

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

IN RE: PROCESSED EGG : **MDL No. 2002**
PRODUCTS ANTITRUST : **08-md-02002**
LITIGATION :

THIS DOCUMENT APPLIES TO: :
All Direct Purchaser Actions :

**SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS
AND DEFENDANT NATIONAL FOOD CORPORATION**

This Settlement Agreement (“Agreement”) is made and entered into as of this 28th day of March 2014 (the “Execution Date”) by and between National Food Corporation (“NFC”) and Direct Purchaser Plaintiffs’ Class representatives (“Plaintiffs”) (as defined herein at Paragraph 15), both individually and on behalf of a Class (as defined herein at Paragraph 4) of direct purchasers of Shell Eggs and Egg Products (as defined herein at Paragraphs 7 and 21).

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

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

WHEREAS, NFC denies all allegations of wrongdoing in the Action;

WHEREAS the Parties have conducted an investigation into the facts and the law regarding the Action and have engaged in extensive discovery;

WHEREAS, despite its belief that it is not liable for, and has good defenses to, the claims alleged in the Action, NFC desires to settle the Action in view of its financial condition, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of the Action, or any action or proceeding relating to the matters being fully settled and finally put to rest in this Agreement;

WHEREAS Class Counsel has evaluated the ability of NFC to pay a significant judgment and has reached settlement terms reflecting NFC's financial condition.

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

WHEREAS Plaintiffs have concluded that settlement with NFC on the terms set forth below is the best that is practically attainable, that it is in the best interests of the Class to enter into this Agreement now rather than continue to pursue a judgment that may prove uncollectible, and that, under the circumstances, the Agreement is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Class;

NOW, 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 NFC only, without costs as to Plaintiffs, the Class, or NFC, and subject to the approval of the Court, on the following terms and conditions:

A. Definitions

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

1. “Class Counsel” shall refer to the law firms of Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065-8404. “Plaintiffs’ Counsel” shall refer to the law firms identified on pages 147-151 of the Third Consolidated Amended Class Action Complaint filed in the Action on January 4, 2013.

2. “NFC’s Counsel” shall refer to the law firm of Davis Wright Tremaine LLP, 1201 Third Avenue, Suite 2200, Seattle, Washington, 98101.

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

4. “Class Member” or “Class” shall mean each member of the Settlement Class, as defined in Paragraph 22 of this Agreement, who does not timely elect to be excluded from the Class, and includes, but is not limited to, Plaintiffs.

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

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

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

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

9. “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Paragraph 37 of this Agreement.

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

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

12. “Non-Settling Defendants” shall refer to Defendants other than NFC.

13. “Other Settling Defendants” shall refer to Moark LLC, Norco Ranch, Inc., Land O’Lakes, Inc. Sparboe Farms, Inc., and Cal-Maine Foods, Inc.

14. “Parties” means NFC and Plaintiffs.

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

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

17. “Releasees” shall refer, jointly and severally, and individually and collectively, to NFC, its parents, subsidiaries, and affiliated companies, and its past and present officers, directors, employees, agents, insurers, attorneys, shareholders, joint venturers that are neither Non-Settling Defendants nor Other Settling Defendants, partners and representatives, as well as the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

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

19. “Settlement Amount” shall refer to \$1,000,000 (\$1 million) U.S. dollars.

20. “Settlement Fund” shall refer to the funds accrued in the Escrow Account established in accordance with Paragraph 37 below.

