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	:	

SUPPLEMENT TO DIRECT PURCHASER PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND FOR REIMBURSEMENT OF EXPENSES

Pursuant to Paragraph 2 of this Court's Order dated July 18, 2012 (Docket No. 704), Direct Purchaser Plaintiffs ("Plaintiffs") submit this supplement to their Motion for an Award of Attorneys' Fees and for Reimbursement of Expenses (Docket No. 493) ("Fee Motion"). Plaintiffs have set forth herein, and in the exhibits attached hereto, the documents and information requested by the Court in the July 18 Order. This supplemental submission is organized according to the 15 lettered sub-paragraphs contained in Paragraph 2 of that Order.

SUPPLEMENTAL INFORMATION

a. **A summary of the amount of time (*e.g.*, hours) and fees devoted to the case by Direct Purchaser Plaintiffs' counsel as to each Designated Counsel law firm with respect to attorney time and paralegal time, separately, and as to the seven (7) categories for billing described in the Motion on a monthly basis.**

b. **As to each Designated Counsel law firm, identification of the attorneys who have worked on the case, number of years they have been admitted to the bar, billable rate, and total hours spent working on the case. Equivalent information shall be provided as to paralegals and law clerks and their respective billable rates.**

Attached hereto, and organized alphabetically by firm name, are declarations of counsel from each of the 35 law firms that performed work on behalf of Plaintiffs in connection with this litigation ("Designated Counsel") for which Plaintiffs are seeking reimbursement. Attached as Exhibit 1 to each firm's declaration is a summary chart setting forth the information requested in Subparagraph (b), as well a the cumulative time, lodestar and expenses (less assessments) for the

firm. Attached as Exhibit 2 to each declaration are monthly time reports for that firm for the period which is covered by the fee petition, generally January 2009 through February 28, 2011 (the "Covered Period").[1] These monthly reports identify, on a monthly basis, the attorney and non-attorney time expended with respect to the seven categories for billing described in the Fee Motion. Attached as Exhibit 3 to each declaration are monthly expense reports that identify, by category, the type of expenses expended by the firm.

c. Documentation sufficient to conduct and evaluate a lodestar cross-check calculation, which shall include, consistent with the relevant case law of the Third Circuit, a reasonable hourly rate and appropriate information in support of reasonableness.

Based on the monthly reports set forth in Subparagraph (a), the total lodestar of the firms working on the case during the Covered Period is $11,001,332.40. Declaration of Steven A. Asher on Behalf of Interim Co-Lead Counsel ("Asher Decl.") ¶ 14. Of this amount, $7,987,523.45 represents the lodestar of the four appointed Interim Co-Lead Counsel firms and Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), and $3,013,808.95 represents the lodestar of the remaining Designated Counsel firms.[2] *Id.* The amount of fees sought in this motion is equivalent to 30% of the $25 million settlement amount, or $7.5 million. In this case, the lodestar for all counsel is substantially in excess of the fee award sought, resulting in a

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[1] Interim Co-Lead Counsel have submitted time and expenses from the inception of this case through February 2011 to reflect their efforts, *inter alia*, in investigating the matter and drafting the initial complaints. Quinn Emanuel has also submitted time and expenses from inception through February 2011, consistent with understanding of Interim Co-Lead Counsel set forth in Subsection g, *infra*. Thus, the Covered Period includes those firms' time and expenses dating to the inception of this case.

[2] Plaintiffs' April 2011 Fee Motion provided detailed time and expense data for only the Interim Co-Lead Counsel firms and Quinn Emanuel. *See* Exhibit B to Asher Decl. in Support of Fee Motion (Docket No. 493-4). This supplemental submission includes detailed time and expense data for all Designated Counsel firms, as requested by the Court. Furthermore, any changes to the time and expense submissions from the co-lead firms and Quinn Emanuel reflect corrections to errors made during the calculation and compilation of the former submission.

multiplier of approximately 0.68. Indeed, the lodestar of only the four lead counsel firms and Quinn Emanuel for the Covered Period exceeds the amount sought. *See id.*[3]

An attorney fee award representing a multiplier of less than 1.0 is well within the range of awards approved by the Third Circuit. *See, e.g.*, *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 (3d Cir. 2011), affirming 2008 U.S. Dist. LEXIS 81146 (D.N.J. May 22, 2008) (lodestar multiplier of approximately 3.3); *Milliron v. T-Mobile U.S.*, 423 Fed. Appx. 131, 135 (3d Cir. 2011) (affirming award representing multiplier of 2.21 and commenting that, "[a]lthough the lodestar multiplier need not fall within any pre-defined range, we have approved a multiplier of 2.99 in a relatively simple case") (internal citations omitted), citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 742 (3d Cir. 2001).

The declarations on behalf of each firm contain a paragraph which sets forth, under oath, that the hourly rates sought are the usual and customary, historical hourly rates in effect at the time work was performed; that the rates are the same as, or substantially similar to, rates used by the firm in similar types of actions; that the firm has submitted fee petitions in other cases that have reported hourly rates at amounts comparable to those sought herein; and that courts have approved an award of attorneys' fees based on such rates. *See, generally,* individual firm declarations. Where available, the firms have identified cases where fee awards have been approved. *Id.*

[3] The Asher Declaration summarizes the substantial work undertaken by Designated Counsel on behalf of the Class during the Covered Period. *See* Asher Decl. at ¶¶ 2-11, 23-24.

d. A Summary of the expenses incurred by the Direct Purchaser Plaintiffs' Counsel as to each Designated Counsel law firm with respect to the specific categories of expenses incurred, as described in the Motion, on a monthly basis. Definitions of the categories of expenses should be provided (*e.g.*, whether "travel" included airfare, ground transportation, meals and entertainment, hotel, parking, clerical overtime, etc.). In conjunction or association with this summary of expenses, Direct Purchaser Plaintiffs shall specify whether the expenses disbursed from the common expense litigation fund are being sought for reimbursement pursuant to the Motion in relation to a specific Designated Counsel or otherwise, and generally, provide further explication as to the implications that the common expense litigation fund in its entirety and as to funds disbursed bear upon the Motion.

Exhibit 3 to each of the attorney declarations attached hereto sets forth, for each firm, the amount of expenses directly incurred by such firm during the Covered Period. Each declaration contains confirmation, in the form of a sworn affidavit by a partner or shareholder from each firm, that the claimed expenses accurately represent the expenses incurred by such firm in the course of performing the work assigned to it by co-lead counsel.

The categories of direct expenses for which reimbursement is sought are as follows:

- Commercial Copies: Copies made by outside vendors.
- Internal Reproduction/Copies: Copies made at a law firm.
- Court Fees (filing, etc.): All fees paid to the court, including filing fees.
- Court Reporters/Transcripts: Payment to court reporters for transcription services as well as payment for transcripts of court proceedings and depositions.
- Computer Research: Lexis/Nexis, Westlaw, PACER or other computer research services.
- Telephone/Fax/Email: Phone, fax and email charges incurred.
- Postage/Express Delivery/Messenger: Mailing and delivery costs.
- Professional Fees (expert, investigator, accountant, etc.): Fees for services of expert witnesses, investigators, discovery vendors and other professionals who are not employees of counsel.

- Travel (Air Transportation, Ground Travel, Meals, Lodging, etc.): Travel expenses including airfare, ground transportation, meals and entertainment while traveling, hotel or other appropriate accommodation and parking.

- Clerical Overtime: Clerical overtime costs incurred by counsel in connection with the litigation of this matter.

- Miscellaneous (Describe): An opportunity for counsel to identify an additional expense which does not fit into the other categories provided on the expense report form.

The total amount of such direct expenses for which Plaintiffs are seeking reimbursement is $323,785.06. Asher Decl. ¶ 16.

In addition to the foregoing out-of-pocket expenses, each firm contributed assessments to the Direct Purchaser Plaintiffs' General Litigation Fund ("Fund"). The Fund pays expenses which are incurred collectively by Designated Counsel, rather than by any individual firm. Thus, for example, the Fund will pay the costs of hearing transcripts, deposition transcripts, expert fees, and electronic discovery costs.

In this petition Plaintiffs are seeking reimbursement for amounts paid by the Fund. Plaintiffs are not, however, seeking the assessments paid into the Fund by the plaintiff firms which were not spent prior to February 28, 2011. Thus, while $225,000 had been paid into the Fund as of February 28, 2011, Plaintiffs are seeking reimbursement only for Fund expenditures totaling $163,935.24 as of that date. Asher Decl. ¶ 18. This amount would either be returned to the Designated Counsel firms on a *pro rata* basis, or be put back into the Fund. Attached to the Asher Declaration as Exhibit 1 is a chart summarizing, by month and type of expense, the actual expenditures from the Fund.

Plaintiffs therefore request reimbursement for $487,720.30 in litigation expenses incurred during the Covered Period. This represents a $78,810.07 reduction from the $566,530.37 initially requested in the Fee Motion. *See* Plaintiffs' Mem. in Supp. of Mot. for Award of Attys.'

