to dismiss. Aranoff Decl. ¶ 4. Those discussions were not productive and there were no additional, meaningful discussions for some time. *Id.*

After the unsuccessful joint mediation in October 2013, Class Counsel decided to re-approach the Hillandale/Gettysburg Defendants about resolving the case. *Id.* at ¶ 5. The parties began substantive discussions in the summer of 2014. *Id.* at ¶ 6. The parties were initially far apart, but made slow and steady progress over time. In early September 2014, after several rounds of telephone calls and other communications, the parties agreed to a settlement requiring a \$3,000,000.00 payment and cooperation. *Id.* The broad terms of the settlement agreement were memorialized in a term sheet dated September 19, 2014. *Id.* at ¶ 7. The formal Settlement Agreement was executed on October 22, 2014. *Id.*

After factual investigation and legal analysis, it is the opinion of Class Counsel that the Settlement Amount of \$3,000,000.00, combined with the Hillandale/Gettysburg Defendants' obligation to cooperate with Plaintiffs, 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. Both of the Settlement Agreements define the proposed Settlement Class as follows:

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.

See Settlement Agreement ¶ 22 (Pizzirusso Decl. Ex. 1); Settlement Agreement ¶ 23 (Aranoff Decl. Ex. 1).

B. MONETARY PAYMENTS AND COOPERATION PROVISIONS

3. The NuCal Settlement Agreement

NuCal agreed to pay the Settlement Class \$1,425,000.00 in cash within five days of execution of the Settlement Agreement. *See* Settlement Agreement ¶¶ 19, 38 (Pizzirusso Decl. Ex. 1). The Settlement Agreement also requires NuCal to cooperate with Plaintiffs in the continued prosecution of this Action. The Agreement requires that NuCal: (1) make its counsel available to provide background information concerning NuCal, its organization, its operations, its personnel, and the identification of potential witnesses with knowledge of matters at issue in this Action; (2) make available for one interview with Class Counsel each of up to three then-current directors, officers, and employees of NuCal, who possess information that Class Counsel believe would assist Plaintiffs in prosecuting the Action against the Non-Settling Defendants; (3) clarify transactional data provided in this Action; (4) establish the authenticity, and/or admissibility as business records, documents produced by NuCal, and to the extent possible, documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action; and (5) make available from among its current directors, officers, or employees up to two representatives to testify at trial regarding facts or issues at issue in this Action. *Id.* at ¶ 44.

4. The Hillandale/Gettysburg Settlement Agreement

The Hillandale/Gettysburg Defendants agreed to pay the Settlement Class \$3,000,000.00 in cash within thirty days of execution of the Settlement Agreement. *See* Settlement Agreement ¶¶ 20, 40 (Aranoff Decl. Ex. 1). The Settlement Amount was split equally between Hillandale PA and Hillandale-Gettysburg. *See id.* at ¶ 20 n.1. In addition to the Settlement Amount, the Agreement also requires that the Hillandale/Gettysburg Defendants cooperate with Plaintiffs in their prosecution of this Action by authenticating documents. Under the Agreement, the Hillandale/Gettysburg Defendants must authenticate documents, including business records if

applicable, that were produced by the Hillandale/Gettysburg Defendants and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators that were authored or created by the Hillandale/Gettysburg Defendants or sent to or received by the Hillandale/Gettysburg Defendants. *Id.* at ¶ 47.

C. RELEASE OF CLAIMS

In exchange for the consideration described above, Plaintiffs have agreed to release NuCal, Hillandale PA, Hillandale-Gettysburg, Hillandale Farms East, Inc., and Hillandale Farms, Inc., from any and all claims arising out of or resulting from the conduct asserted in this lawsuit. *See* Settlement Agreement ¶¶ 30–34 (Pizzirusso Decl. Ex. 1); Settlement Agreement ¶¶ 30–34 (Aranoff Decl. 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 explained in the Notice, Class Members will have an opportunity to comment and/or object to the proposed allocation plan. *Id.*

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.

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 October 3, 2014, the Court preliminarily approved the NuCal Settlement and certified the proposed Class for settlement purposes. (ECF No. 1073.) On December 19, 2014, the Court preliminarily approved the Hillandale/Gettysburg Settlement, certified the proposed Class for settlement purposes, and authorized Class Counsel to disseminate notice of the NuCal and Hillandale/Gettysburg Settlements by direct mail and publication. (ECF No. 1108.) A final fairness hearing for both Settlements is scheduled for June 22, 2015. *Id.* at 9.

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 NuCal and Hillandale/Gettysburg settlements. In doing so, Plaintiffs utilized the same Notice Plan 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 NuCal and Hillandale/Gettysburg 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 Settlements (Notice at 1, 6-7), as well as information needed to make informed decisions about their participation in the settlement (Notice at 1, 6-8). 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 February 11, 2015, Garden City Group, LLC. ("GCG"), the Settlement Claims Administrator retained by Class Counsel, mailed the long-form notice (the "Mailed Notice") to approximately 17,585 direct purchasers of Shell Eggs and Egg Products identified using the sales data produced by Defendants. *See* Keough Aff. ¶ 8. As of May 29, 2015, the date the Keough Affidavit was executed, GCG has received 42 Mailed Notices returned by the U.S. Postal Service with forwarding address information and 3,120 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 NuCal and Hillandale/Gettysburg settlements either before or after the May 22, 2015 deadline to file an objection set forth in the Notice. *See id.* at ¶ 16. GCG received 193 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 NuCal Settlement and 193 requests for exclusion from the Hillandale/Gettysburg settlement.⁵ *Id.* at ¶ 15.

B. SUMMARY NOTICE, PRESS RELEASES AND WEBSITE

Summary Notice was published in the following trade magazines: *Hotel F&B* (March 2015 issue); *Progressive Grocer* (March 2015 issue); *School Nutrition* (March 2015 issue); *Supermarket News* (March 2015 issue); *Stores* (March 2015 issue); *Egg Industry* (March 2015 issue); *Food Processing* (March 2015 issue); *Food Manufacturing* (March/April 2015 issue); *FoodService Director* (March 2015 issue); *Convenience Store News* (March 2015 issue); *Restaurant Business* (March 2015 issue); *Nation 's Restaurant News* (March 23, 2015 issue); *PetFood Industry* (March 2015 issue); *Bake* (March 2015 issue); and *Long Term Living* (March/April 2015 issue). *Id.* at ¶ 11.

Moreover, GCG arranged for publication on February 24, 2015 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 February 24, 2015. *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 with information about the Action and Settlement Agreements.⁶ The Settlement Website's "Important Dates" tab shows the deadline for objections and exclusions from the Settlements and the date of the final fairness hearing. The "Hillandale and NuCal Settlements" tab provides answers to eleven frequently asked questions about the

⁵ The 193 requests for exclusion include requests by related entities. For example, there are over 20 "Safeway" entities, 38 "Kroger" entities, and 34 "Conopco" entities. *See* Keough Aff. ¶ 15.

⁶ www.EggProductsSettlement.com

Settlement Agreements.⁷ The “Notice” tab allows potential Class Members to view and download the Mailed Notice. And the “Court Documents” tab provides the executed Settlement Agreements and the Court’s Orders granting preliminary approval.

The Court’s December 19, 2014 Order approving the notice plan directed that the Mailed Notice, relevant Court documents, NuCal and Hillandale Settlement Agreements, and frequently asked questions be uploaded onto the Website by February 16, 2015. (ECF No. 1108 at 7.) While the Mailed Notice and frequently asked questions were added by February 16, 2015, the executed Settlement Agreements and the preliminary approval Orders were inadvertently not uploaded until May 19, 2015. Keough Aff. ¶ 13.

Although the documents were not loaded, the Website provides contact information enabling potential Class Members to request the documents.⁸ The Website’s “Additional Information” tab directs anyone with additional questions to contact GCG and provides a toll-free number and mailing address. The Website (as well as the Mailed and Summary Notices) also lists the names of Class Counsel and their respective law firms. Neither GCG nor Class Counsel received any requests for the documents, either written or through the toll-free number posted on the Website. *See id.* Class Counsel noticed that the documents were not loaded while preparing this Motion and immediately corrected the issue.

⁷ The website provides answers the following frequently asked questions: “(1) What is this lawsuit about? (2) Who is included in the NuCal and Hillandale/Gettysburg Settlements? (3) Why are there Settlements with NuCal and the Hillandale/Gettysburg Defendants and what do they provide? (4) When will the NuCal and Hillandale/Gettysburg Settlement Funds be distributed? (5) What is the effect of the Court’s final approval of the NuCal and/or Hillandale/Gettysburg Settlements? (6) Who represents the NuCal and Hillandale/Gettysburg Settlement Classes? (7) How will the lawyers be paid? (8) When and where will the Court hold a hearing on the fairness of the NuCal and Hillandale/Gettysburg Settlements? (9) How do I object to the NuCal and Hillandale/Gettysburg Settlements? (10) How do I exclude myself from the Settlements? (11) What happens if I do nothing?”

⁸ The documents were also available on the United States Courts’ Public Access to Court Electronic Records (Pacer) system. (*See* ECF Nos. 1041-2, 1073, 1093-2, 1108.)

The Settlement website has been operational since August 30, 2010, and is accessible twenty-four hours a day, seven days a week. *Id.* Between February 11, 2015, and May 29, 2015, the Settlement website received 2,378 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 NuCal and Hillandale/Gettysburg settlements.⁹ *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 Hillandale/Gettysburg settlements on February 11, 2015. *Id.* Between February 11, 2015 and May 29, 2015 there have been 276 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*

⁹ 1-866-881-8306

Paper Prods., Inc. v. Berger & Montague, P.C., 758 F.2d 86, 90 (3d Cir. 1985) (“It is well 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).

NuCal filed a declaration of CAFA compliance on May 1, 2015. (ECF No. 1176.) The Hillandale/Gettysburg Defendants filed a declaration of CAFA compliance on May 7, 2015. (ECF No. 1178.)

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

In its preliminary approval orders, 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, and also the Rule 23(b) requirements of predominance and superiority. (*See* ECF Nos. 1073 at 5; 1108 at 5–6.) 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 NuCal and Hillandale/Gettysburg 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”). These criteria are satisfied here.

Both settlements were negotiated at arm’s length. Class Counsel and NuCal’s counsel began substantive settlement discussions January 2014, after a failed joint mediation and over five years after the case began. Pizzirusso Decl. ¶¶ 7, 8. The parties were far apart and initially it appeared the talks would not be successful. *Id.* at ¶ 8. After several rounds of telephone calls and email exchanges, the parties eventually reached an agreement in principle in May 2014. *Id.* at ¶¶ 8, 9. The settlement was based primarily on NuCal’s sales data and on its financial statements. NuCal shared its financial statements with Class-Counsel in April 2014. *Id.* at ¶ 8. Given several unique issues with the settlements, it took approximately two months to finalize the formal settlement agreement. *Id.* at ¶ 9. The parties executed the settlement agreement on August 1, 2014. *Id.* at ¶ 10. Class Counsel and NuCal’s counsel vigorously advocated their clients’ positions in reaching the proposed settlement.

Plaintiffs’ Settlement Agreement with the Hillandale/Gettysburg was achieved after vigorous settlement negotiations spanning approximately four months. Class-counsel and counsel for the Hillandale/Gettysburg Defendants began substantive settlement discussion during the summer of 2014, approximately five and a half years after the litigation began. Aranoff Decl. at ¶ 6. The parties were initially far apart, but made slow and steady progress over time. *Id.* The parties eventually agreed to a settlement in principle in late August 2014, after several rounds of

telephone conversations and email exchanges. *Id.* The parties executed the formal settlement agreement on October 22, 2014. *Id.* at ¶ 7.

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 proposed settlements. *See* Pizzirusso Decl. ¶ 11; Aranoff Decl. ¶ 8. 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.

When Plaintiffs and NuCal reached an agreement in May 2014, Plaintiffs had reviewed over 200,000 pages of documents produced by NuCal and had deposed the current president and CEO of NuCal, the former president, a senior vice president of operations, and a vice president of marketing and sales. Pizzirusso Decl. ¶ 11. When Plaintiffs and the Hillandale/Gettysburg reached an agreement, Plaintiffs had reviewed over 15,000 documents produced by the Hillandale/Gettysburg Defendants and had deposed the chairman of Hillandale PA., the president of Hillandale-Gettysburg, and a general manager of Hillandale-Gettysburg. Aranoff Decl. ¶ 8.

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.¹⁰ Counsel for NuCal (Kasowitz, Benson, Torres & Friedman) and the

¹⁰ Class 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 Class Counsel's qualifications and experience. Class 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.

Hillandale/Gettysburg Defendants (Buchanan, Ingersoll & Rooney) 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 193 Class Members have elected to exclude themselves from the Settlements. *See Keough Aff.* ¶¶ 15, 16. The absence of objections and a small percentage of exclusions give rise to a presumption of fairness. *See McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 459 (D.N.J. 2008) (finding that 601 opt-outs and nine objections qualified for a presumption of fairness); *In re Remeron End-Payor Antitrust Litig.*, No. 02-2007, 2005 WL 2230314, at *16–17 (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

5. 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 NuCal and the Hillandale/Gettysburg Defendants would entail a lengthy and complex battle.

NuCal and the Hillandale/Gettysburg Defendants 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.

6. 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 193 requests for exclusion from the Settlements from the Classes of thousands of direct purchasers.¹¹ *See Keough Aff.* ¶ 15. These numbers are consistent with Third Circuit precedent and the decisions of other federal courts approving

¹¹ As noted above, 17,585 copies of the long-form Notice were mailed by the Claims Administrator. *Keough Aff.* ¶ 8. Of those, 42 packets were returned with forwarding address information, and 3,120 packets were returned without forwarding address information. *Id.* at ¶¶ 9–10.

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

7. 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.

Both 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 4.¹² As discussed above, discovery was well underway when the settlements were reached. 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’, NuCal’s, and the Hillandale/Gettysburg Defendants’ 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.

Given the stage of proceedings and discovery conducted when Plaintiffs, NuCal, and the Hillandale/Gettysburg Defendants 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

¹² (ECF No. 26, 2:08-cv-4653, E.D. Pa.)

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").

8. 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.¹³ "Here, as in every case, Plaintiffs face the general risk that they may lose at trial, since no one can predict the way in which a jury will resolve disputed issues." *Lazy Oil Co. v. Wotco Corp.*, 95 F. Supp. 2d 290, 337 (W.D. Pa. 1997), *aff'd sub nom. Lazy Oil Co. v. Witco*

¹³ 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.").

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.”).

9. 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 NuCal and the Hillandale/Gettysburg Defendants, Class Counsel must also recognize the existence of a genuine risk of no recovery or only a limited recovery. In addition, NuCal’s and the Hillandale/Gettysburg Defendants’ cooperation enhances Plaintiffs’ ability to establish damages against the non-settling Defendants, and may encourage a complete settlement of the action.

10. 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. However, Class Counsel acknowledges that

had NuCal and the Hillandale/Gettysburg Defendants not settled, they would have joined the non-settling Defendants in contesting class certification. This uncertainty further supports approval of the proposed Settlement.

11. 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 NuCal and the Hillandale/Gettysburg Defendants 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.”).

12. 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 NuCal and Hillandale/Gettysburg 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: June 1, 2015

Respectfully submitted,

/s/ Mindee J. Reuben

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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 NUCAL FOODS, 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. Michael Hausfeld of 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 NuCal Foods, Inc. ("NuCal") and Direct Purchaser Class Plaintiffs ("Plaintiffs"). This declaration is based on my personal knowledge and conversations with other Interim Counsel.
- 3) This is a class action alleging that NuCal 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 Eggs 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 NuCal, along with other Interim Co-Lead Counsel for Direct Purchasers, who were actively and directly involved. The settlement negotiations with NuCal were conducted by experienced counsel on both sides at arm's length over a period of approximately seven months.

6) The parties first approached NuCal about any interest in a potential resolution soon after the litigation began. The prospects for early resolution did not appear to be fruitful and there were no meaningful discussions for some time.

7) In September 2013, the parties sought to stay the litigation to attend a joint mediation session in October of that year. NuCal attended that mediation and while the joint mediation was unsuccessful, Interim Co-Lead Counsel decided to approach several individual Defendants, including NuCal, about resolving the case on an individual basis.

8) In January 2014, the Interim Co-Lead Counsel began substantive negotiations with NuCal. The parties were far apart and talks initially seemed unlikely to be successful. After several other settlements were reached, however, the parties began to discuss settlement again in earnest. In April 2014, NuCal shared its unaudited financial statements with Plaintiffs. After several rounds of telephone calls and email exchanges, the parties eventually agreed to a \$1,425,000 settlement based primarily on NuCal's financial condition and its sales data.

9) In May 2014, the parties reached an agreement in principal and set out to draft the settlement agreement. Given several unique issues with the settlement, it took approximately two months to finalize the agreement.

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

11) Discovery was well advanced when the parties reached an agreement. Collectively, the defendants in this Action produced over 1 million documents, much of which had been reviewed by Interim Counsel when Plaintiffs and NuCal reached an agreement in May 2014. Plaintiffs had also conducted significant discovery directed specifically at NuCal. When the parties reached an agreement, Plaintiffs had reviewed over 200,000 pages of documents produced by NuCal, and had deposed the current president and CEO of NuCal, the former president, a senior vice president of operations, and a vice president of marketing and sales.

12) Pursuant to ¶ 44 of the Settlement Agreement, NuCal has agreed to provide a proffer concerning its knowledge of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action; to allow for interviews of NuCal employees; to assist with transactional data questions; to authenticate documents; and to provide witnesses to testify at trial, among other things.

13) The Court granted preliminary approval of the proposed Settlement on October 3, 2014. (ECF No. 1073.) On December 19, 2014, the Court authorized Interim Counsel to disseminate Notice of the proposed settlement. (ECF No. 1108.) A final fairness hearing is scheduled for June 22, 2015.