21. “Shell Eggs” shall mean eggs produced from caged birds that are sold in the shell for consumption or for breaking and further processing, excluding “specialty” Shell Eggs (certified organic, nutritionally enhanced, cage free, free range, and vegetarian fed types) and “hatching” Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

B. Settlement Class Certification

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

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

a.) Shell Egg SubClass

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

b.) Egg Products SubClass

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

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

C. Approval of this Agreement and Dismissal of Claims

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

24. Within two (2) business days after the execution of this Agreement by NFC, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against NFC in the Action pending approval of this Agreement. Within twenty (20) business days after execution of the Agreement by NFC, Plaintiffs shall submit to the Court a motion (the "Motion") for an Order granting preliminary approval of the Agreement, appointing Settlement Class Counsel as lead counsel for purposes of this Settlement Agreement, and certifying a Class for settlement purposes ("Preliminary Approval"). As a courtesy, a substantially final draft of the Motion shall be provided to NFC at least two (2) business days before filing. IF NFC suggests changes to the Motion, Plaintiffs shall have no obligation to accept those changes. Plaintiffs shall submit the Motion requesting entry of a Preliminary Approval Order, substantially in the form of Exhibit A, attached hereto, which shall provide that, *inter alia*:

- a. the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;
- b. the Settlement Class defined herein be certified, designating Class Representatives and Settlement Class Counsel as defined herein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is not approved by the

Court or any appellate court;

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

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

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

- a. approve finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- b. determine that the Class Notice constituted, under the circumstances, the most effective and best practicable notice of this Agreement and of the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- c. reconfirm the appointment of Class Representatives and Settlement Class Counsel as defined herein;
- d. direct that, as to NFC, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- e. reserve to the United States District Court for the Eastern District of Pennsylvania exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement;
- f. determine under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay, and directing that the final judgment of dismissal as to NFC shall be entered; and
- g. require Class Counsel to file with the Clerk of the Court a record with the names and addresses of Class Members who timely excluded themselves from the Class, and provide a copy of the record to counsel for NFC.

27. This Agreement shall become final only when (a) the Court has entered an order granting Final Approval to this Agreement; (b) the Court has entered final judgment dismissing the Action against NFC on the merits with prejudice as to all Class Members and without costs; and (c) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in

clause (b) above has expired or, if appealed, approval of this Agreement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining if the conditions for Final Approval have been satisfied. On the Execution Date, Plaintiffs and NFC shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 34 and 35 of this Agreement.

28. Should NFC or Plaintiffs be required to submit any of NFC's confidential information or documentation to the Court to obtain preliminary or final approval, such submission shall be, to the full extent permitted by law or the Court, for review by the court *in camera* only.

D. Release and Discharge

29. In addition to the effect of any final judgment entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including

any Defendants, including any entities or individuals that may later be added as a defendant to the Action, (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs or Egg Products in the United States or elsewhere, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, whether or not concealed or hidden, in the Complaints filed in the Action (the "Complaints"), which in whole or in part arise from or are related to the facts and/or actions described in the Complaints, including under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq., from the beginning of time to the date on which the Court enters an order preliminarily approving the Settlement and certifying a Class for settlement purposes (the "Released Claims"). Releasors shall not, after the date of this Agreement, seek to recover against any of the Releasees for any of the Released Claims. Notwithstanding anything in this Paragraph, Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge, claims based solely on purchases of Shell Eggs and Egg Products outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases.

30. This Release is made with full recognition of the possibility of subsequent discovery or existence of different or additional facts. Each Releasor waives California Civil Code Section 1542 and similar or comparable present or future law or principle of law of any jurisdiction. Each Releasor hereby certifies that he, she, or it is aware of and

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

31. In addition to the provisions of Paragraphs 29 and 30, each Releasor hereby expressly and irrevocably waives and releases, upon this Agreement becoming finally approved by the Court, any and all defenses, rights, and benefits that each Releasor may have or that may be derived from the provisions of applicable law which,

absent such waiver, may limit the extent or effect of the release contained in Paragraphs 29 and 30. Each Releasor also expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

32. The release and discharge set forth in Paragraphs 29 through 31 herein do not include claims relating to payment disputes, physical harm, defective product, or bodily injury (the “Excepted Claims”) and do not include any Non-Settling Defendant or Other Settling Defendant.