Fees & Reimbursement of Expenses (Docket No. 493-1) ("Fee Mem.") at 28. This reduction reflects the clarification that, with respect to the Litigation Fund, Plaintiffs are seeking reimbursement for Fund *expenditures* only. Asher Decl. ¶ 20. A revised proposed form of order incorporating the amended expense reimbursement request is attached hereto as Exhibit 1.

e. A sample of one (1) representative report of time and expenses that each Designated Counsel has prepared and submitted to Liaison Counsel.

Attached as Exhibits 2 and 3 to each firm's declaration are time reports (Exhibit 2) and expense reports (Exhibit 3).[4]

f. Whether costs that are subject to the motion are nontaxable for purposes of Fed. R. Civ. P. 23(h).

As detailed in ¶ (d), *supra*, Plaintiffs seek an award for reimbursement of $487,720.30 in litigation expenses. Plaintiffs interpret subparagraph (f) as inquiring whether certain costs for which they seek reimbursement are considered "taxable" under Rule 54(d)(1) and thus excluded, by negative implication, under Rule 23(h).

As explained below, although certain of these costs would be considered taxable if sought from a losing party under Rule 54(d)(1), all of Plaintiffs' costs are compensable, pursuant to the common benefit doctrine, for purposes of their Rule 23(h) motion for fees and costs from the common fund. Rule 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees and *nontaxable* costs that are authorized by law or the parties' agreement," upon a party's motion under Rule 54(d)(2). Fed. R. Civ. P. 23(h). Despite Rule

[4] Some reports have had cumulative columns removed for purposes of this submission. This was done in order to minimize any confusion where, for example, cumulative totals for non co-lead counsel may have carried 2008 time or expenses forward, or where there were formula errors in the spreadsheet that could not be resolved. Verified cumulative totals for firm time, lodestar and expenses less assessments are located at the bottom of Exhibit 1 attached to each firm's declaration.

23(h)'s reference to "nontaxable" costs only, courts in this Circuit have permitted recovery of all reasonable litigation costs from a common fund pursuant to the common benefit doctrine, including those that would be otherwise considered taxable under Rule 54(d)(1) if sought from the losing party.

Rule 54(d)(1) presumes that the clerk of court will presumptively "tax" certain litigation costs against a losing party upon presentation of a bill of costs by the prevailing party, without need for motion. *See* Fed. R. Civ. P. 54(d)(1); L.R. 54.1(b); *Warren Distrib. Co. v. InBev USA, LLC*, No. 07-1053, 2011 WL 770005, at *3 (D.N.J. Feb. 28, 2011) (citing *In re Paoli R.R. Yard PCB Litig.*, 221 F.3d 449, 462 (3d Cir. 2000)). Rule 54(d)(1) limits taxation to only specific enumerated categories of costs under 28 U.S.C. § 1920. *Race Tires of Am., Inc. v. Hoosier Racing Tire Corp.*, 674 F. 3d 158, 163, 164 (3d Cir. 2012).[5] Awards for "nontaxable" costs pursuant to a motion under Rule 54(d)(2) require an independent source of authority for the award,[6] such as a cost-shifting statute, state law, or another rule. Of the litigation costs for which Plaintiffs seek reimbursement from the Moark Settlement, the following costs for which they seek reimbursement would be presumptively "taxable" under § 1920: costs for process and

[5] Taxable costs are limited to: (1) fees of the clerk and marshal; (2) fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; (5) docket fees under section 1923 of this title; (6) compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title. *Race Tires*, 674 F. 3d at 163, 164.

[6] *See, e.g., Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1224 (3d Cir. 1995).

filing fees;[7] costs for photocopying;[8] and costs for court transcripts.[9] All remaining costs would be nontaxable if sought from the losing party.[10] However, as explained below, because Plaintiffs seek reimbursement from the common fund created by the Moark Settlement[11] pursuant to the common benefit doctrine rather than from Moark directly, all of the costs for which they seek reimbursement are not taxable in the sense that they are not sought by a prevailing party from a losing party, and are permissible under the common benefit doctrine.

Rule 23(h) does not define "nontaxable" costs, nor, based on Plaintiffs' research, has any court in this Circuit considered the distinction between taxable and nontaxable costs for purposes of a Rule 23(h) motion seeking reimbursement from an interim common settlement fund. But both before and after the Rule's adoption,[12] where litigation costs are sought from a common

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[7] Clerk and marshal fees identified if Section 1920 include both filing fees and fees for private service of summonses and subpoenas. *Montgomery Cnty. v. Microvote Corp.*, No. 97-cv-6331, 2004 WL 1087196, at *3, *4 (E.D. Pa. May 13, 2004).

[8] Fees for "copying," include both photocopying paper documents and copying other materials, such as scanning documents to create digital duplicates and converting the file format of electronic documents, and transferring VHS recordings to DVD format. *Race Tires*, 674 F. 3d at 160, 166.

[9] The costs of obtaining hearing transcripts are considered taxable costs in complex litigation. *Burks v. City of Phila.*, No. 95-cv-1636, 1998 WL 351705, at *4 (E.D. Pa. June 26, 1998).

[10] Expert fees for work in a non-testimonial capacity are not taxable. *Farley v. Cessna Aircraft Co.*, No. 93-cv-6948, 1997 WL 537406, at *6 (E.D. Pa Aug. 1, 1997) (citing *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 86 (1991)). Special master fees are also generally considered nontaxable. *See Crowley v. Chait*, No. 85–cv-2441, 2007 WL 7569542, at *7 (D.N.J. Aug. 29, 2007).

[11] *See* Moark Settlement Agreement at ¶ 35.

[12] Rule 23(h) did not "undertake to create new grounds for an award of attorneys' fees or nontaxable costs." Fed. R. Civ. P. 23(h)., cmt. to 2003 amendments. It was added to the Federal Rules in 2003 to codify the best practices of district courts. *See* Comm. on Rules of Practice & Procedure, Judicial Conference of the United States, Minutes of Meeting 12, 14 (Jun. 10-11, 2002), *available at* http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Minutes/ST06-

fund benefitting the class, as here, courts in this Circuit generally apply the common benefit doctrine and award *all* reasonable litigation expenses from the fund, without regard to whether those costs would otherwise be taxable if sought from the losing party under Rule 54(d)(1). Under that independent equitable doctrine, plaintiffs' attorneys "whose efforts create . . . a fund to which others also have a claim, [are] *entitled to recover from the fund the costs of [the] litigation*, including attorneys' fees." *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 187 (3d Cir. 2005) (emphasis added) (quoting *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 n.39 (3d Cir. 1995)). Unlike taxation of costs under Rule 54(d)(1), the "doctrine operates to charge an award against the fund itself, rather than to impose personal liability against a party or beneficiary." *Bogart v. King Pharm.*, 493 F.3d 323, 328 (3d Cir. 2007).

In explaining that all reasonable costs are compensable under the doctrine, the late Judge Broderick noted:

> The equitable principle that *all* reasonable expenses incurred in the creation of a fund for the benefit of a class are reimbursable proportionately by those who accept benefits from the fund authorizes reimbursement of full reasonable litigation expenses as costs of the suit in contrast to the more narrowly defined rules of taxable costs of suit under Federal Rule 54(d) payable by the defendant after adjudication.

In re TSO Fin. Litig., No. 87-cv-7903, 1989 WL 89304, *1 (E.D. Pa. Aug. 7, 1989) (emphasis added). Thus, under the common benefit doctrine, compensable costs in common fund cases include all "expenses reasonably incurred in the prosecution of the litigation," *see, e.g.*, *Gates v.*

2002-min.pdf ("[T]he proposed rule is a codification of best current practices in the district courts.").

Rohm And Haas Co., No. 06-cv-1743, 2008 WL 4078456, at *8 (E.D. Pa. Aug 22, 2008), including those captured under Rule 54(d)(1).

Accordingly, when considering motions for fees and costs from a common settlement fund under Rule 23(h), courts have awarded all reasonable litigation costs, including those costs that would otherwise be considered "taxable" if sought under Rule 54(d)(1) from a losing party.[13] *See, e.g., In re Budeprion XL Mktg. & Sales Litig.*, No. 09–md–2107, 2012 WL 2527021, at *20, *25 (E.D. Pa. July 12, 2012) (awarding costs for, *inter alia*, filing fees, copying, subpoenas, and court reporting); *Cosgrove v. Citizens Auto. Fin., Inc.*, No. 09-cv-1095, 2011 WL 3740809, at *4, *11 (E.D. Pa. Aug. 25, 2011) (awarding costs reasonably and appropriately incurred in the prosecution of the case");[14] *Hall v. AT&T Mobility LLC*, No. 07-cv-5325, 2010 WL 4053547 (D.N.J.), at *17, *23 (D.N.J. Oct. 13, 2010) (noting that courts have generally approved expenses for, *inter alia*, photocopying); *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06–3202, 2009 WL 2137224, at *13, *17 (E.D. Pa. July 16, 2009) (awarding costs for, *inter alia*, filing and copying); *In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, No. 05-cv-232, 2008 WL 4974782, at *11, *17-18 (E.D. Pa. Nov. 21, 2008) (awarding

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[13] In the only case distinguishing between taxable and nontaxable costs in the Rule 23(h)/common fund context found by Direct Purchaser Plaintiffs' in their research, the class plaintiffs had already secured an award of taxable costs by the clerk following a successful appeal. *In re Apollo Grp. Inc. Sec. Litig.*, No. 04-cv-2147, 2012 WL 1378677, at *8 (D. Ariz. Apr. 20, 2012). There, plaintiffs subsequently settled with the defendants against whom costs had already been taxed and agreed to release the defendants from their obligation to pay the prior taxable costs award. *See id.* In such a case, it may be appropriate to deny taxable costs because their reimbursement from the common fund could have been secured prior to, and independent of, the settlement.

