UNITED STATES DISTRICT COURT FOR 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	:	

DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANT MICHAEL FOODS, INC.

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs move the Court for final approval of the settlement between the Direct Purchaser Class Plaintiffs ("Class," "Plaintiffs" or "DPPs") and Defendant Michael Foods, Inc. ("MFI") on the terms and conditions set forth in the Settlement Agreement Between Plaintiffs and MFI ("Settlement" or "Settlement Agreement"), and to certify the Class for the purpose of Settlement pursuant to Federal Rules 23(a) and 23(b)(3). This Motion is based upon Plaintiffs' Memorandum of Law, Declaration of Stanley D. Bernstein, and Supplemental Affidavit of Shandarese Garr submitted herewith, and is made on the following grounds:

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

2. The Settlement is fair, reasonable, and adequate, and the *Girsh* factors strongly support approval. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). The Settlement is fair, reasonable and adequate given the complexity, expense, and likely duration of the litigation,

the stage of the proceedings, and the costs and risks involved in the litigation for Plaintiffs absent MFI's settlement and cooperation. Moreover, the likelihood of further recoveries for Plaintiffs is enhanced by MFI's cooperation, and the reaction of the class has been overwhelmingly positive, with no objections to the Settlement received.

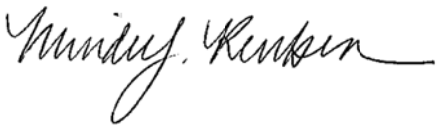
3. As set out in the Court's June 26, 2017 Order (ECF No. 1523), the Settlement Class, as defined in the Settlement Agreement, meets the requirements of Rule 23(a) and Rule 23(b)(3). Fed. R. Civ. P. 23(a), (b)(3).

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

Dated: October 19, 2017

Respectfully submitted,

LITE DEPALMA GREENBERG, LLC



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DIRECT PURCHASER CLASS PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANT MICHAEL FOODS, INC.

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The Direct Purchaser Class Plaintiffs ("Class," "Plaintiffs" or "DPPs") respectfully submit this Memorandum in Support of their Motion for Final Approval of Class Action Settlement between Plaintiffs and Defendant Michael Foods, Inc. ("MFI") and for final certification of the Settlement Class pursuant to Federal Rule of Civil Procedure Rule 23. This Court granted preliminary approval of the settlement on June 26, 2017. (ECF No. 1523).

I. INTRODUCTION

After months of intense of arm's-length negotiations, Co-Lead Counsel for Plaintiffs ("Class Counsel") and MFI's counsel, Weil Gotshal & Manges LLP, obtained a mutually agreeable settlement with MFI ("Settlement"). The Settlement—to which there have not been any objections—includes a $75 million cash payment and cooperation and will benefit a Settlement Class that is identical to the previously-certified Litigation Class. In light of the uncertainty, complexity, and expense inherent in litigation, the proposed settlement is fair, reasonable and adequate and should be finally approved.

II. BACKGROUND

A. The Litigation

This case alleges a nationwide conspiracy among the country's largest egg producers. Plaintiffs allege that Defendants (both settling and non-settling) and other named and unnamed co-conspirators violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq*., by engaging in an unlawful conspiracy to reduce egg production and supply and thereby artificially fix, raise, maintain and/or stabilize the prices of shell eggs in the United States. As a result of Defendants' alleged conduct, Plaintiffs and members of the Class paid prices for shell eggs that were higher than they otherwise would have been absent the conspiracy. The lawsuit seeks treble damages, injunctive relief, and attorneys' fees and costs from Defendants. MFI has denied all allegations of wrongdoing in the Action. Filed in late 2008, this litigation has been pending for just over nine years, and, following the Court's denial of

Defendants' motions for summary judgment on liability and certain Defendants' motions for decertification, is set for trial in May 2018.

B. Previous Settlement History

The MFI Settlement Agreement is the ninth settlement obtained in this Action by DPPs. On June 8, 2009, Sparboe Farms, Inc. entered into a settlement agreement with Plaintiffs, providing for substantial cooperation in the continued litigation of the case, and on July 16, 2012, this Court granted final approval of that settlement. (ECF No. 698). On May 21, 2010, Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. (collectively, "Moark") entered into a settlement agreement with Plaintiffs providing for both continued cooperation and a cash payment of $25,000,000.00, and on July 16, 2012 this Court granted final approval to that settlement. (ECF No. 700). On August 2, 2013, Cal-Maine Foods, Inc. entered into a settlement agreement with Plaintiffs, providing for cooperation and a cash payment of $28,000,000. The Court finally approved the Cal-Maine Settlement Agreement on October 10, 2014. (ECF No. 1082).

In 2014, Plaintiffs entered into a series of settlement agreements with several smaller Defendants: National Food Corporation (on March 28, 2014, for a $1,000,000 cash payment); Midwest Poultry Services, L.P. (on March 31, 2014, for a $2,500.000 cash payment); United Egg Producers ("UEP") and United States Egg Marketers ("USEM") (on May 21, 2014, for a $500,000 cash payment, collectively); NuCal Foods, Inc. (on August 1, 2014, for a $1,425,000 cash payment); and Hillandale Farms of Pa., Inc. and Hillandale-Gettysburg, LP ("Hillandale") (on October 22, 2014, for a $3,000,000 cash payment).[1] The Court granted final approval to these settlements on June 30, 2016. (ECF Nos. 1418 & 1419).

The total value of all prior settlements between DPPs and Settling Defendants is $61,425,000. Each of these settlement agreements provided for a broad settlement class,

[1] Plaintiffs also voluntarily dismissed Defendant Daybreak Foods from the Action.

which included among its members any individual or entity that purchased shell eggs or egg products directly from any egg producer, including but not limited to any Defendant, or producers' affiliates, during the period January 1, 2000 through the date on which the settlements were preliminarily approved by the Court.

C. The MFI Settlement Negotiations

Most recently, Class Counsel for Plaintiffs and MFI's counsel, Weil Gotshal & Manges LLP, engaged in extensive arms' length negotiations over the course of several months, including an all-day mediation and several follow-up discussions, to reach the pending Settlement Agreement. These renewed negotiations followed a failed attempt nearly three years prior to reach a resolution with MFI and various discussions since that time. Throughout prior discussions and the 2016 negotiations, Class Counsel and MFI's counsel, both highly experienced and capable, vigorously advocated their respective clients' positions throughout the settlement negotiations. The Parties (DPPs and MFI) were far apart when their discussions and subsequent mediation began in 2016.

The Parties' first serious attempts at settlement began in October 2013 when Plaintiffs and almost all of the then-remaining Defendants (including MFI) participated in a mediation in an attempt to reach a global resolution of the DPPs' claims. Bernstein Decl. ¶ 5 (ECF 1481-2). The participants prepared mediation briefs and submitted them to the mediator, the Honorable Harlan A. Martin (ret.) of JAMS. *Id*. The mediation took place on October 9, 2013, and lasted nearly a full day, but the gulf between the participants' positions was too wide and no global resolution was reached. *Id.* And, although MFI and Plaintiffs occasionally and informally discussed settlement at various times thereafter, settlement communications did not begin again in earnest for nearly three years. *Id.* ¶ 6.

