

**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 UNITED EGG PRODUCERS AND UNITED STATES EGG
MARKETERS**

This Settlement Agreement (“Agreement”) is made and entered into as of this 21st day of May 2014 (the “Execution Date”) by and between United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”) and Direct Purchaser Plaintiffs’ Class representatives (“Plaintiffs”) (as defined herein at Paragraph 18), 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 8 and 24).

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 UEP, USEM and other Defendants (the “Action”);

WHEREAS, Plaintiffs allege that UEP and USEM 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, UEP and USEM deny 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 their belief that they are not liable for, and have good defenses to, the claims alleged in the Action, UEP and USEM desire to settle the Action in view of their financial condition and resources, 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 inability of UEP and USEM to pay a significant judgment and has reached settlement terms reflecting the financial condition of UEP and USEM;

WHEREAS, Class Counsel and Counsel for UEP and USEM 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 UEP and USEM 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 as against UEP and USEM, and that, under the circumstances, the Agreement is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Class;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to UEP and USEM only, without costs as to Plaintiffs, the Class, UEP or USEM, 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. "Counsel for UEP and USEM" shall refer to the law firm of Pepper Hamilton LLP, 3000 Two Logan Square, Eighteenth and Arch Streets, Philadelphia, Pennsylvania, 19103-2799.
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 25 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. “Direct Action Plaintiffs’ Action” shall mean all actions brought by direct purchasers of Shell Eggs and Egg Products that are not brought on behalf of a class of direct purchasers and are currently pending in the Eastern District of Pennsylvania.

8. “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.

9. “Escrow Account” shall mean the account with the Escrow Agent that holds the Settlement Fund.

10. “Escrow Agent” shall mean the bank into which the Settlement Fund shall be deposited and maintained as set forth in Paragraph 38 of this Agreement.

11. “Escrow Agreement” shall mean Agreement Between Citibank, N. A. as ‘Escrow Agent’ and United Egg Producers and United States Egg Marketers and Bernstein Liebhard LLP, Hausfeld LLP, Susman Godfrey LLP, and Weinstein Kitchenoff & Asher LLC as Interim Co-Lead Counsel for Direct Purchaser Plaintiffs executed contemporaneously with this Agreement.

12. “Fairness Hearing” shall mean 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.

13. “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.

14. “Indirect Purchaser Plaintiff Action” shall mean the action brought by indirect purchasers of Shell Eggs and Egg Products in the Fifth Amended Consolidated Class Action Complaint Filed by Indirect Purchaser Plaintiffs (ECF No. 866) currently pending in the Eastern District of Pennsylvania, and including all indirect purchaser actions transferred for coordination, and all indirect 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 UEP, USEM and other Defendants.

15. “Non-Settling Defendants” shall mean Defendants other than UEP and USEM.

16. “Other Settling Defendants” shall mean Moark LLC, Norco Ranch, Inc., Land O’Lakes, Inc., and Sparboe Farms, Inc.

17. “Parties” shall mean UEP, USEM, and Plaintiffs.

18. “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.

19. “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.

20. “Releasees” shall refer, jointly and severally, and individually and collectively to: UEP; USEM; all current employees of UEP and USEM, and former employees of UEP and USEM during the period January 1, 2000 through the Execution Date that are neither employees of Non-Settling Defendants nor employees of Other Settling Defendants; and each of the foregoing Releasees’ respective past and present officers, directors, parents, subsidiaries, affiliates, partners, agents, attorneys, and insurers, and their predecessors, successors, heirs, executors, administrators, and assigns. In addition, “Releasees” shall include current and former members of UEP and USEM listed on Exhibit A, which are neither Non-Settling Defendants nor Other Settling Defendants.

21. “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, agents, attorneys and insurers, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

22. “Settlement Amount” shall refer to five-hundred thousand (\$500,000) U.S. dollars.

23. “Settlement Fund” shall refer to the funds accrued in the Escrow Account established in accordance with Paragraph 38 below.

24. “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

25. 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 UEP and USEM 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

26. 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 UEP and USEM.

27. Within two (2) business days after the execution of this Agreement by all Parties, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against UEP and USEM in the Action pending approval of this Agreement. Within twenty (20) business days after execution of the Agreement by UEP and USEM, 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 UEP and USEM at least two (2) business days before filing. If UEP and USEM suggest 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 B, attached hereto, which shall provide that, *inter alia*:

- a. the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;
- b. the Settlement Class defined herein be certified, designating Class Representatives and Settlement Class Counsel as defined herein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is not approved by the Court or any appellate court;
- c. a Fairness Hearing on the settlement proposed in this Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

28. 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 any Non-Settling Defendant(s) in the Action or Other Settling Defendants during the Class Period that were previously identified by 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. 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.

