UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

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

DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANTS HILLANDALE FARMS OF PA., INC., AND HILLANDALE-GETTYSBURG, L.P., FOR CERTIFICATION OF CLASS ACTION FOR PURPOSES OF THE SETTLEMENT, AND FOR LEAVE TO FILE A MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Class Plaintiffs ("Plaintiffs") respectfully move the Court to: (1) preliminarily approve a settlement between Plaintiffs and Defendants Hillandale Farms of Pa., Inc. ("Hillandale PA") and Hillandale-Gettysburg, L.P. ("Hillandale-Gettysburg") (collectively the "Hillandale/Gettysburg Defendants" or "Defendants") as set forth in the "Settlement Agreement Between Direct Purchaser Plaintiffs and Defendants Hillandale Farms of Pa., Inc., and Hillandale-Gettysburg, L.P." ("Settlement Agreement"), attached as Exhibit 1 to the Declaration of Ronald J. Aranoff; (2) certify a class for purposes of the Settlement Agreement; and (3) grant Plaintiffs leave to file motions for attorneys' fees and reimbursement of expenses.

This motion is based on the accompanying Memorandum of Law in Support and the Declaration of Ronald J. Aranoff submitted herewith, and is made on the following grounds:

1. The Settlement falls within the range of reasonableness, *In re Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.*, 2013 U.S. Dist. LEXIS 18332, at *7 (E.D. Pa. Feb. 11, 2013), and is "sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard," the applicable standards for preliminary approval of a class action settlement, *see In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *1 (E.D.

Pa. May 11, 2004) (citation omitted).

2. The Settlement Agreement will provide the proposed class with valuable cash consideration, and requires the Hillandale/Gettysburg Defendants to cooperate with Plaintiffs by authenticating documents. Interim Co-Lead Counsel believe that this will assist them in further analyzing and prosecuting the claims in this Action. *See In re Ikon Office Supplies Inc. Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000).

3. The Settlement is fair to the Class as a whole, treats Class Representatives the same as other Settlement Class members, and requires Interim Co-Lead Counsel to seek Court approval of an award for attorneys' fees and expenses from the Settlement Amount.

4. The Settlement is the result of extensive arm's-length negotiations by experienced antitrust and class action lawyers. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807 at *1 (citations omitted); *Thomas v. NCO Fin. Sys.*, No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002).

5. The Settlement Agreement was negotiated and executed after fact discovery was significantly advanced.

6. The expense and uncertainty of continued litigation against Hillandale Pa. and Hillandale-Gettysburg, and the likelihood of appeals, militates strongly in favor of approval. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003); *In re Remeron End-Payor Antitrust Litig.*, No. Civ. 02-2007, 2005 WL 2230314, at *17 (D.N.J. Sept. 13, 2005).

7. The Settlement Class, as defined in the Settlement Agreement, meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3).

Dated: November 21, 2014

Respectfully submitted,

/s/ *Steven A. Asher*

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DIRECT PURCHASER PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND DEFENDANTS HILLANDALE FARMS OF PA., INC., AND HILLANDALE-GETTYSBURG, L.P., FOR CERTIFICATION OF CLASS ACTION FOR PURPOSES OF THE SETTLEMENT, AND FOR LEAVE TO FILE A MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs ("Plaintiffs") respectfully submit this memorandum in support of their motion for (1) preliminary approval of a settlement between Plaintiffs and Defendants Hillandale Farms of Pa., Inc. ("Hillandale PA") and Hillandale-Gettysburg, L.P. ("Hillandale-Gettysburg") (collectively the "Hillandale/Gettysburg Defendants" or "Defendants") as set forth in the "Settlement Agreement Between Direct Purchaser Plaintiffs and Defendants Hillandale Farms of Pa., Inc., and Hillandale-Gettysburg, L.P." ("Agreement" or "Settlement Agreement"), attached as Exhibit 1 to the Declaration of Ronald J. Aranoff; (2) for certification of a class action for purposes of settlement; and (3) for leave to file motions for attorney's fees and reimbursement of expenses.

I. INTRODUCTION

After months of intense arm's-length negotiations, Plaintiffs and the Hillandale/Gettysburg Defendants entered into a Settlement Agreement to provide $3,000,000 into a fund to provide for the claims of members of the proposed Settlement Class. The Agreement also requires that the Hillandale/Gettysburg Defendants cooperate with Class Counsel by authenticating documents. Pursuant to the terms of the Settlement Agreement, Plaintiffs will release the Hillandale/Gettysburg Defendants, as well as Hillandale Farms East, Inc., and Hillandale Farms, Inc., from all pending claims.

Plaintiffs respectfully move the Court for an Order ("Preliminary Approval Order"), preliminarily approving the Settlement Agreement in substantially the same form as the proposed order submitted herewith, that provides, among other things:

- the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;

- the Settlement Class defined in the Settlement Agreement be certified, designating Class Representatives and Settlement Class Counsel as defined therein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is not approved by the Court or any appellate court; and

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

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

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

II. BACKGROUND

A. The Litigation

This case concerns an alleged conspiracy among the nation's largest egg producers. Plaintiffs allege that Defendants and other named and unnamed co-conspirators violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq*., by engaging in an unlawful conspiracy to reduce output and thereby artificially fix, raise, maintain and/or stabilize the prices of shell eggs and egg products in the United States. As a result of Defendants' alleged conduct, Plaintiffs and members of the Class paid prices for shell eggs and egg products that were higher than they otherwise would have been absent the conspiracy. The lawsuit seeks treble damages, injunctive relief,

attorneys' fees, and costs from Defendants. The Hillandale/Gettysburg Defendants deny all allegations of wrongdoing in this action.

B. Previous Settlement History

On June 8, 2009, Sparboe Farms, Inc. ("Sparboe") entered into a settlement agreement with Plaintiffs providing for cooperation in the continued litigation of the case, and on July 16, 2012, this Court granted final approval of the settlement. (ECF No. 698.) On May 21, 2010, Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. (collectively "Moark Defendants") entered into a settlement agreement with Plaintiffs providing for both continued cooperation and a cash settlement of $25,000,000.00. This Court granted final approval of the settlement on July 16, 2012. (ECF No. 700.) On August 2, 2013, Cal-Maine Foods, Inc. ("Cal-Maine") entered into a settlement agreement with Plaintiffs providing for continued cooperation and a cash settlement of $28,000,000.00. (ECF No. 848-2.) This Court granted final approval of that settlement on October 10, 2014. (ECF No. 1082.) On March 28, 2014, Plaintiffs entered into a settlement with Defendant National Food Corporation ("NFC") providing for continued cooperation and a cash settlement of $1,000,000.00. (ECF No. 952-2.) On March 31, Plaintiffs entered into a settlement with Midwest Poultry Services, LP ("MPS") providing for continued cooperation and a cash settlement of $2,500,000.00. (952-3.) On May 21, 2014, Plaintiffs entered into a settlement with United Egg Producers ("UEP") and United States Egg Marketers ("USEM") for cooperation and a cash settlement of $500,000. (ECF No. 997-2.) The Court granted preliminary approval of Plaintiffs' settlements with NFC, MPS, UEP/ USEM on July 30, 2014. (ECF 1027.) On August 1, 2014, Plaintiffs entered into a settlement agreement with NuCal Foods, Inc. ("NuCal") providing for continued cooperation and a cash settlement of $1,425,000. (ECF. No. 1041.) The Court granted preliminary approval of the NuCal Settlement Agreement on October 3, 2014. (ECF. No. 1073.)

C. The Settlement Negotiations

Interim Co-Lead Counsel for Plaintiffs ("Class Counsel") and counsel for the Hillandale/Gettysburg Defendants engaged in extensive arm's-length negotiations over the course of approximately four months to reach the current settlement. The scope and details of the negotiations are described in the Aranoff Declaration filed herewith. Class Counsel and Defendants' counsel, who are highly experienced and capable, vigorously advocated their respective clients' positions in the settlement negotiations.