In July 2016, after the Court had certified the DPP Shell Egg litigation class (but denied certification of an Egg Products class) and limited the class period to September 24,

2004 through December 31, 2008, MFI and Plaintiffs resumed settlement discussions, but the Parties' settlement positions remained far apart. *Id.* ¶ 7. Then, in August 2016, Plaintiffs and MFI agreed to mediate settlement with Jed D. Melnick of JAMS, an experienced and qualified mediator who had previously worked with the Honorable Daniel B. Weinstein, the mediator who assisted with the Cal-Maine settlement discussions. *Id.* ¶ 9. The Parties provided Mr. Melnick with extensive background materials from their summary judgment briefs and supporting documents. *Id.* On September 8, 2016, when the mediation began, the Parties' settlement postures differed sharply, due in part to several pending motions that had the potential to impact the litigation. Although the mediation ended without resolution that day, numerous mediated negotiations continued via telephone and email over the course of the following months. *Id.* ¶ 12.

The Court then denied MFI's motion for summary judgment as to its individual liability (ECF 1445), and granted in part Plaintiffs' motion for summary judgment (ECF 1442), finding that the UEP and Defendants' conduct under the auspices of UEP were not protected by the Capper-Volstead Act (thus eliminating a key defense at trial). *Id.* ¶ 13. As settlement negotiations were ongoing, the Parties continued to aggressively litigate this action. In September 2016, Michael Foods joined in a motion to decertify the Shell Egg litigation class previously certified by the Court, and filed a motion to certify for appeal the Court's denial of its motion for summary judgment. *Id.* ¶¶ 11, 13. Plaintiffs filed briefs opposing both motions in late November and early December. *Id.* ¶¶ 11, 13.

By early December 2016, the negotiations proceeded rapidly as the Parties' positions converged, and the Parties reached agreement on the principal terms of the Settlement on December 6, 2016. Bernstein Decl. ¶¶ 14-15. The proposed Settlement Agreement was fully executed on December 8, 2016. MFI subsequently deposited the Settlement Amount into an escrow account pursuant to the Parties' Agreement. *Id.* ¶¶ 15-16.

Thus, at the time the Settlement Agreement was reached, Class Counsel had significant and comprehensive knowledge of the strengths and weaknesses of Plaintiffs' claims and of MFI's asserted defenses that enabled Class Counsel to evaluate MFI's settlement positions and to advocate for a fair settlement that served the best interests of the Class. Fact and expert discovery had long since closed, Plaintiffs' motion for certification of a Shell Egg litigation class had been granted,[2] *Daubert* and summary judgment motions had been briefed and decided,[3] and the Parties were readying for trial. *Id.* ¶ 17. After extensive factual investigation, legal analysis, and case development, it is the opinion of Class Counsel that the Settlement amount of $75 million, combined with MFI's cooperation obligations, is fair, reasonable and adequate to the Class. Plaintiffs respectfully submit that the Settlement is in the best interests of the Class and should be finally approved by the Court.

III. PROVISIONS OF THE SETTLEMENT AGREEMENT

A. The Class

The Class definition in the MFI Settlement Agreement is identical to the Shell Egg Litigation Class previously certified by this Court:[4]

> All individuals and entities that purchased shell eggs from caged birds in the United States directly from Defendants during the Class Period from September 24, 2004 through December 31, 2008.
>
> Excluded from the Class are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, as well as any government entities. Also excluded

[2] Am. Mem. (ECF No. 1346); Order (ECF No. 1372).
[3] Order Denying Mot. to Exclude Opinions & Testimony of Dr. Jesse David (ECF No. 1423); Order Denying Mot to Exclude Testimony of Dr. Michelle Burtis (ECF No. 1427) Order Denying Mot to Exclude Opinions & Testimony of Dr. Gordon Rausser, Aug. 16, 2016 (ECF No. 1428); Order Denying Mot. to Exclude Opinions & Testimony of Dr. Michael Darre (ECF No. 1430); Mem. Granting, in Part, Mot. for Summ. J. Against IPPs and DAPs (ECF No. 1438); Order Granting, in Part, and Denying, in Part, Mot. for Summ. J. re: Damages (ECF No. 1440); Order Granting, in Part, and Denying, in Part, Pls. Mot. for Summ. J. re: Capper-Volstead (ECF No. 1442); Order Denying Defs. Mot. for Summ. J. (ECF No. 1445).
[4] *Compare* MFI Settlement Agreement ¶ 18 *with* Order Certifying Shell Egg Litigation Class ¶ 1 (ECF No. 1372) *with* Am. Mem. at 4 & 61 (ECF No. 1346).

> from the Class are purchasers of "specialty" shell eggs (such as "organic," "certified organic," "free range," "cage free," "nutritionally enhanced," or "vegetarian fed") and purchasers of hatching eggs, which are used by poultry breeders to produce breeder stock or growing stock for laying hens or meat.

Settlement Agreement ¶ 18 (Bernstein Decl. at Ex. A).

B. Cash Consideration to the Class & Rescission Provisions

The proposed Settlement Agreement provides that within 20 days of its execution, MFI will pay $75,000,000 in cash (the "Settlement Amount") into an escrow account (which funds have since been deposited). *See* Settlement Agreement ¶ 32. This money shall remain in that account, controlled by MFI and Class Counsel, pending approval of the settlement by the Court. MFI also has the right and option to rescind the Agreement should the purchases of class members choosing to opt-out of the Settlement equal or exceed a percentage of sales set forth in a Confidential Supplemental Agreement between the Parties, which will be disclosed to the Court for *in camera* inspection prior to entry of the Preliminary Approval Order. *Id.* ¶ 29. Additionally, the Settlement Agreement provides that Class Counsel may seek an award of attorneys' fees and reimbursement of litigation expenses from the Settlement Fund, subject to Court approval, and that MFI shall have no other obligation to pay any fees or expenses to Class Counsel.

C. The Cooperation Provisions

In addition to the Settlement Amount, the Settlement Agreement also requires that MFI establish the authenticity and status of certain documents as business records. *Id.* ¶ 38. MFI also agrees to comply with trial subpoenas, served via email by Plaintiffs, to produce up to four trial witnesses and that it will not seek to quash any such subpoenas served by Plaintiffs. MFI also agrees that any such witnesses that are current MFI employees will be deemed to reside within 100 miles of this district and will travel to this District for trial at MFI's expense. *Id.* ¶ 39. Additionally, MFI agrees to cooperate to help Plaintiffs locate and

serve subpoenas on MFI's former employees. *Id.*

D. Release Provisions

In exchange for the consideration provided by MFI, Plaintiffs have agreed to release MFI from any and all claims arising out of or resulting from: (i) an agreement or understanding between or among two or more Defendants; (ii) Defendants' reduction or restraint of supply and reduction of or restrictions on production capacity, or (iii) Defendants' pricing, selling, discounting, marketing, or distributing of Shell Eggs in the United States or elsewhere up to December 31, 2008. *Id.* ¶¶ 24-27. The full text of the proposed release, including the limitations thereof, is set forth in the Settlement Agreement at paragraphs 24 through 27.