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

Dated: June 1, 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 DEFENDANT NUCAL FOODS, INC.**

This Settlement Agreement (“Agreement”) is made and entered into as of this 1st day of August 2014 (the “Execution Date”) by and between NuCal Foods, Inc. (“NuCal”) 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 NuCal and other Defendants (the “Action”);

WHEREAS, Plaintiffs allege that NuCal 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, NuCal 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, NuCal 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 NuCal to pay a significant judgment and has reached settlement terms reflecting NuCal's financial condition.

WHEREAS, Class Counsel and NuCal'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 NuCal 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, 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 NuCal only, without costs as to Plaintiffs, the Class, or NuCal, 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. “NuCal’s Counsel” shall refer to the law firm of Kasowitz, Benson, Torres & Friedman LLP.

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 38 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 NuCal.

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 NuCal 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 NuCal, its members Cal Eggs and Nulaid Foods, and members of Cal Eggs and Nulaid Foods (to be listed in Exhibit A), but not as to any other Defendant other than NuCal.

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 \$1,425,000 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).

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 NuCal 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 NuCal.

24. Within five (5) business days after the execution of this Agreement by NuCal, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against NuCal in the Action pending approval of this Agreement. Within twenty (20) business days after execution of the Agreement by NuCal, 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 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.

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 NuCal, any Non-Settling Defendant(s) in the Action, or Other Settling Defendants during the Class Period that: are identified by NuCal; were previously identified by NuCal 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, NuCal shall supply to Class Counsel at NuCal'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. 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 NuCal, through NuCal's Counsel, a written list of the names and addresses of all potential Class Members who have exercised their right to request exclusion from the Class.

27. 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 NuCal, 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 received notice;
- c. reconfirm the appointment of Class Representatives and Settlement Class Counsel as defined herein;
- d. direct that, as to NuCal, 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 NuCal 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 NuCal.

28. 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 NuCal 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 NuCal shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 35 and 36 of this Agreement.

29. Should NuCal or Plaintiffs be required to submit any of NuCal'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

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.

31. 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.

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.

34. 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

35. 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 NuCal 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 NuCal'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 NuCal, pursuant to its instructions; provided, however, that simultaneous with its written instructions to the Escrow Agent, NuCal 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 NuCal'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 (attached as Exhibit C) shall govern.

36. 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 NuCal 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 NuCal 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. All parties reserve their rights with respect to any documents or information that Nucal shared as part of the settlement negotiations that would have otherwise been obtainable by separate and independent discovery under the Federal Rules of Civil Procedure.

37. 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 44 shall be returned to NuCal at NuCal'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 NuCal's Counsel.

F. Payment

38. NuCal shall pay or cause to be paid the Settlement Amount in settlement of the Action. The Settlement Amount shall be wire transferred by NuCal 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.

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. NuCal 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 as long as the amount for attorneys' fees does not exceed 33 1/3% of the Settlement Amount not including for reasonable litigation and administrative expenses and incentive awards. Except to the extent that the

Court may award attorneys' fees and litigation expenses to be paid out of the Settlement Amount, NuCal shall have no obligation to pay any fees or expenses of 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 NuCal, 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 41 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 NuCal in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

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

a. **Proffers:** NuCal agrees that, as soon as practicable after the Execution Date, NuCal's Counsel shall make themselves available to Class Counsel, in person in San Francisco, California and/or by teleconference, at a mutually convenient date and time, to provide background information concerning: NuCal, its organization, its operations, and its personnel; the identification of potential NuCal witnesses with knowledge of the matters at issue in the Action; and the substance of their anticipated testimony according to the best understanding of NuCal's counsel (the "Proffer"). The Proffer shall not extend for more than five (5) hours in duration.

b. **Interviews:** As soon as practicable after the Execution Date, NuCal shall, at an agreed upon time and date in San Francisco, California, and at NuCal's expense, make available for one interview with Class Counsel each of up to three then-current directors, officers, and employees of NuCal, 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. To the extent feasible, such interviews shall be concurrent with interviews conducted by other settling plaintiffs. NuCal shall use best efforts to assist Class Counsel in arranging interviews with any former directors, officers, and employees of NuCal. Any interviews of such former directors, officers, and employees of NuCal shall count against the cap of three interviews.

c. **Transactional Data:** NuCal will meet its obligations under the existing 8 mm tape Protocol (attached as Exhibit D). NuCal shall, upon request by Class Counsel, clarify to the best of its ability transactional data produced by NuCal in discovery in the Action, including providing, upon request by Plaintiffs, follow-up information in response to questions Plaintiffs may reasonably have concerning such transactional 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, NuCal 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 NuCal, and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by NuCal or sent to or received by NuCal. Class Counsel agree to use reasonable efforts to minimize the burden to NuCal of any such authentication or business records testimony.

e. **Trial Testimony:** Upon the request of Class Counsel and at NuCal's expense, NuCal shall make available from among its current 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. NuCal shall use best efforts to assist Class Counsel in arranging testimony from former directors, officers, and employees of NuCal. Any testimony of such former directors, officers, and employees of NuCal shall count against the cap of two testifying witnesses.

f. **Privileged or Protected Matters:** Neither the entry into this agreement nor any performance of it shall constitute a waiver of NuCal's attorney-client privilege or work-product protection. NuCal's obligation to cooperate will be subject to its attorney-client privilege and work-product protection; provided, however, that NuCal shall not produce any documents or disclose information that any person or entity 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 NuCal to Class Counsel pursuant to NuCal's cooperation obligations shall be subject to the protective order entered in the Action.

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

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 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 NuCal 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 by Class Counsel subject to approval of the Court, but in no instance to exceed \$200,000.

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 40 herein. NuCal shall have no responsibility to make any tax filings relating to this 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 NuCal 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.

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 NuCal. 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. NuCal submits to the jurisdiction in the Eastern

District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. NuCal otherwise retain all defenses to the Court's exercise of personal jurisdiction over NuCal.

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

57. Neither NuCal 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, NuCal, 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 NuCal:

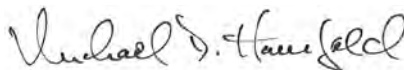
William M. Goodman
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP
101 California Street, Suite 2300
San Francisco, California 94111
wgoodman@kasowitz.com

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: August 1, 2014



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(Counsel for NuCal Foods, Inc.)

Dated: July 31, 2014

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(Counsel for NuCal Foods, Inc.)

Exhibit A

“Releasees” includes the following entities and individuals associated with NuCal members Nulaid Foods and Cal Eggs: Gemperle Brothers (d/b/a Gemperle Enterprises, d/b/a Gemperle Family Farms), Gemperle Egg Packing Co., Inc., Valley Fresh Foods Inc. (d/b/a Nest Best Egg Company) (including the Rainbow Farms Division of Valley Fresh Foods), Harding Ranch, Schendel Farms, August Egg Company, Sierra Egg Company, Merlyn and Betty Lou Garber (d/b/a Garber Poultry Farms), JS West Milling Co., JEM Eggs, Sunrise Farms LLC, Sunrise LLC Specialty, Sunrise LLC, Weber Family Farms, Richard Weber, the Weber Family Trust, R.A. Kearsley & Sons, Hillside Ranch, J & J Ranch, and Friedrichsen Egg Ranch, and their respective past and present parent companies, subsidiaries, officers, directors, employees, agents, and attorneys, to the extent that the foregoing individuals are acting in their representative capacities on behalf of any of the foregoing entities, and the predecessors, successors and assigns of each of the foregoing. None of these entities are Defendants or are affiliated with any of the other Defendants (other than indirectly with NuCal Foods).

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 DEFENDANT NUCAL FOODS, INC., CERTIFYING THE
CLASS FOR PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE
MOTION FOR ATTORNEY’S FEES, REIMBURSEMENT OF EXPENSES, AND
INCENTIVE AWARDS FOR CLASS REPRESENTATIVES**

It is hereby ORDERED AND DECREED as follows:

1. The motion of Direct Purchaser Plaintiffs for preliminary approval of the proposed settlement, which Defendant NuCal Foods, Inc. does not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with NuCal Foods, Inc., 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 has been negotiated at arm’s length by qualified counsel, falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to the following settlement class (the “Settlement Class”), for settlement purposes only:

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

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

a.) Shell Egg SubClass

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

b.) Egg Products SubClass

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

Excluded from the Class and SubClasses are Defendant, 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. Such motion shall be filed in accordance with the schedule set forth in this Court's Order Granting Preliminary Approval of the Proposed Second Amendment to Settlement Agreement Between Direct Purchaser Plaintiffs and Sparboe Farms, Inc. and Approving the Parties' Notice Plan. Class Counsel shall also provide for notice to the Class of such motion in accordance with that Order.

7. The Court will hold a Fairness Hearing to determine whether the proposed settlement is fair, reasonable, and adequate and whether it should be finally approved by the Court.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date: _____

4846-4041-2444, v. 1

Exhibit C

Citibank Preferred Custody Services

Agreement
Between
Citibank, N. A.
as 'Escrow Agent'
and

NuCal Foods, Inc.

("Settling Defendant")

and

Bernstein Liebhard LLP, Hausfeld LLP,
Susman Godfrey LLP, and Weinstein
Kitchenoff & Asher LLC as Interim Co-
Lead Counsel for Direct Purchaser
Plaintiffs

("Interim Co-Lead Counsel")

(Account Number)

Citibank Escrow Agent Custody Account

THIS ESCROW AGREEMENT is made this 4th day of August 2014 between/among NuCal Foods, Inc. (the “Settling Defendant” herein), Bernstein Liebhard LLP, Hausfeld LLP, Susman Godfrey LLP, and Weinstein Kitchenoff & Asher LLC (together, the “Interim Co-Lead Counsel” herein), and CITIBANK, N.A. (the “Escrow Agent” or “Citibank” herein).

Pursuant to that certain Settlement Agreement, dated as of August 1, 2014, by and between Settling Defendant and Interim Lead Co-Counsel (the “Settlement Agreement”), the above-named parties appoint said Escrow Agent, with the attendant duties and responsibilities, and upon the terms and conditions provided in Schedule A annexed hereto and made a part hereof. Capitalized terms used but not defined herein shall have the meaning set forth in the Settlement Agreement.

ARTICLE FIRST: The above-named parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of the Escrow Agent:

- a) The Escrow Agent shall neither be responsible for or under, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document executed between/among the parties hereto, except as may be specifically provided in Schedule A annexed hereto. This Escrow Agreement sets forth all of the obligations of the Escrow Agent, and no additional obligations shall be implied from the terms of this Escrow Agreement or any other agreement, instrument or document.
- b) The Escrow Agent, acting in good faith, may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it and signed by an authorized signer for each of the four Interim Co-Lead Counsel firms and counsel for the Settling Defendant, collectively. The Escrow Agent may, in good faith, act in reliance upon any signature believed by it to be genuine, and to be the signature of a duly authorized person.
- c) After adjudication by the court presiding over the Egg Products Antitrust Litigation, Interim Co-Lead Counsel, acting solely on behalf of Class Plaintiffs, agree to reimburse the Escrow Agent on demand for, and to indemnify and hold the Escrow Agent harmless against and with respect to, any and all loss, liability, damage or expense (including, but without limitation, attorneys’ fees, costs and disbursements) that the Escrow Agent may suffer or incur in connection with this Escrow Agreement and its performance hereunder or in connection herewith, except to the extent such loss, liability, damage or expense arises from its willful misconduct or gross negligence.

- d) The Escrow Agent shall be entitled to compensation for services rendered pursuant to this Escrow Agreement as provided in Schedule B attached hereto. In addition, if the Escrow Agent is required to engage the services of legal counsel due to uncertainty about the Escrow Agent's obligations under this Escrow Agreement and, if the court presiding over the Egg Products Antitrust Litigation determines that such consultation was reasonable and warranted due to the uncertainty, the Escrow Agent shall be entitled to reimbursement from Interim Co-Lead Counsel for the payment of the reasonable fees and expenses of the Escrow Agent's counsel.
- e) The Escrow Agent shall open and maintain a separate and distinct escrow account set apart from the Escrow Agent's assets as provided in Section I of Schedule A. The Escrow Agent shall be under no duty to give the property held in escrow by it hereunder any greater degree of care than it gives its own similar property.
- f) The Escrow Agent shall invest the property held in escrow in such a manner as directed in Section III of Schedule A annexed hereto, which may include deposits in Citibank and money market mutual funds advised, serviced or made available by Citibank or its affiliates even though Citibank or its affiliates may receive a benefit or profit therefrom. The Escrow Agent and any of its affiliates are authorized to act as counterparty, principal, agent, broker or dealer while purchasing or selling investments as specified herein. The Escrow Agent and its affiliates are authorized to receive, directly or indirectly, fees or other profits or benefits for each service, task or function performed, in addition to any fees as specified in Schedule B hereof, without any requirement for special accounting related thereto.

The parties to this Escrow Agreement acknowledge that non-deposit investment products are not obligations of, or guaranteed, by Citibank/Citigroup nor any of its affiliates; are not FDIC insured; and are subject to investment risks, including the possible loss of principal amount invested. Only deposits in the United States are subject to FDIC insurance.

- g) The Escrow Agent shall have no obligation to invest or reinvest the property held in escrow on the day of deposit if all or a portion of such property is deposited with the Escrow Agent after 11:00 AM Eastern Time on the day of deposit. Instructions to invest or reinvest that are received after 11:00 AM Eastern Time will be treated as if received on the following business day in New York. The Escrow Agent shall have the power to sell or liquidate the foregoing investments whenever the Escrow Agent shall be required to distribute amounts from the escrow property pursuant to the terms of this Escrow Agreement. Requests or instructions received after 11:00 AM Eastern Time by the Escrow Agent to liquidate all or any portion of the escrowed property will be treated as if received on the following business day in New York. The Escrow Agent shall have no

responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the escrowed property, as applicable, provided that the Escrow Agent has made such investment, reinvestment or liquidation of the escrowed property in accordance with the terms, and subject to the conditions, of this Escrow Agreement.

- h) In the event of any disagreement between/among any of the parties to this Escrow Agreement, or between/among them or either or any of them and any other person, resulting in adverse claims or demands being made in connection with the subject matter of the Escrow, or in the event that the Escrow Agent, in good faith, is in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all parties shall have been fully and finally adjudicated by the court presiding over the Egg Products Antitrust Litigation, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. The Escrow Agent shall have the option, after 30 calendar days' notice to the other parties of its intention to do so, to file an action in interpleader requiring the parties to answer and litigate any claims and rights among themselves. The rights of the Escrow Agent under this paragraph are cumulative of all other rights which it may have by law or otherwise.
- i) The Escrow Agent is authorized, for any securities at any time held hereunder, to register such securities in the name of its nominee(s) or the nominees of any securities depository, and such nominee(s) may sign the name of any of the parties hereto to whom or to which such securities belong and guarantee such signature in order to transfer, or in order to certify ownership of such securities to tax or other governmental authorities.
- j) Notice to the parties shall be given as provided in Section VI of Schedule A annexed hereto.

ARTICLE SECOND: The Escrow Agent shall make payments of income earned on the escrowed property as provided in Section IV of Schedule A annexed hereto. Each such payee shall provide to the Escrow Agent an appropriate W-9 form for tax identification number certification or a W-8 form for non-resident alien certification. The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the escrowed property.

ARTICLE THIRD: The Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 30 calendar days' written notice to the parties

to the Escrow Agreement herein. The Escrow Agent may be removed as such at any time upon 30 calendar days' written notice to Escrow Agent by Settling Defendant and Interim Co-Lead Counsel, jointly. Any such resignation or removal shall terminate all obligations and duties of the Escrow Agent hereunder except the obligation to cooperate with the parties hereto to transfer the funds held in escrow to a successor escrow agent of their joint choosing. On the effective date of such resignation or removal, the Escrow Agent shall deliver this Escrow Agreement together with any and all related instruments or documents to any successor Escrow Agent agreeable to the parties, subject to this Escrow Agreement herein. If a successor Escrow Agent has not been appointed prior to the expiration of 30 calendar days following the date of the notice of such resignation or removal, the then acting Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Escrow Agreement.

ARTICLE FOURTH: The Escrow Agent shall receive the fees provided in Schedule B annexed hereto. The Escrow agent shall not debit the Escrowed Funds for any charge for its fees or its costs and expenses, until it shall have received a copy of an order issued by the Court, approving the amount of fees, costs and expenses to which it is entitled. Fees and expenses of the Escrow agent charged against the Escrowed Funds shall, to the extent possible, be paid out of interest earned. Once fees have been paid, no recapture or rebate will be made by the Escrow Agent.

ARTICLE FIFTH: Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto.

ARTICLE SIXTH: In the event funds transfer instructions are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call back to the person or persons designated in Schedule A annexed hereto, and the Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing actually received and acknowledged by the Escrow Agent. The parties agree to notify the Escrow Agent of any errors, delays or other problems within 30 calendar days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of the Escrow Agent's error, the Escrow Agent's sole obligation is to pay or refund such amounts as may be required by applicable law. In no event shall the Escrow Agent be responsible for any incidental or consequential damages. Any claim for interest payable will be at the Escrow Agent's published savings account rate in effect in New York, New York.

ARTICLE SEVENTH: This Escrow Agreement shall be governed by the law of the State of New York in all respects. The United States District Court for the Eastern District of Pennsylvania (“the Court”), the court presiding over the Egg Products Antitrust Litigation, has continuing jurisdiction over the Escrow Agreement, the Escrow Account, and the Escrow Funds. The parties hereto irrevocably and unconditionally submit to the Court’s jurisdiction in connection with any proceedings commenced regarding this Escrow Agreement, including but not limited to, any interpleader proceeding or proceeding for the appointment of a successor escrow agent the Escrow Agent may commence pursuant to this Agreement, and all parties irrevocably submit to the jurisdiction of the Court for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue of inconvenient forum.