[14] *See* Fee Mem. at 20-22, *Cosgrove v. Citizens Auto. Fin., Inc.*, No. 09-cv-1095 (E.D. Pa. Aug. 4, 2011), ECF No. 91 (itemizing the fees ultimately approved by the court for payment from the common fund, including, *inter alia*, filing fees, service costs, photocopying, and subpoena costs).

costs for, *inter alia*, duplication, transcripts, filing and court fees, and service fees, and noting "these categories are considered expenses . . . appropriate to reimburse in this circuit").[15] Thus, all of the costs for which Plaintiffs' seek reimbursement, including those for transcripts, process service fees and photocopies are among the costs compensable under the common benefit doctrine for purposes of their Motion for an award of fees and expenses from the common fund.[16]

An interpretation of Rule 23(h) that precludes recovery from a common fund of costs that would be considered taxable under 54(d)(1) would produce inequitable results, contrary to the principles of the common benefit doctrine, and would discourage settlement. First, it would create the anomalous result that plaintiffs could not recover costs through settlement that are ordinarily considered so essential to the litigation that they are presumptively chargeable against a losing party, while permitting recovery of other costs. Second, unless "taxable" costs can be recovered at a later date following a favorable judgment (if any), the class members that enjoyed the benefits of the common fund will not have shared proportionately in the costs incurred to create that benefit. As an independent equitable doctrine, the common benefit doctrine prevents

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[15] Since 2003, even where Rule 23(h) is not referenced in consideration of fees and costs from a common fund, courts have routinely awarded costs that would otherwise be considered taxable. *See, e.g.*, *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-CV-525, 2007 WL 4225828, *9 (D.N.J. Nov. 28, 2007) (awarding all reasonable costs, including those for reproducing documents court fees); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 336 (E.D. Pa. May 14, 2007) (awarding all reasonable costs, including those for transcripts); *Meijer, Inc. v. 3M*, No. 04-cv-5871, 2006 WL 2382718, at *18 (E.D. Pa. Aug. 14, 2006) (awarding all reasonable costs, including those for copying and transcripts); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 WL 3008808, at *17 (D.N.J. Nov. 9, 2005) (awarding all reasonable costs, including costs for copying and transcripts).

[16] If Plaintiffs are awarded taxable costs from this common fund and later, after a favorable judgment, are able to tax costs against a losing defendant under 54(d)(1), that award would be paid directly to the class members, as counsel would have already been reimbursed.

this result by permitting courts to award expenses beyond those that would be permitted under Rule 23(h) if that Rule were the only source of authority for the cost award. Third, excluding costs otherwise taxable under 54(d)(1) would discourage settlement, as the settling defendant could not, by means of a settlement agreement directing that *all* costs to be paid from the common fund, limit its financial exposure. *Cf. Buckhannon Bd. & Care Home, Inc. v. W. Va. Dept. of Health & Human Res.*, 532 U.S. 598, 609 (2001) ("[A] defendant has a strong incentive to enter a settlement agreement, where it can negotiate attorney's fees and costs.").

g. Any understandings or agreements, including any informal policies, reached with or among counsel concerning the time, amount, or rate for calculating fees; any budget(s) set for the litigation; any standards concerning expenses incurred; or other terms relating to fees and expenses.

There was an understanding and agreements amongst the four Interim Co-Lead Counsel – which was also communicated to and understood by all Designated Counsel – that time and expenses in this case had to be reasonable and of the type typically compensated by Courts in this District. There were frequent discussions on weekly calls about ensuring that work was performed in a manner as efficiently and cost-effectively as possible, including that firms should have no more attorneys on calls than necessary, that there should be one set of edits per firm on a document, that various tasks should be assigned to one or two firms rather than having all four firms participate, and that tasks given to non-lead counsel would be monitored by one of the lead firms. *See* Asher Decl. ¶ 23. Moreover, all of the firms involved in the leadership in this case have significant experience in class action litigation and remain well aware of their professional obligations and their obligations to zealously serve the interests of the Class as efficiently and conservatively as possible.

Given the nature of the litigation and the lack of foresight into the number and types of

documents that would be produced in discovery, there was no set budget at the outset of the litigation. All firms that desired to be active participants in this case were asked to contribute to the General Litigation Fund. The four Interim Co-Lead Counsel, along with Quinn Emanuel, paid a total of $100,000 in assessments through the Covered Period while the non co-leads paid a total of $125,000. Asher Decl. ¶ 17.

In light of their economic contribution to the case, as well as the quality of their work, the co-leads also agreed to recommend to the Court that Quinn Emanuel be compensated for work it performed, and be reimbursed for expenses on the same basis as the four interim co-lead firms, subject to the Court's ultimate approval.

h. Whether any auditing or other quality control measures are employed, or have been employed, by Designated Counsel or Liaison Counsel, concerning the time, expenses, and costs devoted to this litigation.

Interim Co-Lead Counsel have promoted efficient case management through audits and quality control measures. Since the inception of this action, weekly conference calls have been held to delegate assignments, monitor activities, and approve expenses and costs when necessary. These measures promote efficiency by avoiding unnecessary duplication and excessive time and cost expenditures. Asher Decl. ¶ 23.

Specifically, time and expenses are carefully monitored on a monthly basis. Designated Counsel have, since the inception of this case, been required to submit time and expense/cost reports for work performed by their respective firms on a monthly basis ("monthly reports"). Asher Decl. ¶ 12. All monthly reports are carefully reviewed to ensure that they reflect the work assigned and expenses approved. Liaison Counsel provides periodic statements on time and expenses to Interim Co-Lead Counsel. Asher Decl. ¶ 21. Time and/or expenses not authorized

by Interim Co-Lead Counsel, or not found to provide some benefit to the class, will be excluded and not reimbursed. *Id.*

In addition, in 2011, all Designated Counsel working on this matter were required to complete a questionnaire, and submit back-up documentation supporting their monthly time and expense/cost reports to Interim Co-Lead Counsel and Liaison Counsel. *Id.* Interim Co-Lead counsel appointed a team to review the questionnaires and supporting documentation to ensure that only time and expenses expressly authorized by Interim Co-Lead Counsel and appropriately billed or incurred would be compensated. *Id.*

i. Whether and what specific efforts Designated Counsel has undertaken to manage, minimize, or cap expenses and costs.

Designated Counsel are experienced class action attorneys with an understanding of how class action contingent litigations are to be managed in order to minimize or cap expenses and costs. Lavish and extravagant spending are not tolerated and will not be approved.

Through weekly Interim Lead Counsel calls, Interim Co-Lead Counsel delegate assignments and monitor activities to avoid duplication of efforts and to ensure that there are no excessive time expenditures. Asher Decl. ¶ 23. Interim Co-Lead Counsel also monitor and review all expenses; all larger expense items must be approved before the actual expense is incurred. Asher Decl. ¶ 18.

When outside vendors have been needed for tasks such as document hosting, document collection and claims administration, Interim Co-Lead Counsel have solicited bids from these vendors prior to their selection in an effort to obtain the best rate for the best services and to ensure that costs to the class would be kept to a minimum while allowing for efficient and excellent work product.

Finally, Interim Co-Lead Counsel are mindful that full-scale discovery in this action has commenced. Interim Co-Lead Counsel intend to implement a discovery protocol outlining guidelines for travel and related expenses and other cost saving requirements that all participating Designated Counsel and staff must abide by.

j. The percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained.

In addition to the *Gunter* factors outlined in Plaintiffs' memorandum in support of the Fee Motion, *see* Fee Mem. at 15-21, several of the issues which the Court would like to address appear to be related to the "*Prudential* factors" that some courts in this District consider when examining a motion for attorneys' fees.[17] The first *Prudential* factor is intended to measure whether "the entire value of the benefits accruing to class members is properly attributable to the efforts of class counsel," *In re AT&T*, 455 F.3d at 172-73, or if some of those benefits are more properly attributed "to the efforts of other groups, such as government agencies conducting investigations." *Id.* at 165-66 (*citing In re Prudential*, 148 F.3d at 338). While the Court did not specifically inquire about this issue, this is addressed in section "o" below. The second *Prudential* factor, addressed in this section, examines the likely "percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained." *In re AT&T*, 455 F.3d at 165-66 (citing *In re Prudential*, 148 F.3d at 340). The third *Prudential* factor, addressed in section "l," examines whether the settlement agreement contains any "innovative" terms to argue in favor of the requested award of attorneys' fees. *In re AT&T*, 455 F.3d 160, 165-66 (citing *In re Prudential*, 148 F.3d at 339).