IV. DISTRIBUTION OF THE SETTLEMENT FUND

The distribution plan, as described in detail in the Notice, provides for a *pro rata* distribution to all the members of the Class who timely and properly submit a valid Claim Form. See Declaration of Shandarese Garr ("Garr Decl.") at Ex. A (ECF No.1537-4 at pp. 19, 22). Each Class Members' *pro rata* share will be based on the dollar amount of their direct purchases of shell eggs in the United States from Defendants.[5] *Id.*

Distribution plans based on a *pro rata* distribution to all eligible Class members have been held as reasonable and adequate in class actions. *See Bradburn Parent Teacher Store, Inc. v. 3M (Minn. Mining and Mfg. Co.)*, 513 F. Supp. 2d 322, 335 (E.D. Pa. 2007) (citing *In re Remeron Direct Purchaser Antitrust Litig.*, Civ. A. No. 03-0085, 2005 WL 3008808, at *11 (D.N.J. Nov. 9, 2005); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 493 (E.D. Pa. 2003)). The distribution plan is intended 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.

[5] Because the alleged overcharge is only a portion of the price paid for shell eggs, recovery will be less than the total amount paid.

V. PRELIMINARY APPROVAL ORDER AND CLASS CERTIFICATION

On June 26, 2017, this Court preliminarily approved the MFI Settlement, certified the class for settlement purposes, and authorized Class Counsel to disseminate Notice and Claim Forms by direct mail and publication. (ECF No. 1523.) A final fairness hearing is scheduled for November 6, 2017. *Id.*

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).

As explained below, the Notice Plan and the Form of Notice met the requirements of Rule 23 and constitutional due process. The Notice Plan and Form of Notice provided notice of the MFI Settlement Agreement to all MFI Settlement Class Members who could be bound by the MFI Settlement and a claims process.[6] The Notice Plan provided notice in a "reasonable manner" and was the best notice that was practicable under the circumstances, including individual notice to all members who could be identified through reasonable effort, as required by Rules 23(e)(1) and 23(c)(2)(B) of the Federal Rules of Civil Procedure. The Form of Notice satisfied the language and content requirements of Rule 23(c)(2)(B) and was likewise consistent with due process.

A. The Notice

On July 20, 2017 Garden City Group, Inc. ("GCG"), the Settlement Claims

[6] The Notice and Form of Notice also provides notice of the Litigation Class to all Litigation Class Members (the MFI Settlement Class shares the same class definition), and notice of a claims process for previously finally-approved settlements. This motion, however, focuses on MFI Settlement component of the notice.

Administrator retained by Class Counsel, mailed the combined Notice and Claim Forms (the "Notice") to over 19,000 potential class members whose addresses GCG had previously compiled from Defendants' sales data. *See* Garr Decl. ¶ 6 (ECF 1537-3). As of October 18, 2017, GCG has received 153 Notices returned by the U.S. Postal Service with forwarding address information and 3,853 Notices returned by the U.S. Postal Service without forwarding address information.[7] 10/19/2017 Declaration of Shandarese Garr Regarding Settlement Administration ("Supp. Garr Decl.") at ¶¶ 5-6. No objections to the MFI Settlement have been filed (either before or after the October 9, 2017 deadline), and only 224 requests for exclusion from the MFI Settlement Class have been received. *Id.* at ¶¶ 10-11. GCG has received 785 new Claim Forms (these are still being processed and reviewed). *Id.* at ¶ 9. Including prior claims, new claims, and supplemental submissions, there are currently 1,252 claims on file in the current Settlements. *Id.*

B. Summary Notice & Press Releases

Summary Notice was published on July 17, 2017, in *The Wall Street Journal.* Summary Notice was also published in the following trade magazines that specifically cater to the restaurant and food industries: *Convenience Store News* (August 2017 issue), *Progressive Grocer* (August 2017 issue), *Supermarket News* (August 2017 issue), *FoodService Director* (August 2017 issue), *Restaurant Business* (August 2017 issue), *Nation's Restaurant News* (August 21, 2017 issue), *Food Processing* (August 2017 issue), *Bake* (August 2017 issue), *Petfood Industry* (August 2017 issue), and *Egg Industry Magazine* (August 2017 issue). Garr Decl. at ¶ 9 and Ex. B thereto (ECF 1537-5).

GCG coordinated the release of press releases, consisting of substantially the same language as the Summary Notice, on July 10, 2017. The releases were distributed over the PR Newswire's US1 Newsline and National Hispanic Newsline within the United States and

[7] Notice Packets returned by the U.S. Postal Service with forwarding address information were promptly re-mailed to the updated addresses provided.

across PR Newswire's Restaurant and Food Industry microlist. Garr Decl. at ¶ 10 (ECF 1537).

C. Internet Sponsored Search Listing & Paid Banner Notice

GCG implemented a keyword search advertising campaign through Google.com using an approved list of key search words determined together by GCG and DPP Class Counsel. The campaign ran from July 17, 2017 to August 13, 2017. When a user typed a key search word into Google.com's search field, a text ad would have had the opportunity to appear on a rotating basis with other advertising campaigns as a sponsored ad and would link to the Settlement Website. Garr Decl. at ¶ 11 and Ex. C (ECF 1537-6) thereto.

GCG caused banner advertising linked to the Settlement Website to appear on The Wall Street Journal Digital Network and trade-related websites Hotel F&B (www.hotelfandb.com), Baking Business (www.bakingbusiness.com), and Food Processing (www.foodprocessing.com).

These banner advertisements ran for a period of four weeks from July 20, 2017 to August 16, 2017. Additionally, banner advertising linked to the Settlement Website appeared in the following e-newsletters: Restaurant Business Weekly Recap (July 30, 2017); Nation's Restaurant News NRN A.M. (July 20, 2017); FoodService Director Update (July 28, 2017); Today in Food Manufacturing (July 24, 2017); Supermarket News Daily (July 28, 2017); Stores Weekly (July 20, 2017, and July 27, 2017); and Watt Poultry Update (July 25, 2017). Garr Decl. at 12 at Ex. D thereto (ECF 1537-7).

D. Website & Toll-Free Telephone Helpline

GCG updated and maintains a website dedicated to the Litigation (www.EggProductsSettlement.com) to provide additional information to the Class Members and to answer frequently asked questions. Users of the website can download the Notice Packet as well as review the Order, various Settlement Agreements, and other relevant Court

documents. The web address is set forth in the Notice Packet. The Settlement website has been operational since August 30, 2010, and is accessible 24 hours a day, 7 days a week. The website was updated to include information about the MFI Settlement and Litigation Class on June 30, 2017. Between June 30, 2017, and October 18, 2017, the website has received 18,938 visits. Supp. Garr Decl. at ¶ 7.

Beginning on August 30, 2010, GCG established and continues to maintain an automated toll-free telephone number (1-866-881-8306), where potential Class Members can obtain information about the Litigation. 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 customer service representative. The automated toll-free number was updated to include information about the MFI Settlement and Litigation Class on June 30, 2017. Between June 30, 2017, and October 17, 2017, there have been 363 calls to the automated number. GCG has and will continue to handle Class Member inquiries. *Id.*at ¶ 8.