The parties first discussed the possibility of settlement shortly after the litigation began, and again after the Court ruled on motions to dismiss. However, these early settlement discussions were not fruitful and the parties did not engage in additional settlement discussions for some time. Aranoff Decl. at ¶ 4. In September 2013, the parties sought to stay the litigation to pursue a joint mediation before the Honorable Harlan A. Martin (Ret.) of JAMS, a respected former jurist. *Id.* at ¶ 5. The Hillandale/Gettysburg Defendants participated in that mediation, which took place in October 2013. Although the mediation was unsuccessful, Class Counsel decided to approach the Hillandale/Gettysburg Defendants about resolving the case. *Id.*

Class Counsel and counsel for the Hillandale/Gettysburg Defendants began substantive settlement discussions during the summer of 2014. *Id.* at ¶ 6. The parties' discussions moved forward in earnest after Plaintiffs reached settlements with other defendants in this case. While the parties were initially far apart, they made slow and steady progress over time. After several rounds of telephone calls and emails, Plaintiffs and the Hillandale/Gettysburg Defendants agreed to a $3,000,000 settlement in early September. *Id.* The broad terms of the settlement were memorialized in a binding term sheet dated September 19, 2014. *Id.* On October 22, 2014, Class Counsel and counsel for the Hillandale/Gettysburg Defendants executed the formal Settlement Agreement. In conjunction with executing the Settlement Agreement, the Hillandale/Gettysburg

Defendants identified financial information provided during discovery sufficient to show the financial status of the company. *Id.*

After factual investigation and legal analysis, it is the opinion of Class Counsel that the Settlement Amount of $3,000,000, combined with Defendants' obligation to authenticate documents, is fair, reasonable, and adequate to the Class. Plaintiffs respectfully submit that the Settlement is in the best interest of the Class and should be preliminarily approved by the Court, and that a class should be certified for purposes of the Settlement.

III. PROVISIONS OF THE SETTLEMENT AGREEMENT

A. The Settlement Class

The Settlement Agreement defines the proposed Settlement Class as follows:

> All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.
>
> a.) Shell Egg SubClass
>
> All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.
>
> b.) Egg Products SubClass
>
> All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.
>
> Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

Settlement Agreement, ¶ 23 (Aranoff Decl., Ex. 1). The Cal-Maine, Moark, Sparboe, NFC, MPS, UEP/USEM, and NuCal settlement agreements all similarly define the Settlement Class.[1]

B. Cash Consideration to the Proposed Class & Rescission Provisions

The Settlement Agreement provides that, within 30 days of its execution, the Hillandale/Gettysburg Defendants will pay $3,000,000.00 in cash (the "Settlement Amount"). *See* Settlement Agreement ¶¶ 20, 40. Payment of the Settlement Amount will be equally split between Hillandale PA and Hillandale-Gettysburg. *Id.* at ¶ 20 n.1. This money shall be maintained in an escrow account controlled by the Defendants and Class Counsel pending approval of the settlement by the Court.

Plaintiffs and Defendants each have the right and option to rescind the Settlement Agreement for the reasons described in ¶ 35 of the Agreement, including in the event that the Court refuses to approve the Agreement or any part thereof, or if such approval is modified or set aside on appeal. Defendants also have the right and option to rescind the Agreement should class members whose combined annual purchases of Shell Eggs and/or Egg Products from Hillandale PA equal or exceed a certain percentage of Hillandale PA's total sales decide to exclude themselves from the Settlement Class. *Id.* at ¶ 38. The Opt-Out threshold is set forth in a

[1] All of the settlement agreements define the Settlement Classes as "all persons and entities that purchased eggs . . . including Shell Eggs and Egg Products . . . directly from any producer . . . ." Moark Settlement Agreement (ECF No. 349-1) ¶ 19. And all of the Settlement Agreements exclude from the class those who purchased exclusively "specialty shell eggs" or "hatching shell eggs." The Moark and Sparboe Agreements provide for those exclusions in the class definitions themselves, whereas the Settlement Agreement with Cal-Maine simply defines "shell eggs" and "egg products" as excluding specialty and hatching shell eggs in the definition of those terms in the Agreement, thus incorporating those exclusions into the class definition by reference. *Compare* Cal-Maine Settlement Agreement (ECF 848-2) ¶¶ 8, 18, 20 *with* Moark Settlement Agreement (ECF No. 349-1) ¶ 19, *and* Sparboe Settlement Agreement (ECF No. 172-2) ¶ 11.

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.* at ¶¶ 38–39.

Additionally, the Settlement Agreement provides that Class Counsel may, at a time approved by the Court, seek from the Settlement Amount an award of attorney's fees, reimbursement of expenses, and incentive awards for class representatives, and that the Defendants shall have no obligation to pay any fees or expenses of Class Counsel. *Id.* at ¶ 43.

C. The Cooperation Provision

In addition to the Settlement Amount, the Agreement also requires that the Hillandale/Gettysburg Defendants cooperate with Plaintiffs in their prosecution of this Action by authenticating documents. Under the Agreement, the Hillandale/Gettysburg Defendants must authenticate documents, including business records if applicable, that were produced by the Hillandale/Gettysburg Defendants and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators that were authored or created by the Hillandale/Gettysburg Defendants or sent to or received by the Hillandale/Gettysburg Defendants. *Id.* at ¶ 47.

D. Release Provisions

In exchange for the consideration described above, Plaintiffs have agreed to release the Hillandale/Gettysburg Defendants, as well as Hillandale Farms East, Inc., and Hillandale Farms, Inc., from any and all claims arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants; (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity; or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs or Egg Products in the United States or elsewhere. The full text of the proposed releases, including the limitations thereof, is set forth in the Settlement Agreements. *Id.* ¶¶ 30-34.

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

A. Standard For Granting Preliminary Approval Of The Settlements

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

When deciding preliminary approval, a court does not conduct a "definitive proceeding on fairness of the proposed settlement." *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D.C. Md. 1983); *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) (holding that the "preliminary determination establishes an initial presumption of fairness"); *In re Am. Inv. Life Ins. Co. Annuity Mktg. and Sales Practices Litig.*, 263 F.R.D. 226, 238 (E.D. Pa. 2009) (same). That definitive determination must await the final hearing, at which the fairness, reasonableness, and adequacy of the settlement are more fully assessed. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).[2] Indeed, as one court noted:

[2] The factors considered for final approval of a class settlement as "fair, reasonable and adequate" include: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best possible recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534-35 (3d Cir. 2004); *In re Prudential Ins. Co. of Am.*

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

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

Additionally, in reviewing a proposed settlement, courts may also consider the amount of relief provided, *see, e.g.*, *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 344 (E.D. Pa. 2007), and commitments of settling defendants to provide information or cooperation that assists the class in prosecuting the action against non-settling defendants, *see e.g.*, *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 643.

Sales Practices Litig., 962 F. Supp. 450, 562 (D.N.J. 1997); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 713 (E.D. Pa. 2001). At the preliminary approval stage, "the Court need not address these factors, as the standard for preliminary approval is far less demanding." *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 444 n.7 (E.D. Pa. 2008). Plaintiffs will thus fully address each of these factors in in their memorandum in support of their motion for final approval.

[3] The last factor, the percentage of objections, is premature at this stage. *In re Imprelis*, 2013 U.S. Dist. LEXIS 18332, at *10.

Finally, the Court should consider that "settlement of litigation is especially favored by courts in the class action setting." *In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 144 (D.N.J. 2013); *see also In re Gen. Motors Corp.*, 55 F.3d at 784 (holding that "[t]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation"); *Austin v. Pa. Dept of Corr.*, 876 F. Supp. 1437, 1455 (E.D. Pa. 1995) (explaining that "the extraordinary amount of judicial and private resources consumed by massive class action litigation elevates the general policy of encouraging settlements to 'an overriding public interest'").

As discussed below, the proposed Settlement Agreement with the Hillandale/Gettysburg Defendants is entitled to a presumption of fairness because it provides no preferential treatment of class representatives or segments of the class, does not provide for excessive compensation of attorneys, provides significant relief to the Settlement Class, and requires the Defendants to cooperate with Plaintiffs by authenticating documents, which will assist Plaintiffs in prosecuting the case against the Non-Settling Defendants.

B. The Settlement Amount, the Cooperation Provision and the Terms of the Agreement Support Preliminary Approval.

The Settlement Amount provided in the proposed Settlement Agreement is fair and reasonable and represent a favorable result for the class. As noted above, the Agreement requires that the Hillandale/Gettysburg Defendants pay $3,000,000. This amount was agreed upon after approximately four months of intense, arm's-length negotiations. Class Counsel believes it is in the best interest of the class to enter into the Agreement rather than continuing to pursue a judgment against the Hillandale/Gettysburg Defendants that may prove to be uncollectible. Moreover, the damages Plaintiffs suffered due to the Hillandale/Gettysburg Defendants alleged conduct remain in the case and are recoverable from Non-Settling

Defendants under joint and several liability. *See In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *2 (E.D. Pa. May 11, 2004) (preliminarily approving settlement agreement because, *inter alia*, "this settlement does not affect the joint and several liability of the remaining Defendants in this alleged conspiracy").