33. Each Plaintiff, and each Class Member who submits a claim to participate in the distribution of the Settlement Amount, shall represent and warrant that their portion of the Released Claims is their property and they have not assigned or transferred to any person or entity any right to recovery for any claim or potential claim that would otherwise be released under this Agreement. Each Plaintiff, and each Class Member who submits a claim to participate in the distribution of the Settlement Amount, shall further represent and warrant that each of them has a valid and existing right to release such claims and is releasing such claims pursuant to their participation in the settlement.

E. Rescission

34. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 27 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, then NFC and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) business days of the action giving

rise to such option. If this Agreement is rescinded, within ten (10) business days of the later of the written notice of rescission to Class Counsel and the Escrow Agent and NFC's written instructions to the Escrow Agent, all amounts in the Escrow Account created pursuant to Paragraph 37 hereof, less any expenses authorized pursuant to this Agreement, shall be wire transferred to NFC, pursuant to its instructions; provided, however, that simultaneous with its written instructions to the Escrow Agent, NFC shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five (5) business days of receipt of such notice, notify the Escrow Agent of any objections to NFC's instructions and funds shall not be wired until expiration of that objection deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

35. If Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 27 of this Agreement, Class Counsel and NFC agree that this Agreement, including its exhibits, and any and all negotiations, documents, information, and discussions associated with it shall be without prejudice to the rights of NFC or Plaintiffs, shall not be deemed or construed to be an admission or denial, or evidence or lack of evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity of any of the claims or allegations made in this Action in any pleading, and shall not be used directly or indirectly, in any way, whether in this Action or in any other proceeding, unless such documents and/or information is otherwise obtainable by separate and independent discovery permissible under the Federal Rules of Civil Procedure.

36. Class Counsel further agree that in the event of rescission the originals and all copies of any notes, memos or records related to the Cooperation obligations pursuant to paragraph 43 shall be returned to NFC at NFC's expense or destroyed by Class Counsel at their own expense, provided however that such attorney notes, memoranda or records may be destroyed rather than produced if an affidavit of such destruction is promptly provided by Class Counsel to NFC's Counsel.

F. Payment

37. NFC shall pay or cause to be paid the Settlement Amount in settlement of the Action. The Settlement Amount shall be wire transferred by NFC or its designee within five (5) business days of the Execution Date into the Settlement Fund, which shall be established as an Escrow Account at a bank selected by Class Counsel and administered in accordance with the Escrow Agreement entered into by the Parties.

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

39. Class Counsel may, at a time approved by the Court, seek an award of attorneys' fees and reasonable litigation expenses and incentive awards for class representatives approved by the Court, to be paid out of the Settlement Amount after the Final Approval of the Agreement. NFC agrees not to object to Class Counsel's petition to the Court for payment of attorneys' fees, costs, expenses, and incentive awards for class representatives from the Settlement Amount. Except to the extent that the Court may award attorneys' fees and litigation expenses to be paid out of the Settlement Amount, NFC shall have no obligation to pay any fees or expenses of Class Counsel.

40. Upon entry of an order by the Court approving the request for an award of attorneys' fees and expenses and incentive awards for class representatives ("Attorneys' Fees Order") made pursuant to Paragraph 39 above, attorneys' fees may be distributed from the Settlement Fund pursuant to the terms of the fee order, provided however that any Class Counsel seeking to draw down their share of the attorneys' fees prior to Final Approval and the Attorneys' Fees Order becoming final shall secure the repayment of the amount drawn down by a letter of credit or letters of credit on terms, amounts, and by banks acceptable to NFC, which acceptance shall not be unreasonably withheld. The Attorneys' Fees Order becomes final when the time for appeal or to seek permission to appeal from the Attorneys' Fees Order has expired or, if appealed, has been affirmed by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

41. In order to receive distribution of funds pursuant to Paragraph 40 prior to Final Approval and the Attorneys' Fees Order becoming final above, each Class Counsel shall be required to provide the Claims Administrator the approved letter(s) of credit in the amount of Class Counsel's draw-down, and shall be required to reimburse the Settlement Fund within thirty (30) business days all or the pertinent portion of the draw-down with interest, calculated as the rate of interest published in the *Wall Street Journal* for 3-month U.S. Treasury Bills as of the close on the date that the draw-down was distributed, if Final Approval is not granted or if the award of attorneys' fees is reduced or overturned on appeal. The Claims Administrator may present the letter(s) of credit in the event the Class Counsel fails to honor the obligation to repay the amount withdrawn.