E. 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, internet sponsored search listings, paid banner notice, a website, and a toll-free telephone number. Garr Decl. at 4. "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, including through the internet, satisfied due process. *See Zimmer 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."); *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.*, 226 F.R.D. 498, 520 (E.D. Pa. 2005) (notice implemented by experienced provider and using a variety of media, including direct notice and publication on the internet was best notice practicable and satisfied due process); *In re New Jersey Tax Sales Certificates Antitrust Litig.*, 2016 WL 7494259, at 3 (D.N.J. Sept. 30, 2016) (combination of direct notice, publication of summary notice, targeted internet advertising, and dedicated case website was best notice practicable and satisfied due process).

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). MFI filed a Declaration of CAFA Compliance on February 16, 2017. (ECF No. 1498.) The Declaration states that MFI satisfied CAFA's notice requirement by serving notice to the appropriate state and federal officials on January 17, 2017. *Id.* at ¶ 5.

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

In its preliminary approval order (ECF No. 1523), this Court determined that the MFI Settlement was within the range of reasonableness for claims such as those alleged by Plaintiffs, including the context of other settlements in this Litigation. *Id.* at ¶ 8. The Court also determined that, because the Settlement Class is identical to the Litigation Class previously approved by the Court, no additional Rule 23 findings were necessary. *Id.* at ¶ 9.

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

VIII. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

The United States Supreme Court has identified the "important principle that settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits." *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 401 (1977) (internal quotation marks 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)).

Here, the Settlement is entitled to an initial presumption of fairness because the settlement negotiations occurred at arms'-length; discovery was closed at the time of the settlement; counsel for the Parties are experienced in antitrust matters; and there have not been any objections to the Settlement. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 232 (3d Cir. 2001) (identifying factors). Moreover, the factors recited by the Third Circuit in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975) and reiterated in *In re Prudential Insurance Co. American Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998) ("*Prudential*") demonstrate that the Settlement fair, reasonable and adequate and should be finally approved.

A. The Settlement is Entitled to an Initial Presumption of Fairness

Under Federal Rule of Civil Procedure 23(e), a settlement must be "fair, reasonable and adequate" to be approved. Fed. R. Civ. P. 23(e)(2); *see also Prudential*, 148 F.3d at 316; *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." *Cendant*, 264 F.3d at 231 (quoting *Gen. Motors*, 55 F.3d at 785).

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

There can be no doubt that the negotiations that led to this Settlement were undertaken at arm's length. As discussed above and in the Bernstein Declaration, the Settlement with MFI is the result of hard-fought, arm's-length negotiations between Class Counsel and MFI's counsel, all experienced and capable lawyers in complex class actions

and antitrust matters.[8] Class Counsel and MFI's counsel vigorously advocated their respective clients' positions in the settlement negotiations and were prepared to proceed against MFI to trial if no settlement was reached. Bernstein Decl. ¶¶ 5-9, 12, 17. And the Parties twice engaged the services of experienced, neutral mediators to facilitate the settlement negotiations; after the second mediation, the mediator continued assisting the negotiations in the months following the initial in-person mediation session. *Id.* ¶¶ 5, 9, 12. As part of those processes, the Parties exchanged, and provided to the mediator, comprehensive confidential mediation briefs and other materials laying out the strengths and weaknesses of the claims and defenses. *Id.* ¶¶ 5, 9.

Importantly, as settlement negotiations with Michael Foods were ongoing, the Parties continued to aggressively advocate their litigation positions. As discussed more fully *infra* in II.C., after the mediation had already been planned or was continuing, Michael Foods joined in a motion to decertify the DPP Shell Egg litigation class (ECF No. 1433), and also moved the Court to certify for interlocutory appeal its order denying MFI's summary judgment motion (ECF No. 1449). Plaintiffs filed strong and vigorous opposition briefs to both motions, along with a supplemental expert report accompanying the opposition to the motion for decertification. (ECF Nos. 1454 & 1456).

The best interests of the Settlement Class were of paramount importance throughout the negotiation process. Class Counsel conducted its own extensive and in depth investigation of the facts of this case, and concluded that a settlement was in the best interest of the Settlement Class. At the time of the Settlement, discovery had been completed, a Litigation Class had been certified, and summary judgment motions had been resolved. Accordingly, Plaintiffs had significant knowledge of Defendants' alleged antitrust conspiracy and the

[8] In finally approving the Cal-Maine Settlement, the Court previously found that Class Counsel were experienced in similar class action and antitrust litigation. Mem. at 27, Oct. 10, 2014 (ECF No. 1081).

strengths and weaknesses of the parties' claims and weaknesses when the Settlement was reached.

Furthermore, both parties have been represented by seasoned class action litigators. Class Counsel is experienced in similar antitrust class actions, and unreservedly recommend this Settlement.[9] Counsel for MFI, Weil, Gotshal & Manges, LLP, are similarly experienced and likewise support the Settlement. Courts recognize "significant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class." *Lake v. First Nationwide Bank,* 900 F. Supp. 726, 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 (ED. 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 224 Class Members have elected to exclude themselves from the Settlement. *See* Supp. Garr Decl. ¶ 10. The

[9] This Court has observed that Class Counsel "have extensive documented experience in complex class action litigation," are "well-respected law firms in the plaintiff's class action bar," and have "capably managed this suit on behalf of Plaintiffs since the Court formally appointed them." *In re Processed Prods. Antitrust Litig.*, 284 F.R.D. 249, 262 (E.D. Pa. 2012).

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 opts outs and eight objections from a class of 850,000 qualified for a presumption of fairness).

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

B. Application of the *Girsh*/*Prudential* 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":

(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 (quotation omitted); *Prudential*, 148 F.3d at 317.

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

C. The Proposed Settlement Satisfies the *Girsh*/*Prudential* Criteria for Final Approval

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

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

MFI was capable and fully prepared to defend itself and continue litigating this case. Had the case continued, MFI would have asserted various defenses, and a jury trial might well turn on questions of proof, making the outcome inherently uncertain for both parties. *See, e.g., Linerboard*, 292 F. Supp. 2d at 639; *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475-76 (S.D.N.Y. 1998) ("Antitrust litigation in general, and class action litigation in particular, is unpredictable . . . . [T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal."). A trial on the merits of this case would entail considerable expense, including numerous experts, further pre-trial motions, and thousands of additional hours of attorney time. Moreover, even after trial is concluded, there would likely be one or more lengthy appeals. *See Remeron,* 2005 WL 2230314, at *17.

By reaching a favorable Settlement, Plaintiffs have avoided significant expense and delay, and have ensured a recovery to the Class. These factors weigh in favor of the Settlement. *See Warfarin Sodium,* 391 F.3d at 535-36 (acknowledging this factor because "continuing litigation through trial would have required additional discovery, extensive

pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial"); *Linerboard*, 292 F. Supp. 2d at 642 (noting that the "protracted nature of class action antitrust litigation means that any recovery would be delayed for several years," and this settlement's "substantial and immediate benefits" to class members favors settlement approval).