Also, as described above, the Settlement Agreement requires the Hillandale/Gettysburg Defendants to cooperate with Plaintiffs by authenticating documents. Under the Agreement, the Hillandale/Gettysburg Defendants must authenticate documents, including business records, that they produced in this Action, and to the extent possible, documents produced by Non-Settling Defendants or the alleged co-conspirators that were authored or created by, or sent to or received by, the Hillandale/Gettysburg Defendants. Class Counsel believes that Defendants' cooperation will assist Class Counsel in prosecuting their claims in this case. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 643 ("The provision of such [cooperation] is a substantial benefit to the classes and strongly militates toward approval of the Settlement Agreement."); *In re Ikon Office Supplies Inc. Sec. Litig.*, 194 F.R.D. 166, 177 (E.D. Pa. 2000) (noting that cooperation agreements are valuable when settling a complex case); *In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807, at *2 (acknowledging the assistance that the settling defendants will provide "in pursuing this case against the remaining Defendants").

Class Counsel have substantial experience litigating antitrust class actions and strongly believe that the settlement amount is appropriate cash consideration for the discharge of the claims against the Hillandale/Gettysburg Defendants, and is a highly favorable result of the Class. This determination is based in part on the risk and likely expense of continuing to litigate the claims against Defendants. Courts have accorded significant weight to the opinion of Class Counsel based on a thorough analysis of the facts. *See, e.g., In re Gen. Instruments Sec. Litig.,*

209 F. Supp. 2d 423, 431 (E.D. Pa. 2001); *Stewart v. Rubin*, 948 F. Supp. 1077, 1087 (D.D.C. 1996) ("A court should defer to the judgment of experienced counsel who have competently evaluated the strength of the proof."); *McGuiness v. Parnes*, No. 87-2728-LFO, 1989 WL 29814, at *1 (D.D.C. Mar. 22, 1989) ("While the evaluation of the fairness and adequacy of a settlement such as this is anything but a scientific process, there is nothing about this Settlement suggesting that the Court should second-guess the product of the negotiations between the skilled and conscientious lawyers who represented parties on both sides of this litigation."); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659, 667 (D. Minn. 1974) ("The recommendation of experienced antitrust counsel is entitled to great weight.").

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

C. The Negotiation Process Supports Preliminary Approval.

Settlements that result from arm's-length negotiations between experienced counsel are generally entitled to deference from the court. *In re Auto. Refinishing Paint Antitrust Litig.*, No. MDL 1426, 2003 WL 23316645, at *6 (E.D. Pa. Sept. 5, 2003); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 640 ("A presumption of correctness is said to attach to a class settlement

reached in arm's-length negotiations between experienced, capable counsel . . . ." (internal quotations omitted)); *Lake v. First Nationwide Bank*, 156 F.R.D. 615, 628 (E.D. Pa. 1994) (giving "due regard to the recommendations of the experienced counsel in this case, who have negotiated this settlement at arms-length and in good faith"); *Petruzzi's Inc. v. Darling-Delaware Co.*, 880 F. Supp. 292, 301 (M.D. Pa. 1995) ("[T]he opinions and recommendations of such experienced counsel are indeed entitled to considerable weight"); 2 NEWBERG ON CLASS ACTIONS, § 11.41 (3d ed. 1992) ("There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval."). This deference reflects the understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness considerations of Rule 23(e).

As discussed above and in the accompanying Aranoff Declaration, the settlement is the result of arm's length negotiations between Class Counsel and counsel for the Hillandale/Gettysburg Defendants, all of whom are experienced and capable in complex class action and antitrust matters.[4] Defendants' counsel and Class Counsel vigorously advocated their respective clients' positions in the settlement negotiations and were prepared to litigate the case fully if no settlement was reached. Nothing in the course of Plaintiffs' negotiations with the Hillandale/Gettysburg Defendants, or in the substance of the proposed Settlement Agreement, presents any reason to doubt the Agreement's fairness.

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

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

Fact discovery was well advanced when this Settlement Agreement was reached. When Class Counsel and counsel for the Hillandale/Gettysburg Defendants reached an agreement, Class Counsel had reviewed over 15,000 documents produced by Hillandale/Gettysburg. Aranoff Decl. at ¶ 8. Class Counsel had also deposed the Chairman of Hillandale-Gettysburg, the President of Hillandale Pa., and the General Manager of Hillandale-Gettysburg. *Id.* Additionally, at the time of the Settlement Agreement, Defendants collectively had produced over 1 million documents, much of which had already been reviewed by Class Counsel. Accordingly, the amount of discovery completed supports a finding that the Settlement is within the range of reasonableness. *In re Imprelis*, 2013 U.S. Dist. LEXIS 18332, at *9-10 (finding settlement within range of reasonableness where "[a] considerable amount of preliminary discovery was conducted, including the review of some 500,000 pages of documents . . . , the hiring and consultation of several experts, and a deposition of [Defendant's] product manager").

E. The Expense and Uncertainty of Continued Litigation Against the Hillandale/Gettysburg Defendants Supports Preliminary Approval.

Class counsel have considered the complexities of this litigation, the risks, expense and duration of continued litigation against Hillandale PA and Hillandale-Gettysburg and the likely appeal if Plaintiffs prevail at trial. After weighing these against the guaranteed recovery and cooperation provided to the Plaintiffs in the Settlement Agreement, Class Counsel strongly believes the Settlement is favorable to and in the best interests of the Plaintiffs and the Class.

The settlement is particularly reasonable given the inherent risks in moving forward with litigation towards trial. It has been often observed that "[a]n antitrust class action is arguably the most complex action to prosecute." *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 639 (citation omitted); *see also Weseley v. Spear*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989) (noting that

antitrust class actions are "notoriously complex, protracted, and bitterly fought"). Continuing this litigation against either party would entail a lengthy and expensive legal battle, which has already consumed almost six years. This case does not follow a Department of Justice investigation or any public indictment. Additionally, the Hillandale/Gettysburg Defendants have asserted various defenses, and a jury trial (assuming the case proceeded beyond pretrial motions) might well turn on questions of proof, making the outcome inherently uncertain for both parties. *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 639; *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475-76 (S.D.N.Y. 1998) ("Antitrust litigation in general, and class action litigation in particular, is unpredictable. . . . [T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal."). Moreover, even after trial is concluded, there could be one or more lengthy appeals. *In re Remeron End-Payor Antitrust Litig.*, No. Civ. 02-2007, 2005 WL 2230314, at *17 (D.N.J. Sept. 13, 2005). The degree of uncertainty supports preliminary approval of the proposed Settlement Agreement. *See In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

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

V. PRELIMINARY CERTIFICATION OF THE PROPOSED SETTLEMENT CLASSES IS WARRANTED

It is well-established that a class may be certified for purposes of settlement. *In re Pet Food Prods. Liability Litig.*, No. 07-2867, 2008 WL 4937632, at *3 (D.N.J. Nov. 18, 2008)

("Class actions certified for the purposes of settlement are well recognized under Rule 23."); *Ikon*, 194 F.R.D. at 188 (class certified for purposes of settlement of securities class action). In the case of settlements, "tentative or temporary settlement classes are favored when there is little or no likelihood of abuse, and the settlement is fair and reasonable and under the scrutiny of the trial judge." *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995) (internal quotation and citation omitted). The Settlement here is fair, reasonable, and non-abusive. Therefore the Settlement Class should be certified by the Court.

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

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

Certification is appropriate under Rule 23(a) if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). The Court held that the same settlement class satisfies Rule 23(a)'s prerequisites in its October 10, 2014 Order granting final approval to the Cal-Maine settlement agreement:

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

Order, October 10, 2014 (ECF No. 1082 at ¶ 4). The Court also found that Rule 23(a)'s requirements were satisfied for purposes of preliminary approval of the Settlement Class set forth in: (1) the NFC Settlement Agreement (ECF No. 1027 at ¶ 16), (2) the MPS Settlement Agreement (*id.*), (3) the UEP/USEM Settlement Agreement (*id.* at ¶ 26), and (4) the NuCal Settlement Agreement (ECF. No. 1073 at ¶ 9), all of which used the same Settlement Class provided in this Settlement Agreement.

1. The Settlement Class is sufficiently numerous.

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

Here, the proposed Settlement Class is comprised of direct purchasers of hundreds of millions of cases of shell eggs and of direct purchasers of egg products. Third Consolidated Amended Class Action Complaint ("3CAC"), ¶ 108 (ECF No. 779). In the Moark Settlement, notice of the Settlement Agreement was sent to more than 13,000 potential class members, and nearly 700 class members filed claims and received distributions from the Settlement Fund. *See* Mem. in Supp. of DPP's Motion to Pay Costs of Settlement Administration (ECF No. 823-2) at 2, 6. In the Cal-Maine Settlement, notice of the Settlement Agreement was sent to 16,796 potential class members, and 470 class members submitted claim forms. *See* Supplemental

Affidavit of Jennifer M. Keogh Regarding Notice Dissemination and Claims Administration, ECF No. 1036-4 at ¶¶ 8, 15.