[17] Plaintiffs inadvertently failed to include a discussion of these factors in their opening brief which presumably is what prompted several of the Court's questions.

A one-third (or higher) contingency is standard in individual litigation, and could be even higher in antitrust cases, given the complexities and risks involved. *See Bradburn Parent Teacher Store*, 513 F. Supp. 2d at 340 (holding that a fee award of 35% of the net settlement fund was comparable to the percentage counsel would have negotiated had the case been subject to a private contingency fee agreement when counsel was retained); *Remeron*, 2005 WL 3008808, at *16 (observing that "[a]ttomeys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation" and holding, in the context of a direct purchaser pharmaceutical antitrust class action, that the "requested 33 1/3% fee reflects the market rate in other litigation of this type"); *In re Insurance Brokerage Antitrust Litigation*, MDL Docket No. 1663, Civ. No. 04-5184, 2009 WL 411856, at *7 (same).[18]

"In determining the market price for such services, evidence of negotiated fee arrangements in comparable litigation should be examined." *Remeron*, 1005 WL 3008808, at *16 (citing *In re Continental Illinois Sec. Litig*., 962 F.2d 566, 572 (7th Cir.1992)). Indeed, counsel in this case (such as Susman Godfrey and Hausfeld LLP), who both handle a significant amount of non-class action contingency work, routinely charge a contingent fee of 33 1/3% or greater in individual litigation. *See* Hausfeld Decl. at ¶ 6; Susman Godfrey Decl. at ¶ 6. Moreover, Bernstein Liebhard negotiated a retainer agreement in this litigation which states that,

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[18] *See also Milliron v. T-Mobile USA, Inc*., 2009 WL 3345762, at *13 (D.N.J. 2009); *In re Ikon*, 194 F.R.D. at 194 ("[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."); *In re U.S. Bioscience*, 155 F.R.D. at 119 (adopting Special Master's conclusion that thirty percent would likely have been negotiated in securities action); *In re U.S. Bioscience*, Civ. A. No. 92–0678, 1994 WL 485935, at *9–10 (E.D.Pa.1994) (Special Master's report examining practice by attorneys in this district who reported negotiating agreements between 30–40%); *In re Orthopedic Bone Screws Products Liability Litig.*, 2000 WL 1622741, at *7 (E.D. Pa. Oct.23, 2000) ("the court notes that plaintiffs' counsel in private contingency fee cases regularly negotiate agreements providing for thirty to forty percent of any recovery.")

for any recovery on an individual (non-class) basis, the firm may receive 33 1/3% of any settlement proceeds and 40% of any judgment proceeds. *See* Bernstein Liebhard Decl. at ¶ 6. That the fees requested here are comparable to those that Class Counsel have negotiated in the marketplace also supports the reasonableness of the fee request.

k. Explanation as to how and why each of the cases cited by Direct Purchaser Plaintiffs in their Motion for purposes of demonstrating "awards in similar cases" are similar to this suit.

In Plaintiffs' opening memorandum, Plaintiffs' counsel suggested that "[t]he fee requested by Plaintiffs' Counsel – 30% of the Moark Settlement fund – is a reasonable amount that falls well within the range of amounts approved by this Court in similar cases. Indeed, 'courts within this Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses.'" Fee Mem. at 20-21 (citing *Ravisent*, 2005 WL 906361, at *11, *Auto. Paint*, 2008 WL 63269, at **5-6 (awarding requested fees of one third of the multi-million dollar settlement fund); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 WL 3008808, at *13 n.1 (D.N.J. Nov. 9, 2005) (awarding fees of 33 1/3% from $75 million settlement fund); *Godshall v. Franklin Mint. Co.*, No. 01-CV-6539, 2004 WL 2745890, at*5 (E.D. Pa. Dec. 1, 2004) (awarding a 33 1/3% fee and noting that "[t]he requested percentage is in line with percentages awarded in other cases"); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d at 433-34 (awarding 1/3 of a $48 million settlement fund); *Cullen*, 197 F.R.D. at 150 (an "award of one-third of the settlement fund" for attorneys' fees is consistent with fee awards by district courts in the Third Circuit); *In re Greenwich Pharm. Sec. Lit.*, No. 92-3071, 1995 WL 251293, at *6 (E.D. Pa. Apr. 26, 1995) (holding that "a fee award of 33.3 percent is in line with the fee awards approved by other courts."); *In re FAO, Inc. Sec. Litig.*, Nos. 03-942 & 03-6596, 2005 U.S. Dist. LEXIS 16577, at *5 (E.D. Pa. May 20, 2005) (awarding fees of 30% and 33%)).

Each of the cases cited, while differing in some respects, is similar to the settlement and action here in a number of ways: each was a class action in a court of this circuit involving complex or novel legal or factual matters;[19] most were pending for several years prior to reaching settlement, as is the case here; in those cases addressing objections to the settlement or fee petition, there were few or no objectors; and, where lodestar multipliers were calculated, the multipliers were equal to or greater than the multiplier here.[20] Moreover, none of the cited cases involved "megafunds"—common funds of $100 million or more—where the size of the fund may be given less weight in the analysis of the appropriate fee percentage and the percentage awarded as fees is often less than one-third. *See, e.g.*, *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. 03-cv-4578, 2005 WL 1213926, at *9 (E.D. Pa. May 19, 2005). Indeed, several of the cited cases involved settlement funds somewhat larger than the fund here,

[19] For example, this case has involved and is likely to involve complex legal questions such as the application privilege claims in the context of a trade association, application of the Capper-Volstead Act, and the impact of the Third Circuit's decision in *In re Hydrogen Peroxide Antitrust Litigation,* 552 F.3d 305 (3d Cir. 2008) on the Sparboe settlement class certification.

[20] *Ravisent,* 2005 WL 906361, at *11-12 (complex securities class action with difficult matters of proof; pending for five years at the time of settlement; no objectors; and multiplier of 3.1); *Auto. Paint*, 2008 WL 63269, at *3-6 (complex, expensive and lengthy antitrust MDL, with claims against multiple defendants pending for nearly four years at time of agreement; no objections filed; and multiplier of less than one); *Remeron*, 2005 WL 3008808, at *4-8 (complex antitrust class action pending for three years; no objections filed; difficult legal and factual questions remained; and multiplier of 1.8); *Godshall*, 2004 WL 2745890, at*1, *5 (complex ERISA class action with unsettled questions of law, pending for three years at time of settlement and four years at time of approval; and no objections filed); *Gen. Instrument*, 209 F. Supp. 2d at 433-34 (securities class action involving complex issues; no objections; 1.38 multiplier); *Cullen*, 197 F.R.D. at 142, 148-51 (complex RICO and state law class action, pending for nearly two years at time of settlement; one objector; and multiplier of 2); *FAO.*, 2005 WL 3801469, at *1-2 (multiplier of 2).

and yet awarded one-third of the common fund as fees[21]—a greater percentage than that sought by Plaintiffs here.

Although a number of the cases cited were at more advanced litigation stages at the time of settlement than this action,[22] Plaintiffs invested similarly significant effort and resources in this matter prior to settlement. These efforts included: conducting a detailed investigation into the conduct without aid of any federal criminal investigation or indictment;[23] preparing responses to 14 motions to dismiss before a stay was imposed due to the Sparboe settlement; entering into a settlement with Sparboe that secured significant cooperation, resulting document production and review and in-depth, on-site employee interviews from which counsel obtained critical information about the alleged conspiracy embodied in the later filed Second Consolidated Class Action Complaint; briefing nine subsequent motions to dismiss and preparing for oral argument regarding those motions; and successfully briefing, negotiating, and litigating UEP's assertions of privilege as to documents produced by Sparboe, resulting in relinquishment of most privilege claims.

Additionally, two of the cases cited by Plaintiffs involved antitrust class actions,[24] which are among the most complex cases to prosecute. *See In re Linerboard Antitrust Litig.*, 296 F. Supp. 2d 568, 577 (E.D. Pa. 2003). And although several of the cases cited by Plaintiffs are

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[21] *Auto. Paint*, 2008 WL 63269, at *5-6 ($39 million common fund with one-third awarded as fees); *Gen. Instrument*, 209 F. Supp. 2d at 433-34 ($48 million with one-third awarded as fees).

[22] *See, e.g.*, *Remeron*, 2005 WL 3008808, at *1-2 (noting the extensive and contentious discovery and depositions conducted and dispositive motion practice).

[23] *Cf. Auto Paint*, 2008 WL 63269, at *5 (noting the contributions of class counsel in prosecuting the case even after DOJ declined to seek indictments).