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

2. Class Reaction to the Proposed Settlement

"This factor attempts to gauge whether members of the class support the settlement." *Prudential*, 148 F.3d at 318. A lack of substantial objections or exclusions by class members is highly significant. *See Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313-14 (3d Cir. 1993); *In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577-78 (E.D. Pa. 2003). There have been no objections to the MFI Settlement (or any other settlement in this Litigation). *See* Supp. Garr Decl. ¶ 12. 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 224 requests for exclusion from the Class of thousands of direct purchasers. *See* Supp. Garr Decl. ¶ 10. These numbers are consistent with Third Circuit precedent and the decisions of other federal courts approving settlements. *See Stoetzner*, 897 F.2d at 118-19 (holding that only 29 objections in 281 member class - or

10% - "strongly favors settlement"); *Prudential*, 148 F.3d at 318 (affirming conclusion of district court that class reaction was favorable when 19,000 class members opted out of class of eight million and 300 objected); *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 175 (E.D. Pa. 2000) (settlement approved where there were 2,500 requests for exclusion from an original notice to 140,000 class members).

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

3. The Stage of Proceedings and Amount of Discovery Completed

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

determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *General Motors*, 55 F.3d at 813.

Plaintiffs and MFI executed the Settlement Agreement on December 8, 2016, eight years after this class action litigation was commenced. As noted above, at the time of Settlement, discovery had been completed, a Litigation Class had been certified, and summary judgment had been resolved. Accordingly, this *Girsh* factor weighs in favor of settlement.

4. The Risks of Establishing Liability

The fourth *Girsh* factor "examine[s] what the potential rewards (or downside) of litigation might have been had 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 [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.[10] "Here, as in every case, Plaintiffs face the general risk that

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

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'dsub nom. Lazy Oil Co. v. Witco Corp.*, 166 F.3d 581 (3d Cir. 1999), *see also State of West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) ("It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced.").

5. The Risks of Establishing Damages

The fifth *Girsh* factor, similar to the fourth, "attempts to measure the expected value of litigating the action rather than settling it at the current time." *Cendant*, 264 F.3d at 238 (quoting *General Motors*, 55 F.3d at 816). Even if the Class establishes 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 MFI, Class Counsel must also recognize the existence of a genuine risk of no recovery or only a limited recovery. In addition, MFI's cooperation enhances Plaintiffs' ability to establish damages against the non-settling Defendants, and may encourage a complete settlement of the action.

6. The Risks of Maintaining a Class Action Through Trial

The sixth *Girsh* factor evaluates the risks of maintaining the class action through a trial. "Because the prospects for obtaining certification have a great impact on the range of recovery one can expect to reap from the [class] action, this factor measures the likelihood of obtaining and keeping a class certification if the action were to proceed to trial." *Warfarin Sodium*, 391 F.3d at 537 (internal quotation marks and citation omitted). Although there is

always a risk that a class may be decertified, in this case a Litigation Class has been certified and Plaintiffs have already defeated a joint motion to decertify the Class. Accordingly, this factor is neutral with regard to the proposed Settlement.

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

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

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

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

In re Nat'l Student Mktg. Litig., 68 F.R.D. 151, 155 (D.D.C. 1974).

As courts have explained, "[w]hile the court is obligated to ensure that the proposed settlement is in the best interest of the class members by reference to the best possible outcome, it must also recognize that settlement typically represents a compromise and not hold counsel to an impossible standard." *In re Aetna, Inc. Sec. Litig.*, MDL No. 1219, 2001 WL 20928 at *6 (E.D. Pa. Jan. 4, 2001); *see also General Motors*, 55 F.3d at 806 (noting that "after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution."); *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 Settlement, which is higher than all other settlements combined that have been reached to date, represents excellent value for the class in light of the stage of the litigation and the risks attendant with its continuing prosecution. It thus, satisfies the eighth and ninth *Girsh* factors.

Therefore, for the reasons stated above, the Settlement satisfies the majority of the *Girsh* factors and is fair, reasonable and adequate.

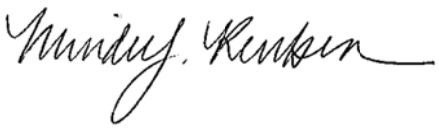
IX. CONCLUSION

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

Respectfully submitted,

Dated: October 19, 2017

LITE DEPALMA GREENBERG, LLC



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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

DECLARATION OF SHANDARESE GARR
REGARDING SETTLEMENT ADMINISTRATION

I, SHANDARESE GARR, declare and state as follows:

1. I am the Senior Vice President, Communications of Garden City Group, LLC ("GCG"), a full service administration firm providing legal administration services, including the development of complex legal notice programs. GCG was retained to design and administer the Notice Plan as well as to administer all other aspects of the Settlement between Michael Foods, Inc. ("MFI") and the Direct Purchaser Plaintiffs ("DPPs"). The following statements are based on my personal knowledge as well as 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. I submit this Declaration to update the Court and the Parties to the Litigation regarding the administration of the Settlement.

DIRECT MAIL NOTICE

3. GCG loaded data previously provided by Defendants or obtained by GCG through administration of prior settlements into a database created for the Litigation. Prior to mailing the Notice Packet, mailing addresses of potential Class Members were updated using the

National Change of Address database ("NCOA").[1] The NCOA resulted in 499 address updates. GCG identified and excluded duplicate records. Additionally, GCG excluded known ineligible records including known records for Defendants and indirect purchasers. GCG formatted the Notice Packet, and caused it to be printed and personalized with the name and address of each known potential Class Member.

4. Pursuant to Paragraph 12.b. of the Court's June 26, 2017 Order (1) Granting Preliminary Approval of the Proposed Settlement Agreement Between Direct Purchaser Plaintiffs and Michael Foods, Inc.; (2) Granting Leave to File Motion(s) For Fees And Expenses; and (3) Approving Dissemination of the Combined Class Notice of: (A) Certification of the Shell Egg Litigation Class; (B) The Preliminarily Approved Michael Foods, Inc. Settlement Agreement; and (C) The Claims Process for Settlement Agreements with United States Egg Marketers, United Egg Producers, Hillandale Farms of Pa., Inc., Hillandale-Gettysburg, L.P., Midwest Poultry Services, L.P., National Food Corporation, and NuCal Foods, Inc. (the "Order"), GCG mailed 19,105 Notice Packets via first-class U.S. mail, postage pre-paid on July 20, 2017 (the "Notice Date").

5. As of October 18, 2017, GCG has received 153 Notice Packets returned by the U.S. Postal Service with forwarding address information. Notice Packets returned by the U.S. Postal Service with forwarding address information are re-mailed to the updated addresses provided.

6. As of October 18, 2017, GCG has received 3,853 Notice Packets returned by the U.S. Postal Service without forwarding address information.

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[1] The NCOA database is the official United States Postal Service technology product, which makes change of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mailstream. This product is an effective tool to update address changes when a person has completed a change of address form with the Post Office. The address information is maintained on the database for 48 months.

WEBSITE

7. Pursuant to Paragraph 12.c. of the Order, GCG updated and maintains a website dedicated to the Litigation (www.EggProductsSettlement.com) to provide additional information to the Class Members and to answer frequently asked questions. Users of the website can download the Notice Packet as well as review the Order, various Settlement Agreements, and other relevant Court documents. The web address is set forth in the Notice Packet. The Settlement website has been operational since August 30, 2010, and is accessible 24 hours a day, 7 days a week. The website was updated to include information about the MFI Settlement and Litigation Class on June 30, 2017. Between June 30, 2017, and October 18, 2017, the website has received 18,938 visits.