Moreover, Class Representatives are located in California, Illinois, Missouri, New York, North Carolina, Pennsylvania and Wisconsin. 3CAC, ¶¶ 32-38. Putative class members are also geographically dispersed. Thus, joinder of all class members would be impracticable and the Settlement Class is sufficiently numerous to satisfy Rule 23(a)(1). *Stewart*, 275 F.3d at 227-28 (observing that generally the requirement is met if the number of plaintiffs exceeds 40); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 508-09 (S.D.N.Y. 1996) (holding that class members numbering a million made joinder impracticable); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 278 (S.D.N.Y. 1999) (numerosity requirement met where potential class exceeded 20,000).

2. There are common questions of law and fact.

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

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

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

Whether Defendants entered into an illegal agreement to reduce production and fix the prices of eggs is a factual question common to all class members because this question is an essential element of proving an antitrust violation. Common legal questions include whether, if such an agreement was reached, Defendants violated antitrust laws. "Indeed, consideration of the conspiracy issue would, of necessity focus on Defendants' conduct, not the individual conduct of the putative class members." *In re Flat Glass Antitrust Litig.*, 191 F.R.D. 472, 484 (W.D. Pa. 1999); *see also In re Warfarin*, 391 F.3d at 528 ("In other words, while liability depends on the conduct of DuPont, and whether it conducted a nationwide campaign of misrepresentation and deception, it does not depend on the conduct of individual class members."); *In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1039 (N.D. Miss. 1993) ("Evidence of a national conspiracy . . . would revolve around what the defendants did, and said, if anything, in pursuit of a price fixing scheme."); *Transamerican Refining Corp. v. Dravo Corp.*, 130 F.R.D. 70, 75 (S.D. Tex. 1990) ("[T]he conspiracy issue … is susceptible of generalized proof since it deals primarily with what the Defendants themselves did and said."). Because there are several common legal and factual questions related to potential liability, the commonality requirement of Rule 23(a)(2) is met.

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

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

> The typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align

> with those of absent class members so as to assure that the absentees' interests will be fairly represented. The typicality criterion is intended to preclude certification of those cases where the legal theories of the named plaintiffs potentially conflict with those of the absentees by requiring that the common claims are comparably central to the claims of the named plaintiffs as to the claims of the absentees."
>
> Typicality entails an inquiry whether "the named plaintiff's individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based." Commentators have noted that cases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.

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

Moreover, "factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." *Hoxworth v. Blinder, Robinson & Co., Inc.*, 980 F.2d 912, 923 (3d Cir. 1992) (internal citations omitted). "Even if there are 'pronounced factual differences among the plaintiffs, typicality is satisfied as long as there is a strong similarity of legal theories and the named plaintiff does not have any unique circumstances.'" *Microcrystalline*, 218 F.R.D. at 84; *see also Mercedez-Benz*, 213 F.R.D at 185 ("[W]hile the Court must ensure that the interests of the plaintiffs are congruent, the Court will not reject the plaintiffs' claim of typicality on speculation regarding conflicts that may arise in the future.").

Here, typicality is satisfied because the claims of the Class Representatives and absent class members rely on the same legal theories and arise from the same alleged conspiracy and illegal agreement by Defendants, namely, Defendants' agreement to reduce production and artificially fix and/or inflate the prices of eggs. *See* 3CAC, ¶ 536. Moreover, Plaintiffs allege that all putative class members were direct purchasers of eggs and/or egg products and suffered injury as a result of Defendants' alleged anticompetitive conduct. The Class is also divided into

subclasses to address any differences between shell egg purchases and purchases of processed egg products. Accordingly, the Rule 23(a)(3) typicality requirement is satisfied.

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

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

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

Id. at 449.

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

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

In addition to satisfying Rule 23(a), Plaintiffs must show that each putative class falls under at least one of the three subsections of Rule 23(b). Here, the Settlement Class qualifies

under Rule 23(b)(3), which authorizes class certification if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."[5] Fed. R. Civ. P. 23(b)(3).

The Court has already found that the same settlement class satisfies Rule 23(b)(3)'s prerequisites in its October 10, 2014 Order granting final approval of the Cal-Maine Settlement Agreement. Order, October 10, 2014 (ECF. No. 1082 at ¶ 4); *see also* Mem. in Supp. of Order (ECF No. 1081). The Court also found that Rule 23(b)(3)'s requirements were satisfied for purposes of preliminary approval of the Settlement Class set forth in: (1) the NFC Settlement Agreement (ECF No. 1027 at ¶ 16), (2) the MPS Settlement Agreement (*Id.*), (3) the UEP/USEM Settlement Agreement (*Id.* ¶ 26), and the NuCal Settlement Agreement (ECF No. 1073 at ¶ 9), all of which used the same Settlement Class provided in the Hillandale/Gettysburg Settlement Agreement.

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

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

1. Common legal and factual questions predominate.

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

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

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

In evaluating a challenge to the predominance of common issues for each settlement class, the Third Circuit first noted that "because the 'clear focus' of an antitrust class action is on

the allegedly deceptive conduct of defendant and not on the conduct of individual class members, common issues necessarily predominate." *Id.* at 267; *see also Sullivan*, 667 F.3d at 299 (finding that *Wal-Mart Stores Inv. v. Dukes*, 131 S. Ct. 2541 (2011), bolstered a finding that common issues predominated in an antitrust case where the answers to the questions of alleged anticompetitive conduct and the harm it caused are common as to all class members). The court then turned to the specific common issues identified by the district court with respect to the antitrust claims:

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

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

Finding these issues satisfied predominance, the court "examine[d] [each of] the elements of plaintiffs' claim through the prism of Rule 23." *Id.* The court analyzed whether common questions of law or fact existed with respect to the four elements of a Sherman Act Section One conspiracy claim, which require a plaintiff to show: "(1) concerted action by the defendants; (2) that produced anticompetitive effects within the relevant product and geographic markets; (3) that the concerted actions were illegal; and (4) that it was injured as a proximate result of the concerted action." *Id.*

The court found that "[b]ecause the first and third elements of a Sherman Act violation focus on the conduct of the defendants . . . common questions abound with respect to whether the defendants engaged in illegal, concerted action" and that "[t]he second element of a Sherman Act violation, which focuses on the effects of the defendants' challenged conduct, also involves common questions in the present case, including whether the . . . Defendants' actions reduced competition for insurance, whether the . . . Defendants' actions resulted in a consolidation of the

insurance industry, and whether the . . . Defendants' actions produced an increase in the cost of premiums for commercial insurance." *Id.* at 268.

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

After examining the first three elements of the Sherman Act conspiracy claim, the court in *Insurance Brokerage* turned to the final element: injury or antitrust impact. The court found that "the task for plaintiffs is to demonstrate that the element of antitrust impact is capable of proof at trial through evidence that is common to the class rather than individual to its members." *Id.* The plaintiffs in that case argued antitrust injury was a common question because the overcharge attributable to the conspiracy was "built into every commercial premium for commercial insurance products, and the conspiratorial conduct of all Defendants reduced or eliminated competition for insurance products, thereby raising the insurance premiums paid by Plaintiffs and all members of the class." *Id.* The court agreed, finding that "whether the named plaintiffs and absent class members were proximately injured by the conduct of the . . . Defendants is a question that is capable of proof on a class-wide basis." *Id.* After a brief

discussion of the flow of injury through the insurance brokerage market, the court concluded that it was "satisfied that the element of antitrust injury—that is, the fact of damages—is susceptible to common proof, even if the amount of damage that each plaintiff suffered could not be established by common proof." *Id.*

The *Insurance Brokerage* decision, which expressly accounted for the Third Circuit's earlier ruling in *Hydrogen Peroxide*, also accords with earlier cases holding that the fact of antitrust injury is susceptible to common proof, even where individual damages may differ. *See e.g.*, *K-Dur*, 2008 WL 2699390, at *20; *Flat Glass*, 191 F.R.D. at 486 ("[T]he proof plaintiffs must adduce to establish a conspiracy to fix prices, and that defendants' base price was higher than it would have been absent the conspiracy, would be common to all class members."); *In re Plywood Antitrust Litig.*, 76 F.R.D 570, 584 (E.D. La. 1976) ("[I]f the members of each of the classes prove they purchased softwood plywood during the relevant period and that defendants conspiratorially increased or stabilized plywood prices, then the trier of fact may conclude that the requisite fact of injury occurred."); *Hedges Enters., Inc. v. Cont'l Grp., Inc.*, 81 F.R.D. 461, 475 (E.D. Pa. 1979) (proof of a conspiracy to establish a "base" price would establish at least the fact of damage, even if the extent of the damages suffered by the plaintiffs would vary).

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

which will be capable of measurement on a class-wide basis since all class members purchased eggs or egg products.