[24] *Auto. Paint.*, 2008 WL 63269, at *1 (multidistrict litigation involving claims under § 1 of the Sherman Act for price fixing); $39 million common fund with one-third awarded as fees); *Remeron*, 2005 WL 3008808, at *1-2 (involving complex claims under §2 of the Sherman Act).

securities class actions, such actions have been considered sufficient comparators by courts in this district when considering fee petitions in antitrust class actions.[25] Both class actions under the Sherman Act and under the Securities Exchange Act tend to involve large numbers of class members, are factually and legally complex, and pose substantial risks to counsel serving on a contingency basis. *See, e.g., Auto. Paint*, 2008 WL 63269, at *4-5 (approving fee award in antitrust case where more than 2,000 class members filed claims; "like most antitrust cases, [the case had] been exceedingly complex, expensive, and lengthy;" and there was a high risk of nonpayment where no prima facie liability was established by a parallel criminal action); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d at 429-430, 432-33 (approving fee award in securities case where thousands of class members would benefit; case was complex, because, *inter alia*, "securities cases are always complicated;" and there was a high risk of nonpayment given, proof required).

By referencing a diverse range of cases both in terms of size of settlement and the subject matter of the litigation, Direct Purchaser Plaintiffs did not mean to suggest there are insufficient comparable antitrust cases. Courts in this Circuit have awarded fees in the amount of 30% or more of a settlement fund in numerous other antitrust actions as well. *See McDonough*, 834 F. Supp. 2d at 341 (awarding one-third of $35 million common settlement fund achieved in Section 1 and 2 antitrust action pending for five years, with a multiplier of .36); *Bradburn Parent Teacher Store*, 513 F. Supp. 2d at 339 (awarding 35% of $39.75 million common settlement

[25] *See, e.g., McDonough v. Toys "R" Us, Inc.*, 834 F.Supp.2d 329, 344 (E.D. Pa. 2011) (comparing fee award sought in antitrust class action to those awarded in securities class actions); *Auto. Refinishing*, 2008 WL 63269, at*5 (same); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 339-40 (E.D. Pa. 2007) (same); *Remeron*, 2005 WL 3008808, at *13; *Nichols v. SmithKline Beecham Corp.*, No. 00-cv-6222, 2005 WL 950616, at *22 (E.D. Pa. Apr. 22, 2005) (same).

fund in Section 2 antitrust action, with a multiplier of 2.5); *Nichols*, 2005 WL 950616, at *24 (awarding 30% of a $65 million dollar common settlement fund achieved in Section 2 antitrust action, with a multiplier of 3.15); *In re Residential Doors Antitrust Litig.*, Nos. 94-cv-3744 & 96-cv-2125, 1998 WL 151804, at *11 (E.D. Pa. Apr. 2, 1998) (noting prior approval of 30% of a $14.5 million settlement fund in price-fixing class action, with a multiplier of 2.48).

l. Whether the Court should consider any innovative terms of settlement.

With respect to the third *Prudential* factor, the settlement agreement here contains no particularly "innovative" terms that bear on the requested award of attorneys' fees. *In re AT&T Corp.*, 455 F.3d 160, 165-66 (3d Cir. 2006) (citing *In re Prudential*, 148 F.3d at 339). Nevertheless, both the Sparboe and Moark settlements did provide that the settling entities would cooperate with the Plaintiffs and provide early discovery materials and those materials have proven helpful as Plaintiffs have amended their Complaint and were better able to prepare for discovery even while discovery against the remaining defendants was stayed.

m. The existence of any agreements between attorneys and their clients, or other counsel involved in the litigation, as to the Motion, including incentive awards. If such an agreement exists, the following information shall be provided: the names of the parties to the agreement, their efforts expended as to the Motion or on behalf of the class, and other facts relating to such agreement.

No agreement exists between any counsel in this case and their clients regarding incentive awards. Interim Co-Lead Counsel seek leave to file *in camera* herewith a document containing information regarding agreements related to referral counsel.

n. How and what specific work performed by any non-Interim-Co-Lead counsel (*i.e.*, Quinn Emanuel Urquhart & Sullivan, LLP) actually conferred a benefit on the Class consistent with the relevant case law of the Third Circuit.

1. The governing standards

Under the common benefit doctrine, an award of attorney's fees is appropriate where "'the plaintiff's successful litigation confers a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them.'" *In re Diet Drugs*, 582 F.3d 524 (3d Cir. 2009); *Polonski v. Trump Taj Mahal Assocs.*, 137 F.3d 139, 145 (3d Cir. 1998) (quoting *Hall v. Cole*, 412 U.S. 1, 5 (1973)). Thus, in order to obtain common benefit fees, an attorney must confer a substantial benefit to members of an ascertainable class, and the court must ensure that the costs are proportionately spread among that class. *Id.* The awarding of fees is within the district court's discretion. *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d at 727.

In the Third Circuit, "[w]hen awarding fees to non-lead counsel, '[o]nly work that actually confers a benefit on the class will be compensable,'" *Milliron*, 423 Fed. Appx. at 134 (citing *In re Cendant Corp. Sec. Litig*. 404 F.3d at 197). *In Cendant Corp. Sec.*, an action brought under the Private Securities Litigation Reform Act ("PSLRA"), the Third Circuit held that in order to receive compensation, "[n]on-lead counsel will have to demonstrate that their work conferred a benefit on the class beyond that conferred by lead counsel." 404 F.3d at 191. *See Larson v. Sprint Nextel Corp.*, No. 07-cv-5325 (JLL), 2010 WL 234934, at *28-35 (D.N.J. Jan. 15, 2010); *Lan v. Ludrof*, No. 06-cv-114(SJM), 2008 WL 763763, at *27-29 (W.D.Pa. Mar. 21, 2008). In *Milliron*, the Third Circuit stated that even in common fund cases, the "inquiry correctly focused on the essential consideration, the benefit to the class, not the amount of time

expended." *Id*. at 135; *see also Larson*, 2010 WL 234934, at *32-33 (holding that "[o]nly those attorneys who confer an independent benefit upon the class will merit compensation," and "the effectiveness of counsel is measured by results--not by the number of depositions taken, pleadings filed, or motions briefed.").

At the same time, Courts routinely approve fee awards with allocations to specific firms determined by lead counsel, who are most familiar with the work done by each firm and each firm's contribution to the litigation. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 533 n.15 (3d Cir. 2004) (affirming the District Court's decision to permit attorneys' fees to be divided according to the discretion of the co-chairs of the Executive Committee and declining to "deviate from the accepted practice of allowing counsel to apportion fees amongst themselves"); *In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 329 n.96 (3d Cir. 1998) ("The court need not undertake the difficult task of assessing counsels' relative contributions"); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004), *order amended* by 2004 WL 1240775 (E.D. Pa. June 4, 2004) (granting liaison counsel authority to apportion attorneys' fees because liaison counsel was in the best position to "describe the weight and merit of each [counsel's] contribution") (internal quotations omitted); *In re Auto. Refinishing Paint Antitrust Litig.*, 2004 U.S. Dist. LEXIS 29162, at **36-37 (E.D. Pa. Oct. 13, 2004).

2. Contributions of Quinn Emanuel

In this litigation, Quinn Emanuel[26] has brought to bear its experience, expertise and resources to make very substantial contributions that have conferred a direct benefit on the class. Among other things, at the direction of and in coordination with the appointed co-lead firms, and through February 2011:

- Mr. Neuwirth and other Quinn Emanuel attorneys were actively involved in drafting those portions of the first and second consolidated amended complaints concerning the USEM export program, and were actively involved in commenting on and editing other sections of those complaints.

- Mr. Neuwirth and other attorneys at Quinn Emanuel played a significant role in developing and drafting the responses to defendants' arguments, stemming from the Supreme Court's *Twombly* decision, that the Consolidated Amended Complaint should be dismissed, as well as the responses to defendants' arguments stemming from *Twombly* that the Second Consolidated Amended Complaint should be dismissed.

- Mr. Neuwirth presented that portion of the oral argument to this Court on behalf of plaintiffs with respect to *Twombly*-related issues at the two-day hearing in October 2010, and Quinn Emanuel attorneys prepared the binder of detailed demonstratives utilized at the hearing. These demonstrative were in the style Quinn Emanuel has used in many litigations over the years.

- Mr. Neuwirth participated in discussions with counsel for Golden Oval and Sparboe that led to the significant cooperation that Sparboe provided the class and the related settlement agreement between Sparboe and the settlement class. Mr. Neuwirth also

[26] Quinn Emanuel, with over 600 attorneys, is the largest firm in the United States devoted solely to business litigation. The firm has a blue chip practice representing major corporations as both defendants and plaintiffs. The firm also has one of the nation's leading practices representing plaintiffs in antirust class actions, and is currently serving as court-appointed co-lead counsel in *In re Rail Freight Feul Surcharge Antitrust Litigation* (D.D.C.) (class certification granted in June 2012); *In re Polyurethane Foam Antitrust Litigation* (N.D. Ohio); *Universal Delaware v. Comdata Corp.* (E.D. Pa.); and *Four in One Company v. SK Foods* (Tomato Products Antitrust Litigation) (E.D. Cal.). The firm believes that its experience representing plaintiffs in antitrust class actions helps to facilitate interactions with defendants' counsel. The firm is also highly experienced at developing factual records and ultimately prevailing at trial. Earlier this year, the *Law360* publication identified Quinn Emanuel as having one of the nation's top five antitrust practices in 2011. The *National Law Journal* has named Quinn Emanuel to its "Plaintiffs' Hot List" for the last four years in a row. Stephen Neuwirth chairs Quinn Emanuel's antitrust and competition law practice.

participated with other co-lead counsel in meetings in Houston and Minnesota with Sparboe officers and their outside counsel that were key to obtaining the settlement and confirming the scope of the cooperation that Sparboe witnesses would be able to provide. Quinn Emanuel attorneys also provided significant assistance to co-lead counsel in reviewing the documents that Sparboe made available in connection with its cooperation and settlement.