ARTICLE EIGHTH: This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement. Facsimile signatures on counterparts of this Escrow Agreement shall be deemed original signatures with all rights accruing thereto.

ARTICLE NINTH: The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

ARTICLE TENTH: No printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "Citibank" by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party’s behalf, without the prior written consent of the Escrow Agent.


[The remainder of this page is blank.]

In witness whereof the parties have executed this Agreement as of the date first above written.

CITIBANK, N.A. as Escrow Agent

By: _____
(Signature)
Title: _____
Date: _____

Kasowitz, Benson, Torres & Friedman LLP as Counsel for Settling Defendant

By:  _____
(Signature)
Title: Partner, Kasowitz Benson Torres + Friedman LLP
Date: August 5, 2014

Bernstein Liebhard LLP as Interim Co-Lead Counsel

By: _____
Title: Partner, Bernstein Liebhard LLP
Date: _____

Hausfeld LLP as Interim Co-Lead Counsel

By: _____
Title: Partner, Hausfeld LLP
Date: _____

In witness whereof the parties have executed this Agreement as of the date first above written.


CITIBANK, N.A. as Escrow Agent

By: _____
(Signature)
Title: _____
Date: _____

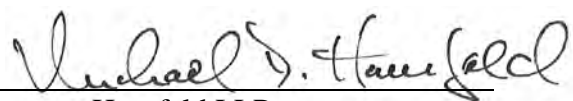
Kasowitz, Benson, Torres & Friedman LLP as Counsel for Settling Defendant

By: _____
(Signature)
Title: _____
Date: _____


Bernstein Liebhard LLP as Interim Co-Lead Counsel

By:  _____
Title: Partner, Bernstein Liebhard LLP
Date: 8/5/2014

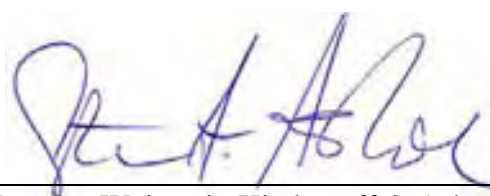
Hausfeld LLP as Interim Co-Lead Counsel

By:  _____
Title: Partner, Hausfeld LLP
Date: 8/5/2014

Susman Godfrey LLP as Interim Co-Lead Counsel

By: 
Title: Partner, Susman Godfrey LLP
Date: 8/5/2014

Weinstein Kitchenoff & Asher LLC as Interim Co-Lead Counsel

By: 
Title: Partner, Weinstein Kitchenoff & Asher LLC
Date: 8/5/2014

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

**IN RE: PROCESSED EGG PRODUCTS
ANTITRUST LITIGATION**

**MDL Docket No. 2002
08-md-02002 (GP)**

**THIS DOCUMENT APPLIES TO:
DIRECT PURCHASER ACTIONS**

**DECLARATION OF RONALD J. ARANOFF IN SUPPORT OF DIRECT
PURCHASER PLAINTIFFS’ MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS
AND DEFENDANTS HILLANDALE FARMS OF PA., INC. AND
HILLANDALE- GETTYSBURG, L.P.**

I, Ronald J. Aranoff, declare as follows:

1. I am a member of Bernstein Liebhard LLP and one of the attorneys at my firm principally responsible for handling this case. My partner, Stanley D. Bernstein, is one of the appointed Interim Co-Lead Counsel for the Direct Purchaser Plaintiffs in the above captioned action, along with counsel from Weinstein Kitchenoff & Asher LLC, Susman Godfrey LLP, and Hausfeld LLP.

2. I submit this declaration in support of the accompanying motion for final approval of the proposed settlement agreement between Direct Purchaser Class Plaintiffs (“Plaintiffs”) and Hillandale Farms of Pa., Inc. (“Hillandale PA”) and Hillandale-Gettysburg, L.P. (“Hillandale-Gettysburg”) (collectively “the Hillandale/Gettysburg Defendants”).

3. I was the principal negotiator of the Settlement Agreement with the Hillandale/Gettysburg Defendants. Settlement negotiations with the Hillandale/Gettysburg Defendants, represented principally by Wendelynne J. Newton of Buchanan, Ingersoll & Rooney

PC, were conducted by experienced counsel on both sides at arm's length over a period of approximately four months.

4. The parties first discussed a potential resolution of this action as it relates to the Hillandale/Gettysburg Defendants soon after the litigation began, and again after the Court issued its Opinion on the Motions to Dismiss the Complaint. Those initial discussions did not result in a settlement and there were no additional, meaningful discussions for some time.

5. In September 2013, the parties sought a stay of the litigation to pursue a joint mediation session. The mediation occurred in October 2013 before JAMS mediator, the Honorable Harlan A. Martin. The Hillandale/Gettysburg Defendants participated in that mediation. While the joint mediation was unsuccessful, Interim Co-Lead Counsel soon decided to approach the Hillandale/Gettysburg Defendants again about trying to resolve the case.

6. In the summer and fall of 2014, Interim Co-Lead Counsel began substantive settlement negotiations with the Hillandale/Gettysburg Defendants. The parties were initially far apart, but over time began to make slow and steady progress. After settlements were reached with some of the other Defendants, the parties' settlement discussions moved forward in earnest. In late August and September 2014, after several rounds of telephone calls and communications, the parties agreed to a \$3,000,000 cash settlement.

7. The broad terms of the settlement were first memorialized in a binding term sheet dated September 19, 2014; a formal Settlement Agreement was executed on October 22, 2014. In conjunction with executing the Settlement Agreement, the Hillandale/Gettysburg Defendants identified financial information, previously provided during discovery, sufficient to show the financial status of the company. A copy of the executed Settlement Agreement is attached hereto as Exhibit 1.

8. Discovery was well advanced when the parties reached this Settlement Agreement. Collectively, the defendants in this Action produced over 1 million documents, much of which had been reviewed by Class Counsel when Plaintiffs and the Hillandale/Gettysburg Defendants reached an agreement in September 2014. At the time the Settlement Agreement was signed, Plaintiffs had reviewed over 15,000 documents produced by the Hillandale/Gettysburg Defendants, and deposed Gary Bethel (Chairman of Hillandale-Gettysburg), Orland Bethel (President of Hillandale Pa.), and Sy Rizvi (General Manager of Hillandale-Gettysburg).

9. In addition, paragraph 47 of the Settlement Agreement provides that the Hillandale/Gettysburg Defendants have agreed to assist with authenticating documents, including business records if applicable, produced by the Hillandale/Gettysburg Defendants and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by the Hillandale/Gettysburg Defendants or sent to or received by the Hillandale/Gettysburg Defendants.

10. The Court granted preliminary approval of the proposed Settlement on December 19, 2014. (ECF No. 1108.) In the same Order, the Court authorized Interim Counsel to disseminate Notice by direct mail and publication. A final fairness hearing is scheduled for June 22, 2015.

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

Dated: June 1, 2015

/s/ Ronald J. Aranoff
Ronald J. Aranoff

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	:	
<hr/>		
THIS DOCUMENT APPLIES TO:	:	
All Direct Purchaser Actions	:	

**SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS
AND DEFENDANTS HILLANDALE FARMS OF PA., INC. AND HILLANDALE-
GETTYSBURG, L.P.**

This Settlement Agreement (“Agreement”) is made and entered into as of this 22nd day of October 2014 (the “Execution Date”) by and between Hillandale Farms of Pa., Inc. (“Hillandale PA”) and Hillandale-Gettysburg, L.P. (“Hillandale-Gettysburg”) (collectively referred to herein as “the Hillandale/Gettysburg Defendants”) and Direct Purchaser Plaintiffs’ Class representatives (“Plaintiffs”) (as defined herein at Paragraph 16), both individually and on behalf of a Class (as defined herein at Paragraphs 4 and 23) of direct purchasers of Shell Eggs and Egg Products (as defined herein at Paragraphs 7 and 22).

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 the Hillandale/Gettysburg Defendants and other Defendants (the “Action”);

WHEREAS, Plaintiffs allege that the Hillandale/Gettysburg Defendants 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, the Hillandale/Gettysburg Defendants deny all allegations of wrongdoing in the Action;

WHEREAS, the Parties (as defined herein at Paragraph 15) have conducted an investigation into the facts and the law regarding the Action and have completed discovery;

WHEREAS, despite their belief that they are not liable for, and have good defenses to, the claims alleged in the Action, the Hillandale/Gettysburg Defendants desire to settle the Action so as to avoid the risk, expense, 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, the Hillandale/Gettysburg Defendants have previously provided and identified financial information to Class Counsel and Class Counsel has evaluated the Hillandale/Gettysburg Defendants' finances and has reached appropriate settlement terms commensurate with those finances;

WHEREAS, Class Counsel and the Hillandale/Gettysburg Defendants' 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 the Hillandale/Gettysburg Defendants 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, 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 the Hillandale/Gettysburg Defendants only, without costs as to Plaintiffs, the Class, or the Hillandale/Gettysburg Defendants, 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. "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. The "Hillandale/Gettysburg Defendants' Counsel" shall refer to the law firm of Buchanan Ingersoll & Rooney PC, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, PA 15219.
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 40 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(c) of the Federal Rules of Civil Procedure.

12. "Hillandale PA's Total Sales" shall mean the sum of the annual U.S. sales by Hillandale PA of Shell Eggs and Egg Products, excluding sales to Producers, for the years during the Class Period.

13. "Non-Settling Defendants" shall refer to those parties that, as of the execution of this Agreement, are Defendants, other than Hillandale PA and Hillandale-Gettysburg.

14. "Other Settling Defendants" shall refer to National Food Corporation, Midwest Poultry Services, L.P., NuCal Foods, Inc., United Egg Producers, Inc., United States Egg Marketers, Inc., Moark LLC, Norco Ranch, Inc., Land O'Lakes, Inc. Sparboe Farms, Inc., and Cal-Maine Foods, Inc.

15. "Parties" means the Hillandale/Gettysburg Defendants and Plaintiffs.

16. "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.

17. "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.

18. "Releasees" shall refer, jointly and severally, and individually and collectively, to Hillandale PA, Hillandale-Gettysburg, Hillandale Farms East, Inc. and Hillandale Farms, Inc., together with (a) each of their past and present subsidiaries, parents and affiliates and (b) each of their past and present shareholders, partners,

officers, directors, trustees, representatives, joint ventures, employees, agents, attorneys, including, without limitation, HGLP, LLC, predecessors and successors of the persons referenced in the preceding clauses (a) and (b), but not as to any other Defendant other than the Hillandale/Gettysburg Defendants, including without limitation, defendant Ohio Fresh Eggs, LLC and (a) each of its past and present subsidiaries, parents and affiliates and (b) each of its past and present shareholders, partners, officers, directors, trustees, representatives, joint ventures, employees, agents, attorneys, including, without limitation, its predecessors and successors.

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

20. "Settlement Amount" shall refer to \$3,000,000 U.S. dollars.¹

21. "Settlement Fund" shall refer to the funds accrued in the escrow account established in accordance with Paragraphs 40 and 41 below.

22. "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

¹ The Settlement Amount will be equally split between Hillandale PA and Hillandale-Gettysburg.

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

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 as to the Hillandale/Gettysburg Defendants 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

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 the Hillandale/Gettysburg Defendants.

25. Within five (5) business days after the execution of this Agreement by the Hillandale/Gettysburg Defendants, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against the Hillandale/Gettysburg Defendants in the Action pending approval of this Agreement. Within thirty-one (31) business days after execution of the Agreement by the Hillandale/Gettysburg Defendants, Plaintiffs shall submit to the Court a motion (the "Motion") for an Order granting preliminary approval of the Agreement, appointing 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 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.

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 the Hillandale/Gettysburg Defendants, any Non-Settling Defendant(s) in the Action, or Other Settling Defendants during the Class Period that: are identified by the Hillandale/Gettysburg Defendants; were previously identified by the Hillandale/Gettysburg Defendants 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, the Hillandale/Gettysburg Defendants shall supply to Class Counsel at the Hillandale/Gettysburg Defendants’ expense and in such form as kept in the regular course of business (electronic format if available) such names and addresses of potential Class Members as they have. 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. Within twenty (20) days after the end of the opt-out period established by the Court and set forth in the notice, Plaintiffs shall provide the Hillandale/Gettysburg Defendants, through the Hillandale/Gettysburg Defendants' Counsel, a written list of all potential Class Members who have exercised their right to request exclusion from the Class.

27. 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 the Hillandale/Gettysburg Defendants, 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 received notice;
- c. reconfirm the appointment of Class Representatives and Settlement Class Counsel as defined herein;
- d. direct that, as to the Hillandale/Gettysburg Defendants, 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

the Hillandale/Gettysburg Defendants 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 the Hillandale/Gettysburg Defendants.

28. 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 the Hillandale/Gettysburg Defendants 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 the Hillandale/Gettysburg Defendants shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 35 through 39 of this Agreement.

29. Should the Court require Hillandale/Gettysburg Defendants or Plaintiffs to submit any of the Hillandale/Gettysburg Defendants' confidential information or documentation 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

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.

31. 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.

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.

34. 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

35. 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 28 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 the Hillandale/Gettysburg Defendants and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) business days of the action giving rise to such option. If this Agreement is rescinded, within ten (10) business days of (i) the written notice of rescission to Class Counsel and the Escrow Agent and (ii) the Hillandale/Gettysburg Defendants' written instructions to the Escrow Agent, all amounts in the escrow account created pursuant to Paragraph 40 hereof, plus any interest on the Settlement Amount only, shall be wire transferred to the Hillandale/Gettysburg Defendants, pursuant to their instructions; provided, however, that simultaneous with their written instructions to the Escrow Agent, the Hillandale/Gettysburg Defendants 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 the Hillandale/Gettysburg Defendants' instructions and funds shall not be wired until expiration of that objection deadline. In the event that, pursuant to paragraphs 25, 41, 44-46, or 49, funds have been paid out of the Escrow Account prior to the Agreement's rescission, Class Counsel shall

reimburse the Settlement Fund all of the draw-down with interest on the Settlement Amount only, calculated as the rate of interest published in the Wall Street Journal for 3-month U.S. Treasury Bills within ten (10) business days of notice. If Class Counsel objects, the provisions of Article First, subsection h of the Escrow Agreement (attached as Exhibit B) shall govern.

36. If Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 28 of this Agreement, Class Counsel and the Hillandale/Gettysburg Defendants 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 the Hillandale/Gettysburg Defendants 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.

37. Class Counsel further agree that in the event of the Agreement's rescission the originals and all copies of any notes, memos or records related to the cooperation obligations pursuant to paragraph 47 shall be returned to the Hillandale/Gettysburg Defendants at the Hillandale/Gettysburg Defendants' 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 the Hillandale/Gettysburg Defendants' Counsel.

38. The Hillandale/Gettysburg Defendants have the right and the option to rescind this Agreement if they determine, within fifteen (15) business days after receipt of the written list pursuant to Paragraph 26 of all potential Class Members who have exercised their right to request exclusion from the Class (the "Excluded Class Members"), that the Excluded Class Members' combined annual purchases of Shell Eggs and/or Egg Products from Hillandale PA over the Class Period equal or exceed a percentage of Hillandale PA's Total Sales set forth in a Supplemental Agreement signed by the parties ("Opt-Out Threshold"). If the Hillandale/Gettysburg Defendants exercise their right of rescission pursuant to this paragraph, the Hillandale/Gettysburg Defendants will provide written notice of their intentions to Class Counsel and, contemporaneously with that written notice, shall provide to Plaintiffs (to the extent that such data has not already been produced by the Hillandale/Gettysburg Defendants in discovery in the Action) in a text delimited format, data reflecting Hillandale PA's Total Sales over the Class Period sufficient to show the dollar volume of sales of Shell Eggs and Egg Products to each of Hillandale PA's customers during the Class Period (the "Hillandale/Gettysburg Defendants' Opt-Out Threshold Data"). Upon request from Plaintiffs' counsel, Hillandale PA shall make an employee knowledgeable about the Hillandale/Gettysburg Defendants' Opt-Out Threshold Data available for a two hour interview, under oath, at the offices of Buchanan Ingersoll & Rooney PC in Pittsburgh, Pennsylvania. If this Agreement is rescinded, subject to the terms of the Supplemental Agreement, all amounts in the Escrow Account created pursuant to Paragraph 40 hereof, plus any interest on the

Settlement Amount only, shall be wire transferred to the Hillandale/Gettysburg Defendants, pursuant to their instructions to the Escrow Agent; provided, however, that simultaneous with their written instructions to the Escrow Agent, the Hillandale/Gettysburg Defendants shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within fifteen (15) business days of receipt of such notice, notify the Escrow Agent of any objections to the Hillandale/Gettysburg Defendants' instructions and funds shall not be wired until expiration of that objection deadline. In the event that, pursuant to paragraphs 25, 41, 44-46, or 49, funds have been paid out of the Escrow Account prior to the Agreement's rescission, Class Counsel shall reimburse the Settlement Fund all of the draw-down with interest on the Settlement Amount only, calculated as the rate of interest published in the Wall Street Journal for 3-month U.S. Treasury Bills within ten (10) business days of notice. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement (attached as Exhibit B) shall govern.

39. 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.

F. Payment

40. The Hillandale/Gettysburg Defendants shall pay or cause to be paid the Settlement Amount in Settlement of the Action. The Settlement Amount shall be wire transferred by the Hillandale/Gettysburg Defendants or their designee within thirty (30) 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. Other than their payment pursuant to this paragraph, the Hillandale/Gettysburg Defendants shall have no obligations to either the Class or Class Counsel, except as otherwise provided herein.

41. No distributions of the Settlement Amount to the Settlement Class shall be made from the Escrow Account except upon Court approval.

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

43. 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. The Hillandale/Gettysburg Defendants agree 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 as long as the amount for attorneys' fees does not exceed 33 1/3% of the Settlement Amount not including for reasonable litigation and administrative expenses and incentive awards. Except to the extent that the Court may award attorneys' fees and litigation expenses to

be paid out of the Settlement Amount, the Hillandale/Gettysburg Defendants shall have no further obligation to pay any fees or expenses of Class Counsel.