Here, the alleged conspiracy is the overriding predominant question in this case. And, as alleged in the Complaint, the conspiracy permitted all Defendants to artificially maintain or inflate the price of eggs by eliminating the risk that customers would be able to avoid the non-competitive price, thus working an antitrust injury onto the entire class. *See* 3CAC, ¶¶ 496, 530-531. Accordingly, common or class-wide proof will also predominate with respect to the fact of injury or impact in this case.[6]

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

"The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternate available methods of adjudication." *In re The Prudential Ins. Co. of Am. Sales Practices Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998). In evaluating the superiority of a class action, the Court should inquire as to the class members' interest in individually controlling the prosecution of separate actions, the extent and nature of any litigation concerning the controversy already commenced by members of the class, and the desirability or undesirability of concentrating the litigation of the claims in the particular forum. Fed. R. Civ. P. 23(b)(3).

[6] Regarding the amount of damages, "[a]ntitrust cases nearly always require some speculation as to what would have happened under competitive conditions, to estimate the damage done by restraints on trade or other collusion, but this is not fatal to class certification." *Microcrystalline*, 218 F.R.D. at 92 (*citing In re Fine Paper Antitrust Litig.*, 82 F.R.D 143, 151-52 (E.D. Pa. 1979)) (noting that diversity of product, marketing practices, and pricing have not been fatal to class certification in numerous cases where conspiracy is "the overriding predominant question"). Accordingly, the need to determine the amount of damage sustained by each plaintiff is an insufficient basis to decline class certification. *In re Cmty. Bank of N. Va.*, 418 F.3d at 305-306 ("Although the calculation of individual damages is necessarily an individual inquiry, the courts have consistently held that the necessity of this inquiry does not preclude class action treatment where class issues predominate."); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 242 (D. Del 2003) ("[T]he need for individual damages calculations does not defeat predominance and class certification.").

Here, a class action is superior to other available methods for the fair and efficient adjudication of class claims, "because litigating all of these claims in one action is far more desirable than numerous separate actions litigating the same issues." *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d at 259. Absent class action certification, the Court may be faced with dozens of individual lawsuits, all of which would arise out of the same set of operative facts. By proceeding as a class action, resolution of common issues alleged in one action will be a more efficient use of judicial resources and bring about a single outcome that is binding on all class members. Also, as in most antitrust lawsuits, potential plaintiffs are likely to be geographically dispersed, as are the Class Representatives. As such, the realistic alternative to a class action is many scattered lawsuits with possibly contradictory results for some plaintiffs and Defendants. These very issues led the Supreme Court to acknowledge that the unique qualities of antitrust litigation often mean that a class action is superior to individual lawsuits. *Amchem*, 521 U.S. at 617.

Finally, this is an appropriate forum to litigate the case because two of the Class Representatives are located in the district, many of the Defendants resided or transacted business in the district during the Class Period, and a substantial portion of the affected interstate trade and commerce was carried out in the district. 3CAC, ¶ 26. This is also the forum selected by the Judicial Panel on Multidistrict Litigation.

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

Plaintiffs respectfully seek leave to file a motion for an award of attorneys' fees and reimbursement of expenses from the Settlement Amount.[7] As specified in the Proposed Order

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

filed herewith, Class Counsel's motion for attorneys' fees and for reimbursement of expenses shall be filed 45 days in advance of the Settlement objection and opt-out deadline. Plaintiffs have filed a proposed notice plan for this Settlement concurrent with this motion for preliminary approval. The proposed notice plan combines notice of the Hillandale/Gettysburg Settlement with notice of the NuCal settlement. The timing and form of the notice in Plaintiffs' proposed notice plan will provide potential class members with both sufficient notice of the motion for fees and expenses, and a reasonable opportunity to review it prior to determining whether to object to the motion or Agreement or to opt-out of the class.[8] Additionally, as set forth in the proposed Order, the Class Notice of the Settlement Agreement shall include the date on which the motion for fees and costs shall be filed, and inform the Class that the motion will be made available on the settlement website.

VII. CONCLUSION

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

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

Dated: November 21, 2014

Respectfully submitted,

/s/ *Steven A. Asher*

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

IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION	**MDL Docket No. 2002** **08-md-02002 (GP)**
THIS DOCUMENT APPLIES TO: DIRECT PURCHASER ACTIONS	

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

I, Ronald J. Aranoff, declare as follows:

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

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

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

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

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

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

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

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

8. Discovery was well advanced when the parties reached this Settlement Agreement. At the time the Settlement Agreement was signed, Plaintiffs had reviewed over 15,000 documents produced by the Hillandale/Gettysburg Defendants, and deposed Gary Bethel (Chairman of Hillandale-Gettysburg), Orland Bethel (President of Hillandale Pa.), and Sy Rizvi (General Manager of Hillandale-Gettysburg).

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

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

Dated: November 21, 2014

/s/ *Ronald J. Aranoff*
Ronald J. Aranoff

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION	:	**MDL No. 2002 08-md-02002**
THIS DOCUMENT APPLIES TO: All Direct Purchaser Actions	:	

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

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

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

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

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

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

WHEREAS, despite their belief that they are not liable for, and have good defenses to, the claims alleged in the Action, the Hillandale/Gettysburg Defendants desire to settle the Action so as to avoid the risk, expense, exposure, inconvenience, and distraction of continued litigation of the Action, or any action or proceeding relating to the matters being fully settled and finally put to rest in this Agreement;

WHEREAS, the Hillandale/Gettysburg Defendants have previously provided and identified financial information to Class Counsel and Class Counsel has evaluated the Hillandale/Gettysburg Defendants' finances and has reached appropriate settlement terms commensurate with those finances;

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

WHEREAS, Plaintiffs have concluded that settlement with the Hillandale/Gettysburg Defendants on the terms set forth below is the best that is

practically attainable, that it is in the best interests of the Class to enter into this Agreement, and that under the circumstances the Agreement is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Class;

NOW, THERFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to the Hillandale/Gettysburg Defendants only, without costs as to Plaintiffs, the Class, or the Hillandale/Gettysburg Defendants, and subject to the approval of the Court, on the following terms and conditions:

A. Definitions

The following terms, as used in this Agreement, have the following meanings:

1. "Class Counsel" shall refer to the law firms of Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065. "Plaintiffs' Counsel" shall refer to the law firms identified on pages 147-151 of the Third Consolidated Amended Class Action Complaint filed in the Action on January 4, 2013.

2. The "Hillandale/Gettysburg Defendants' Counsel" shall refer to the law firm of Buchanan Ingersoll & Rooney PC, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, PA 15219.

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

4. "Class Member" or "Class" shall mean each member of the Settlement Class, as defined in Paragraph 23 of this Agreement, who does not timely elect to be excluded from the Class, and includes, but is not limited to, Plaintiffs.

5. "Class Period" shall mean the period from and including January 1, 2000 up to and including the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for settlement purposes.

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

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

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

9. "Escrow Agent" means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Paragraph 40 of this Agreement.

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

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

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

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

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

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

16. "Plaintiffs" shall mean each of the following proposed named Class representatives: T.K. Ribbing's Family Restaurant, LLC; Eby-Brown Company LLC; Goldberg and Solovy Foods, Inc.; Karetas Foods, Inc.; Nussbaum-SF, Inc.; Somerset Industries, Inc.; Wixon, Inc.; John A. Lisciandro d/b/a/ Lisciandro's Restaurant, and SensoryEffects Flavor Co. d/b/a SensoryEffects Flavor Systems.

17. "Producer" shall mean any person or entity that owns, contracts for the use of, leases, or otherwise controls hens for the purpose of producing eggs for sale, and the parents, subsidiaries, and affiliated companies of such Producer.

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

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

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

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

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

22. "Shell Eggs" shall mean eggs produced from caged birds that are sold in the shell for consumption or for breaking and further processing, excluding "specialty" Shell Eggs (certified organic, nutritionally enhanced, cage free, free range, and vegetarian fed

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

types) and "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

B. Settlement Class Certification

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

> All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.
>
> a.) Shell Egg SubClass
>
> All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.
>
> b.) Egg Products SubClass
>
> All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.
>
> Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of

Defendants, Other Settling Defendants, and Producers, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

C. Approval of this Agreement and Dismissal of Claims

24. The Parties shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking Court approval of this Agreement and securing both the Court's certification of the Class and the Court's approval of procedures, including the giving of Class notice under Federal Rules of Civil Procedure 23(c) and (e), to secure the prompt, complete, and final dismissal with prejudice of the Action as to the Hillandale/Gettysburg Defendants.