29. 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 UEP and USEM, 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 UEP and USEM only, 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 UEP and USEM 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 UEP and USEM.

30. 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 UEP and USEM 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 the above-stated times. On the Execution Date, Plaintiffs, UEP and USEM shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraph 35 of this Agreement.

31. Should UEP, USEM or Plaintiffs be required to submit any of UEP's or USEM'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

32. 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, including any and all known and unknown, foreseen and unforeseen, concealed or hidden, suspected or unsuspected

injuries or damages, and the consequences thereof, on account of, arising out of, or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants and/or their members and any entities or individuals that may later be added as a defendant to the Action, (ii) the reduction, restraint or restriction of supply and/or production capacity of Shell Eggs or Egg Products, 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) in the Complaints filed in the Action (the "Complaints"), that 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 January 1, 2000 to the Execution Date (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.

33. 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.

34. In addition to the provisions of Paragraphs 31 and 32, 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.

35. The release and discharge set forth in Paragraphs 31 through 33 herein do not include claims relating to payment disputes, physical harm, defective products, or bodily injury (the "Excepted Claims") and do not include any Non-Settling Defendant or Other Settling Defendant.

36. 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

37. 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 30 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 UEP, USEM, 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, and shall, within that same time period, submit written notice to the other Parties and to the Escrow Agent of their decision to rescind the Agreement. If this Agreement is rescinded, UEP and USEM shall submit written instructions to the Escrow Agent regarding wire transfer of the amounts remaining in the Settlement Fund with simultaneous notice of such instructions provided to Class Counsel, and Class Counsel shall, within five (5) business days of receipt of such notice, notify the Escrow Agent of any objections to the instructions of UEP and USEM. The Escrow Agent shall, within ten (10) business days of receipt of written instructions by UEP and USEM to the Escrow Agent regarding wire transfer, wire transfer all amounts in the Escrow Account created pursuant to Paragraph 38 hereof, less any expenses authorized pursuant to this Agreement, pursuant to their instructions; provided, however, no funds shall be wire transferred until expiration of the deadline by which Class Counsel may object to UEP and USEM's instructions to the Escrow Agent, as provided in this paragraph. If Class Counsel object to the wire transfer instructions, the provisions of Article First, subsection H of the Escrow Agreement shall govern.

38. If Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 30 of this Agreement, Class Counsel, UEP and USEM 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 UEP, USEM, 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.

39. In the event of rescission, all documents produced pursuant to Paragraph 44(b) shall be returned to UEP and USEM or destroyed by Class Counsel at their own expense, provided however that such documents may be destroyed rather than returned if an affidavit of such destruction is promptly provided by Class Counsel to Counsel for UEP and USEM. Class Counsel further agree that the fact of the agreement by UEP and USEM to produce, and the production of, documents pursuant to Paragraph 44(b) does not constitute waiver of the attorney-client privilege or work-product protections that UEP or USEM may assert apply to those documents. UEP and USEM further agree that if the Agreement is rescinded, Plaintiffs may seek production of documents produced pursuant to Paragraph 44(b) and any other documents withheld by UEP and/or USEM as privileged or protected on any other basis, and Plaintiffs agree that if they seek such production, they may not use, refer to or rely on in any way information as to those documents' content that was learned by Plaintiffs as a result of their review of the documents produced pursuant to this Agreement.

F. Payment

40. UEP and USEM shall pay or cause to be paid the Settlement Amount in settlement of the Action. Three-fifths of Settlement Amount (\$300,000) shall be wire transferred by UEP and USEM 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. The remaining two-fifths of the Settlement Amount (\$200,000) shall be wire transferred by UEP and USEM or its designee on or before January 5, 2015.

41. 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.

42. Class Counsel may, at a time approved by the Court, seek an award of attorneys' fees and reasonable litigation expenses, not to exceed one-third of the Settlement Amount, 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. UEP and USEM agree not to object to Class Counsel's petition to the Court for payment of attorneys' fees, costs, expenses (in an amount consistent with this Paragraph), and incentive awards for class representatives from the Settlement Amount. In the event the Court does not approve Class Counsel's petition for payment of attorneys' fees, costs, expenses, or awards an amount less than that sought in Class Counsel's petition, such denial or reduction shall have no effect on this Agreement. Except to the extent that the Court may award attorneys' fees and litigation expenses to be paid out of the Settlement Amount, UEP and USEM shall have no obligation to pay any fees or expenses of Class Counsel.

43. Upon entry of an order by the Court approving the request for an award of attorneys' fees and expenses and incentive awards for class representatives ("Attorneys' Fees Order") made pursuant to Paragraph 40 above, attorneys' fees may be distributed

from the Settlement Fund pursuant to the terms of the fee order, provided however that any Class Counsel seeking to draw down their share of the attorneys' fees prior to Final Approval and the Attorneys' Fees Order becoming final shall secure the repayment of the amount drawn down by a letter of credit or letters of credit on terms, amounts, and by banks acceptable to UEP and USEM, 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.