44. 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 43 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 the Hillandale/Gettysburg Defendants, 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.

45. In order to receive distribution of funds pursuant to Paragraph 43 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 ten (10) business days all or the pertinent portion of the draw-down with interest on the Settlement Amount only, 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.

46. 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.

47. **Cooperation:** The Hillandale/Gettysburg Defendants' cooperation pursuant to this Agreement is limited to providing authentication of documents as requested by Plaintiffs. The Hillandale/Gettysburg Defendants' obligations pursuant to this paragraph shall apply only to Releasors who act with, by or through Class Counsel pursuant to this Agreement in this Action. More specifically, such cooperation shall consist of the following:

- a. **Authentication of Documents:** Prior to trial in this Action, the Hillandale/Gettysburg Defendants 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) authenticate documents, including business records if applicable, produced by the Hillandale/Gettysburg Defendants and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by the Hillandale/Gettysburg Defendants or sent to or received by the Hillandale/Gettysburg Defendants. Class Counsel shall use reasonable efforts to minimize the burden to the Hillandale/Gettysburg Defendants of any such requests for authentication.
- b. **Privileged or Protected Matters:** Neither the entry into this agreement nor any performance of it shall constitute a waiver of the Hillandale/Gettysburg Defendants' attorney-client privilege or work-product protection. The Hillandale/Gettysburg Defendants' obligation to cooperate will be subject to its attorney-client privilege and work-product protection; provided, however, that the Hillandale/Gettysburg Defendants 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.

- c. **Confidentiality:** All information provided by the Hillandale/Gettysburg Defendants to Class Counsel pursuant to the Hillandale/Gettysburg Defendants' cooperation obligations shall be subject to the protective order entered in the Action.
- d. **Further Discovery.** The Hillandale/Gettysburg Defendants will not be required to participate in further discovery in the Action except as stated above.

G. Notice of Settlement to Class Members

48. 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.

49. 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. Plaintiffs shall use best efforts to combine Notice of the Agreement with notice of other settlement agreements as provided for under paragraph 25.

H. Taxes

50. 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 46 herein. The Hillandale/Gettysburg Defendants shall have no responsibility to make any tax filings relating to this Agreement.

51. 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)).

52. 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

53. 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 the Hillandale/Gettysburg Defendants to Class Members shall remain in the case against the Non-Settling Defendants in the Action as a basis for damage claims and shall be part of any joint and several liability claims against Non-Settling Defendants in the Action or other persons or entities other than the Releasees. This Agreement further does not settle, compromise or prejudice any defenses or affirmative defenses the Hillandale/Gettysburg Defendants have asserted or may assert in indirect purchaser actions currently pending and consolidated in the Eastern District of Pennsylvania. All rights of the Hillandale/Gettysburg Defendants against such indirect purchaser plaintiffs are specifically reserved by the Hillandale/Gettysburg Defendants.

54. 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 the Hillandale/Gettysburg Defendants. This Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Pennsylvania without regard to its choice of law or conflict of laws principles. The Hillandale/Gettysburg Defendants submit to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. The Hillandale/Gettysburg Defendants otherwise retain all defenses to the Court's exercise of personal jurisdiction over the Hillandale/Gettysburg Defendants.

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

56. 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.

57. This Agreement may be executed in counterparts by Class Counsel and the Hillandale/Gettysburg Defendants' 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.

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, or in the event that this Agreement is rescinded, 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 the Hillandale/Gettysburg Defendants or Plaintiffs to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to Class certification, raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by the Hillandale/Gettysburg Defendants.

60. Neither the Hillandale/Gettysburg Defendants nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for

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

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, the Hillandale/Gettysburg Defendants, 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 the Hillandale/Gettysburg Defendants:

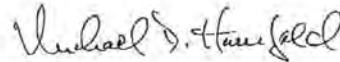
Wendelynne J. Newton
BUCHANAN INGERSOLL & ROONEY PC
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410
wendelynne.newton@bipc.com

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: October 22, 2014



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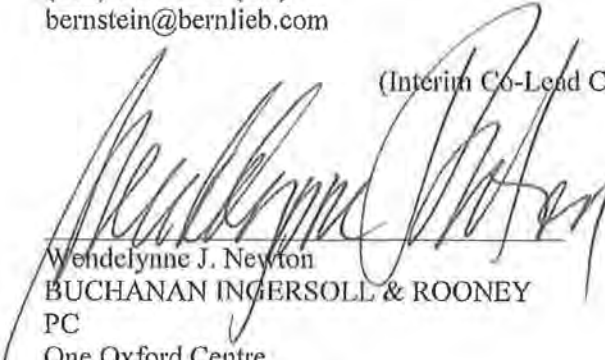


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(Interim Co-Lead Counsel for the Class)



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(Counsel for Hillandale Farms of Pa., Inc.
and Hillandale-Gettysburg, L.P.)

Exhibit A

**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 DEFENDANT'S HILLANDALE FARMS, PA., INC. AND
HILLANDALE-GETTYSBURG, L.P., CERTIFYING THE CLASS FOR PURPOSES OF
SETTLEMENT, AND GRANTING LEAVE TO FILE MOTION FOR ATTORNEY'S
FEES, REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS FOR CLASS
REPRESENTATIVES**

It is hereby ORDERED AND DECREED as follows:

1. The motion of Direct Purchaser Plaintiffs for preliminary approval of the proposed settlement, which Defendants Hillandale Farms of Pa., Inc. and Hillandale-Gettysburg, L.P. (collectively referred to herein as "the Hillandale/Gettysburg Defendants") do not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with the Hillandale/Gettysburg Defendants, 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 has been negotiated at arm's length by qualified counsel, 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:

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 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.

6. Direct Purchaser Plaintiffs' request for leave to file a motion for attorneys' fees and litigation expenses is hereby approved. Such motion shall be filed in accordance with the schedule set forth in this Court's Order Granting Preliminary Approval of the Proposed Second Amendment to Settlement Agreement Between Direct Purchaser Plaintiffs and Sparboe Farms, Inc. and Approving the Parties' Notice Plan. Class Counsel shall also provide for notice to the Class of such motion in accordance with that Order.

7. The Court will hold a Fairness Hearing to determine whether the proposed settlement is fair, reasonable, and adequate and whether it should be finally approved by the Court.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date: _____

Exhibit B

Citibank Preferred Custody Services

Agreement
Between
Citibank, N. A.
as 'Escrow Agent'
and

Hillandale Farms of Pa., Inc. and Hillandale-
Gettysburg, L.P.

("Settling Defendants")

and

Bernstein Liebhard LLP, Hausfeld LLP,
Susman Godfrey LLP, and Weinstein
Kitchenoff & Asher LLC as Interim Co-
Lead Counsel for Direct Purchaser
Plaintiffs

("Interim Co-Lead Counsel")

(Account Number)

Citibank Escrow Agent Custody Account

THIS ESCROW AGREEMENT is made this 22nd day of October 2014 between/among between Hillandale Farms of Pa., Inc. and Hillandale-Gettysburg, L.P. (collectively referred to herein as the "Settling Defendants"), Bernstein Liebhard LLP, Hausfeld LLP, Susman Godfrey LLP, and Weinstein Kitchenoff & Asher LLC (together, the "Interim Co-Lead Counsel" herein), and CITIBANK, N.A. (the "Escrow Agent" or "Citibank" herein).

Pursuant to that certain Settlement Agreement, dated as of October 22, 2014, by and between Settling Defendants and Interim Lead Co-Counsel (the "Settlement Agreement"), the above-named parties appoint said Escrow Agent, with the attendant duties and responsibilities, and upon the terms and conditions provided in Schedule A annexed hereto and made a part hereof. Capitalized terms used but not defined herein shall have the meaning set forth in the Settlement Agreement.

ARTICLE FIRST: The above-named parties agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of the Escrow Agent:

- a) The Escrow Agent shall neither be responsible for or under, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document executed between/among the parties hereto, except as may be specifically provided in Schedule A annexed hereto. This Escrow Agreement sets forth all of the obligations of the Escrow Agent, and no additional obligations shall be implied from the terms of this Escrow Agreement or any other agreement, instrument or document.
- b) The Escrow Agent, acting in good faith, may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it and signed by an authorized signer for each of the four Interim Co-Lead Counsel firms and counsel for the Settling Defendants, collectively. The Escrow Agent may, in good faith, act in reliance upon any signature believed by it to be genuine, and to be the signature of a duly authorized person.
- c) After adjudication by the court presiding over the Egg Products Antitrust Litigation, Interim Co-Lead Counsel, acting solely on behalf of Class Plaintiffs, agree to reimburse the Escrow Agent on demand for, and to indemnify and hold the Escrow Agent harmless against and with respect to, any and all loss, liability, damage or expense (including, but without limitation, attorneys' fees, costs and disbursements) that the Escrow Agent may suffer or incur in connection with this Escrow Agreement and its performance hereunder or in connection herewith, except to the extent such loss, liability, damage or expense arises from its willful misconduct or gross negligence.

- d) The Escrow Agent shall be entitled to compensation for services rendered pursuant to this Escrow Agreement as provided in Schedule B attached hereto. In addition, if the Escrow Agent is required to engage the services of legal counsel due to uncertainty about the Escrow Agent's obligations under this Escrow Agreement and, if the court presiding over the Egg Products Antitrust Litigation determines that such consultation was reasonable and warranted due to the uncertainty, the Escrow Agent shall be entitled to reimbursement from Interim Co-Lead Counsel for the payment of the reasonable fees and expenses of the Escrow Agent's counsel.
- e) The Escrow Agent shall open and maintain a separate and distinct escrow account set apart from the Escrow Agent's assets as provided in Section I of Schedule A. The Escrow Agent shall be under no duty to give the property held in escrow by it hereunder any greater degree of care than it gives its own similar property.
- f) The Escrow Agent shall invest the property held in escrow in such a manner as directed in Section III of Schedule A annexed hereto, which may include deposits in Citibank and money market mutual funds advised, serviced or made available by Citibank or its affiliates even though Citibank or its affiliates may receive a benefit or profit therefrom. The Escrow Agent and any of its affiliates are authorized to act as counterparty, principal, agent, broker or dealer while purchasing or selling investments as specified herein. The Escrow Agent and its affiliates are authorized to receive, directly or indirectly, fees or other profits or benefits for each service, task or function performed, in addition to any fees as specified in Schedule B hereof, without any requirement for special accounting related thereto.

The parties to this Escrow Agreement acknowledge that non-deposit investment products are not obligations of, or guaranteed, by Citibank/Citigroup nor any of its affiliates; are not FDIC insured; and are subject to investment risks, including the possible loss of principal amount invested. Only deposits in the United States are subject to FDIC insurance.

- g) The Escrow Agent shall have no obligation to invest or reinvest the property held in escrow on the day of deposit if all or a portion of such property is deposited with the Escrow Agent after 11:00 AM Eastern Time on the day of deposit. Instructions to invest or reinvest that are received after 11:00 AM Eastern Time will be treated as if received on the following business day in New York. The Escrow Agent shall have the power to sell or liquidate the foregoing investments whenever the Escrow Agent shall be required to distribute amounts from the escrow property pursuant to the terms of this Escrow Agreement. Requests or instructions received after 11:00 AM Eastern Time by the Escrow Agent to liquidate all or any portion of the escrowed property will be treated as if received on the following business day in New York. The Escrow Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the escrowed property, as applicable, provided that

the Escrow Agent has made such investment, reinvestment or liquidation of the escrowed property in accordance with the terms, and subject to the conditions, of this Escrow Agreement.

- h) In the event of any disagreement between/among any of the parties to this Escrow Agreement, or between/among them or either or any of them and any other person, resulting in adverse claims or demands being made in connection with the subject matter of the Escrow, or in the event that the Escrow Agent, in good faith, is in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all parties shall have been fully and finally adjudicated by the court presiding over the Egg Products Antitrust Litigation, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. The Escrow Agent shall have the option, after 30 calendar days' notice to the other parties of its intention to do so, to file an action in interpleader requiring the parties to answer and litigate any claims and rights among themselves. The rights of the Escrow Agent under this paragraph are cumulative of all other rights which it may have by law or otherwise.
- i) The Escrow Agent is authorized, for any securities at any time held hereunder, to register such securities in the name of its nominee(s) or the nominees of any securities depository, and such nominee(s) may sign the name of any of the parties hereto to whom or to which such securities belong and guarantee such signature in order to transfer, or in order to certify ownership of such securities to tax or other governmental authorities.
- j) Notice to the parties shall be given as provided in Section VI of Schedule A annexed hereto.

ARTICLE SECOND: The Escrow Agent shall make payments of income earned on the escrowed property as provided in Section IV of Schedule A annexed hereto. Each such payee shall provide to the Escrow Agent an appropriate W-9 form for tax identification number certification or a W-8 form for non-resident alien certification. The Escrow Agent shall be responsible only for income reporting to the Internal Revenue Service with respect to income earned on the escrowed property.

ARTICLE THIRD: The Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 30 calendar days' written notice to the parties to the Escrow Agreement herein. The Escrow Agent may be removed as such at any time upon 30 calendar days' written notice to Escrow Agent by Settling Defendants and Interim Co-Lead Counsel, jointly. Any such resignation or removal shall terminate all

obligations and duties of the Escrow Agent hereunder except the obligation to cooperate with the parties hereto to transfer the funds held in escrow to a successor escrow agent of their joint choosing. On the effective date of such resignation or removal, the Escrow Agent shall deliver this Escrow Agreement together with any and all related instruments or documents to any successor Escrow Agent agreeable to the parties, subject to this Escrow Agreement herein. If a successor Escrow Agent has not been appointed prior to the expiration of 30 calendar days following the date of the notice of such resignation or removal, the then acting Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Escrow Agreement.

ARTICLE FOURTH: The Escrow Agent shall receive the fees provided in Schedule B annexed hereto. The Escrow agent shall not debit the Escrowed Funds for any charge for its fees or its costs and expenses, until it shall have received a copy of an order issued by the Court, approving the amount of fees, costs and expenses to which it is entitled. Fees and expenses of the Escrow agent charged against the Escrowed Funds shall, to the extent possible, be paid out of interest earned. Once fees have been paid, no recapture or rebate will be made by the Escrow Agent.

ARTICLE FIFTH: Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto.

ARTICLE SIXTH: In the event funds transfer instructions are given (other than in writing at the time of execution of this Escrow Agreement), whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call back to the person or persons designated in Schedule A annexed hereto, and the Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. To assure accuracy of the instructions it receives, the Escrow Agent may record such call backs. If the Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it will not execute the instruction until all issues have been resolved. The persons and telephone numbers for call backs may be changed only in writing actually received and acknowledged by the Escrow Agent. The parties agree to notify the Escrow Agent of any errors, delays or other problems within 30 calendar days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of the Escrow Agent's error, the Escrow Agent's sole obligation is to pay or refund such amounts as may be required by applicable law. In no event shall the Escrow Agent be responsible for any incidental or consequential damages. Any claim for interest payable will be at the Escrow Agent's published savings account rate in effect in New York, New York.

ARTICLE SEVENTH: This Escrow Agreement shall be governed by the law of the State of New York in all respects. The United States District Court for the Eastern District of Pennsylvania ("the Court"), the court presiding over the Egg Products Antitrust Litigation, has continuing jurisdiction over the Escrow Agreement, the Escrow

Account, and the Escrow Funds. The parties hereto irrevocably and unconditionally submit to the Court's jurisdiction in connection with any proceedings commenced regarding this Escrow Agreement, including but not limited to, any interpleader proceeding or proceeding for the appointment of a successor escrow agent the Escrow Agent may commence pursuant to this Agreement, and all parties irrevocably submit to the jurisdiction of the Court for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue of inconvenient forum.

ARTICLE EIGHTH: This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement. Facsimile signatures on counterparts of this Escrow Agreement shall be deemed original signatures with all rights accruing thereto.

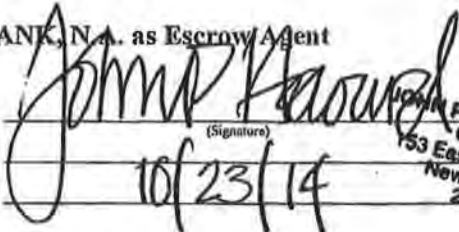
ARTICLE NINTH: The Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, but not limited to, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

ARTICLE TENTH: No printed or other material in any language, including prospectuses, notices, reports, and promotional material which mentions "Citibank" by name or the rights, powers, or duties of the Escrow Agent under this Agreement shall be issued by any other parties hereto, or on such party's behalf, without the prior written consent of the Escrow Agent.

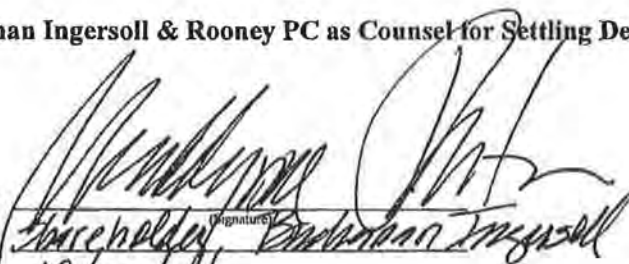
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In witness whereof the parties have executed this Agreement as of the date first above written.