25. Within five (5) business days after the execution of this Agreement by the Hillandale/Gettysburg Defendants, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against the Hillandale/Gettysburg Defendants in the Action pending approval of this Agreement. Within thirty-one (31) business days after execution of the Agreement by the Hillandale/Gettysburg Defendants, Plaintiffs shall submit to the Court a motion (the "Motion") for an Order granting preliminary approval of the Agreement, appointing Class Counsel as lead counsel for purposes of this Settlement Agreement, and certifying a Class for settlement purposes ("Preliminary Approval"). Plaintiffs shall submit the Motion requesting entry of a Preliminary Approval Order, substantially in the form of Exhibit A, attached hereto, which shall provide that, *inter alia*:

a. the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;

b. the Settlement Class defined herein be certified, designating Class Representatives and Settlement Class Counsel as defined herein, on the

condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is not approved by the Court or any appellate court;

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

After Preliminary Approval, and subject to approval by the Court of the form of and means for dissemination of notice, individual notice of the Agreement ("Class Notice") shall be mailed to persons and entities who are located in the United States and who purchased Shell Eggs or Egg Products directly from the Hillandale/Gettysburg Defendants, any Non-Settling Defendant(s) in the Action, or Other Settling Defendants during the Class Period that: are identified by the Hillandale/Gettysburg Defendants; were previously identified by the Hillandale/Gettysburg Defendants and Other Settling Defendants; and are identified by Plaintiffs and Plaintiffs' Counsel or Non-Settling Defendants in the Action. In addition, after Preliminary Approval, and subject to Court approval of the form of and means for dissemination of notice, Class Notice shall also be published once in the *Wall Street Journal* and in such other trade journals targeted towards direct purchasers of Shell Eggs and Egg Products, if any, proposed by Class Counsel. Within twenty (20) calendar days after the Execution Date, the Hillandale/Gettysburg Defendants shall supply to Class Counsel at the Hillandale/Gettysburg Defendants' expense and in such form as kept in the regular course of business (electronic format if available) such names and addresses of potential Class Members as they have. Plaintiffs shall use reasonable best efforts to, subject to approval by the Court, combine dissemination of notice of the certification of the Class for settlement purposes and of the Agreement with the dissemination of notice of other

settlement agreements that may be reached with other Defendants in the Action near the time of the Execution Date of the Agreement.

26. Within twenty (20) days after the end of the opt-out period established by the Court and set forth in the notice, Plaintiffs shall provide the Hillandale/Gettysburg Defendants, through the Hillandale/Gettysburg Defendants' Counsel, a written list of all potential Class Members who have exercised their right to request exclusion from the Class.

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

a. approve finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

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

c. reconfirm the appointment of Class Representatives and Settlement Class Counsel as defined herein;

d. direct that, as to the Hillandale/Gettysburg Defendants, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;

e. reserve to the United States District Court for the Eastern District of Pennsylvania exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Settlement;

f. determine under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay, and directing that the final judgment of dismissal as to

the Hillandale/Gettysburg Defendants shall be entered; and

g. require Class Counsel to file with the Clerk of the Court a record with the names and addresses of Class Members who timely excluded themselves from the Class, and provide a copy of the record to counsel for the Hillandale/Gettysburg Defendants.

28. This Agreement shall become final only when (a) the Court has entered an order granting Final Approval to this Agreement; (b) the Court has entered final judgment dismissing the Action against the Hillandale/Gettysburg Defendants on the merits with prejudice as to all Class Members and without costs; and (c) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in clause (b) above has expired or, if appealed, approval of this Agreement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining if the conditions for Final Approval have been satisfied. On the Execution Date, Plaintiffs and the Hillandale/Gettysburg Defendants shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 35 through 39 of this Agreement.

29. Should the Court require Hillandale/Gettysburg Defendants or Plaintiffs to submit any of the Hillandale/Gettysburg Defendants' confidential information or documentation to obtain preliminary or final approval, such submission shall be, to the full extent permitted by law or the Court, for review by the court *in camera* only.

D. Release and Discharge

30. In addition to the effect of any final judgment entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants, including any entities or individuals that may later be added as a defendant to the Action, (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs or Egg Products in the United States or elsewhere, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, whether or not concealed or hidden, in the Complaints filed in the Action (the "Complaints"), which in whole or in part arise from or are related to the facts and/or actions described in the Complaints, including under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq., from the beginning of time to the date on which the Court enters an order preliminarily approving the Settlement and certifying a Class for settlement purposes (the "Released Claims").

Releasors shall not, after the date of this Agreement, seek to recover against any of the Releasees for any of the Released Claims. Notwithstanding anything in this Paragraph, Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge, claims based solely on purchases of Shell Eggs and Egg Products outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases.

31. This Release is made with full recognition of the possibility of subsequent discovery or existence of different or additional facts. Each Releasor waives California Civil Code Section 1542 and similar or comparable present or future law or principle of law of any jurisdiction. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"): "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of this Agreement, but each Releasor hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, claim whether or not concealed or hidden, with full recognition of the possibility of the subsequent discovery or existence of such

different or additional facts, as well as any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, again with full recognition of the possibility of the subsequent discovery or existence of such other or different facts.

32. In addition to the provisions of Paragraphs 30 and 31, each Releasor hereby expressly and irrevocably waives and releases, upon this Agreement becoming finally approved by the Court, any and all defenses, rights, and benefits that each Releasor may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in Paragraphs 30 and 31. Each Releasor also expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

33. The release and discharge set forth in Paragraphs 30 through 32 herein do not include claims relating to payment disputes, physical harm, defective product, or bodily injury (the "Excepted Claims") and do not include any Non-Settling Defendant or Other Settling Defendant.

34. Each Plaintiff, and each Class Member who submits a claim to participate in the distribution of the Settlement Amount, shall represent and warrant that their portion of the Released Claims is their property and they have not assigned or transferred to any person or entity any right to recovery for any claim or potential claim that would otherwise be released under this Agreement. Each Plaintiff, and each Class Member who

submits a claim to participate in the distribution of the Settlement Amount, shall further represent and warrant that each of them has a valid and existing right to release such claims and is releasing such claims pursuant to their participation in the settlement.

E. Rescission

35. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 28 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, then the Hillandale/Gettysburg Defendants and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) business days of the action giving rise to such option. If this Agreement is rescinded, within ten (10) business days of (i) the written notice of rescission to Class Counsel and the Escrow Agent and (ii) the Hillandale/Gettysburg Defendants' written instructions to the Escrow Agent, all amounts in the escrow account created pursuant to Paragraph 40 hereof, plus any interest on the Settlement Amount only, shall be wire transferred to the Hillandale/Gettysburg Defendants, pursuant to their instructions; provided, however, that simultaneous with their written instructions to the Escrow Agent, the Hillandale/Gettysburg Defendants shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five (5) business days of receipt of such notice, notify the Escrow Agent of any objections to the Hillandale/Gettysburg Defendants' instructions and funds shall not be wired until expiration of that objection deadline. In the event that, pursuant to paragraphs 25, 41, 44-46, or 49, funds have been paid out of the Escrow Account prior to the Agreement's rescission, Class Counsel shall

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

36. If Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 28 of this Agreement, Class Counsel and the Hillandale/Gettysburg Defendants agree that this Agreement, including its exhibits, and any and all negotiations, documents, information, and discussions associated with it shall be without prejudice to the rights of the Hillandale/Gettysburg Defendants or Plaintiffs, shall not be deemed or construed to be an admission or denial, or evidence or lack of evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity of any of the claims or allegations made in this Action in any pleading, and shall not be used directly or indirectly, in any way, whether in this Action or in any other proceeding, unless such documents and/or information is otherwise obtainable by separate and independent discovery permissible under the Federal Rules of Civil Procedure.

37. Class Counsel further agree that in the event of the Agreement's rescission the originals and all copies of any notes, memos or records related to the cooperation obligations pursuant to paragraph 47 shall be returned to the Hillandale/Gettysburg Defendants at the Hillandale/Gettysburg Defendants' expense or destroyed by Class Counsel at their own expense; provided, however, that such attorney notes, memoranda

or records may be destroyed rather than produced if an affidavit of such destruction is promptly provided by Class Counsel to the Hillandale/Gettysburg Defendants' Counsel.

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

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

39. The parties intend that the Supplemental Agreement shall be specifically disclosed to the Court and offered for *in camera* inspection by the Court at or prior to entry of the Preliminary Approval Order, but, subject to the Court's approval, it shall not be filed with the Court before the expiration of the Opt-Out Deadline unless ordered otherwise by the Court. The parties shall seek to keep the Opt-Out Threshold confidential prior to the Opt-Out Deadline. In the event that the Court directs that the Supplemental Agreement be filed prior to the Opt-Out Deadline, no party shall have any right to any relief by reason of such disclosure.