44. 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.

45. 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 UEP or USEM in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

G. Cooperation

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

- a. **Depositions:** Class Counsel may participate in any depositions of UEP or USEM, but agree that they will not lead such depositions nor question the witnesses. Plaintiffs agree to withdraw their notice of deposition, pursuant to Federal Rule of Civil Procedure 30(b)(6), as to UEP and USEM.
- b. **Production of Documents Withheld on Grounds of Attorney-Client Privilege or Work Product Protection:** The parties have agreed that UEP and USEM will, within five (5) business days of the Execution Date and pursuant to the Stipulation and Order Pursuant to Federal Rule of Evidence 502(d) signed by the Court on December 20, 2012, produce or authorize the production of the logged documents on the list agreed to by the Parties and attached to this Agreement as Exhibit C, which include, but are not limited to, the documents created between January 1, 1999 to September 23, 2008 regarding the Capper-Volstead immunity in their possession which include (a) any documents to or from attorneys at Brann & Isaacson; (b) any documents to or from other UEP counsel and; (c) any documents that reference such legal advice provided by attorneys at Brann & Isaacson or other UEP counsel. In addition, Defendants will not oppose the production of such documents in the possession of other non-settling defendants or in the possession of any third-party that has been subpoenaed prior to August 31, 2013. If Plaintiffs identify other privileged UEP or USEM documents that fall within the parameters of this Paragraph 46(b) that were not reflected on privilege logs served prior to the Execution Date, the parties will work in good faith to determine if such documents should be produced to Plaintiffs pursuant to the terms of this Agreement. All such documents shall be marked "Highly Confidential" pursuant to the Case Management Order No. 10 (Protective Order) signed by the Court on February 12, 2009. In exchange, Plaintiffs agree to not to seek relief relating to privilege disputes including the disputes identified in Plaintiffs' letter to UEP and USEM dated July 31, 2013, attached hereto as Exhibit D, until or unless this Agreement is rescinded pursuant to Paragraph 35.

Class Counsel agree that, except upon order of a court or the consent of UEP or USEM, they will neither provide copies of documents produced pursuant to this subparagraph nor share their contents with any person, plaintiff, counsel, class counsel or plaintiffs' counsel in any state or other federal action (other than Plaintiffs' Counsel), including counsel in the Indirect Purchaser Plaintiffs' Action, the Direct Action Plaintiffs' Action, or counsel for any person or entity that elects to exclude themselves from the Agreement, or with any third party not associated with Class Counsel or Plaintiffs' Counsel in prosecuting this action.

Plaintiffs may use documents produced pursuant to this Paragraph in litigating the Action, provided, however, that limitations on the use of material qualifying as Highly Confidential pursuant to the Protective Order in the Action entered on February 12, 2009 (ECF No. 50) shall apply as provided under that Order.

c. **Production of Documents Produced and Deposition Transcripts in the Kansas State Action:** Plaintiffs have served a subpoena seeking production of documents produced by UEP and USEM, Settling Defendants, and Non-Settling Defendants in litigation against Settling Defendants, Non-Settling Defendants, and UEP and USEM, pending in the District Court of Wyandotte County, Kansas ("Kansas Action"), along with pleadings filed in, and deposition transcripts from, the Kansas Action. Plaintiffs agree to withdraw their subpoena as to documents produced by UEP and USEM in the Kansas Action. UEP and USEM agree that, in the event Plaintiffs and Non-Settling Defendants reach agreement providing for, or a court orders, production of pleadings or transcripts from that litigation, UEP and USEM will not oppose the production of such transcripts or pleadings, provided, however, that UEP and USEM may redact, at their election, references in such transcripts or pleadings to documents created by UEP and USEM after September 23, 2008.

d. **Transactional Data:** UEP and USEM shall, upon request by Class Counsel, clarify to the best of its ability transactional and other data produced by them in discovery in the Action, including providing, upon reasonable request by Plaintiffs, follow-up information in response to questions Plaintiffs may reasonably have concerning such data. UEP and USEM will not be required to file a formal response to this request, and Plaintiffs agree to use reasonable efforts to minimize the burdens associated with this request.

e. **Authentication of Documents & Certifications as to Business Records:** Prior to trial in this Action, UEP and USEM 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 UEP and USEM, and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by UEP or USEM or sent to or received by UEP or USEM.

f. **Trial Testimony:** Upon the request of Class Counsel, and with expenses to be borne by UEP and USEM, UEP and USEM shall make available their current employees who are designated by Class Counsel to testify at trial in this Action. UEP and USEM shall use reasonable efforts to assist Class Counsel in arranging for the appearance of their former employees, who are designated by Class Counsel to testify at trial in this Action.