TOLL-FREE TELEPHONE HELPLINE

8. Pursuant to Paragraph 12.d. of the Order, beginning on August 30, 2010, GCG established and continues to maintain an automated toll-free telephone number (1-866-881-8306), where potential Class Members can obtain information about the Litigation. 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 customer service representative. The automated toll-free number was updated to include information about the MFI Settlement and Litigation Class on June 30, 2017. Between June 30, 2017, and October 18, 2017, there have been 363 calls to the automated number. GCG has and will continue to handle Class Member inquiries.

CLAIM SUBMISSIONS

9. Class Members who wished to file a claim in the MFI Settlement and/or the United States Egg Marketers; United Egg Producers; Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Midwest Poultry Services, L.P.; National Food Corporation; and NuCal Foods, Inc. Settlements were required to submit a completed Claim Form to GCG via mail postmarked or hand-delivered no later than October 9, 2017. Between June 30, 2017 and October 18, 2017, GCG has received 802 Claim Forms.[2] Class Members who previously filed a claim in the Moark and/or Cal-Maine Settlement were not required to file a Claim Form in the current Settlements for those same purchases. Class Members with valid Moark and/or Cal-Maine Settlement claims automatically have claims under review in the current Settlements. Including prior claims, new claims, and supplemental submissions, there are currently 1,254 claims on file in the current Settlements.

OBJECTIONS AND EXCLUSIONS

10. Pursuant to Paragraph 12.i. of the Order, any Class Member who wished to be excluded from the MFI Settlement and/or the Litigation Class was required to submit their exclusion request to GCG postmarked or hand-delivered no later than October 9, 2017. As of October 18, 2017, GCG has received 224 MFI Settlement exclusion requests and 250 Litigation Class exclusions requests. Many of the reported exclusions appear to encompass subsidiaries, affiliates, similar names, and brand names. Of the entities who have requested exclusion, there are, for example, over 25 "Winn-Dixie" entities, over 40 "Kroger" entities, and 35 "Conopco" entities. A list of excluded entities is attached hereto as Exhibit A.

11. Pursuant to Paragraph 12.j. of the Order, any Class Member who wished to object

[2] As GCG is still processing and reviewing claims, the information provided herein is preliminary and subject to further analysis and quality control and is intended only for informational purposes as this time.

to the approval of the MFI Settlement was required to submit their objection to the Court and the Parties, postmarked or hand-delivered no later than October 9, 2017. As of October 18, 2017, GCG has not directly received any objections from Class Members relating to the MFI Settlement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 19th day of October 2017 in Lake Success, New York.

Shandarese Garr

Exhibit A

GCG #	Primary Exclusion #	Name	Michael Foods Exclusion	Litigation Class Exclusion
288	N/A	A & P	x	x
706	N/A	ACME MARKETS, INC.	x	x
979	N/A	ADLOPH'S LTD	x	x
283	N/A	ALATHIA US LIMITED	x	x
284	N/A	ALBERTSONS	x	x
978	N/A	ALBERTSONS COMPANIES LLC	x	x
286	N/A	ALBERTSONS LLC	x	x
502	N/A	ALBERTSON'S, INC	x	x
872	N/A	AMERICAN DRUG STORES LLC	x	x
503	N/A	AMERICAN DRUG STORES, INC	x	x
709	N/A	AMERICAN PROCUREMENT & LOGISTICS CO LLC	x	x
504	N/A	AMERICAN STORES COMPANY	x	x
990	N/A	ATLANTA LAND, L.K.E., LLC	x	x
1001	N/A	BAY-N-GULF, INC. D/B/A SAVE ON SEAFOOD	x	x
285	N/A	BBJ PRODUCTS INC	x	x
287	N/A	BEN & JERRY'S	x	x
289	N/A	BEN & JERRY'S FRANCHISING INC	x	x
291	N/A	BEN & JERRY'S GIFT CARD LLC	x	x
293	N/A	BEN & JERRY'S HOMEMADE INC	x	x
295	N/A	BESTFOODS	x	x
770	N/A	BI-LO HOLDINGS, LLC		x
1005	N/A	BI-LO LLC		x
1002	N/A	BNG TRANSPORT, INC.	x	x
505	N/A	BRISTOL FARMS	x	x
296	N/A	BROOKE-BOND INVESTMENTS INC	x	x
243	N/A	CARR-GOTTSTEIN FOODS CO	x	x
1012682	N/A	CARROLL CTY GOVERNMENT	x	x
314	N/A	CENTRAL MARKET	x	x
7672865	N/A	CHARLES STEPHAN	x	x
299	N/A	CHESEBROUGH PONDS MANUFACTURING COMPANY	x	x
213	N/A	CITY MARKET	x	x
1027501	N/A	CJ IRWIN-BUFFALO	x	x
876	N/A	CONAGRA FOODS, INC.	x	x
279	N/A	CONOPCO INC	x	x
981	N/A	COPPS FOOD CENTER	x	x
301	N/A	CORE MARKETS INC	x	x
401	N/A	CRACKIN' GOOD, INC.		x
1012065	402	DEEP SOUTH PRODUCTS		x
402	N/A	DEEP SOUTH PRODUCTS, INC.		x
214	N/A	DILLON	x	x
216	N/A	DILLON COMPANIES, INC.	x	x
404	N/A	DIXIE DARLING BAKERS, INC.		x
403	N/A	DIXIE PACKERS, INC.		x
246	N/A	DOMINICK'S	x	x
248	N/A	DOMINICK'S FINER FOODS LLC	x	x
212	N/A	DREYER'S GRAND ICE CREAM INC	x	x
273	N/A	DUANE READE	x	x
275	N/A	DUANE READE, INC.	x	x
984	N/A	E & H DISTRIBUTING, LLC	x	x
303	N/A	EMERALD MANUFACTURING CO	x	x
276	N/A	EXTREME VALUE	x	x
277	N/A	EXTREME VALUE CENTERS	x	x
419	N/A	FAIRWAY FOOD STORES, INC.		x
302	N/A	FARMER JACK	x	x
710	N/A	FF ACQUISITION LLC	x	x
996	N/A	FIRST COURSE, LLC	x	x
994	N/A	FIRSTCLASS FOODS - TROJAN, INC.	x	x
223	N/A	FMJ, INC.	x	x
249	N/A	FOOD 4 LESS	x	x
251	N/A	FOOD 4 LESS HOLDINGS, INC.	x	x
306	N/A	FOOD BASICS	x	x