- Mr. Neuwirth and other Quinn Emanuel attorneys played a key role, together with co-lead counsel, in eliciting information from Sparboe pursuant to plaintiffs' settlement discussions and settlement agreement, including active participation in Minnesota at witness interviews, Sparboe document review, and analysis of fact information provided by Sparboe. Among other things, given his in-depth understanding of the export-related issues, Mr. Neuwirth played a particularly active role in the interview of the Sparboe witness most familiar with the USEM export program. Mr. Neuwirth also actively participated in other interviews of Sparboe witnesses.

- Quinn Emanuel attorneys played an active role in the development of discovery requests to defendants and in the related negotiations with defendants after those requests had been served, including in particular a lead role in negotiations with defendant Michael Foods and significant contributions to negotiations with Moark/Land O' Lakes.

- Quinn Emanuel attorneys played a key role in addressing assertions of privilege by defendant United Egg Producers.

- Mr. Neuwirth assisted the appointed co-lead counsel in resolving issues raised by counsel for plaintiffs that filed cases in jurisdictions other than the Eastern District of Pennsylvania, including issues related to potential claims and related expert analysis.

- Mr. Neuwirth was actively involved in discussions among co-lead counsel regarding the prospective settlement with Moark/Land O' Lakes, and provided valuable input regarding settlement negotiation strategy, settlement terms and related matters.

- Mr. Neuwirth and other Quinn Emanuel attorneys played a lead role in drafting the papers submitted by Plaintiffs in support of Court approval of the Sparboe and Moark/Land O' Lakes settlements, including in-depth analysis, in response to Court inquiries, of the post-*Hydrogen Peroxide* standards for certification of settlement classes.

- Based on Quinn Emanuel having first developed the theory of how the Defendants colluded to use experts as a means to reduce egg supply in the United States, Quinn Emanuel was assigned to draft those protions of the Consolidated Amended Complaint dealing with export issues.

It is respectfully submitted that the foregoing, non-exhaustive list demonstrates

that Quinn Emanuel has provided valuable contributions that conferred direct benefits on the class.

3. Contributions of other non-Interim-Co-Lead counsel

In addition to Quinn Emanuel, nunmerous other firms[27] have also brought to bear their experience, expertise and resources to make substantial contributions that have conferred a direct benefit on the class. Among other things, at the direction of and in coordination with the appointed co-lead firms, and through February 2011, other non lead firms participated in the following:

- Reviewing, writing significant portions of, and providing edits to the various amendments of the Complaint and other substantive briefs.
- Reviewing and coding documents from Golden Oval.
- Reviewing and coding documents from Sparboe Farms.
- Reviewing and coding documents from Moark/Land O' Lakes.
- Obtaining and reviewing documents from class representatives.
- Keeping clients informed about the status of the litigation and ensuring ongoing preservation of documents.

[27] These firms include: Barrack Rodos & Bacine LLP; Law Offices of Bernard M. Gross P.C.; Bolognese & Associates LLC; Cafferty Faucher LLP (as of 8/12 Cafferty Clobes Meriwhether & Sprengel LLP); Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C.; Criden & Love, P.A.; Edelson & Associates, LLC; Fine, Kaplan & Black, R.P.C.; Freed, Kanner, London & Millen LLC; Futterman, Howard & Ashley, P.C.; Gold Bennett Cera & Sidener LLP; The Guiliano Law Firm, P.C.; Gustafson Gluek, PLLC; Heins Mills & Olson, PLC; Keller Rohrback LLP; Klehr Harrison Harvey Branzburg LLP; Leopold Kuvin P.A.; Levin, Fishbein, Sedran & Berman LLP; Lieff Cabraser Heiman & Bernstein LLP; Lockridge Grindal Nauen PLLP; Malkinson & Halpern, P.C.; Meredith Cohen Greenfogel & Skirnick LLP; RodaNast, P.C.; Saltz, Mongeluzzi, Barrett & Bendesky, P.C.; Seeger Weiss LLP; Sher Corwin Winters LLC; Spector, Roseman, Kodroff & Willis, P.C.; Steyer Lowenthal Boodrookas Alvarez & Smith LLP; Tuggle Duggins & Meschan, P.A.; and Zelle Hofmann Voelbel & Mason LLP.

It is respectfully submitted that the foregoing, non-exhaustive list demonstrates that other non-lead firms have also provided valuable contributions that conferred direct benefits on the class. Interim Lead Counsel anticipate an even larger role for these non-lead firms as the case transitions into discovery.

o. Any additional information appurtenant to the Court's consideration of the Motion as established by the relevant case law of the Third Circuit and rules of this Court.

As noted above, the first *Prudential* factor is intended to measure whether "the entire value of the benefits accruing to class members is properly attributable to the efforts of class counsel," *In re AT&T Corp.*, 455 F.3d at 172-73, or if some of those benefits are more properly attributed "to the efforts of other groups, such as government agencies conducting investigations." *Id.* at 165-66 (*citing In re Prudential*, 148 F.3d at 338). While there were a few public reports of a limited investigation into the processed egg products industry before Plaintiffs initially filed suit, it quickly became clear that this narrow investigation (which appears to have ended) was wholly unrelated to the claims asserted in Plaintiffs' class action complaints. As such, Class counsel was not assisted by any government investigation and this factor also supports the fee request. *See In re AT&T Corp.*, 455 F.3d at 173 ("Here, class counsel was not aided by the efforts of any governmental group, and the entire value of the benefits accruing to class members is properly attributable to the efforts of class counsel. This strengthens the District Court's conclusion that the fee award was fair and reasonable."); *McDonough*, 834 F. Supp. 2d at 344-45 (same); *Stop & Shop Supermarket Co.*, 2005 WL 1213926, at *12 ("[T]his action was riskier than many other antitrust class actions because there was no prior government

investigation, or prior finding of civil or criminal liability based on antitrust violations, in this case.").[28]

CONCLUSION

For the reasons set forth in Plaintiffs' Motion for an Award of Attorneys' Fees and for Reimbursement of Expenses and Memorandum in support thereof, as supplemented by this submission, Plaintiffs and Designated Counsel respectfully request that the Court grant their request for an award of the attorneys' fees and reimbursement of litigation expenses.

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[28] One other relevant factor the Court might want to consider is the role that private enforcement of the nation's antitrust laws (and fee awards as a result) plays in benefitting society and the fact that Plaintiffs' counsel are not compensated unless they are successful. As one study concluded: In a study conducted by the authors concluded:

> In a significant number of cases, the courts determined that the exemplary work of counsel and other factors warranted an award of one third of the recovery . . . . A point rarely appreciated is that plaintiffs' counsel often exercised significant self-restraint in these cases—the amount of the award reflected a request by class counsel of a relatively small percentage of the fund. And, of course, an analysis of the fees awarded in these successful cases does not reflect others in which private counsel lost, recovered nothing for their time, and received no compensation or reimbursement for their substantial expenditures, often including hundreds of thousands of dollars in expert witness fees and other costs.

Robert H. Lande & Joshua P. Davis, *Benefits from Private Antitrust Enforcement: An Analysis of Forty Cases*, 42 U.S.F.L. Rev. 879, 902-03 (2008) (citations omitted). As the authors further explained, "In considering an appropriate contingent fee award, it is necessary to take into account the high proportion of contingent fee cases that do not result in any award to the attorneys. Unlike defense attorneys, who are normally paid by the hour, a system of contingent fees depends upon a portfolio of cases where the small number of large winners offsets the large number of cases in which there is a small fee, or no fee at all." *Id.* at 903 n.98. And unlike the defense counsel in this case who have been paid over the last four years for their work on this matter, those attorneys working for the Plaintiffs have yet to be compensated for their years of work.

Dated: September 7, 2012

Respectfully submitted,

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Interim Co-Lead Counsel for Direct Purchaser Plaintiffs

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	:	

[REVISED PROPOSED] ORDER APPROVING DIRECT PURCHASER PLAINTIFFS' REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND FOR REIMBURSEMENT OF EXPENSES

1. AND NOW, this ____ day of _____, 2012, upon consideration of Direct Purchaser Plaintiffs' Motion, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for attorneys' fees in the amount of $7.5 million representing 30% of the $25 million Moark settlement fund, and for expenses in the total amount of $ $487,720.30, the Court makes the following FINDINGS and CONCLUSIONS:

2. Direct Purchaser Plaintiffs' request for attorneys' fees totaling 30% of the Moark settlement fund is reasonable in light of: the size of the fund created for the Class and the number of persons benefited by the fund; the absence of objectors to the Moark settlement; the substantial effort expended by counsel in this litigation, as well as the skill and efficiency demonstrated by counsel in establishing the fund; the significant complexity and duration of this antitrust litigation; and the risk of nonpayment faced by counsel given the contingent nature of this representation and the absence of any related government prosecution.