CITIBANK, N.A. as Escrow Agent

By: 
(Signature)
Title: JOHN P. HOWARD, DIRECTOR
Citi Private Bank
153 East 53rd Street, 21st FL
New York, NY 10022
212-783-7109
Date: 10/23/14

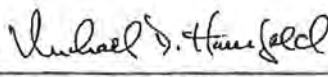
Buchanan Ingersoll & Rooney PC as Counsel for Settling Defendants

By: 
(Signature)
Title: Marc Helder, Buchanan Ingersoll
Date: 10/23/14


Bernstein Liebhard LLP as Interim Co-Lead Counsel

By: 
Title: Partner, Bernstein Liebhard LLP
Date: October 22, 2014


Hausfeld LLP as Interim Co-Lead Counsel

By: 
Title: Partner, Hausfeld LLP
Date: October 22, 2014

Susman Godfrey LLP as Interim Co-Lead Counsel

By: 
Title: Partner, Susman Godfrey LLP
Date: October 22, 2014

Weinstein Kitchenoff & Asher LLC as Interim Co-Lead Counsel

By: 
Title: Partner, Weinstein Kitchenoff & Asher LLC
Date: October 22, 2014

SEC Shareholder Disclosure Rule 14b-2: SEC Rule 14b-2 directs us to contact you to request authorization to provide your name, address and share position with respect to the referenced account to requesting companies whose stock you have voting authority over. Under the Rule, we must make the disclosures for accounts opened after December 28, 1986, if requested, unless you specifically object to disclosure. Hence, failure to respond will be deemed consent to disclosure. Thank you for assisting us in complying with this SEC rule.

- Yes, we are authorized to release your name, address and share positions
- No, we are not authorized to release your name, address and share positions.

(Signature)

(Date)

Reference Account No.: _____

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,

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

Washington; Chicago, Illinois; Dublin, Ohio; Tallahassee, Florida; Lake Oswego, Oregon; 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 25 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 12(a) of the Court's December 19, 2014 Order (1) Granting Preliminary Approval of the Proposed Settlement Agreement Between Direct Purchaser Plaintiffs and Hillandale Farms of PA., Inc., and Hillandale-Gettysburg, L.P.; (2) Certifying the Classes for Purposes of Settlement; (3) Granting Leave to File Motion for Fees and Expenses; and (4) Approving the Notice Plan for the Preliminarily Approved Settlement Agreements Between Direct Purchaser Plaintiffs and NuCal Foods, Inc., Hillandale Farms of PA., Inc., and Hillandale-Gettysburg, L.P. (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 Hillandale Farms of PA., Inc., and Hillandale-Gettysburg, L.P. ("Hillandale") and Nucal Foods, Inc. ("NuCal"), (together, "the Settlements").

5. Pursuant to Paragraph 12(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, the Notice Plan was implemented. The Notice Plan elements include:

- Direct long-form notice by first-class mail to over 17,500 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
- A toll-free telephone helpline through which Class Members can obtain information concerning the Settlements.

DIRECT MAIL NOTICE

6. In 2010, prior to implementing notice relating to the Moark Settlement and the Sparboe Settlement, GCG received approximately 13,901 electronic records from egg producer Defendants. In March and April 2014, GCG received 8,413 supplemental customer records from various Defendants, and in August, September, and October 2014 GCG received 723 supplemental records from various Defendants. Pursuant to Paragraph 12(b) of the Order, Defendants were ordered to provide supplemental records not included in prior productions to GCG. In January 2015, GCG received electronic data files from various Defendants, and was advised that the files contained the lists of supplemental Class Member names and addresses. In total, GCG received 254 supplemental electronic records from Defendants. Pursuant to

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 December 19, 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.

Paragraph 12(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 52 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 12(d) of the Order, GCG posted the Mailed Notices for first-class mail, postage pre-paid on February 11, 2015 (the “Notice Date”). On the Notice Date, 17,585 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 42 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 3,120 Mailed Notices returned by the U.S. Postal Service without forwarding address information.

NOTICE BY PUBLICATION

11. Pursuant to Paragraph 12(f)(i) of the Order, GCG caused the Summary Notice to be published on February 24, 2015 in *The Wall Street Journal*. Additionally, pursuant to Paragraph 12(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: *Hotel F&B* (March 2015 issue), *Progressive Grocer* (March 2015 issue), *School Nutrition* (March 2015 issue), *Supermarket News* (March 2015 issue), *Stores* (March 2015 issue), *Egg Industry* (March 2015 issue), *Food Processing* (March 2015 issue), *Food Manufacturing* (March/April 2015 issue), *FoodService Director* (March 2015 issue), *Convenience Store News* (March 2015 issue), *Restaurant Business* (March 2015 issue), *Nation's Restaurant News* (March 23, 2015 issue), *PetFood Industry* (March 2015 issue), *Bake* (March 2015 issue), and *Long Term Living* (March/April 2015 issue). Summary Notice tear sheets from the publications are attached hereto as Exhibit 2.

PRESS RELEASES

12. Pursuant to Paragraph 12(f)(iii) of the Order, GCG coordinated the release of press releases, consisting of substantially the same language as the Summary Notice, on February 24, 2015. 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.

WEBSITE

13. Pursuant to Paragraph 12(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 the Mailed Notice and answers to frequently asked questions concerning the Settlements on February 11, 2015. The Order and

Settlement Agreements were added to the website on May 19, 2015. GCG did not receive any requests for copies of the Order or Settlement Agreements. Between February 11, 2015 and the date of this Affidavit, the website has received 2,378 visits.

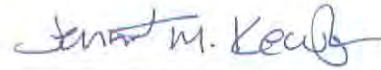
TOLL-FREE TELEPHONE HELPLINE

14. Pursuant to Paragraph 12(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 on February 11, 2015. Between February 11, 2015 and the date of this Affidavit, there have been 276 calls to the automated number. GCG has and will continue to expeditiously handle Class Member inquiries.

OBJECTIONS AND EXCLUSIONS

15. Pursuant to Paragraph 12(j) of the Order, any Class Member who wished to be excluded from the Settlements was required to submit their exclusion request to GCG postmarked or hand-delivered no later than May 22, 2015. As of the date of this Affidavit, GCG has received 193 timely Hillandale Settlement exclusion requests and 193 timely NuCal Settlement exclusion requests. 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, over 20 "Safeway" entities, 38 "Kroger" entities, and 34 "Conopco" entities. As of the date of this Affidavit, GCG has not received any untimely exclusion requests.

16. Pursuant to Paragraph 12(k) of the Order, any Class Member who wished to object to the approval of the Settlements was required to submit their objection to the Court and the Parties, postmarked or hand-delivered no later than May 22, 2015. As of the date of this Affidavit, GCG has not directly received any objections from Class Members relating to the Hillandale and NuCal Settlements.



JENNIFER M. KEOUGH

Sworn to before me in Seattle, Washington,
this 29th day of May, 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 December 19, 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 NuCal Foods, Inc., Hillandale Farms of Pa., Inc., and Hillandale-Gettysburg, L.P., 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.

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

This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the settlement with NuCal Foods, Inc. ("NuCal"), Hillandale Farms of Pa., Inc. ("Hillandale Pa."), and Hillandale-Gettysburg, L.P. ("Hillandale-Gettysburg") (collectively the "NuCal and Hillandale/Gettysburg Settlements"), and of your rights with respect to the settlements, 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 NUCAL AND HILLANDALE/GETTYSBURG SETTLEMENTS:	
TAKE NO ACTION	You will receive the non-monetary benefits of the NuCal and Hillandale/Gettysburg Settlements and give up the right to sue NuCal, Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., and Hillandale Farms, Inc., 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 NUCAL OR HILLANDALE/GETTYSBURG SETTLEMENT CLASSES BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, MAY 22, 2015	This is the only option that allows you to ever be a part of any other lawsuit against NuCal, Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., or Hillandale Farms, Inc., 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 NuCal, Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., or Hillandale Farms, Inc., with respect to the claims asserted in this case.
OBJECT TO THE NUCAL OR HILLANDALE/GETTYSBURG SETTLEMENTS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, MAY 22, 2015	You will remain a member of the NuCal and Hillandale/Gettysburg Settlement Classes, but you also have the right to comment on the terms of the Settlements.
GO TO THE FAIRNESS HEARING ON JUNE 22, 2015 AFTER FILING A TIMELY OBJECTION TO THE NUCAL OR HILLANDALE/GETTYSBURG SETTLEMENTS	If you file a timely objection, you may speak in Court about the fairness of the NuCal or Hillandale/Gettysburg Settlements.

ABOUT THIS NOTICE & LITIGATION**1. Why did I receive this notice?**

This legal notice is to inform you of the NuCal and Hillandale/Gettysburg 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. 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, twelve 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 two times. 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 approved the First Sparboe Amendment on October 10, 2014. 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”). A notice dated July 30, 2014 regarding the Second Sparboe Amendment was sent to potential Class Members in October 2014.

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.

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

The 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 approved the Cal-Maine Settlement on October 10, 2014.

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. A notice dated July 30, 2014 regarding the NFC Settlement was sent to potential Class Members in October 2014.

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. A notice dated July 30, 2014 regarding the Midwest Settlement was sent to potential Class Members in October 2014.

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. A notice dated July 30, 2014 regarding the UEP/USEM Settlement was sent to potential Class Members in October 2014.

The NuCal Settlement. Plaintiffs and Defendant NuCal Foods, Inc. (“NuCal”) entered into a settlement agreement on August 1, 2014 to provide \$1,425,000 to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants.

The Hillandale/Gettysburg Settlement. Plaintiffs and Defendants Hillandale Farms of Pa., Inc. (“Hillandale Pa.”), and Hillandale-Gettysburg, L.P. (“Hillandale-Gettysburg”) (collectively the “Hillandale/Gettysburg Defendants”) entered into a settlement agreement on October 22, 2014 to provide \$3,000,000 to a fund to compensate Class Members and limited 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 purchasers of Shell Eggs and Egg Products across the United States. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the class present and share common questions of law and fact. Plaintiffs claim that Defendants’ actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from the year 2000 to the present. Plaintiffs allege that Defendants and unnamed co-conspirators controlled the egg supply through various methods that were all part of a wide-ranging conspiracy. These methods 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. NuCal, Hillandale Pa., Hillandale-Gettysburg, and the other Defendants deny all of Plaintiffs’ allegations.

The Defendants remaining in this case include: Michael Foods, Inc.; Rose Acre Farms, Inc.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; and R.W. Sauder, Inc.

THE NUCAL AND HILLANDALE/GETTYSBURG SETTLEMENTS
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3. Who is included in the NuCal and Hillandale/Gettysburg Settlements?

NuCal and the Hillandale/Gettysburg Defendants entered into separate Settlement Agreements with Plaintiffs, but both 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 December 19, 2014.

Excluded from the Settlement Class are:

- a. NuCal, Hillandale Pa., and Hillandale-Gettysburg, the Defendants that remain in the case, prior Settling Defendants (Moark Defendants, Sparboe, Cal-Maine, NFC, Midwest, UEP, and USEM), 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 NuCal and the Hillandale/Gettysburg Defendants and what do they provide?

The NuCal Settlement. Plaintiffs and Defendant NuCal Foods, Inc. ("NuCal") began substantive settlement discussions in January 2014. Those discussions continued on an intermittent basis through April 2014, when NuCal shared its unaudited financial statements with Plaintiffs. After extensive arm's-length negotiations, in May 2014 NuCal and Plaintiffs reached a settlement agreement in principle providing \$1,425,000 to a fund to compensate Class Members. The parties executed a formal settlement agreement on August 1, 2014. The settlement amount was based primarily on NuCal's financial condition and its sales data. Under the settlement, NuCal also will provide information concerning NuCal'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 NuCal Settlement, Plaintiffs will release NuCal from all pending claims.

The Hillandale/Gettysburg Settlement. Plaintiffs and Defendants Hillandale Farms of Pa., Inc. ("Hillandale Pa."), and Hillandale-Gettysburg, L.P. ("Hillandale-Gettysburg") (collectively the "Hillandale/Gettysburg Defendants") began substantive settlement discussions in the summer of 2014. After approximately four months of extensive arm's-length negotiations, in September 2014 Plaintiffs and the Hillandale/Gettysburg Defendants reached an agreement in principle providing \$3,000,000 to a fund to compensate Class Members. The broad terms of the settlement were memorialized in a binding term sheet on September 19, 2014. The parties executed a formal settlement agreement on October 22, 2014. Under the settlement, the Hillandale/Gettysburg Defendants will assist Plaintiffs in prosecuting this Action against the

² For both 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 December 19, 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 December 19, 2014."

remaining Defendants by authenticating documents. Pursuant to the terms of the Hillandale/Gettysburg Settlement, Plaintiffs will release Hillandale Pa. and Hillandale-Gettysburg, as well as Hillandale Farms East, Inc., and Hillandale Farms, Inc., from all pending claims.

The NuCal and Hillandale/Gettysburg Settlements should not be taken as an admission by NuCal, Hillandale Pa., or Hillandale-Gettysburg of any allegation by Plaintiffs or of wrongdoing of any kind. These settlements are between Plaintiffs and NuCal, Hillandale Pa., and Hillandale-Gettysburg 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 NuCal and Hillandale/Gettysburg Settlements to all members of the Settlement Class who can be identified through reasonable effort.

5. When will the NuCal and Hillandale/Gettysburg 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 NuCal and Hillandale/Gettysburg 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 NuCal and/or Hillandale/Gettysburg Settlements?

If the Court grants final approval, the NuCal and Hillandale/Gettysburg Settlements will be binding upon you and all other members of the Settlement Class. By remaining a part of the NuCal and/or Hillandale/Gettysburg Settlements, if approved, you will give up any claims against NuCal, and/or Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., and Hillandale Farms, Inc., 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.

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

7. Who represents the NuCal and Hillandale/Gettysburg Settlement Classes?

The NuCal and Hillandale/Gettysburg 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

8. 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 NuCal and Hillandale/Gettysburg Settlement

Funds, of attorneys' fees in an amount not to exceed 33 1/3% of \$4,425,000, as well as the costs and expenses incurred (the "Fee Petition"), including fees and costs expended while providing notice to the Class.

Class Counsel will file their Fee Petition on or before April 7, 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 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. 10.b below.

FINAL FAIRNESS HEARING

9. When and where will the Court hold a hearing on the fairness of the NuCal and Hillandale/Gettysburg Settlements?

The Court has scheduled a "Fairness Hearing" at 10:00a.m. on June 22, 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 determine whether the NuCal and Hillandale/Gettysburg Settlements are fair, reasonable, and adequate and whether the Court should enter judgment granting final approval of these Settlements. 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

10. How do I object to the NuCal and Hillandale/Gettysburg Settlements?

- a. If you are a member of the NuCal or Hillandale/Gettysburg 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 below.
- b. In order for the Court to consider your objection to either the NuCal or Hillandale/Gettysburg Settlements, your objection must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, May 22, 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

Counsel for Plaintiffs:

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

Counsel for NuCal (if objecting to the NuCal Settlement):

William M. Goodman
KASOWITZ, BENSON, TORRES &
FRIEDMAN LLP
101 California St. Suite 2300
San Francisco, CA 94111

Counsel for Hillandale/Gettysburg Defendants (if objecting to the Hillandale/Gettysburg Settlement):

Wendelynn J. Newton
BUCHANAN INGERSOLL &
ROONEY PC
One Oxford Center
301 Grant St. 20th Floor
Pittsburgh, PA 15219

Your objection(s) must be in writing and must provide evidence of your membership in the NuCal and Hillandale/Gettysburg Settlements Classes. 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 NuCal and Hillandale/Gettysburg Settlement Classes, you have the right to voice your objection to the NuCal and Hillandale/Gettysburg Settlements 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.

11. How do I exclude myself from the Settlements?

- a. If you are a member of the NuCal and Hillandale/Gettysburg 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 below.
- b. Your request(s) for exclusion must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,³ May 22, 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 the NuCal and/or the Hillandale/Gettysburg Settlements. If you intend to bring your own lawsuit against NuCal, you should exclude yourself from the NuCal Settlement Class. If you intend to bring your own lawsuit against Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., or Hillandale Farms, Inc., you should exclude yourself from the Hillandale/Gettysburg Settlement Class.

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.

12. What happens if I do nothing?

If you do nothing, you will remain a member of the NuCal and Hillandale/Gettysburg Settlement Classes. As a member of these Settlement Classes, you will be represented by the law firms listed above in Question No. 7, 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 NuCal Settlement, you may wish to review the Settlement Agreement and the Order “(1) Granting Preliminary Approval of the Proposed Settlement Agreement Between Direct Purchaser Plaintiffs and NuCal Foods, Inc.; (2) Certifying the Class for Purposes of Settlement; and (3) Granting Leave to File a Motion for Fees and Expenses” (entered October 3, 2014). For more detailed information concerning matters relating to the Hillandale/Gettysburg Settlement, you may wish to review the Settlement Agreement and the Order “(1) Granting Preliminary Approval of the Proposed Settlement Agreement Between Direct Purchaser Plaintiffs and Defendants Hillandale Pa., Inc., and Hillandale-Gettysburg, L.P.; (2) Certifying the Class for Purposes of Settlement; and (3) Granting Leave to File a Motion for Fees and Expenses” (entered December 19, 2014).

These documents are available on the settlement website, www.eggproductsettlement.com, which also contains answers

³ 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.

to “Frequently Asked Questions,” as well as more information about the case. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 10. You may also obtain more information by calling the toll-free helpline at (866) 881-8306.

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

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

Dated: December 19, 2014

The Honorable Gene E. K. Pratter

Exhibit 2

HOTELFANDB.COM

MARCH APRIL 2015

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EVEN
HOTELS
DELIVERS
HEALTH AWAY
FROM HOME
P. 42



Big Breaks

Hotel del Coronado makes a statement for the senses, page 16

- Italian B&C translates perfectly p. 24
- Speeding up lunch at Setai Miami, p. 11
- Breakfast for dinner wins in Vegas, p. 34
- DIY restaurant dominance, p. 38

Legal Notice

If you purchased Shell Eggs or Egg Products produced in the United States directly from any producer from January 1, 2000 through December 19, 2014, you could be a Class Member in a proposed class action settlement.

This legal notice is to inform you of proposed Settlements between Plaintiffs and Defendants NuCal Foods, Inc. ("NuCal"), Hillandale Farms of Pa., Inc. ("Hillandale Pa."), and Hillandale-Gettysburg, L.P. ("Hillandale-Gettysburg"), 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.