H. Notice of Settlement to Class Members

47. 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.

48. 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. If Notice of the Agreement is combined with dissemination of notice of other settlement agreements as provided for under Paragraph 28, 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 the Notice of the Agreement is combined with notice of one other settlement agreement and UEP and USEM’s Settlement Amount

accounts for ten (10) percent of the combined total amount of the two settlements, then ten (10) percent of such costs shall be paid from the Settlement Amount. In the event that this Agreement is disapproved, rescinded, or otherwise fails to become effective, only the costs of the combined notice and settlement administration that have been apportioned to UEP and USEM will be non-refundable to UEP and USEM.

I. Taxes

49. 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 43 herein. UEP and USEM shall have no responsibility to make any tax filings relating to this Agreement.

50. 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)).

51. 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.

J. Miscellaneous

52. 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 UEP or USEM, if any, 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.

53. 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, UEP and USEM. 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. UEP and USEM submit to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. UEP and USEM otherwise retain all defenses to the Court's exercise of personal jurisdiction over them.

54. This Agreement and the terms of the settlement embodied in this Agreement represent a compromise of disputed claims, and the negotiations, discussions and communications in connection with or leading up to and including this Agreement are agreed to be confidential, non-discoverable, and within the protection of Federal Rule of Evidence 408 and corresponding state statutes and rules of evidence and shall not be construed as admissions or concessions by the Parties, or any of them, either as to any liability or wrongdoing or as to the merits of any claim or defense. Neither the existence of this Agreement nor any of its provisions shall be offered into evidence by any person or its agents in this or any other action, arbitration or proceeding as admissions or concessions of liability or wrongdoing of any nature on the part of any Party hereto, or as admissions or concessions concerning the merits of any claim or defense.

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

60. Neither UEP, USEM, nor Plaintiffs 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, 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 UEP and USEM:

Jan P. Levine

PEPPER HAMILTON LLP

3000 Two Logan Square

Eighteenth and Arch Streets

Philadelphia, Pennsylvania 19103-2799

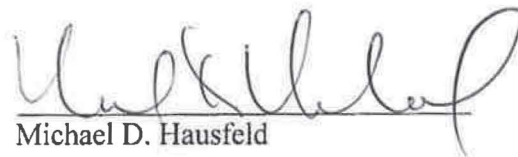
levinej@pepperlaw.com

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: May 21, 2014



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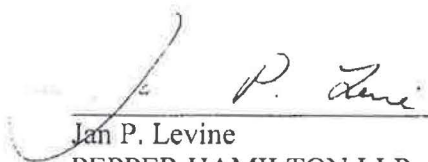


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(212) 336-8340 (fax)
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(Interim Co-Lead Counsel for the Class)



Jan P. Levine
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3000 Two Logan Square
Eighteenth and Arch Streets
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(215) 981-4714
(215) 981-4750 (fax)
levinej@pepperlaw.com

(On Behalf of UEP and USEM)

Exhibit A

EXHIBIT A

UEP and USEM Member Entities

Ace Farms, Inc.
Baer's Poultry Company
Berne Hi-Way Hatchery, Inc.
Big Stone Colony, Inc.
Boeckner Enterprises, Inc.
Bowden Egg Farm
Braswell Egg Company, Inc.
Brown Brothers Produce Company, Inc.
Caldwell Foods LLC
Cashton Farm Supply
Cedar Valley Egg Farm, LLP
Center Fresh Egg Farm, LLP
Centrum Valley Farms, LLP
Centurion Poultry, Inc.
Chestnut Mtn. Egg Farms, Inc.
Chickenville USA, Inc.
CHS, Inc.
Coffee Street Acres
Colorado Egg, LLC
Cooper Farms, Inc.
Country Charm Eggs, LLC
Creighton Bros.LLC
Dakota Layers, LLP
Demler Enterprises
Deweerd Poultry Farm, LLC
Dooyema & Sons, Inc.
Eagle Creek Colony, Inc.
Egg Innovations, LLC
Farm Crest Foods, Inc.
Fassio Egg Farms, Inc.
Feather Crest Farms, Inc.
Featherland Egg Farms, Inc.
Featherland Farms, Inc.
Flieg's Poultry Farm
Forsman Farms, Inc.
Freitas Fresh Eggs, Inc.
Fremont Farms of Iowa, LLP
Fremont Farms, LC
Ft. Recovery Equity Exchange Co.
GCB Foods, LLC
Gemperie Enterprises
Girard Brothers, LLC
Giroux's Poultry Farm, Inc.
Green Valley Poultry Farm, Inc.
Harold Heins & Sons, Inc.
Hawkeye Pride Egg Farm, LLP
Hemmelgarn & Sons, Inc.
Herbruck's Poultry Ranch, Inc.
Hertzfeld Poultry Farms, Inc.
Hickman's Egg Ranch, Inc.
Hickman's Family Farms of CA, LLC
Hidden Villa Ranch
Hillside Poultry Farms, Inc.
Hy-Line North America, LLC
Iowa Cage Free, LLP
ISE America, Inc.
ISE Newberry, Inc.
J&A Farms, LLC
James Farm, Inc.
JEM Eggs, LLC
Jenkins Poultry Farms
Jordan Egg Farm, Inc.
Junction Farms, Inc.
King, Elmer J.
Konos, Inc.
Kreher's Farm Fresh Eggs, LLC
L. R. F., Inc.
Larkin Poultry, LLC
Lathem Farms, Inc.
Latta's Egg Ranch, Inc.
Layer's, Inc.
Ledge Farms
M&C Anderson Pullets, Inc.
Mahard Egg Farm, Inc.
MCM Poultry Farm
Mercer Landmark, Inc.
Merrill's Poultry Farm, Inc.
Michael Farms
Minnich Poultry, LLC
Missouri Egg Farm LLC
MJ Homan Poultry Farm
Mobo Farms, Inc.
Morning Fresh Farms Inc.
Mussman's Back Acres, Inc.