F. Payment

40. The Hillandale/Gettysburg Defendants shall pay or cause to be paid the Settlement Amount in Settlement of the Action. The Settlement Amount shall be wire transferred by the Hillandale/Gettysburg Defendants or their designee within thirty (30) days of the Execution Date into the Settlement Fund, which shall be established as an Escrow Account at a bank selected by Class Counsel and administered in accordance with the Escrow Agreement entered into by the Parties. Other than their payment pursuant to this paragraph, the Hillandale/Gettysburg Defendants shall have no obligations to either the Class or Class Counsel, except as otherwise provided herein.

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

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

43. Class Counsel may, at a time approved by the Court, seek an award of attorneys' fees and reasonable litigation expenses and incentive awards for class representatives approved by the Court, to be paid out of the Settlement Amount after the Final Approval of the Agreement. The Hillandale/Gettysburg Defendants agree not to object to Class Counsel's petition to the Court for payment of attorneys' fees, costs, expenses, and incentive awards for class representatives from the Settlement Amount as long as the amount for attorneys' fees does not exceed 33 1/3% of the Settlement Amount not including for reasonable litigation and administrative expenses and incentive awards. Except to the extent that the Court may award attorneys' fees and litigation expenses to

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

44. Upon entry of an order by the Court approving the request for an award of attorneys' fees and expenses and incentive awards for class representatives ("Attorneys' Fees Order") made pursuant to Paragraph 43 above, attorneys' fees may be distributed from the Settlement Fund pursuant to the terms of the fee order, provided however that any Class Counsel seeking to draw down their share of the attorneys' fees prior to Final Approval and the Attorneys' Fees Order becoming final shall secure the repayment of the amount drawn down by a letter of credit or letters of credit on terms, amounts, and by banks acceptable to the Hillandale/Gettysburg Defendants, which acceptance shall not be unreasonably withheld. The Attorneys' Fees Order becomes final when the time for appeal or to seek permission to appeal from the Attorneys' Fees Order has expired or, if appealed, has been affirmed by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

45. In order to receive distribution of funds pursuant to Paragraph 43 prior to Final Approval and the Attorneys' Fees Order becoming final above, each Class Counsel shall be required to provide the Claims Administrator the approved letter(s) of credit in the amount of Class Counsel's draw-down, and shall be required to reimburse the Settlement Fund within ten (10) business days all or the pertinent portion of the draw-down with interest on the Settlement Amount only, calculated as the rate of interest published in the *Wall Street Journal* for 3-month U.S. Treasury Bills as of the close on the date that the draw-down was distributed, if Final Approval is not granted or if the award of attorneys' fees is reduced or overturned on appeal. The Claims Administrator

may present the letter(s) of credit in the event the Class Counsel fails to honor the obligation to repay the amount withdrawn.

46. Disbursements for any payments and expenses incurred in connection with taxation matters relating to this Settlement Agreement shall be made from the Settlement Amount pursuant to section H of this Agreement upon written notice to the Escrow Agent by Class Counsel of such payments and expenses.

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

a. **Authentication of Documents**: Prior to trial in this Action, the Hillandale/Gettysburg Defendants shall, at the request of Class Counsel and through reasonable means (including, but not limited to, affidavits and declarations by persons qualified to testify as to authenticity) authenticate documents, including business records if applicable, produced by the Hillandale/Gettysburg Defendants and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by the Hillandale/Gettysburg Defendants or sent to or received by the Hillandale/Gettysburg Defendants. Class Counsel shall use reasonable efforts to minimize the burden to the Hillandale/Gettysburg Defendants of any such requests for authentication.

b. **Privileged or Protected Matters:** Neither the entry into this agreement nor any performance of it shall constitute a waiver of the Hillandale/Gettysburg Defendants' attorney-client privilege or work-product protection. The Hillandale/Gettysburg Defendants' obligation to cooperate will be subject to its attorney-client privilege and work-product protection; provided, however, that the Hillandale/Gettysburg Defendants shall not produce any documents or disclose information that any Non-Settling Defendant or Other Settling Defendant asserts is privileged or protected until such time as the privileges and/or protection have been

waived or determined to have been waived or otherwise determined to be inapplicable whether by agreement between Plaintiffs and such other party or by order of the Court.

c. **Confidentiality:** All information provided by the Hillandale/Gettysburg Defendants to Class Counsel pursuant to the Hillandale/Gettysburg Defendants' cooperation obligations shall be subject to the protective order entered in the Action.

d. **Further Discovery.** The Hillandale/Gettysburg Defendants will not be required to participate in further discovery in the Action except as stated above.

G. Notice of Settlement to Class Members

48. Class Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement ("Notice") and the date of the hearing scheduled by the Court to consider the fairness, adequacy, and reasonableness of this Agreement is provided in accordance with the Federal Rules of Civil Procedure and any Court orders. Class Counsel will undertake all reasonable efforts to obtain from Non-Settling Defendants the names and addresses of those persons that purchased Shell Eggs or Egg Products directly from any Non-Settling Defendant during the Class Period. Class Notice will be issued after Preliminary Approval by the Court and subject to any Court orders regarding the means of dissemination of notice.

49. Subject to Court approval, disbursements for any payments and expenses incurred in connection with the costs of Notice and administration of the Agreement by the Claims Administrator shall be made from the Settlement Amount upon written notice to the Escrow Agent by Class Counsel of such payments and expenses. Plaintiffs shall use best efforts to combine Notice of the Agreement with notice of other settlement agreements as provided for under paragraph 25.

H. Taxes

50. Class Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Amount. Further, Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Escrow Funds ("Tax Expenses"). Class Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including reasonable professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable Escrow Fund by notifying the Escrow Agent in writing and as provided in Paragraph 46 herein. The Hillandale/Gettysburg Defendants shall have no responsibility to make any tax filings relating to this Agreement.

51. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrator" of the Settlement Amount shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Settlement Amount (including, without limitation, all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B 2(1)).

52. The Parties to this Agreement and their Counsel shall treat, and shall cause the Claims Administrator to treat, the Settlement Amount as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B 1. In addition, the Claims Administrator and, as required, the parties, shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the

"relation-back election" (as defined in Treas. Reg. § 1.468B 1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Amount being a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B 1.

I. Miscellaneous

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

54. Subject to Court approval, the United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and the Hillandale/Gettysburg Defendants. This Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Pennsylvania without regard to its choice of law or conflict of laws principles. The Hillandale/Gettysburg Defendants submit to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. The Hillandale/Gettysburg Defendants otherwise retain all defenses to the Court's exercise of personal jurisdiction over the Hillandale/Gettysburg Defendants.

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

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

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

58. The headings in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

59. In the event this Agreement is not approved, or in the event that the order and final judgment approving the settlement is entered but is substantially reversed, modified, or vacated, or in the event that this Agreement is rescinded, the pre-settlement status of the litigation (including, without limitation, any applicable tolling of all statutes of limitations) shall be restored, and the Agreement shall have no effect on the rights of the Hillandale/Gettysburg Defendants or Plaintiffs to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to Class certification, raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by the Hillandale/Gettysburg Defendants.

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

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

61. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasors, the Hillandale/Gettysburg Defendants, and Releasees any right or remedy under or by reason of this Agreement.

62. Any putative Class Member that does not opt out of the Class created pursuant to the Agreement may remain in the Class without prejudice to the right of such putative Class Member to opt out of any other past, present, or future settlement class or certified litigation class in the Action.

63. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

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

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

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

Dated: October 22, 2014

Steven A. Asher
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(Interim Co-Lead Counsel for the Class)

Wendelynne J. Newton
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Pittsburgh, PA 15219-1410
wendelynne.newton@bipc.com

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

Exhibit A

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

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

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH DEFENDANTS HILLANDALE FARMS, PA., INC. AND HILLANDALE-GETTYSBURG, L.P., CERTIFYING THE CLASS FOR PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE MOTION FOR ATTORNEY'S FEES, REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

It is hereby ORDERED AND DECREED as follows:

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

2. The Court finds that the proposed settlement with the Hillandale/Gettysburg Defendants, as set forth in the settlement Agreement, subject to final determination following an approved form of and plan for notice and a Fairness Hearing,[1] has been negotiated at arm's length by qualified counsel, falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to the following settlement class (the "Settlement Class"), for settlement purposes only:

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

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

a.) Shell Egg SubClass

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

b.) Egg Products SubClass

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

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

3. For purposes of settlement and on the basis of the entire record before the Court, the Court finds that the Settlement Class fully complies with the requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the Settlement Classes; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the Settlement Classes; and (4) the representative parties will fairly and adequately protect the interests of the class. Additionally, for purposes of settlement, the Court

finds that Federal Rule of Civil Procedure 23(b)(3) is also met and that there are questions of law or fact common to class members which predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. In accordance with the holding in *In re Community Bank of Northern Virginia*, 418 F.3d 277, 306 (3d Cir. 2005), this Court makes no determination concerning the manageability of this action as a class action if it were to go to trial.