GCG #	Primary Exclusion #	Name	Michael Foods Exclusion	Litigation Class Exclusion
1000448	N/A	FOOD INGREDIENT SALES, L.L.C.	x	x
218	N/A	FRED MEYER	x	x
221	N/A	FRED MEYER JEWELERS, INC.	x	x
225	N/A	FRED MEYER STORES, INC.	x	x
220	N/A	FRED MEYER, INC.	x	x
999	N/A	FRESH TRANSPORTATION CO., LTD.	x	x
998	N/A	FRESH UNLIMITED INC D/B/A FRESHWAY FOODS	x	x
1000	N/A	FRESHWAY LOGISTICS, INC.	x	x
227	N/A	FRY'S	x	x
222	N/A	GENERAL MILLS INC	x	x
224	N/A	GENERAL MILLS MARKETING INC	x	x
226	N/A	GENERAL MILLS OPERATIONS INC	x	x
228	N/A	GENERAL MILLS OPERATIONS LLC	x	x
560	228	GENERAL MILLS OPERATIONS, LLC	x	x
250	N/A	GENUARDI'S	x	x
252	N/A	GENUARDI'S FAMILY MARKETS LP	x	x
229	N/A	GERBES	x	x
1015109	1003355	GIANT EAGLE	x	x
1012952	1003355	GIANT EAGLE DSD DEPT	x	x
1008360	1003355	GIANT EAGLE MARKETS INC-PITTSBURGH	x	x
1003355	N/A	GIANT EAGLE, INC.	x	x
987	N/A	GREAT NORTH IMPORTS, LLC	x	x
312	N/A	H.E. BUTT GROCERY COMPANY	x	x
734	N/A	HARRIS TEETER	x	x
1008517	734	HARRIS TEETER, INC.	x	x
1008518	734	HARRIS TEETER, LLC	x	x
230	N/A	HEALTHY OPTIONS, INC.	x	x
309	N/A	H-E-B	x	x
278	N/A	HY-VEE	x	x
280	N/A	HY-VEE, INC.	x	x
991	N/A	JACKSON L.K.E., LLC	x	x
231	N/A	JAY C FOOD STORES	x	x
274	N/A	JERSEYMAID MILK PRODUCTS	x	x
727	N/A	JEWEL FOOD STORES	x	x
506	N/A	JEWEL FOODS, INC	x	x
232	N/A	JUNIOR FOOD STORES OF WEST FLORIDA, INC.	x	x
561	N/A	KELLOGG COMPANY	x	x
219	N/A	KELLOGG NORTH AMERICA COMPANY	x	x
217	N/A	KELLOGG USA INC	x	x
233	N/A	KESSEL	x	x
234	N/A	KESSEL FOOD MARKETS, INC.	x	x
1011742	N/A	KIEKE EGG FARM, LLC	x	x
975	N/A	KINS SOOPERS	x	x
958	N/A	KRAFT	x	x
192	N/A	KRAFT FOODS	x	x
877	N/A	KRAFT FOODS GLOBAL, INC.	x	x
906	877	KRAFT FOODS GLOBAL, INC.	x	x
194	N/A	KRAFT FOODS GLOBAL, INC.	x	x
195	N/A	KRAFT FOODS HOLDINGS INC	x	x
960	N/A	KRAFT FOODS INC	x	x
197	N/A	KRAFT FOODS MANUFACTURING INC	x	x
198	N/A	KRAFT FOODS NORTH AMERICA	x	x
199	N/A	KRAFT GENERAL FOODS	x	x
200	N/A	KRAFT GENERAL FOODS INC	x	x
202	N/A	KRAFT NORTH AMERICA COMMERCIAL	x	x
959	N/A	KRAFT, INC	x	x
208	N/A	KRGP INC.	x	x
201	N/A	KROGER	x	x
206	N/A	KROGER LIMITED PARTNERSHIP I	x	x
209	N/A	KROGER TEXAS L.P.	x	x
418	N/A	KWIK CHEK SUPERMARKETS, INC.		x

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468	N/A	KWIK CHEK SUPERMARKETS, INC.		x
469	N/A	KWIK CHEK SUPERMARKETS, INC.		x
236	N/A	KWIK SHOP, INC.	x	x
305	N/A	LEVER	x	x
307	N/A	LIPTON	x	x
308	N/A	LIPTON INDUSTRIES	x	x
238	N/A	LOAF 'N JUG	x	x
976	N/A	MARIANO'S FRESH MARKET	x	x
397	N/A	METRO MARKET	x	x
240	N/A	MINI MART	x	x
242	N/A	MINI-MART, INC.	x	x
310	N/A	MLT ACQUISTION CORP	x	x
1015766	N/A	MONTGOMERY COUNTY SCHOOLS-CLARKSVIL	x	
707	N/A	MORAN FOODS, INC	x	x
711	N/A	NC&T SUPERMARKETS, INC.	x	x
210	N/A	NESTLE BUSINESS SERVICES	x	x
205	N/A	NESTLE PREPARED FOODS CO	x	x
207	N/A	NESTLE PREPARED FOODS CO	x	x
559	203	NESTLE U.S.A.	x	x
203	N/A	NESTLE USA INC	x	x
878	203	NESTLE USA, INC.	x	x
507	N/A	NEW ALBERTSON'S, INC	x	x
268	N/A	PAK N SAVE FOODS	x	x
992	N/A	PARIS L.K.E., LLC	x	x
292	N/A	PATHMARK	x	x
294	N/A	PATHMARK STORES, INC.	x	x
270	N/A	PAVILIONS	x	x
272	N/A	PAVILIONS PLACE	x	x
281	N/A	PERISHABLE DISTRIBUTORS OF IOWA, LTD.	x	x
508	N/A	PREFERRED PRODUCTS, INC	x	x
493	N/A	PUBLIX SUPER MARKETS, INC.	x	x
244	N/A	QFC	x	x
245	N/A	QUIK STOP	x	x
247	N/A	QUIK STOP MARKETS, INC.	x	x
253	N/A	RALPHS	x	x
255	N/A	RALPHS GROCERY COMPANY	x	x
254	N/A	RANDALL'S	x	x
256	N/A	RANDALL'S FOOD & DRUGS LP	x	x
712	N/A	RICHFOOD, INC.	x	x
738	N/A	RISER FOODS COMPANY	x	x
997	N/A	RIVERSIDE FOOD DISTRIBUTORS, LLC	x	x
977	N/A	ROUNDY'S INC.	x	x
986	N/A	RS FUNDING, INC.	x	x
237	N/A	SAFEWAY	x	x
241	N/A	SAFEWAY FOOD & DRUG	x	x
239	N/A	SAFEWAY INC	x	x
304	N/A	SAV-A-CENTER	x	x
1003	N/A	SAVE ON SEAFOOD FISHING, INC.	x	x
412	N/A	SAVE RITE GROCERY WAREHOUSE		x
509	N/A	SAVE-A-LOT FOOD STORES, LTD	x	x
713	N/A	SAVE-A-LOT TYLER GROUP, LLC	x	x
400	N/A	SAVE-RITE FOODS, INC.		x
511	N/A	SHAWS SUPERMARKETS, INC.	x	x
512	N/A	SHOP-N-SAVE WAREHOUSE FOODS, INC	x	x
513	N/A	SHOPPERS FOOD WAREHOUSE CORP	x	x
261	N/A	SIMON DAVID	x	x
257	N/A	SMITH'S	x	x
259	N/A	SMITH'S FOOD & DRUG CENTERS, INC.	x	x
514	N/A	SOUTHSTAR, LLC	x	x
311	N/A	SPECTRUM LAND COMPANY	x	x
300	N/A	SUPER FRESH	x	x