Nature Pure, LLC
Nature's Best Egg Company, LLC
NC Layer Performance & Mgmt Program
Nebraska Eggs, LTD
Nelson Poultry Farms, Inc.
Novus International, Inc.
Oakdell Egg Farms, Inc.
Old Pike Farm, LLC
Olivera Egg Ranch, LLC
P & R Farms, Inc.
PCF Poultry, LLC
Pearl Valley Farms, Inc.
Phil Overdorf Farms, Inc.
Phil's Fresh Eggs, Inc.
Pollock Poultry
Powl Associates
Premier Eggs
Prime Foods, LLC
Puglisi Egg Farms of Delaware, LLC
Puglisi Egg Products, Inc.
R & S Farms
Railside Farms, LLC
Rembrandt Enterprises, Inc.
Rigtrup Egg Farm, LLC
Rindler Poultry, LLC
Ritewood, Inc.
Riverview Farms, Inc.
Ross-Medford Farms, LLC
S & R Egg Farms, Inc.
Schipper Eggs, LLC
Schmidt Poultry
Shepherd Poultry Farm, LLC
Simpson's Eggs, Inc.
Sioux County Egg Farm, LLP
SKS Enterprises, Inc.
Smith Quality Eggs, LLC
Soncrest Egg Company
Sperry Farm, Inc.
Sterup Poultry Farms, LLC
Stiebers Farms, Inc.
Stoller Farms, Inc.
Strickland Partnership
Sunny Side Farms, Inc.
Sunny Yolk Egg Ranch, LLC
Sunrise Acres, Inc.
Sunrise Farms, LLC

The Country Hen
Thomas Poultry Farm of Schoylerville, Inc.
Trillium Farm Holdings, LLC
United Egg Marketing Corp.
Valley Fresh Foods, Inc.
Vermont Egg Farms, Inc.
Vorderstrasse Farms, LLC
Warnock, Melvin (Al)
Warren Farms, LLP
Wayne County Eggs, LLC
Weaver Brothers, Inc.
Wharton County Foods, LLC
Whitesville Poultry, LLC
Wilcox Farms, Inc.
Willamette Egg Farms, Inc.
Winchester Egg Farms, LLC
Wuebker Poultry, Inc.
Wuebker, Melvin
Zeilinger Farms, LLC
Zoet Poultry, Inc.

Exhibit B

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

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

**MDL No. 2002
Case No: 08-md-02002**

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

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT WITH UNITED EGG PRODUCERS AND UNITED STATES EGG
MARKETERS, 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 Defendants United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”) do not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with UEP and USEM, 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.eggproductsettlemnt.com website prior to the objection and opt-out deadlines set forth below.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date: _____

Exhibit C

EXHIBIT C

Entries on 5.13.13 UEP/USEM/UEA Hard Copy Document Privilege Log
1-3
7-29
31-32
35-38
43-44
50-54
57
120-130
132
134-142
144-146
158-162
Entries on 5.13.13 UEP/USEM/UEA Electronic Document Privilege Log
1-5
7-12
14
18
46-48
92-94
97-98
100-102

111-112
121-122
135-139
143-163
208-210
225-228
231-242
276-280
282-286
292-294
386
Entries on 5.13.13 UEP/USEM/UEA Privilege Log for Documents in Possession of UEP and USEM's Co- Defendants
2-9
12
18-22
25-27
45
68
122-163
165-171
194
Entries on UEP Privilege Log for Documents in Possession of Golden Oval