Who is included in the Settlements?

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 December 19, 2014.

What is this case about?

Plaintiffs claim that Defendants conspired to limit the supply of Shell Eggs and Egg Products, which raised the price of Shell Eggs and Egg Products and, therefore, violated the Sherman Antitrust Act, a federal statute that prohibits agreements that unreasonably restrain competition. The settling Defendants deny all of Plaintiffs' allegations.

What do the Settlements provide?

Under the Settlements, Plaintiffs will release all claims against NuCal, Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., and Hillandale Farms, Inc. In exchange, NuCal will pay \$1,425,000, and Hillandale Pa. and Hillandale-Gettysburg will collectively pay \$3,000,000, into a settlement fund for the benefit of the Classes. Plaintiffs also will receive documents and information that Plaintiffs' attorneys believe will aid in their analysis and prosecution of this Action.

What do I do now?

If you are a Class Member your legal rights are affected, and you now have a choice to make.

Participate in the Settlements: No action is required to remain part of the recent Settlements. If the Court grants final approval to the Settlements, they will be binding upon you and all other Class Members. By remaining part of the Settlements, you will give up any potential claims that you may have against NuCal, Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., and Hillandale Farms, Inc., relating to the claims alleged in this lawsuit. You may be eligible to receive a settlement payment at a future date.

Ask to be excluded: If you wish to exclude yourself from the recent Settlements and wish to retain your rights to pursue your own lawsuit relating to the claims alleged in this lawsuit, you must formally exclude yourself from the Classes by sending a signed letter to the Claims Administrator postmarked on or before May 22, 2015.

Object: You may notify the Court that you object to the recent Settlements by mailing a statement of your objection(s) to the Court, Plaintiffs' Counsel, and Defense Counsel postmarked by May 22, 2015. Detailed instructions on how to participate, opt out or object are on the settlement website.

Who represents you?

The Court appointed Steven A. Asher of Weinstein Kitchenoff & Asher LLC; Michael D. Hausfeld of Hausfeld LLP; Stanley D. Bernstein of Bernstein Liebhard LLP; and Stephen D. Susman of Susman Godfrey LLP as Interim Co-Lead Class Counsel. You do not have to pay them or anyone else to participate. You may hire your own lawyer at your own expense.

When will the Court decide whether to approve the Settlements?

At 10:00 a.m. on June 22, 2015, at the United States District Court, James A. Byrne Federal Courthouse, 601 Market Street, Philadelphia, PA 19106, the Court will hold a hearing to determine the fairness and adequacy of the recent Settlements, and consider any motion for an award of attorneys' fees and incentive awards and reimbursement of litigation costs. You may appear at the hearing, but are not required to do so.

Please note that the Court may change the date and/or time of the Fairness Hearing. Settlement Class Members are advised to check www.eggproductsettlemnt.com for any updates.

How can I learn more?

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www.eggproductsettlemnt.com

continued from page 50

where dishes are plated, finished, and expedited to tables. The labor model is one person in the kitchen, one out front, and a roving manager who helps in the BOH or FOH as needed. If more staff is required, such as during peak breakfast times, they are brought in to assist. Unlike at other brands, these staff members don't double as front desk clerks, etc. They are F&B staff, cross-trained to work both BOH and FOH, and some are also trained to bartend in the evenings.

FROM LONERS TO GROUPS

Cork & Kale is a welcoming refuge for solo travelers. "It has little pods where you can watch TV. You don't feel like you're by yourself, and it's relaxing," says Schmitz, who notes that group business also has been solid for Cork & Kale.

"We had a group come in, and they were really concerned with our offerings—granola bowls, etc.," he recalls. "They wanted the more traditional breakfast; they were worried about their clients. We were willing to do that and on the second day catered it for them. They actually called us back and said the group wanted to go back to our menus; they loved the differentiation from your standard catering menu. That was a pretty big win for us."

Schmitz says that of all EVEN's fitness offerings, F&B is the biggest success, and it's all tied in together. "Cork & Kale is an element of EVEN Hotels, so the menu design, our digital tablet process, how we look at things in photo shoots, and how we show things on our digital screens—all of it is integrated," Glickman says. "Cork & Kale is not standalone, created in isolation from the brand."

F&B is a point of struggle for many hotels, and IHG prepared EVEN hotels to start strong on that front. "We wanted to come to market for future franchisees and customers with a fully thought-out and vetted business model in the food and beverage space that not only delivers a great guest experience and stands up to our values but is also operationally executable," Glickman says, "so the operator can deliver it to our customers." 🍷

Tad Wilkes is managing editor of *Hotel F&B*. Michael Costa is industry relations editor of *Hotel F&B*.

Evolving Landscape
Looking ahead at emerging retail trends Page 33

Less is More
Free from reports major retailers for success Page 48

Deprived
Annual report shows mixed outlook to new heights Page 55

PROGRESSIVE GROCER



GOURMET MEETS GROCERY

Key Food's Olive Tree Marketplace banner aims to be all things to all shoppers

Page 10

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Legal Notice

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Plaintiffs claim that Defendants conspired to limit the supply of Shell Eggs and Egg Products, which raised the price of Shell Eggs and Egg Products and, therefore, violated the Sherman Antitrust Act, a federal statute that prohibits agreements that unreasonably restrain competition. The settling Defendants deny all of Plaintiffs' allegations.

What do the Settlements provide?

Under the Settlements, Plaintiffs will release all claims against NuCal, Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., and Hillandale Farms, Inc. In exchange, NuCal will pay \$1,425,000, and Hillandale Pa. and Hillandale-Gettysburg will collectively pay \$3,000,000, into a settlement fund for the benefit of the Classes. Plaintiffs also will receive documents and information that Plaintiffs' attorneys believe will aid in their analysis and prosecution of this Action.

What do I do now?

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Participate in the Settlements: No action is required to remain part of the recent Settlements. If the Court grants final approval to the Settlements, they will be binding upon you and all other Class Members. By remaining part of the Settlements, you will give up any potential claims that you may have against NuCal, Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., and Hillandale Farms, Inc., relating to the claims alleged in this lawsuit. You may be eligible to receive a settlement payment at a future date.

Ask to be excluded: If you wish to exclude yourself from the recent Settlements and wish to retain your rights to pursue your own lawsuit relating to the claims alleged in this lawsuit, you must formally exclude yourself from the Classes by sending a signed letter to the Claims Administrator postmarked on or before May 22, 2015.

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Please note that the Court may change the date and/or time of the Fairness Hearing. Settlement Class Members are advised to check www.eggproductsettlement.com for any updates.

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Technology Data Synchronization

The National Data Quality Program is designed to be universal across all sectors, and consists of the three essential components of good-quality data:

Data governance: Ensuring processes and procedures are in place to set up and maintain accurate data over time. This includes the use of industry best practices and data stewards.

Education and training: This ensures that the people responsible have the knowledge to implement the program, with particular focus on synchronizing data to the GDSN, an internet-based, interconnected network of interoperable data pools, and a global registry known as the GS1 Global Registry. They enable companies around the globe to exchange standardized, synchronized supply chain data with their trading partners.

Attribute audit: This is the physical audit of the product compared with the most recent information shared. It validates the data governance processes and institutional knowledge as demonstrated in the first two components.

Demonstrating proficiency in all three pillars will enable a supplier to become certified either by a third-party solution provider or by GS1 US. Meanwhile, another trio of pillars forms the basis of the Retail Grocery Initiative: digital product information and images, supply chain visibility, and operational efficiencies.

Product Information and Images

"Data is no longer limited to supply chain metrics and physical characteristics," says Gardner, of Wegmans. "It is also consumer-facing, and these attributes need to be part of the model."

Indeed, of the three areas of focus in the initiative, product information and images is the only one dealing with consumer-facing issues. Trading partners are concerned about the data density and quality to support product catalogs and e-commerce solutions.

"As technology continues to evolve, customers expect more product attributes and product images to review products online," says Brous, of Publix. "There are also concerns about the authentication of the data, which we believe should be from our suppliers and manufacturers."

"We have already participated in some initial data-quality measurement efforts with GS1," she continues. "Along with several other suppliers and retailers, we confirmed that data quality and density for product catalogs and e-commerce solutions remain a large opportunity. Product data for traditional supply chain needs is available, but not for consumer catalogs. We are sharing this opportunity with our suppliers and working with several data pools to secure this product attribute data in our product catalog for customer convenience."

A GS1 US workgroup is actively addressing the issues related to product information, including images, to ensure that data synchronization based on GS1 standards is seamless.

"The need for expanded product attributes is driven

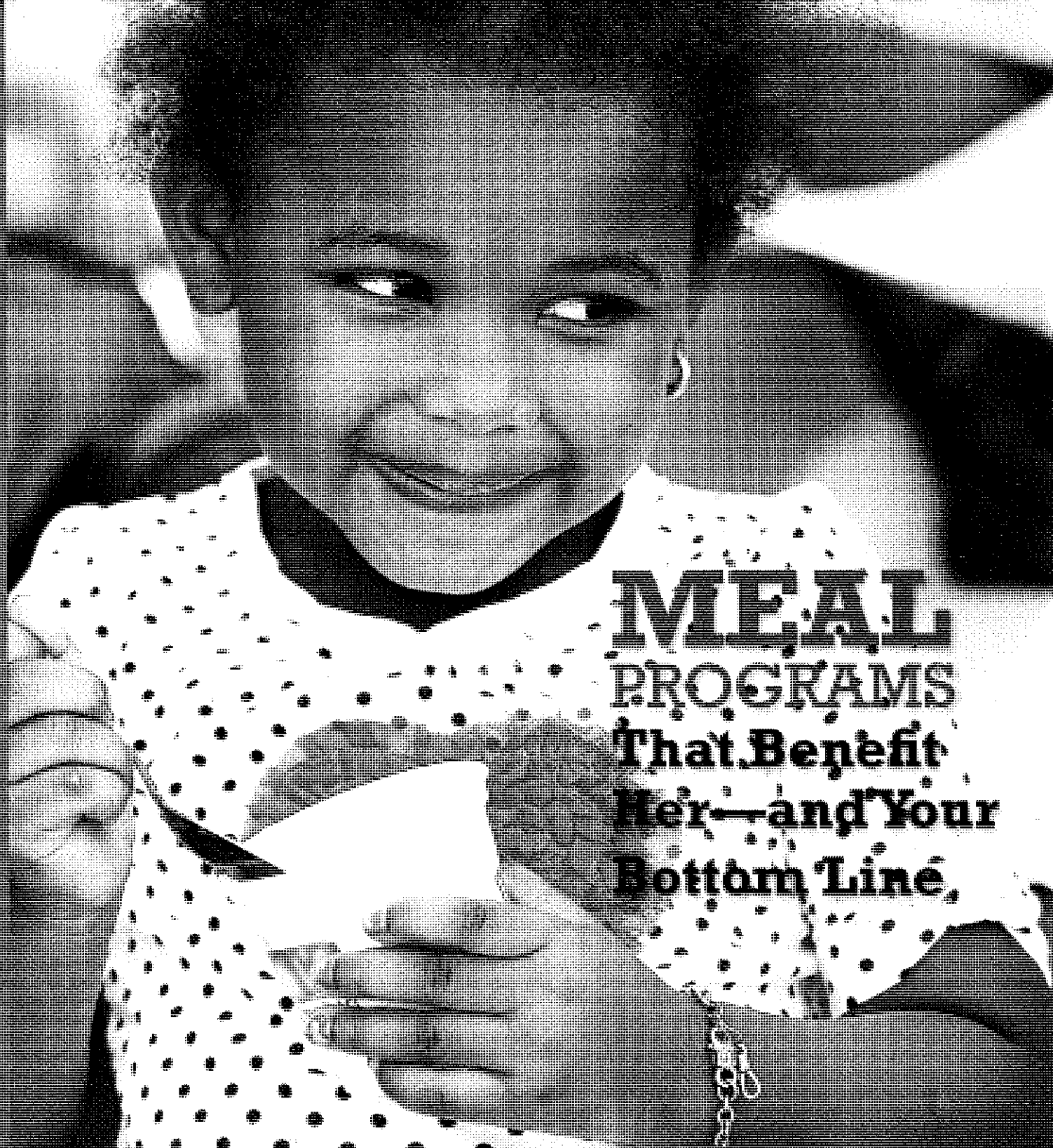
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PROGRAMS
That Benefit
Her—and Your
Bottom Line.**

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Who is included in the Settlements?

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social media channels, like Facebook and Twitter, to share the news—and be sure to send a letter home to parents! Celebrate your CEP status with a website banner that promotes the fact that breakfast and lunch are available at no charge. Samples of these different communication tools are available online at www.schoolnutrition.org/snmagazinebonuscontent.

CEP provides healthy, nutritious breakfasts and lunches to the children that need it most and more than 2,000 schools districts have already made the decision to implement. Should you? "Districts that have adopted community eligibility are its biggest champions, because it's a win-win opportunity. Leaders at the districts with eligible schools have a terrific opportunity this spring to take a fresh look at community eligibility to see whether they can bring its benefits to their students," stresses CBPP's Neuberger.

Goff, one of CEP's true champions, sums it up: "It's the right thing to do and in the children's best interest. We're talking about feeding children here. Children can't pull themselves up by their bootstraps; they don't have bootstraps. In the greatest country in the world, it's a beautiful thing that we can do this. And it is something we *should* do!" SN

Arienne Corbett is managing director of Leading Health, LLC, in Tampa Fla., and a former manager of nutrition advocacy at SNA. Photography by jiunlimited.com.

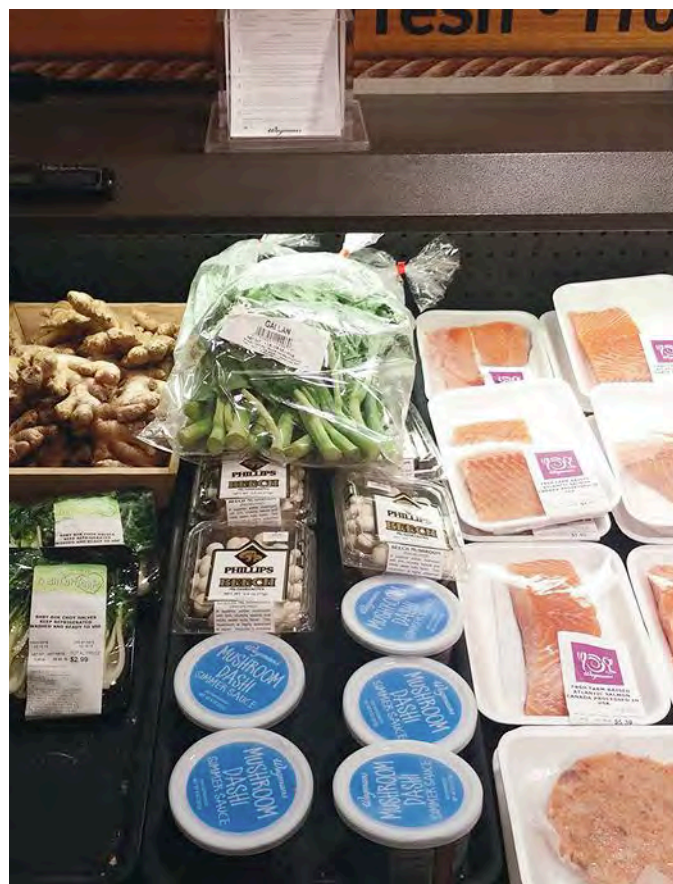
BONUS
WEB CONTENT

The potential for CEP expansion is so exciting, and USDA, SNA and other child nutrition advocates have created a wide variety of tools and resources to help school nutrition professionals make the most of this opportunity. *School Nutrition* has collected several of these and made them available at www.schoolnutrition.org/snmagazinebonuscontent.

fresh



Creative displays for AN ENTIRE MEAL WITH SEAFOOD are seen at Rouses (above) and Wegmans (at right).



big brands launch," Breuhl said.

Not surprisingly, those chains, usually small, that KDYH VRPH W\SH RI SUR;W VKDU ing plan have an easier time getting departments to work together.

Dorothy Lane's owners in VWLWXHNG D SUR;W VKDULQJ SODQ ;YH XHUV DJR

"We call it the Great Game of Business," Gridley said. "And that has got everybody thinking about turning product, whatever the product. They realize that if every d SDUWPHQW PDNHV D SUR;W LW EHQH;WV HYHU\ERG\ "

At Newport Avenue Market, it wasn't quite as simple. Owners Rudy and Debbie ' RU\ SXW D SUR;W VKDULQJ SODQ into effect years ago, but it wasn't until Yochum explained to every department manager and employee how working WRJHWKHU ;QDQFLDQ\ EHQH;WV everybody that there was a VLJQL;FDQW GLIHUHQFH

"Randy has been good at getting people to work together. He has all perishables departments going toward the same goal. The key is in buying," Rudy Dory said.

Yochum said he had to ex SIDLQ SUR;W VKDULQJ LQ D ZD\ that everybody could relate to.

"I told them it was up to all of us to make it work," Yochum said. "I emphasized

each person's bonus is based on the total store's sales and SUR;W QRW RO WKHLU SDUWLFXODU department's numbers. Once that was understood, we began working like a cohesive machine."

Careful ordering to reduce waste and turning product with good merchandising play big roles. Department managers at Newport Avenue meet three times a week and part of the discussion is what they'll be ordering and particularly what foodservice chef Greg Donnelly will need for his

menu. But some interaction is spontaneous.

"Greg might call me or come over and ask me if I can get him a particular item for his Wednesday Seafood Night," Yochum said.