42. Disbursements for any payments and expenses incurred in connection with taxation matters relating to this Settlement Agreement shall be made from the Settlement Amount pursuant to section H of this Agreement upon written notice to the Escrow Agent by Class Counsel of such payments and expenses, and such amounts shall not be refundable to NFC in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

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

a. **Proffers:** NFC agrees that, as soon as practicable after the Execution Date, NFC's Counsel shall make themselves available to Class Counsel, in person in Seattle, Washington and/or by teleconference, at a mutually convenient date and time, to provide background information concerning: NFC, its organization, its operations, and its personnel; the identification of potential NFC witnesses with knowledge of the matters at issue in the Action; and the substance of their anticipated testimony according to the best understanding of NFC's counsel (the "Proffer"). The Proffer shall not extend for more than five (5) hours in duration; and shall, to the extent practicable, occur concurrently with any substantially similar interviews agreed to with other settling parties. NFC's Counsel will not be required or expected to disclose any matters that any other present or former Party to the Action asserts to be privileged material or work product (see subparagraph f below).

Plaintiffs and Class Counsel agree that they shall maintain all statements made by NFC's Counsel under this paragraph as strictly confidential and that they shall not use directly or indirectly the information so received for any purpose other than prosecution of the Action and that such information may not be used to prosecute any claim or action against Releasees. Class Counsel may use information contained in the Proffer in the prosecution of the Action without attributing the source of the information or breaching the agreement regarding confidentiality of statements made under the Proffer as provided in this paragraph unless so required by order of the Court or applicable law.

Class Counsel agree, unless ordered by a court and consistent with due process, that under no circumstances shall information or documents obtained from the Proffer be shared with any person, counsel, Class Counsel or Plaintiffs' Counsel who is also (i) counsel for any plaintiff in any state or federal action against one or more of the Releasees, (ii) counsel for any plaintiff or Class Member that elects to opt out of the proposed class for settlement purposes under this Agreement or from a litigation class that may be certified, (iii) any counsel representing or advising indirect purchasers of Shell Eggs or Processed Eggs, or (iv) any third party not associated with Class Counsel in this Action except in connection with prosecution of this Action. At the conclusion of the Action, Class Counsel shall destroy all notes, memoranda, or records related to the Proffer, and any copies thereof, and shall certify in writing to NFC Plaintiffs' compliance with this requirement.

b. **Interviews:** As soon as practicable after the Execution Date, NFC shall, at an agreed upon time, date and location, and at NFC's expense, make available for one interview with Class Counsel each of up to two then-current directors, officers, and employees of NFC, and up to one former director, officer or employee, who possess information that, based on Class Counsel's good faith belief, would assist Plaintiffs in prosecuting this action. Such interviews shall not exceed seven hours each in duration, and shall occur at a mutually agreed-to date and time. To the extent feasible, such interviews shall be concurrent with interviews conducted by other settling plaintiffs. NFC shall use best efforts to assist Class Counsel in arranging interviews with any former directors, officers, and employees of NFC. The failure of any former officer, director or employee to make himself or herself available for the interview shall not affect in any way the release of NFC, provided it has acted reasonably.

c. **Transactional Data:** NFC shall, upon request by Class Counsel, clarify to the best of its ability transactional and other data produced by NFC in discovery in the Action, including providing, upon request by Plaintiffs, follow-up information in response to questions Plaintiffs may reasonably have concerning such data. Class Counsel agrees to use reasonable efforts to minimize the burden of any such clarification or follow-up requests.