4
7-15

Exhibit D

EXHIBIT D

quinn emanuel trial lawyers | new york

51 Madison Avenue, 22nd Floor, New York, New York 10010-1601 | TEL: (212) 849-7000 FAX: (212) 849-7100

WRITER'S DIRECT DIAL NO.
(212) 849-7152

WRITER'S INTERNET ADDRESS
steigolson@quinnemanuel.com

July 31, 2013

VIA E-MAIL

Eli Segal
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799

Re: *In re Processed Egg Products Antitrust Litigation*

Dear Eli:

I write on behalf of the Direct Purchaser Plaintiffs ("Plaintiffs") regarding documents that Defendants UEP, USEM, and UEA (together for the purposes of this letter "UEP") have either withheld or redacted on the grounds of attorney-client privilege or work-product doctrine. Based on a review of UEP's privilege logs and the redacted documents produced by UEP, Plaintiffs have determined that UEP's assertion of privilege or protection over certain documents, portions of documents, and categories of documents, appears unjustified, as detailed below.

A. Documents concerning the "Compassion Over Killing" lawsuit against UEP

UEP has withheld or redacted numerous documents concerning the lawsuit brought by Compassion Over Killing against UEP. UEP's own description of many of these documents facially indicates that they are not privileged. For example:

quinn emanuel urquhart & sullivan, llp

LOS ANGELES | 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017-2543 | TEL (213) 443-3000 FAX (213) 443-3100
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111-4788 | TEL (415) 875-6600 FAX (415) 875-6700
SILICON VALLEY | 555 Twin Dolphin Drive, 5th Floor, Redwood Shores, California 94065-2139 | TEL (650) 801-5000 FAX (650) 801-5100
CHICAGO | 500 W. Madison Street, Suite 2450, Chicago, Illinois 60661-2510 | TEL (312) 705-7400 FAX (312) 705-7401
WASHINGTON, DC | 1299 Pennsylvania Avenue NW, Suite 825, Washington, District of Columbia 20004-2400 | TEL (202) 538-8000 FAX (202) 538-8100
LONDON | 16 Old Bailey, London EC4M 7EG, United Kingdom | TEL +44 20 7653 2000 FAX +44 20 7653 2100
TOKYO | NBF Hibiya Building, 25F, 1-1-7, Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan | TEL +81 3 5510 1711 FAX +81 3 5510 1712
MANNHEIM | Mehlstraße 42, 68165 Mannheim, Germany | TEL +49 621 43298 6000 FAX +49 621 43298 6100
MOSCOW | Voynorg Building, 3rd Floor, 10 Vozdvizhenka Street, Moscow 125009, Russia | TEL +7 495 797 3666 FAX +7 495 797 3667
HAMBURG | An der Alster 3, 20099 Hamburg, Germany | TEL +49 40 89728 7000 FAX +49 40 89728 7100

EXHIBIT D

- Document No. 60 on UEP's Electronic Document Privilege Log (dated May 13, 2013) ("Electronic Privilege Log") is an email from Gene Gregory of UEP to Howard Magwire of UEP, copying Al Pope of UEP, which UEP describes as a "Confidential email discussing defense of COK lawsuit regarding UEP animal welfare program." No attorney were copied on the email, which does not purport to contain the advice of counsel, yet UEP has withheld this document on the grounds of "UEP Work Product."
- Document No. 76 on UEP's Privilege Log for Documents in Possession of UEP and USEM's Co-Defendants (dated May 13, 2013) ("Co-Defendant Privilege Log") is a memorandum from Gene Gregory of UEP to the members of UEP's Executive Committee Members. No attorneys are listed in the author or recipient fields for this memorandum, which UEP describes as a "Confidential memorandum reporting on mediation conference in COK lawsuit regarding UEP animal welfare program and containing UEP counsel's legal advice regarding the same." UEP has withheld this document on the grounds of "Attorney-Client" privilege and "Work Product."
- Document No. 172 on UEP's Co-Defendant Privilege Log is a document authored by Gene Gregory of UEP, which UEP describes as "Confidential notes regarding NAD Review Board hearing and NAD action initiated by COK regarding UEP animal welfare program." Although an attorney did not prepare these notes, UEP has withheld them on the grounds of "UEP Work Product."

None of these documents appear to be communications with counsel requesting or reflecting legal advice that would fall within the bounds of the attorney-client privilege. (*See* Docket Entry No. 585, Mem. & Opinion in Support of Order re: Direct Purchaser Plaintiffs' Motion to Compel Production of Sparboe Documents and Other Information [hereinafter "Magistrate Judge Rice Privilege Order"], Oct. 19, 2011, at 2 ("Were any of the communications at issue made for the purpose of obtaining or providing legal advice? If not, they cannot fall within the bounds of the attorney-client privilege".) Merely discussing a lawsuit does not make the content of that discussion privileged.