"I do all the fresh seafood buying for prepared foods so I sometimes make suggestions to him as to what would be a good buy this week. We have D ORQJ WLPX VXSSOLHU WKDW , WR tally rely on. They know that we're most concerned about quality, and also they know the items our customers like." **SN**

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PHOTO (TOP) COURTESY OF ROUSES

STORES

The Magazine of NRF

MARCH 2015



**WILL DRONES FLY
IN RETAIL?**

The sky's
not the only
limit

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information updates. "It becomes a universal customer number," Kennamer says, "one identification number." Consumers can also see offers from all the participating retailers.

COSTS AND BENEFITS

Respondents to a recent survey said they'd shop retailers that use the LOC platform 46 percent more frequently than retailers that don't.

Phillips Edison & Company, a retail real estate company with shopping centers nationwide hosting stores like Kroger and Publix, is rolling out the card at its locations; merchants have said they like it, says chief operating officer Bob Myers. "It makes sense and is really a good way to connect with consumers."

The simplification the card promises is a key component, he says. Most retailers want to retain their loyalty programs, but make them easier to use.

Simplicity was a drawing point for Dave Ratner, owner of Dave's Soda and Pet City, which has seven Massachusetts locations. "I thought it was a fabulous

Nearly **one-quarter** of consumers are inclined to be "unwilling participants" in loyalty programs.

— Peanut Labs

idea," Ratner says. "Customers wouldn't have to carry around 80 million cards."

Dave's has offered a club card for about 20 years, he says, and more than 90 percent of its customers participate. He began transitioning customers to the LOC card in September and acknowledges that merging information from the club card to the LOC card requires some work. LOC is helping, though. "When we run into a glitch — we're a guinea pig — they fix it immediately," he says.

Ratner expects the LOC technology to save money and help the company better target promotions. In addition, the LOC dashboard will let him reach individuals who aren't currently customers.

Among the program's attributes that consumers most value, according to LOC's research, are the abilities to sign up for new loyalty programs with a single swipe of a card, receive relevant promotions and securely manage personal information.

The LOC card is free to consumers; retailers pay subscription fees based on use. **STORES**

Karen M. Kroll is a business writer based in Minnetonka, Minn.

NRF.COM/STORES

Egg Industry

News for the Egg Industry Worldwide

WATTAgNet.com
Your leading agribusiness resource

Inside

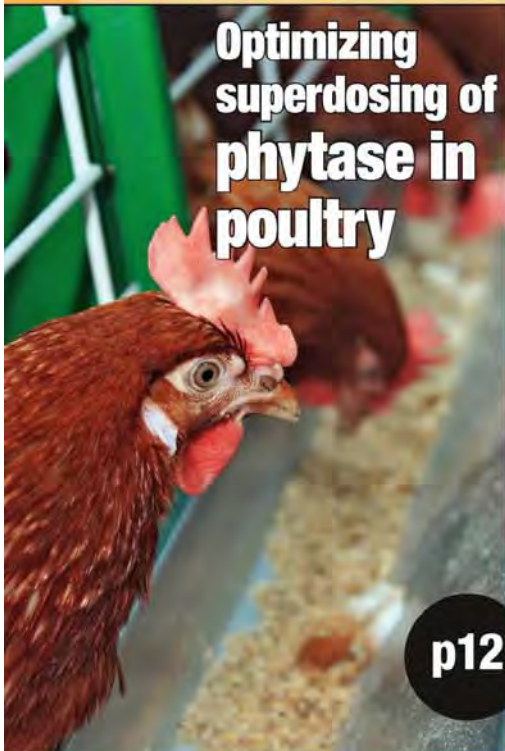
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- 6 Initial short supply causes price run-up for California eggs
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What will the future bring for cage housing of layers in the US?

Optimizing superdosing of phytase in poultry



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Initial short supply causes price run-up for California eggs



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double-yolked Marks and Spencer offering will retail at GBP2.75 per box.

They are part of a new range which includes Araucona Blue and Maran Island brown eggs, and have grabbed multiple column inches in the U.K. press since being launched.

According to the British Egg Industry Council, double yolks occur only in 0.1 percent of eggs. The retailer is guaranteeing, via candling, that all eggs will have double yolks.

SONSTEGARD FOODS PLANS TO BUILD LAYER FARM IN SOUTH DAKOTA

Sonstegard Foods, headquartered in Sioux Falls, South Dakota, is hoping to greatly expand its egg business by building a new layer farm near Parker, South Dakota. If realized, the farm would enable the company to more than double its total number of laying hens.

"We've been talking about building another chicken farm for five years," Peter Sonstegard, the company's vice president of sales, told the Argus Leader. "We've looked at buying some other companies, we've looked at buying some other farms and we've come to the conclusion that we're better building it ourselves."

The expansion in Parker would cost \$85 million overall, with 18 months separating the initial groundbreaking from the first shipment of eggs, he said. The facilities would include two barns to start with and 30 to 40 employees. Sonstegard hopes to add a barn a year until the facility reaches six million chickens, the Sioux City Journal reported.

There would also be a feed mill, manufacturing facility and two sheds to store dry manure – which would then be sold as fertilizer.

Sonstegard Foods is the parent company of Sunrise Farms, which has an estimated 5 million laying hens, according to the WATT Global Media Top Companies Database. Sonstegard Foods originated in 1972, and now operates in five states under several names, selling dry, liquid and shelled eggs to grocery stores, schools, prisons, and manufacturing companies.

NEWS OF NEW LAYER FARM GETS MIXED REVIEWS IN PARKER AREA

Several area residents attended a public meeting in Parker on February 16, with some speaking in favor of the farm.

Parker Mayor Ron Nelson said the city has not taken an official position on the proposed farm, but he did say he likes the idea of 155 new jobs and the impact those jobs will have

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similar rate," says Rasmussen, "therefore it is important that formulators and food companies stay flexible and are able to move quickly to meet new guidelines and regulations."

Giraffe's Powell adds that she hopes the new dietary guidelines will clear up the confusion on serving sizes, too. "Consumers are confused by the wide variety of serving sizes found on Nutrition Facts Panels. Not all food companies base their serving sizes on the FDA's Reference Amounts Customarily Consumed (RACC), and sometimes make their own decision about what is a serving size. This makes it difficult for the everyday shopper to compare products in similar categories."

The new guidelines should clarify what a portion is for a particular type of food and all retail food products should follow those guidelines. "I expect the 2015 guidelines to emphasize the need to increase fiber intake through eating more fruits and vegetables," says Nahoum. "I would expect them to emphasize a limited intake for trans fat and added sugars. Added sugars is one of the proposed changes to the Nutrition Facts label, which highlights the importance of making it more visible to the consumer."

Research chefs, food scientists and culinary scientists are working hard to meet the demands of consumer users of retail and food service products. Consumers want clearer and cleaner labels as well as more protein, fiber and vitamins. Marketers want to give their marketing departments more "claims for fame" opportunities.

Food developers in both retail and foodservice must rely heavily on their ingredient suppliers to provide them with cleaner sounding ingredients that match their customer requests. Developers must then creatively incorporate these new ingredients into existing products without impacting the final flavor and taste.

All this can be challenging, since many ingredients perceived as being "unclean" are highly functional, like modified food starch and artificial flavors. Consumers should expect cost increases to match their new requests. Clean ingredients can be limited in supply and manufacturers should source out and confirm materials needed as soon as possible. 

SPEAKING OF CLEAN LABELS

There will be several sessions touching upon clean labels at our upcoming Food Leaders Summit – but hurry to register, because the conference is April 27-29 in Chicago.

Some of the sessions: "Beyond Clean Label" led by Janet Carver of Ingredient; "Natural Product Trends in Mainstream Grocery" by John Grubb of Sterling Rice Group; "The Future of Partially Hydrogenated Oils"; "2018: What's On Trend in the Food Landscape?" by John Roulac of Nutiva; and "Navigating Consumer Desires in the Era of Too Much Information" by Charlotte Biltekoff of UC-Davis and Sally Aaron of Solazyme. And there are several on transparency and building consumer trust.

See the entire program and register at www.TheFoodLeadersSummit.com.

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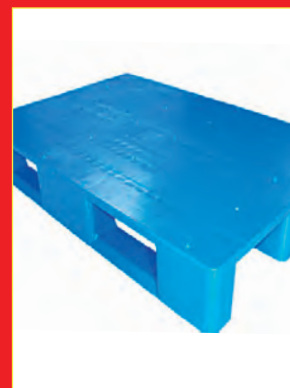
Vol. 28, No. 2

A FIRM GRASP ON ITS CRAFT

Griffin Claw Brewing Company prides itself on producing beer with a mix of tradition and technology at its Birmingham, Michigan facility.

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- **Ways Plastic Pallets Can Impact Cleanliness and Drive Change**
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- **5 Best Practices for Using Robotics in Your Food Processing Plant**
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- **A Recipe for a Winning Process Manufacturing ERP**
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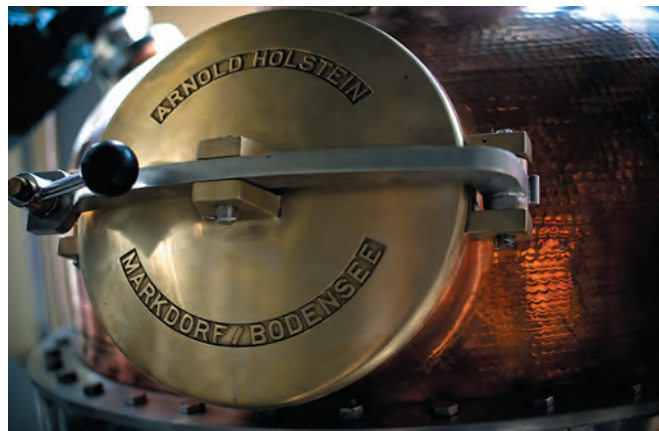


real light beers — I call them training wheel beers — because some people don't like a really hoppy beer. So I have a nice mild lager and then a nice pale ale. Then we have a very hoppy IPA and then some stouts and sour beers. You should be able to find something you like. We've also made hard cider and things like that."

Griffin Claw produces half-barrels, quarter-barrels, bottles and cans, and its beers are available at approximately 1,200 retailers, bars and restaurants throughout Michigan.

"I think people like drinking local. They like the beer that's made local. I've seen that happen here in this state," Rogers said. "People want local. That's why we're staying in Michigan right now. We're not looking to any other states yet. Local is key."

Griffin Claw currently has four year-round beers — El Rojo Red Ale, Grind Line Pale Ale, Norm's Raggedy Ass IPA and Grand Trunk Pilsner — with a fifth on the way this summer in the form of a



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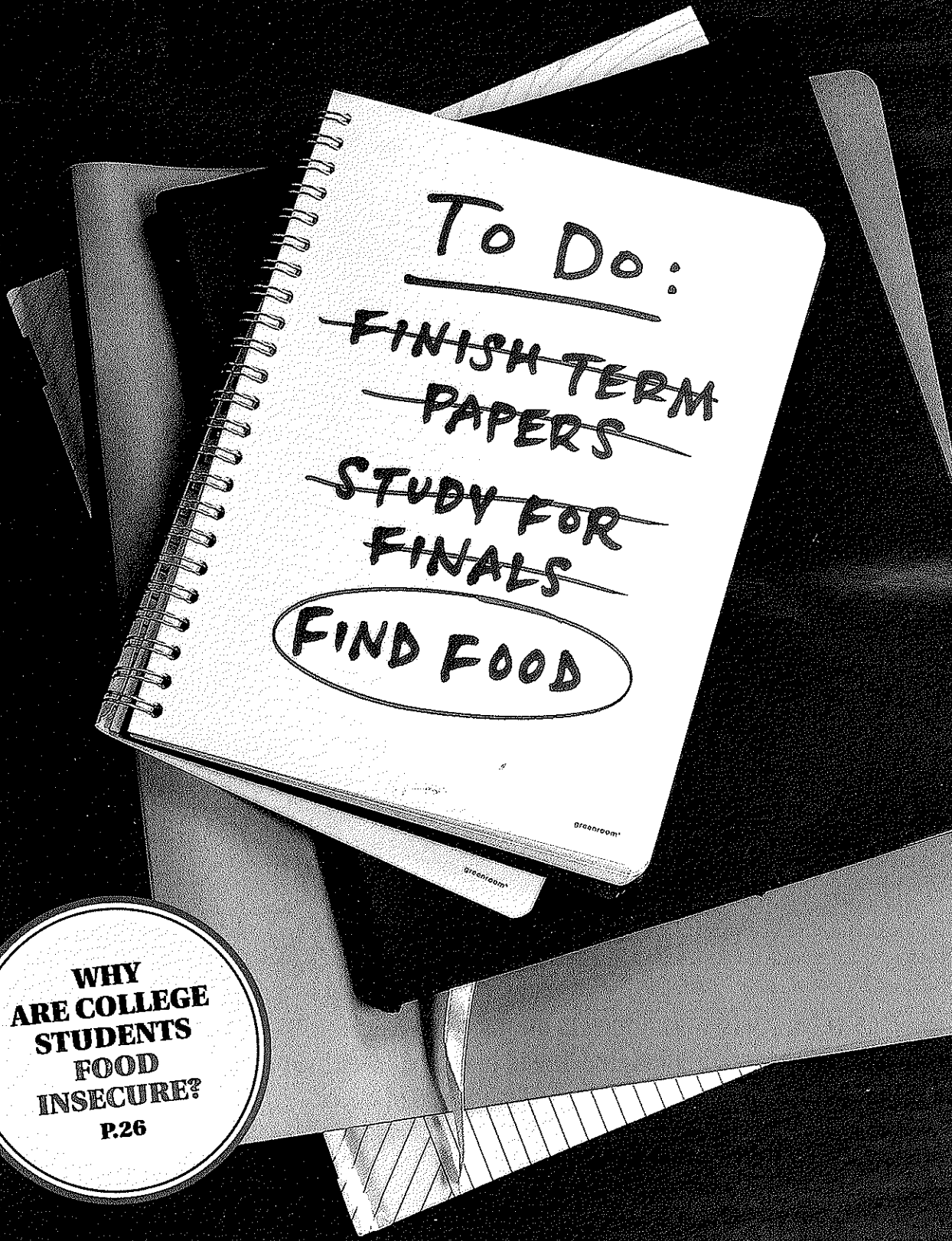
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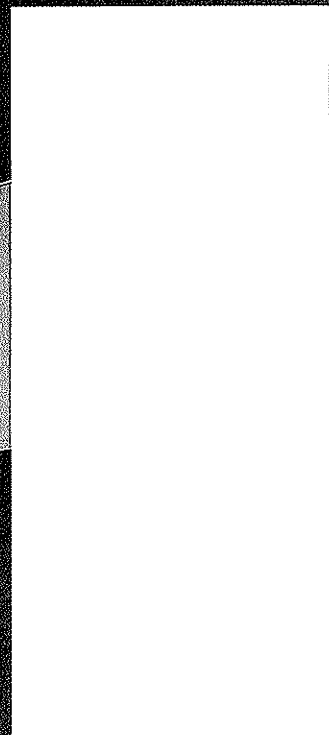
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FOODSERVICE DIRECTOR

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WHAT'S CLICKING?

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{menu staples}

Soup: For all seasons

No matter the weather, fresh, flavorful soups and stews are menu staples.



By Marygrace Taylor

At Cannon Memorial Hospital, in Pickens, S.C., the first day of cold weather marks the start of soup season.

"Once the leaves start to turn in October, we'll begin testing the waters with soups one or two days a week. As it gets colder, we'll do up to a soup a day," says Director of Food Service John Unsworth. Typically, he'll strike a balance between heartier stews such as beef burgundy and lighter options such as parsnip and leek, but the one constant is his dedication to using high-quality ingredients.

"If you're going to make a from-scratch soup, don't cut corners," Unsworth says, and that means using fresh ingredients. By switching to a smaller distributor, he has been able to get fresh produce delivered six days per week.

South Carolina's warmer average climate means that Cannon Memorial's soup season tends to wind down by April. But in more northerly places, such as Northeastern Illinois University, in Chicago, soup is often on the menu year-round. Sean O'Donnell, executive chef at this Aviands account, says his operation goes through as much as 14 gallons of soup per day in the winter. But even in the warmer months, production stays nearly as high, at 11 gallons, he adds. Lighter, broth-based options such as gluten-free minestrone, corn and black bean soup and vegetarian chili work for every season.

Year-round soup is also the norm at the University of New Hampshire, in Durham, N.H., where Executive Chef Todd Sweet serves up to 10 varieties daily. In the winter, it's all about chowders and stews, such as Green Chile Turkey Stew, served with corn tortillas and pinto beans. Broth-based

offerings such as Asian noodle bowls with pork or chicken are popular regardless of the season, while the summer months feature cooling favorites such as Chilled Wildberry Soup with Mint.

Sweet says fresh vegetables and aromatics are the key to a delicious soup. To coax out even more flavor, Sweet's team makes soups in the morning and holds them at 165 degrees for several hours to encourage ingredients to mingle. For cream-based soups, Sweet says he adds a starch thickener to minimize separation.

At the Elizabeth Jane Bivins Culinary Center, in Amarillo, Texas, Executive Chef Rocky Dunham has a different approach. Because the center churns out hundreds of gallons of soups per day for local schools, childcare centers and healthcare facilities, Dunham says it makes more sense to chill soups after cooking and then reheat them on-site.

To make soups such as Homestyle Pork Stew, French Onion Soup, Shrimp and Sausage Gumbo, Texas Chili and Broccoli Cheddar Soup, Dunham relies on cook-chill technology. His 100-gallon capacity kettle features four computerized inner paddles that simultaneously act as bench scrapers and whisks to keep soup moving. The automated technology allows Dunham to produce high volumes of product safely and cheaply. Cook times and temperatures are programmed and logged electronically, while the large kettle size keeps production costs lower.

"I can make 100 gallons of soup without having to wash ten 10-gallon pots," Dunham says. "Traditionally, chicken noodle soup would cost me \$1.13 a portion. With cook-chill, I can get that down to [about 15 cents] per portion, so we're saving quite a bit of money."