3. Direct Purchaser Plaintiffs' request for attorneys' fees totaling 30% of the Moark settlement fund falls well within the range of attorneys' fee awards approved by this Court in similar cases, and is supported by a lodestar cross-check analysis of the time expended by counsel in this litigation.

4. Direct Purchaser Plaintiffs' request for reimbursement of expenses necessary for the prosecution of this litigation in the amount of $487,720.30 is reasonable, and reflects (i) individual firm out-of-pocket expenses for, *inter alia*, document management, travel, photocopying, overnight mail, process service fees, long distance telephone, and electronic research in the amount of $323,785.06; and (ii) expenditures from the General Litigation Fund in the amount of $163,935.24.

It is therefore **ORDERED**:

1. The Motion is GRANTED in all respects;

2. Counsel for Direct Purchaser Plaintiffs are hereby awarded attorneys' fees in the total amount of $_____;

3. Interim Co-Lead Counsel are authorized to distribute among counsel for Direct Purchaser Plaintiffs the awarded attorneys' fees in a manner which fairly compensates each firm for their contribution to the prosecution of Direct Purchaser Plaintiffs' claims; and

4. Counsel for Direct Purchaser Plaintiffs are hereby awarded reimbursement of expenses in the total amount of $_____.

BY THE COURT:

_____

HONORABLE 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	:	

DECLARATION OF STEVEN A. ASHER, ESQUIRE ON BEHALF OF INTERIM CO-LEAD COUNSEL

1. I am an attorney-at-law and a member of the firm of Weinstein Kitchenoff & Asher LLC, one of the Interim Co-Lead Counsel for Direct Purchaser Class Plaintiffs ("DPP") in this litigation. I submit this declaration in support of the pending petition for an award of fees and expenses filed by co-lead counsel on April 14, 2011, and as part of the Supplemental Submission required by the Court pursuant to its Order dated July 18, 2012, Docket No. 704.

FACTUAL BACKGROUND

2. In this Declaration I will, *inter alia*, review the work performed by counsel on behalf of the DPP Class during the period from the commencement of this litigation until February 2011. The description set forth herein is summary, and is intended to provide the Court with an overview of the work performed by Interim Co-Lead Counsel, and by other firms at the direction of the interim co-leads (Interim Co-Lead Counsel and these other firms are collectively referred to herein as "Designated Counsel").

3. Designated Counsel filed the initial complaints in this matter in September 2008 without the benefit of a governmental investigation or related indictments. Instead, counsel relied on their extensive research into the egg industry, including investigation of egg producer trade associations and animal welfare programs, the economics underpinning the alleged

conspiracy, and the complex legal issues pertaining to the conspiracy. The initial complaints contained probative information that would not have come to light absent counsel's investigation. *See* Plaintiffs' Memorandum of Law in Support of Their Motion for an Award of Attorneys' Fees and for Reimbursement of Expenses (Docket No. 493-1) ("Fee Mem.") at 4-5.

4. Designated Counsel then negotiated an important settlement with Sparboe Farms, Inc. and presented that settlement to the Court for approval. *See* Fee Mem. at 6-7. The settlement negotiations were intense, and the resulting agreement provided "valuable consideration" to the Class. *See* Memorandum in Support of Order Granting Final Approval of Sparboe Settlement (Docket No. 697) at 47-48.

5. As a result of the settlement with Sparboe, Plaintiffs obtained important documents and interviews with key Sparboe personnel. In December 2009, Plaintiffs filed a second consolidated amended complaint ("2CAC") which included information obtained from Sparboe. Nine of the Defendants who had moved to dismiss the prior complaint chose to answer the amended complaint. *See* Fee Mem. at 6-7.

6. The filing of the 2CAC precipitated a flood of activity in this litigation, including motions to dismiss, a substantial settlement between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. ("Moark"), and hard-fought litigation over privilege claims asserted by Defendant UEP. Designated Counsel have navigated these waters efficiently and effectively – simultaneously overcoming numerous motions to dismiss, obtaining Court approval for the Moark settlement and defeating the vast majority of privilege claims raised by UEP. Significantly, Designated Counsel obtained these results in litigation against first-rate defense counsel, and while incurring relatively modest litigation expenses. *See* Fee Mem. at 7-11.

7. With respect to Defendants' motions to dismiss, Designated Counsel ably contested the six motions to dismiss 2CAC filed on behalf of individual defendants, as well as joint motions by all defendants to limit the applicable statute of limitations and the scope of the alleged conspiracy. *See* Fee Mem. at 7-8. In opposition to these motions, counsel engaged in comprehensive briefing, prepared extensively for oral argument and, during two days of oral argument in October 2010, provided the Court with detailed responses concerning the pending motions to dismiss. As a result of Designated Counsel's diligent efforts, the Court denied four of the six individual motions to dismiss as well as the motion to exclude allegations concerning egg products from the litigation. *See* Docket Nos. 563, 582.

8. At the same time that Designated Counsel were opposing the motions to dismiss, counsel expended considerable effort to obtain the Moark settlement, from which this award of fees and expenses is sought. Counsel commenced negotiations with Moark in October 2009 and intensified those efforts in April 2010. Through these intensive negotiations, Designated Counsel obtained from Moark a $25 million settlement as well as agreement from Moark to cooperate in providing documents and witness interviews. Designated Counsel subsequently briefed the motions for preliminary and final settlement approval by the Court, and prepared for and argued the motion for final approval on February 28, 2011. *See* Fee Mem. at 8-9.

9. The Court granted Plaintiffs' motion for final approval of the Moark settlement on July 16, 2012, stating that "the $25 million settlement amount and Moark's cooperation confer real and substantial benefits upon the Class." Memorandum in Support of Order Granting Final Approval of Moark Settlement (Docket No. 699) at 52.

10. Designated Counsel have also engaged in hard-fought litigation over privilege claims asserted by Defendant UEP. Prior to February 28, 2011, Plaintiffs obtained leave of

court to conduct discovery necessary to challenge UEP's privilege claims. Plaintiffs conducted a Rule 30(b)(6) deposition of UEP, and propounded a series of interrogatories and document requests. In response to this discovery, UEP withdrew many privilege claims. With respect to the privilege claims that were not withdrawn, Designated Counsel conducted substantial legal research and held meet-and-confers with UEP counsel. *See* Fee Mem. at 10-11.

11. Based on this discovery conducted by Designated Counsel, Plaintiffs' ultimately prevailed on their motion to compel production of documents over which UEP asserted claims of privilege. *See* Order of Oct. 19, 2011 (Docket No. 585) at 2.

FEES AND EXPENSES

12. Since the inception of this case, Designated Counsel have been required to submit to Interim Co-Lead Counsel time and expense/cost reports for work performed by their respective firms on a monthly basis. All monthly reports are carefully reviewed to ensure that they reflect the work assigned and expenses approved.

13. Based on those monthly submissions, this Supplemental Submission identifies, on a monthly basis, the amount of lodestar generated by each Designated Counsel firm. In addition, this Submission contains a declaration from each Designated Counsel firm confirming that the lodestar information which they submitted is true and correct.

14. The total amount of lodestar generated by all Designated Counsel during the Covered Period is $11,001,332.40. This represents $7,987,523.45 for the four Interim Co-Lead Counsel and Quinn Emanuel Urquhart & Sullivan LLP ("Quinn Emanuel") from the inception of the case through February 28, 2011, and $3,013,808.95 for all other DPP counsel from January 2009 through February 28, 2011.

15. Plaintiffs` April 2011 Fee Motion provided detailed time and expense data for only the Interim Co-Lead Counsel firms and Quinn Emanuel. *See* Exhibit B to Asher Decl. in Support of Fee Motion (Docket No. 493-4). This Supplemental Submission includes detailed time and expense data for all Designated Counsel firms, as requested by the Court. Any changes to the time and expense submissions from the co-lead firms and Quinn Emanuel from the initial Fee Motion reflect corrections to errors made during the calculation and compilation of the former submission.

16. The monthly submissions transmitted by the Designated Counsel firms also contain data on the amount of in-house expenses which each firm incurred and paid directly in the course of performing work in this case. These expenses include, for example, travel expenses, in-house copying expenses, delivery and postage expenses, telephone expenses, and electronic legal research expenses. This information is submitted on a monthly basis to Interim Co-Lead Counsel. The declarations provided by a partner at each DPP firm, and included in this submission, verify the accuracy of these expenses. The total amount of in-house expenses incurred by all Designated Counsel is $323,785.06. This represents $252,009.77 for the Interim Co-Lead Counsel and Quinn Emanuel from the inception of this litigation through February 28, 2011, and $71,775.29 for non-lead counsel from January 2009 through February 28, 2011.