Moreover, Gene Gregory of UEP is not an attorney and his notes, mental impressions, and/or communications with other non-attorneys cannot be withheld as Attorney Work Product. As Magistrate Judge Rice explained: "The work-product doctrine 'is designed to protect material prepared by an attorney acting for his client in anticipation of litigation.'" (*See* Magistrate Judge Rice Privilege Order at 9 (quoting *United States v. Rockwell Int'l*, 897 F.2d 1255, 1265 (3d Cir. 1990).)

Plaintiffs have the same concerns about the following entries on UEP's privilege logs: Document Nos. 36, 37, 38, 42, 43, 49, 50, 59, 60, 69, 87, 88, 117-119, 124, 125, and 128 on UEP's Electronic Privilege Log; Document Nos. 34, 45-48, 61, 96, 97, 103, and 104 on UEP's Hard Copy Document Privilege Log (dated May 13, 2013) ("Hard Copy Privilege Log"); Document Nos. 11, 13, 16, 24, 33, 50-52, 60-63, 76-81, 92-99, and 172-190 on UEP's Co-Defendant Privilege Log.

EXHIBIT D

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

B. Privilege log entries for withheld email chains involving multiple parties

UEP also has withheld numerous documents that are described as “Confidential email exchange[s]” among various individuals, some of whom are counsel and some of whom are not. However, Plaintiffs are unable to evaluate the basis for UEP’s assertion of privilege over these documents based on the minimal information provided by UEP. For example:

- Document No. 118 on UEP’s Electronic Privilege Log is described as an email from Howard Magwire of UEP to Gene Gregory of UEP. The privilege log entry indicates that no other person was copied on this particular email. However, the description of the document states that this document is a “confidential email exchange among Gene Gregory, Howard Magwire,” and several other persons, including Kevin Haley (UEP counsel) “containing legal advice of Haley regarding petition filed by COK with FDA regarding egg labeling requirements and attaching draft UEP response prepared by Haley.” UEP has withheld this email exchange on the grounds of “Attorney-Client” privilege.
- Document No. 166 on UEP’s Co-Defendant Privilege Log is an email from UEP Long Range Planning Committee Chairman Roger Deffner to Chad Gregory of UEP. The privilege log entry indicates that no other person was copied on this particular email. However, the description of the document provided by UEP states that this document is a “confidential email exchange among Roger Deffner, Chad Gregory, Kevin Haley (UEP counsel), Gene Gregory (UEP President) and Mike McGriff (UEP Dir. Member Services) requesting and discussing request for legal advice regarding Capper-Volstead.” UEP has withheld this email exchange on the grounds of “Attorney-Client” privilege.

It is unclear from these privilege log entries how many emails the “exchanges” contain, who if anyone was copied on each email in the chain and, most importantly, whether counsel was copied on all or only some of the emails in the exchange. No attorneys are identified in the “Author/From” or “To” fields provided for these email exchanges, suggesting that counsel was not on every single email in the chain. An entire series of email exchanges cannot be withheld as privileged merely because one or multiple emails in the chain constitute privileged communications with counsel; rather, the emails should be produced with any privileged communications redacted. *See, e.g., Rhoads Indus. v. Bldg. Materials Corp. of Am.*, 254 F.R.D. 238, 242 (E.D. Pa. 2008)

In addition to the specific examples provided, Plaintiffs have the same concern about the following entries on UEP’s privilege logs: Document Nos. 33, 118, 119, 124-25, 128, and 371-73 on UEP’s Electronic Privilege Log; Document Nos. 92-99, 161, 165, 166, 168, and 169 on UEP’s Co-Defendant Privilege Log. Please review these documents and either produce the email exchanges, with any appropriate redactions, or provide amended privilege log entries that adequately explain with specificity UEP’s basis for withholding each of these email exchanges in full and not only the privileged portions. *See Rhoads Indus., supra.*

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C. Communications with nonmembers

UEP has withheld or redacted communications with individuals who were apparently not members of UEP at the time of the communication. For example:

- Document No. 43 (UE0142186-89) on UEP's Hard Copy Privilege Log is a redacted email from Justin Whaley of Country Creek Farms to Gene Gregory, copying other employees of Country Creek Farms. UEP has redacted this document on the grounds of "UEP Attorney-Client Privilege" and identifies Justin Whaley as a UEP member on the privilege log. Yet UEP stated in response to DPP's Joint Interrogatory No. 7 that Country Creek Farms never was a member of UEP. Thus, communications with representatives of Country Creek Farms are not privileged.
- Document No. 82 on UEP's Co-Defendant Privilege Log is identified as a "confidential email forwarding and discussing confidential memorandum from Brann & Isaacson (UEP counsel) providing legal advice regarding settlement of COK lawsuit." However, the email recipients include "UEP Animal Welfare Committee Observers" such as nonmembers Kevin Whaley of Country Creek Farms and Jason Wadsworth of Wegman's Food Markets, Inc. Communications with these nonmember "observers" are not privileged.