d. **Authentication of Documents & Certifications as to Business Records:** Prior to trial in this Action, NFC shall, at the request of Class Counsel and through reasonable means (including, but not limited to, affidavits and declarations by persons qualified to testify as to authenticity and/or as to business records (pursuant to Federal Rules of Evidence 902(11) and (12)) establish the authenticity of documents and/or admissibility as business records produced by NFC, and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by NFC or sent to or received by NFC. Class Counsel agree to use reasonable efforts to minimize the burden to NFC of any such authentication or business records testimony.

e. **Trial Testimony:** Upon the request of Class Counsel and at NFC's expense, NFC shall make available from among its current or former directors, officers or employees up to two representatives who Class Counsel believe in good faith to have knowledge regarding Plaintiffs' claims as alleged in the Action to testify at trial regarding facts or issues at issue in this Action.

f. **Privileged or Protected Matters:** Neither the entry into this agreement nor any performance of it shall constitute a waiver of NFC's attorney-client privilege or work-product protection. NFC's obligation to cooperate will be subject to its attorney-client privilege and work-product protection; provided, however, that NFC shall not produce any documents or disclose information that any Non-Settling Defendant or Other Settling Defendant asserts is privileged or protected until such time as the privileges and/or protection have been waived or determined to have been waived or otherwise determined to be inapplicable whether by agreement between Plaintiffs and such other party or by order of the Court.

g. **Confidentiality:** All information provided by NFC to Class Counsel pursuant to NFC's cooperation obligations shall be subject to the protective order entered in the Action.

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

G. Notice of Settlement to Class Members

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

45. Subject to court approval, disbursements for any payments and expenses incurred in connection with the costs of Notice and administration of the Agreement by the Claims Administrator shall be made from the Settlement Amount upon written notice to the Escrow Agent by Class Counsel of such payments and expenses. Such amounts, up to a maximum of \$350,000, shall not be refundable to NFC in the event that this Agreement is disapproved, rescinded, or otherwise fails to become effective. If Notice of the Agreement is combined with dissemination of notice of other settlement agreements as provided for under paragraph 25, the costs of the combined notice and settlement administration shall be apportioned equally to the settlement amounts of each such settlement agreement. For example, if Notice of the Agreement is combined with notice of one other settlement agreement, fifty (50) percent of such costs shall be paid from the Settlement Amount.

H. Taxes

46. Class Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Amount. Further, Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Escrow Funds (“Tax Expenses”). Class Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including reasonable professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable Escrow Fund by notifying the Escrow Agent in

writing and as provided in paragraph 42 herein. NFC shall have no responsibility to make any tax filings relating to this Agreement.

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

48. The Parties to this Agreement and their Counsel shall treat, and shall cause the Claims Administrator to treat, the Settlement Amount as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1. In addition, the Claims Administrator and, as required, the parties, shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B 1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Settlement Amount being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1.

I. Miscellaneous

49. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Action against any Non-Settling Defendant or any potential defendant other than the Releasees. All rights of any Class Member against Non-Settling Defendants or any other person or entity other than the Releasees are specifically reserved by Plaintiffs and the Class Members. The sales of Shell Eggs and Egg Products by NFC to Class Members shall remain in the case against the Non-Settling Defendants in the Action as a basis for damage claims and shall be part of any joint and several liability claims against Non-Settling Defendants in the Action or other persons or entities other than the Releasees.

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

51. This Agreement constitutes the entire agreement among Plaintiffs (and the other Releasors) and NFC (and the other Releasees) pertaining to the settlement of the

Action against NFC only, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and NFC in connection therewith. In entering into this Agreement, Plaintiffs and NFC have not relied upon any representation or promise made by Plaintiffs or NFC not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and NFC and approved by the Court.