17. In addition to the foregoing expenses, each Designated Counsel firm has made, at various times, capital contributions to the DPP Litigation Fund. During the Covered Period, the four Interim Co-Lead Counsel firms and Quinn Emanuel made Litigation Fund contributions totaling $100,000. The remaining Designated Counsel firms made Litigation Fund contributions totaling $125,000.

18. The Litigation Fund pays expenses which are incurred collectively by Designated Counsel, rather than by any individual firm. Thus, for example, the Litigation Fund will pay the costs of hearing transcripts, deposition transcripts, expert fees, and electronic discovery costs. Attached hereto as Exhibit 1 is a document detailing the expenditures incurred by the Litigation Fund for the Covered Period. The total amount paid by the Litigation Fund for common expenses in this case during the Covered Period totals $163,935.24. The Litigation Fund has been supervised by my firm since the commencement of the litigation: I personally reviewed each invoice and signed each check, and can verify that each expense was properly incurred, accurately stated, and necessary to the effective litigation of this case.

19. Each Designated Counsel firm, in its monthly reporting, includes any capital contributions made to the Litigation Fund. In this motion DPPs are not seeking reimbursement for amounts contributed to the Litigation Fund. Rather, with respect to the Litigation Fund, DPPs are only seeking reimbursement for amounts actually paid by the Litigation Fund. Moreover, amounts paid to the Litigation Fund are not included in the in-house expenses for which reimbursement is sought. To the extent this Court elects to reimburse Designated Counsel for amounts paid by the Litigation Fund, such monies will either be returned to the Litigation Fund to pay future litigation expenses, or returned to the contributing firms on a pro rata basis reflecting the amounts of their contributions.

20. Plaintiffs therefore seek reimbursement for $487,720.30 in litigation expenses incurred during the Covered Period. This represents a $78,810.07 reduction from the $566,530.37 initially requested in the Fee Motion. *See* Fee Mem. at 28. This reduction reflects the clarification that, with respect to the Litigation Fund, Plaintiffs are seeking reimbursement for *Fund expenditures* only.

21. Interim Co-Lead Counsel have taken steps to make sure that the lodestar reports submitted by Designated Counsel on a monthly basis only set forth time for projects which were explicitly assigned and essential to the effective litigation of DPP claims. To that end, Interim Co-Lead Counsel appointed a team to verify the accuracy of the lodestar submissions. The team required each DPP firm to respond to a questionnaire regarding the work which it performed, and to submit backup documentation. Through this process, Interim Co-Lead Counsel were able to make sure that the monthly reports from Designated Counsel reflected only lodestar and expenses which Interim Co-Lead Counsel deemed essential to the effective prosecution of the litigation.

22. In response to Paragraphs 2(g) and 2(m) of the July 18 Order, attached hereto as Exhibit 2 is a chart identifying referral agreements involving Designated Counsel. This chart is being submitted for *in camera* review.

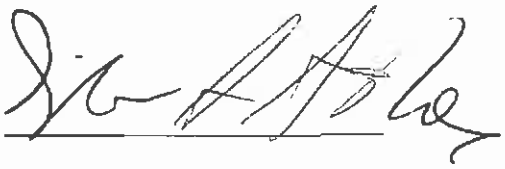
EFFECTIVE MANAGEMENT OF THE LITIGATION

23. Another tool which Interim Co-Lead Counsel used to effectively manage the litigation was an inviolate schedule of weekly conference calls which were almost never cancelled or postponed. Prior to each conference call a detailed agenda was made covering every aspect of the litigation. Moreover, a detailed set of minutes was prepared after each call. This procedure proved invaluable in making sure that every task was properly assigned, that persons assigned tasks were held accountable for their progress, and that decisions were promptly addressed and resolved. These procedures ensured that the case was litigated effectively and efficiently, and that all Interim Co-Lead Counsel were fully integrated into the management and supervision of the case.

24. Through their vigorous advocacy and careful administration, Interim Co-Lead Counsel have obtained an excellent initial settlement for the Class while avoiding unnecessary costs. Thus, Plaintiffs' requested fee award in the amount of 30% of the Moark settlement proceeds is reasonable.

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

Executed on the 7th day of September, 2012 at Philadelphia, Pennsylvania.



Steven A. Asher, Esq.

EXHIBIT 1

In Re Processed Egg Products Anti-Trust Litigation, MDL No. 2002, E.D. Pa 08-md-02002
Analysis of Litigation Fund
Period from Inception to February 28, 2011

Opening Balance		-
Assesments Received:		**225,000.00**
Expenditures:		
Experts:	153,073.11	
Transcripts	3,101.36	
Process & Filing Fees	3,218.00	
Administrative Fees	1,296.97	
Copies	203.93	
Special Master Fee	3,041.87	
Total Expenses	**163,935.24**	
Adjustment		**(0.25)**
Balance as of February 28, 2011		**61,064.51**
Balance per Declaration		61,064.51
		-

In Re Processed Egg Products Anti-Trust Litigation, MDL No. 2002, E.D. Pa 08-md-02002
Analysis of Litigation Fund
Period from Inception to February 28, 2011

	Assessments	Experts	Transcripts	Process & Filing	Admin Fees	Copies	Special Master Fee	Total Expense Paid	Balance
Jan-09	100,000.00	(7,296.25)			(74.24)			(7,370.49)	92,629.51
Feb-09	75,000.00			(240.00)	3.17			(236.83)	167,392.68
Mar-09	5,000.00			(398.00)	(16.61)			(414.61)	171,978.07
Apr-09	5,000.00	(37,801.65)			(5.02)			(37,806.67)	139,171.40
May-09	10,000.00	(27,855.63)		(1,600.00)	(5.69)	(203.93)		(29,665.25)	119,506.15
Jun-09	5,000.00						(3,041.87)	(3,041.87)	121,464.28
Jul-09			(308.00)	(300.00)				(608.00)	120,856.28
Aug-09								-	120,856.28
Sep-09		(13,246.99)	70.04					(13,176.95)	107,679.33
Oct-09				(150.00)				(150.00)	107,529.33
Nov-09								-	107,529.33
Dec-09		(1,800.00)			(227.17)			(2,027.17)	105,502.16
Jan-10		(42,659.79)			(36.62)			(42,696.41)	62,805.75
Feb-10				(160.00)	(49.19)			(209.19)	62,596.56
Mar-10		(7,775.00)	(110.00)	(370.00)	(70.84)			(8,325.84)	54,270.72
Apr-10					(73.99)			(73.99)	54,196.73
May-10	5,000.00	(2,670.00)	(231.00)		(150.50)			(3,051.50)	56,145.23
Jun-10	10,000.00	(4,725.00)	39.80					(4,685.20)	61,460.03
Jul-10	10,000.00	(97.50)			(236.04)			(333.54)	71,126.49
Aug-10		(6,932.50)	187.89					(6,744.61)	64,381.88
Sep-10								-	64,381.88
Oct-10		(1,007.50)						(1,007.50)	63,374.38
Nov-10		(357.50)	(1,194.20)		(253.45)			(1,805.15)	61,569.23
Dec-10		(3,611.35)			(12.41)			(3,623.76)	57,945.47
Jan-11			(385.00)		(89.38)			(474.38)	57,471.09
Feb-11		(292.45)	(1,261.60)		1.01			(1,553.04)	55,918.05
O/S Checks/Adjust		5,056.00	90.71					5,146.71	61,064.76
Adjusted									(0.25)
Totals	**225,000.00**	**(153,073.11)**	**(3,101.36)**	**(3,218.00)**	**(1,296.97)**	**(203.93)**	**(3,041.87)**	**(163,935.24)**	**61,064.51**

EXHIBIT 2

REFERRAL CHART – SUBPARAGRAPHS 2g AND 2m

Request For In Camera Submission Pending

INDIVIDUAL FIRM DECLARATIONS

Individual Firm Declarations And Their Supporting Exhibits Have Been Filed In Hard Copy Due To ECF Size Limitations. They Are Available In Hard Copy At The Clerk's Office.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September, 2012, a copy of the Supplement to Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees and for Reimbursement of Expenses, including the Declaration of Steven A. Asher, was filed with the Clerk of the Court, per the Local Rules, will be available for viewing and downloading via the CM/ECF system, and the CM/ECF system will send notification of such filing to all attorneys of record. On this date, the document was also served, via electronic mail, on (1) all counsel on the Panel Attorney Service List pursuant to Case Management Order No. 1; and (2) the below-listed Liaison Counsel for Defendants, Indirect Purchaser Plaintiffs, and Direct Action Plaintiffs.

Hard copies of the individual firm declarations in support of the Supplement were publicly filed in hard copy with the Court of Clerk due to ECF size limitations. Flash drives containing copies of the individual firm declarations will be delivered to the below-listed Liaison Counsel for Defendants, Indirect Purchaser Plaintiffs, and Direct Action Plaintiffs.

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Direct Action Plaintiffs' Liaison Counsel

Date: September 7, 2012

BY: /s/ Mindee J. Reuben
WEINSTEIN KITCHENOFF & ASHER LLC