GCG #	Primary Exclusion #	Name	Michael Foods Exclusion	Litigation Class Exclusion
714	N/A	SUPER RITE FOODS, INC.	x	x
1029	N/A	SUPERMARKET OPERATORS OF AMERICA, INC	x	x
716	N/A	SUPERVALU HOLDINGS, INC.	x	x
718	N/A	SUPERVALU, INC.	x	x
405	N/A	TABLE SUPPLY FOOD STORES CO., INC.		x
298	N/A	THE FOOD EMPORIUM	x	x
290	N/A	THE GREAT ATLANTIC & PACIFIC TEA COMPANY	x	x
215	N/A	THE KELLOGG COMPANY	x	x
204	N/A	THE KROGER CO.	x	x
211	N/A	THE KROGER CO. OF MICHIGAN	x	x
266	N/A	THE VONS COMPANIES INC	x	x
267	N/A	THGP CO., INC.	x	x
413	N/A	THRIFTWAY, INC.		x
315	N/A	TIGI DE PUERTO RICO INC	x	x
313	N/A	TIGI LINEA CORP	x	x
260	N/A	TOM THUMB	x	x
258	N/A	TOM THUMB FOOD & DRUGS	x	x
874	N/A	TOPCO ASSOCIATES, LLC	x	x
903	874	TOPCO ASSOCIATES, LLC	x	x
875	874	TOPCO ASSOCIATES, LLC	x	x
904	874	TOPCO ASSOCIATES, LLC	x	x
985	N/A	TRANS-PORTE, INC.	x	x
263	N/A	TURKEY HILL	x	x
265	N/A	TURKEY HILL, L.P.	x	x
316	N/A	UNATRAC US INC	x	x
317	N/A	UNILEVER	x	x
318	N/A	UNILEVER BESTFOODS	x	x
319	N/A	UNILEVER BESTFOODS ROBERTSONS	x	x
320	N/A	UNILEVER CAPITAL CORPORATION	x	x
322	N/A	UNILEVER HOME & PERSONAL CARE USA	x	x
323	N/A	UNILEVER HPC	x	x
324	N/A	UNILEVER HPCNA	x	x
321	N/A	UNILEVER ILLINOIS MANUFACTURING CO LLC	x	x
325	N/A	UNILEVER NORTH AMERICA	x	x
326	N/A	UNILEVER SUPPLY CHAIN, INC	x	x
327	N/A	UNILEVER TRUMBULL HOLDINGS INC	x	x
328	N/A	UNILEVER TRUMBULL RESEARCH SERVICES, INC	x	x
330	N/A	UNILEVER UNITED STATES FOUNDATION, INC.	x	x
329	N/A	UNILEVER UNITED STATES INC	x	x
993	N/A	US FOODS CULINARY EQUIPMENT & SUPPLIES	x	x
982	N/A	US FOODS HOLDING CORP.	x	x
1113	N/A	US FOODS INC.	x	x
1004	N/A	US FOODS OF ILLINOIS	x	x
983	N/A	US FOODS, INC. D/B/A U.S. FOODSERVICE	x	x
1003867	7285464	US FOODSERVICE INC	x	x
7285464	N/A	US FOODSERVICE, INC.	x	x
988	N/A	USF PROPCO I, LLC	x	x
989	N/A	USF PROPCO II, LLC	x	x
717	N/A	VALU VENTURES 2, INC.	x	x
262	N/A	VONS	x	x
264	N/A	VONS GROCERY COMPANY	x	x
516	N/A	W NEWELL & CO	x	x
297	N/A	WALDBAUM'S	x	x
269	N/A	WALGREEN	x	x
271	N/A	WALGREEN CO.	x	x
995	N/A	WAUKESHA TRANSPORT INC.	x	x
409	N/A	WINN-DIXIE ATLANTA, INC.		x
414	N/A	WINN-DIXIE CHARLOTTE, INC.		x
415	N/A	WINN-DIXIE GREENVILLE, INC.		x
410	N/A	WINN-DIXIE LOUISIANA, INC.		x
416	N/A	WINN-DIXIE LOUISVILLE, INC.		x

GCG #	Primary Exclusion #	Name	Michael Foods Exclusion	Litigation Class Exclusion
417	N/A	WINN-DIXIE MIDWEST, INC.		x
406	N/A	WINN-DIXIE MONTGOMERY, INC.		x
407	N/A	WINN-DIXIE PROCUREMENT, INC.		x
408	N/A	WINN-DIXIE RALEIGH, INC.		x
398	N/A	WINN-DIXIE STORES, INC.		x
399	N/A	WINN-DIXIE SUPERMARKETS, INC.		x
411	N/A	WINN-DIXIE TEXAS, INC.		x

UNITED STATES DISTRICT COURT FOR 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	:	

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN DIRECT PURCHASER CLASS PLAINTIFFS AND DEFENDANT MICHAEL FOOD, INC.

AND NOW, this _____ day of _____, 2017, upon consideration of Direct Purchaser Class Plaintiffs' Motion for Final Approval of Class Action Settlement between Plaintiffs and Defendant Michael Foods, Inc. ("MFI"), 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 Agreement, 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 Agreement, unless otherwise defined herein, have the same meanings in this Order as in the Settlement Agreement.

3. The following Settlement Class, which is identical to the Shell Egg Litigation Class previously certified by this Court (ECF No. 1372), was conditionally certified in the Court's Order granting preliminary approval of the Settlement (ECF No. 1523) and is finally certified for settlement purposes as follows:

> All individuals and entities that purchased shell eggs from caged birds in the United States directly from Defendants during the Class Period from September 24, 2004 through December 31, 2008.
>
> Excluded from the Class are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, as well as any government entities. Also excluded from the Class are purchasers of "specialty" shell eggs (such as "organic," "certified organic," "free range," "cage free," "nutritionally enhanced," or "vegetarian fed") and purchasers of hatching eggs, which are used by poultry breeders to produce breeder stock or growing stock for laying hens or meat.

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 Settlement, questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. Notice of the Settlement Agreement 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. MFI has filed notification of the Settlement with the appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. (ECF 1498).

7. As discussed in the accompanying Memorandum, the Court finds that the Settlement Agreement is sufficiently fair, reasonable and adequate to the Settlement Class pursuant to Federal Rule of Civil Procedure 23(e). Specifically, the Court finds that the Settlement meets the standard for an initial presumption of fairness. Additionally, the Court's analysis of the factors set forth in *Girsh v. Jepson*, 521F.2d153 (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 Settlement are fair, reasonable and adequate under Federal Rule of Civil Procedure 23(e).

8. The Settlement Agreement is 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 Agreement 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 Agreement, and shall have exclusive jurisdiction over any suit, action, motion, proceeding, or dispute arising out of or relating to the Settlement Agreement or the applicability of the Settlement Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and MFI. The Settlement 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. MFI shall submit to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of its respective Settlement Agreement and the

implementation, enforcement and performance thereof. MFI 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
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	:	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND MICHAEL FOODS, INC.** upon Liaison Counsel via electronic mail and all counsel registered to receive electronic notice via this Court's ECF service.

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Direct Action Plaintiffs' Liaison Counsel

Date: October 19, 2017

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