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

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

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

55. In the event this Agreement is not approved, or in the event that the order and final judgment approving the settlement is entered but is substantially reversed, modified, or vacated, the pre-settlement status of the litigation (including, without limitation, any applicable tolling of all statutes of limitations) shall be restored, and the Agreement shall have no effect on the rights of NFC or Plaintiffs to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to

Class certification, raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by NFC.

56. Neither NFC nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

57. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasers, NFC, and Releasees any right or remedy under or by reason of this Agreement.

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

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

For the Class:

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

For NFC:

Marvin L. Gray, Jr.
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
montygray@dwt.com

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

Dated: March 28, 2014

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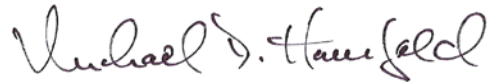

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(On Behalf of National Food Corporation)

Dated: March 28, 2014



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(On Behalf of National Food Corporation)

Exhibit A

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

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

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT WITH NATIONAL FOOD CORPORATION, CERTIFYING THE
CLASS FOR PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE
MOTION FOR FEES AND EXPENSES**

It is hereby ORDERED AND DECREED as follows:

1. The motion of Direct Purchaser Plaintiffs for preliminary approval of the proposed settlement, which Defendant National Food Corporation (“NFC”) does not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with NFC, as set forth in the settlement Agreement, subject to final determination following an approved form of and plan for notice and a Fairness Hearing,¹ falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to the following settlement class (the “Settlement Class”), for settlement purposes only:

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

a.) Shell Egg SubClass

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

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

b.) Egg Products SubClass

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

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

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

of Northern Virginia, 418 F.3d 277, 306 (3d Cir. 2005), this Court makes no determination concerning the manageability of this action as a class action if it were to go to trial.

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

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

6. Direct Purchaser Plaintiffs' request for leave to file a motion for attorneys' fees and litigation expenses is hereby approved and shall be filed in accord with the deadline to be proposed by Class Counsel as set forth in paragraph 7 herein that shall be at least 90 days prior to the date on which the final Fairness Hearing is held and at least 45 days prior to the date by which potential Class Members must exclude themselves from or object to the Agreement.

7. Class Counsel shall submit for the Court's approval (a) a Proposed Notice to the Class, including a proposed schedule for Class Members to opt out or object to the proposed Settlement, (b) a proposed Plan of Notice that includes the proposed manner of Notice, a proposed Administrator for Notice and Claims, (c) a proposed date for the Court's Fairness Hearing to determine whether the Settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court, (d) a proposed deadline by which Plaintiffs must file

their motion for an award of attorneys' fees and reimbursement of litigation expenses, (e) a proposed deadline by which Plaintiffs must file their Motion for Final Approval of the Settlement Agreement, and (f) proposed deadlines by which Class Members must object to or request exclusion from the Settlement Agreement.

8. Interim Co-Lead Counsel for Direct Purchaser Plaintiffs shall include in the text of their proposed Direct Mail Notice and Publication Notice of the Settlement Agreement the deadline by which Direct Purchaser Plaintiffs must file their motion for an award of attorneys' fees and litigation expenses and a statement that Class Members may review the motion at the www.eggproductsettlement.com website prior to the objection and opt-out deadlines set forth below.

9. Within 30 days of entry of this Order, each Defendant shall provide to Garden City Group ("GCG") a supplemental production that shall include the names and addresses of all customers in the United States (i) to whom that Defendant sold Shell Eggs or Egg Products in the United States between the date of that Defendant's most recent customer name and address production to GCG and the date of entry of this Order; and (ii) that were not included in that Defendant's most recent customer name and address production to GCG.

- a. The customer information shall be produced in a mutually agreeable electronic format or, if not available electronically, in the form in which such information is regularly maintained;
- b. The customer information transmitted by Defendants to GCG shall be treated as confidential, and shall only be used by GCG for purposes of creating and maintaining a customer database and for disseminating notice; and

- c. The customer information transmitted by Defendants to GCG shall not be shared with Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, their counsel, or their experts.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date: _____