4. Plaintiffs T.K. Ribbing's Family Restaurant, LLC; Eby-Brown Company LLC; Goldberg and Solovy Foods, Inc.; Karetas Foods, Inc.; Nussbaum-SF, Inc.; Somerset Industries, Inc.; Wixon, Inc.; John A. Lisciandro d/b/a/ Lisciandro's Restaurant, and SensoryEffects Flavor Co. d/b/a Sensory Effects Flavor Systems (collectively, "Plaintiffs"), will serve as Class Representatives on behalf of the Settlement Class.

5. The Court confirms the appointment of Class Counsel for purposes of the Settlement Class as the law firms Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065.

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

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

BY THE COURT:

_____
Gene E.K. Pratter
United States District Judge

Date:_____

Exhibit B

Citibank Preferred Custody Services

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

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

("Settling Defendants")

and

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

("Interim Co-Lead Counsel")

(Account Number)

Citibank Escrow Agent Custody Account

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

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

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

a) The Escrow Agent shall neither be responsible for or under, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document executed between/among the parties hereto, except as may be specifically provided in Schedule A annexed hereto. This Escrow Agreement sets forth all of the obligations of the Escrow Agent, and no additional obligations shall be implied from the terms of this Escrow Agreement or any other agreement, instrument or document.

b) The Escrow Agent, acting in good faith, may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it and signed by an authorized signer for each of the four Interim Co-Lead Counsel firms and counsel for the Settling Defendants, collectively. The Escrow Agent may, in good faith, act in reliance upon any signature believed by it to be genuine, and to be the signature of a duly authorized person.

c) After adjudication by the court presiding over the Egg Products Antitrust Litigation, Interim Co-Lead Counsel, acting solely on behalf of Class Plaintiffs, agree to reimburse the Escrow Agent on demand for, and to indemnify and hold the Escrow Agent harmless against and with respect to, any and all loss, liability, damage or expense (including, but without limitation, attorneys' fees, costs and disbursements) that the Escrow Agent may suffer or incur in connection with this Escrow Agreement and its performance hereunder or in connection herewith, except to the extent such loss, liability, damage or expense arises from its willful misconduct or gross negligence.

d) The Escrow Agent shall be entitled to compensation for services rendered pursuant to this Escrow Agreement as provided in Schedule B attached hereto. In addition, if the Escrow Agent is required to engage the services of legal counsel due to uncertainty about the Escrow Agent's obligations under this Escrow Agreement and, if the court presiding over the Egg Products Antitrust Litigation determines that such consultation was reasonable and warranted due to the uncertainty, the Escrow Agent shall be entitled to reimbursement from Interim Co-Lead Counsel for the payment of the reasonable fees and expenses of the Escrow Agent's counsel.

e) The Escrow Agent shall open and maintain a separate and distinct escrow account set apart from the Escrow Agent's assets as provided in Section I of Schedule A. The Escrow Agent shall be under no duty to give the property held in escrow by it hereunder any greater degree of care than it gives its own similar property.

f) The Escrow Agent shall invest the property held in escrow in such a manner as directed in Section III of Schedule A annexed hereto, which may include deposits in Citibank and money market mutual funds advised, serviced or made available by Citibank or its affiliates even though Citibank or its affiliates may receive a benefit or profit therefrom. The Escrow Agent and any of its affiliates are authorized to act as counterparty, principal, agent, broker or dealer while purchasing or selling investments as specified herein. The Escrow Agent and its affiliates are authorized to receive, directly or indirectly, fees or other profits or benefits for each service, task or function performed, in addition to any fees as specified in Schedule B hereof, without any requirement for special accounting related thereto.

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

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

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

h) In the event of any disagreement between/among any of the parties to this Escrow Agreement, or between/among them or either or any of them and any other person, resulting in adverse claims or demands being made in connection with the subject matter of the Escrow, or in the event that the Escrow Agent, in good faith, is in doubt as to what action it should take hereunder, the Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all parties shall have been fully and finally adjudicated by the court presiding over the Egg Products Antitrust Litigation, or (ii) all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. The Escrow Agent shall have the option, after 30 calendar days' notice to the other parties of its intention to do so, to file an action in interpleader requiring the parties to answer and litigate any claims and rights among themselves. The rights of the Escrow Agent under this paragraph are cumulative of all other rights which it may have by law or otherwise.

i) The Escrow Agent is authorized, for any securities at any time held hereunder, to register such securities in the name of its nominee(s) or the nominees of any securities depository, and such nominee(s) may sign the name of any of the parties hereto to whom or to which such securities belong and guarantee such signature in order to transfer, or in order to certify ownership of such securities to tax or other governmental authorities.

j) Notice to the parties shall be given as provided in Section VI of Schedule A annexed hereto.

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

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

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

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

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

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

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

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

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

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

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

[The remainder of this page is blank.]

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

CITIBANK, N.A. as Escrow Agent

By: _____ (Signature)
Title:
Date: 10/23/14

JOHN P. HOWARD, DIRECTOR
Citi Private Bank
153 East 53rd Street, 21st FL
New York, NY 10022
212-783-7109

Buchanan Ingersoll & Rooney PC as Counsel for Settling Defendants

By: _____ (Signature)
Title: Shareholder, Buchanan Ingersoll
Date: 10/23/14

Bernstein Liebhard LLP as Interim Co-Lead Counsel

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

Hausfeld LLP as Interim Co-Lead Counsel

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

Susman Godfrey LLP as Interim Co-Lead Counsel

By: _____

Title: Partner, Susman Godfrey LLP

Date: October 22, 2014

Weinstein Kitchenoff & Asher LLC as Interim Co-Lead Counsel

By: _____

Title: Partner, Weinstein Kitchenoff & Asher LLC

Date: October 22, 2014

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

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

_____

_____ _____

(Signature) *(Date)*

Reference Account No.:_____

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

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

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH DEFENDANTS HILLANDALE FARMS OF PA., INC., AND HILLANDALE-GETTYSBURG, L.P., CERTIFYING THE CLASS FOR PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

It is hereby ORDERED AND DECREED as follows:

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

2. The Court finds that the proposed settlement with the Hillandale/Gettysburg Defendants, as set forth in the Settlement Agreement, subject to final determination following an approved form of and plan for notice and a Fairness Hearing,[1] has been negotiated at arm's length by qualified counsel, falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to the following settlement class (the "Settlement Class"), for settlement purposes only:

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

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

approving the Agreement and certifying a Class for Settlement purposes.

a.) Shell Egg SubClass

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

b.) Egg Products SubClass

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

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family.

3. For purposes of settlement and on the basis of the entire record before the Court, the Court finds that the Settlement Class fully complies with the requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the Settlement Classes; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the Settlement Classes; and (4) the representative parties will fairly and adequately protect the interests of the class. Additionally, for purposes of settlement, the Court finds that Federal Rule of Civil Procedure 23(b)(3) is also met and that there are questions of law or fact common to class members which predominate over any questions affecting only

individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. In accordance with the holding in *In re Community Bank of Northern Virginia*, 418 F.3d 277, 306 (3d Cir. 2005), this Court makes no determination concerning the manageability of this action as a class action if it were to go to trial.

4. Plaintiffs T.K. Ribbing's Family Restaurant, LLC; Eby-Brown Company LLC; Goldberg and Solovy Foods, Inc.; Karetas Foods, Inc.; Nussbaum-SF, Inc.; Somerset Industries, Inc.; Wixon, Inc.; John A. Lisciandro d/b/a/ Lisciandro's Restaurant, and SensoryEffects Flavor Co. d/b/a Sensory Effects Flavor Systems (collectively, "Plaintiffs"), will serve as Class Representatives on behalf of the Settlement Class.

5. The Court confirms the appointment of Class Counsel for purposes of the Settlement Class as the law firms Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065-8404.

6. Direct Purchaser Plaintiffs' request for leave to file a motion for attorneys' fees and litigation expenses is hereby approved and shall be filed at least 45 days prior to the date by which potential Class Members must exclude themselves from or object to the Agreement.

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

BY THE COURT:

_____
Gene E.K. Pratter
United States District Judge

Date:_____

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

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

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November 2014, a copy of Direct Purchaser Plaintiffs' Motion for Approval of Notice Plan for the Proposed Settlement with Defendants HILLANDALE FARMS OF PA., INC., AND HILLANDALE-GETTYSBURG, L.P., Memorandum in Support, Proposed Notices, and Proposed Form of Order, were filed with the Clerk of the Court, per the Local Rules, will be available for viewing and downloading via the CM/ECF system, and the CM/ECF system will send notification of such filing to all registered attorneys of record and the below-listed Liaison Counsel for Defendants, Indirect Purchaser Plaintiffs, and Direct Action Plaintiffs.

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Direct Action Plaintiffs' Liaison Counsel

Date: November 21, 2014

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