MARCH 2015

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Tony Katsaris, CEO of
7-Eleven Inc.

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RESTAURANT LEADER OF THE YEAR: DANNY MEYER, UNION SQUARE HOSPITALITY GROUP P.73

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Patrick Jammet
Marketing, food and
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Nicolas
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Co-founder,
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THE

POWER 20

The family dynasties leading restaurants into a new generation. P.50

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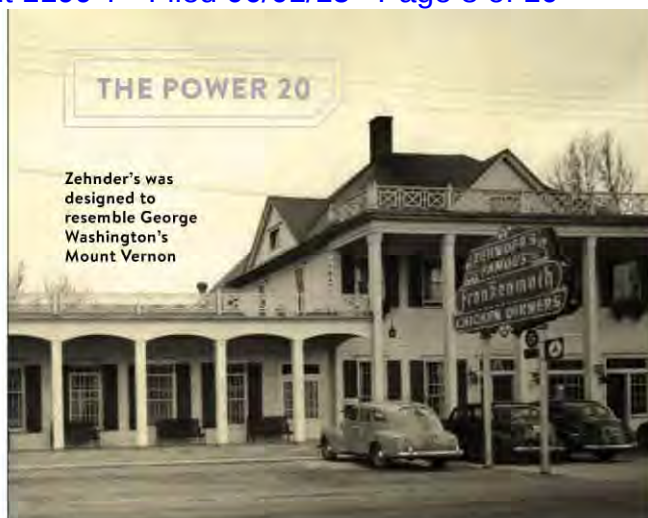
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THE ZEHNDERS

*Zehnder's of Frankenmuth/
Frankenmuth Bavarian Inn*

KEY PLAYERS

William and Emilie Zehnder, founders



Edwin "Eddie" Zehnder, manager, Zehnder's

William "Tiny" Zehnder, manager, Bavarian Inn



Al Zehnder, CEO, Zehnder's

Martha Shelton, CFO, Zehnder's

Susan Zehnder, VP of HR, Zehnder's

John Zehnder, executive chef and F&B director, Zehnder's

Bill Zehnder, owner and co-president, Bavarian Inn

Judy Zehnder-Keller, co-president, Bavarian Inn

Having a decades-long foothold in a relatively small tourism-driven area and an unprecedented number of seats (more than 1000) has helped the Zehnder family corner the restaurant market in Frankenmuth, Mich., a seasonal family destination 100 miles north of Detroit. Two restaurant properties, The Bavarian Inn and Zehnder's of Frankenmuth are separately owned and operated by the children of William and Eddie Zehnder, a relationship Zehnder's of Frankenmuth CEO Al Zehnder describes as "friendly competition." And each grosses more than \$11 million a year, earning both of them spots on Restaurant Business' 2014 ranking of the Top 100 Independents.

The current generation of operators has changed little about the restaurants that sprouted from William Sr.'s purchase of the Exchange Hotel, which he traded his farm to acquire in 1928. That includes the signature family-style chicken dinners still served today. But the business has expanded, with Zehnder's adding a golf course and an indoor water park hotel nearby that Al calls "an outstanding addition to our company."

BEST PARENTAL ADVICE

"Never argue about a dollar. My sisters and I always agree or find a way to agree in the direction of the company ... Nobody's got the ultimate hammer." —AL

Mobile payment a must-have pg. 22 • Room to raise prices pg. 38 • Consumers want more protein pg. 48

NATION'S Restaurant News

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MARCH 23, 2015

Powered by Penton*

Casual-dining comeback

Long-struggling segment posts industry-leading sales results as new entrants, revamps of classic brands breathe new life into the market

Report begins on page 16

ALSO IN THIS ISSUE: A new era for Darden Restaurants Inc.



The segment has drawn new entrants like five-unit Cabo Flats, pictured. Meanwhile, established brands are updating their menus and operations.



Beefing up options

Operators turn to new cuts and presentations to mitigate rising beef costs amid high demand



Using lesser cuts of beef for kebabs or burgers can help control food costs and eliminate waste.

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Qdoba: Turnaround taking hold

Sister chain Jack in the Box also sees sales improvements

BY LISA JENNINGS

Qdoba Mexican Grill's simplified pricing structure helped propel same-store sales 14 percent in the first quarter, boosting the chain's average check 9.8 percent without giving the impression of a price increase, company officials said.

The results, which marked Qdoba's fourth consecutive quarter of same-store sales increases above seven percent, show that turnaround efforts at the brand are taking hold, Lenny Comma, chairman and CEO of San Diego-based Jack in the Box Inc., said in an earnings call last month.

He added that even he was a bit surprised by the stellar results, which have continued into the second quarter.

"We're just as astonished by the performance as you are," Comma said. "We haven't really dug deep enough yet to fully understand why consumers are responding so favorably."

The 12.9-percent same-store sales increase at company-owned Qdoba restaurants was comprised of a 9.8-percent increase in average check. Transactions increased 1.9 percent for the quarter, and catering contributed another 1.2 percent.

Qdoba has been steadily improving over the past two years, since closing 62 underperforming locations and hiring a new brand president, Tim Casey, formerly CEO of Famous Brands International. Consumer research was conducted to get a better picture of where Qdoba should go, and consultants were brought in to rework the brand, which has more than 600 units.

The goal has been to step out from under the shadow of other brands, Comma said without mentioning names, but likely including fast-casual category leader Chipotle Mexican Grill.

"We were caught in a sea of sameness or in the copycat brand space," Comma said. "We really needed to establish ourselves as a standalone brand with its own personality going forward."

Efforts included a shift in October to a new pricing structure that let customers pay one price, based on protein, for a menu item, without paying extra for add-ons like guacamole or queso sauce.

"Guests have responded very favorably," Comma said, noting that guacamole additions have more than doubled and customers now request queso sauce with nearly half of all entrées.



Qdoba Mexican Grill's brand revitalization efforts include a new menu pricing structure and an "in your face" prototype design for new stores.

Eliminating the extra cost for add-ons has allowed for more positive interactions between customers and restaurant employees as they build their meals.

"It's not just a price increase," he said. "In fact, the consumer doesn't interpret it that way."

The move also allowed Qdoba to eliminate discounting, which contributed about half of the average check increase, Comma said.

Still, Qdoba is still in the early stages of its brand revitalization, he said. Two new prototype locations are under construction, and when they open in the spring will serve as models for future growth. The company did not indicate where they are located.

"We wanted essentially to marry what we're doing with food and bold flavors with the persona of the brand and the image of the facility," Comma said.

Comma described the new design as "in your face," with an aggressive personality that "brings to life this idea of individualism."

Aside from nontraditional locations, all new restaurants will sport the new design, though the company will continue to test various aspects in different markets to see what works best going forward.

The company plans to open 50 to 60 new Qdoba restaurants in fiscal 2015, about half of which will be company owned.

The company has also been working on bringing bolder flavors to the menu, as well as new platforms, like the recently introduced Smothered Burrito line, a "knife and fork" offering designed to help build dinner sales, Comma said. And there's more menu innovation to come.

"This is the very beginning stage of where we think we can go," Comma said.

Meanwhile, at sister brand Jack in the Box, offi-

CONTINUED ON PAGE 44

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NUTRIFUSION

Expanding into the specialty petfood market

p. 32



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If you purchased Shell Eggs or Egg Products produced in the United States directly from any producer from January 1, 2000 through December 19, 2014, you could be a Class Member in a proposed class action settlement.

This legal notice is to inform you of proposed Settlements between Plaintiffs and Defendants NuCal Foods, Inc. ("NuCal"), Hillandale Farms of Pa., Inc. ("Hillandale Pa."), and Hillandale-Gettysburg, L.P. ("Hillandale-Gettysburg"), 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.

Who is included in the Settlements?

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 December 19, 2014.

What is this case about?

Plaintiffs claim that Defendants conspired to limit the supply of Shell Eggs and Egg Products, which raised the price of Shell Eggs and Egg Products and, therefore, violated the Sherman Antitrust Act, a federal statute that prohibits agreements that unreasonably restrain competition. The settling Defendants deny all of Plaintiffs' allegations.

What do the Settlements provide?

Under the Settlements, Plaintiffs will release all claims against NuCal, Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., and Hillandale Farms, Inc. In exchange, NuCal will pay \$1,425,000, and Hillandale Pa. and Hillandale-Gettysburg will collectively pay \$3,000,000, into a settlement fund for the benefit of the Classes. Plaintiffs also will receive documents and information that Plaintiffs' attorneys believe will aid in their analysis and prosecution of this Action.

What do I do now?

If you are a Class Member your legal rights are affected, and you now have a choice to make.

Participate in the Settlements: No action is required to remain part of the recent Settlements. If the Court grants final approval to the Settlements, they will be binding upon you and all other Class Members. By remaining part of the Settlements, you will give up any potential claims that you may have against NuCal, Hillandale Pa., Hillandale-Gettysburg, Hillandale Farms East, Inc., and Hillandale Farms, Inc., relating to the claims alleged in this lawsuit. You may be eligible to receive a settlement payment at a future date.

Ask to be excluded: If you wish to exclude yourself from the recent Settlements and wish to retain your rights to pursue your own lawsuit relating to the claims alleged in this lawsuit, you must formally exclude yourself from the Classes by sending a signed letter to the Claims Administrator postmarked on or before May 22, 2015.

Object: You may notify the Court that you object to the recent Settlements by mailing a statement of your objection(s) to the Court, Plaintiffs' Counsel, and Defense Counsel postmarked by May 22, 2015. Detailed instructions on how to participate, opt out or object are on the settlement website.

Who represents you?

The Court appointed Steven A. Asher of Weinstein Kitchenoff & Asher LLC; Michael D. Hausfeld of Hausfeld LLP; Stanley D. Bernstein of Bernstein Liebhard LLP; and Stephen D. Susman of Susman Godfrey LLP as Interim Co-Lead Class Counsel. You do not have to pay them or anyone else to participate. You may hire your own lawyer at your own expense.

When will the Court decide whether to approve the Settlements?

At 10:00 a.m. on June 22, 2015, at the United States District Court, James A. Byrne Federal Courthouse, 601 Market Street, Philadelphia, PA 19106, the Court will hold a hearing to determine the fairness and adequacy of the recent Settlements, and consider any motion for an award of attorneys' fees and incentive awards and reimbursement of litigation costs. You may appear at the hearing, but are not required to do so.

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How can I learn more?

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→ SUPERFOODS

Blueberries are touted for their vitamin C and their anthocyanins, a type of antioxidant.



including two grain-free and gluten-free options.

LANSING TRADE GROUP LLC, a North American handler of whole grains and feed ingredients, has focused on sweet potatoes as a superfood in petfood formulations. "Sweet potatoes are a high-quality alternative grain-free ingredient and a superb source of vitamins, minerals and complex carbohydrates," says Isaac Matthews, division manager at Lansing. "Since sweet potatoes are viewed as extremely nutritious, they are also excellent at self-marketing as a healthy, unique and specialized food." Matthews says that Lansing's customers are focused on things like nutritional profile and target market objectives when considering formulations. Items like sweet potatoes, which fulfill those needs for many petfood manufacturers right now, have settled alongside a number of different grain-free ingredients that Lansing provides to meet its customers' needs.

One Dog Organic Bakery's pumpkin spice treats are handmade, all natural, organic and gluten-free, and contain 100% human-grade ingredients. Pumpkin is high in potassium, beta carotene and vitamin E and is naturally low in calories, making it a healthy, nutritious selection for snacking, according to the company. The company also uses ingredients such as coconut oil, flaxseed, chia seed and bee pollen, all of which purport to meet various nutritional requirements, in its products.

Family Owned Spot Farms dog treats are antibiotic-free, 100% USA-made, all-human-grade jerky dog treats in formulas such as Chicken Jerky Hip+Joint, Chicken Jerky Skin+Coat, Chicken Jerky Heart Health and Chicken Jerky Serenity. The Hip+Joint recipe

bake®

Issue No. / 3

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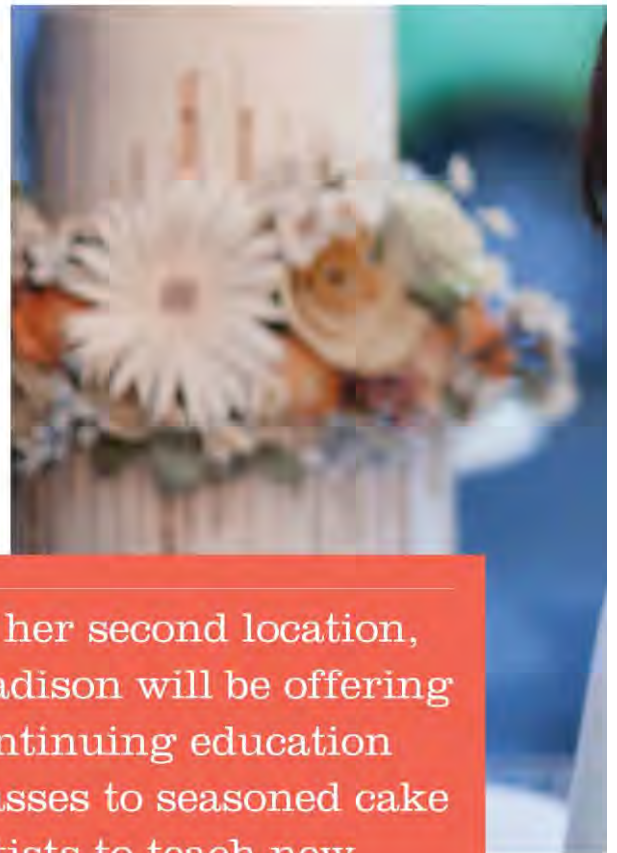
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www.eggproductssettlement.com




In her second location, Madison will be offering continuing education classes to seasoned cake artists to teach new techniques and trends.

Each cake is as unique as the client she creates cakes for. There are no cookie-cutter designs here. Her attention to these fine details has given her the opportunity to create cakes for some of the industry's most prestigious magazines and clients.

She has been featured in *Brides*, *Huffington Post*, *Style Me Pretty*, *New York Wedding*, *Good Morning America*, and she's also been awarded numerous first prize gold medals for her outstanding work.

Barricelli's goals of teaching are also coming to fruition, as she opens a second location this year at 336 West 37th Street in Manhattan's legendary Garment District. She will be offering continuing education to seasoned cake artists to teach new techniques and trends. This location will also serve as a hub for meeting with her brides and grooms from the tristate area.

As life often imitates art, Barricelli is going to be a bride herself in a few short months. When asked who is making her cake, she replies with a smile. "Me! I am making my cake and eating it too." 

LONG-TERM Living

MARCH/APRIL 2015 VOLUME 64, NUMBER 2

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The organization identified “super users” who could troubleshoot issues and help their co-workers learn the new system, and everyone knew in advance who the super users were.

basis right now to continue to refine workflows, make changes to the system and work with our vendor partner to continue to refine.”

The clinical work groups also identify where retraining is needed. “It’s not enough to train everyone just once,” Winn-Horvitz said. “You have to tell them, and then tell them again and again.”

As the rollout was set to begin, JAA tried to create a sense of excitement and enthusiasm among all staff members, making it “more than just an IT project,” Winn-Horvitz said. “We actually gave a name to the project. We called it J Care, and we were counting down the days to the launch of J Care at the organization. We had signs up. Everyone knew it was coming.”

The organization identified “super users” who could troubleshoot issues and help their co-workers learn the new system, and everyone knew in advance who the super users were. On the go-live date, those super users wore bright green T-shirts so that they were easily identifiable. “We asked them to wear the T-shirts for the first week of go-live so that if anyone had a problem anywhere, they knew where they could find a super user,” Winn-Horvitz said. “All shifts, all over the organization.”

The contingency planning the CCRC had completed ended up being useful during implementation, she added. “When you’re going live with an EMR, everyone knows there’s a chance that something could happen, and as fate would have it, we actually ended up having some issues with our power. We had a number of unplanned power outages probably two weeks into our go-live.”

But one of the most important lessons JAA learned in the entire EMR selection and implementation process was the importance of communication, Winn-Horvitz said. “You cannot over-communicate,” she said. “It’s so important to include individuals from all levels of the organization. It makes everyone’s job much easier if everyone really knows what’s going on.”

The CCRC already is reaping rewards from its implementation to date: improvements in quality measure scores; access to real-time information; improved workflows in admissions, finance and nursing; and accelerated cash flow due to full electronic claims submission and payment processing. **LTL**

Find out how a regional extension center can help you by listening to the webinar, “Transform Your Organization with Information Technology: 5 Steps to Success,” on-demand through Jan. 22, 2016, at ow.ly/JDCAV



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**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 NUCAL
FOODS, INC. AND (2) DEFENDANTS HILLANDALE FARMS OF
PA, INC. AND HILLANDALE-GETTYSBURG, L.P.**

AND NOW, this ____ day of _____, 2015, upon consideration of Direct Purchaser Plaintiffs’ Motion for Final Approval of the Class Action Settlements between Plaintiffs and (1) Defendant NuCal Foods, Inc. (“NuCal”), and (2) Defendants Hillandale Farms of PA., Inc. (“Hillandale PA”) and Hillandale-Gettysburg, L.P. (“Hillandale-Gettysburg”), 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 both 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 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, 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 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. Jepson*, 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 NuCal, Hillandale PA, or Hillandale-Gettysburg. 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. NuCal, Hillandale PA, and Hillandale-Gettysburg 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 Class Action Settlements Between Plaintiffs and (1) Defendant NuCal Foods, Inc. and (2) Defendants Hillandale Farms of Pa., Inc. and Hillandale-Gettysburg, L.P. 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

William J. Blechman, Esquire
KENNY NACHWALTER, P.A.
1100 Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131
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Facsimile: 305-372-1861
wblechman@kennynachwalter.com

Indirect Purchaser Plaintiffs' Liaison Counsel

Direct Action Plaintiffs' Liaison Counsel

Date: June 1, 2015

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