It is well-established that communications with third-parties are not privileged, and that disclosing otherwise privileged communications to third-parties waives any claim of privilege. *In re Teleglobe Commcn's Corp.*, 493 F.2d 345, 361 (3d Cir. 2007). UEP has no basis for withholding communications with nonmembers under the purview of the "UEP Attorney-Client Privilege." Nor can UEP withhold minutes of meetings that were attended by nonmembers or otherwise privileged communications that have been disclosed to nonmembers.

In addition to the specific examples provided, Plaintiffs have the same concerns about the following entries on UEP's privilege logs: Document Nos. 82-93, 95, 98, 109-122, 129-33, 134-40, 147, 150-53, 191, and 192 on UEP's Co-Defendant Privilege Log; Document Nos. 137-139, and 143 of UEP's Electronic Privilege Log; Document Nos. 120 and 162 on UEP's Hard Copy Privilege Log.

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

D. Meeting minutes and related documents

UEP has redacted certain portions of the minutes of various UEP committee meetings, as well as other documents related to those meetings. For example:

- Document No. 53 (UE0944732-33) on UEP's Hard Copy Privilege Log are minutes from an undated meeting held by the UEP Committee for Egg Products Market

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Discovery. Attendees at this meeting included UEA Chairman Toby Catherman. UEP's privilege log states that this was a confidential meeting, and that the redacted portion of the document "reflect[s] request for legal advice from and provision of legal advice by Martin Eisenstein (UEP counsel) regarding Capper-Volstead."

- Document No. 122 (MOARK0039248-251) on UEP's Co-Defendant Privilege Log are minutes from a February 27, 2007 meeting of the Long Range Planning Committee. The minutes identify nonmember Kevin Whaley of Country Creek Foods as a participant in this meeting, and thus any communications that took place at this meeting could not have been privileged.
 - ◆ Document UE0144760-68 identified in UEP's clawback letter dated April 29, 2013 ("Clawback Letter") appears to be a copy of Chad Gregory's handwritten minutes and notes the same Long Range Planning Committee meeting. Various portions of the handwritten notes are redacted, but nothing in this document suggests that it contains anything more than Chad Gregory's own mental impressions of what transpired at this meeting. As explained above, the presence of a nonmember at this meeting eliminates any claim of privilege over the communications that took place at the meeting, as well as any related documents.
 - ◆ Documents Nos. 129 (MFI0633678-81) and 150 (MFI0633682-85) on UEP's Co-Defendant Privilege Log are emails sent by Chad Gregory forwarding the same minutes of the Long Range Planning Committee to various recipients, including UEP's public relations firm Golin Harris). Comments from these recipients, none of whom were counsel, were requested, and counsel was only copied. These emails do not contain "confidential" or "attorney-client" markings, nor does the content of these emails otherwise suggest that the attached meeting minutes should be kept confidential.

UEP has no basis for asserting privilege over minutes taken at UEP committee or board meetings, or over the handwritten notes and mental impressions of a non-attorney from those open meetings. Both Gene Gregory and Al Pope of UEP testified that UEP meetings were open meetings (*see* Tr. of June 22, 2013 Dep. of Gene Gregory at 781; Tr. of May 21, 2013 Dep. of Al Pope at 79-80.) and, as set forth above, both UEP's privilege log entries and the meeting minutes that have been produced in this litigation make clear that nonmembers participated in many of these meetings. Moreover, Magistrate Judge Rice has held previously that UEP meetings were open to the public and the trade press until at least 2009. (*See* Magistrate Judge Rice Privilege Order at 21.) The fact that the meeting minutes of the Long Range Planning Committee identified above were circulated to various non-attorneys for comments, without any indication that they should be kept confidential, only further demonstrates that they are not protected communications.

In addition to the specific examples provided, Plaintiffs have the same concerns about the following entries on UEP's privilege logs: Document Nos. 90, 137, 138, 143, and 145 on UEP's

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Electronic Privilege Log; Document Nos. 120, 139, 158, and 162 on UEP's Hard Copy Privilege Log; Document Nos. 19, 129, 134, 136, 147, 150, and 155 on UEP's Co-Defendant Privilege Log.

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

E. Communications to which counsel was not a party and which do not otherwise appear to contain privileged information

UEP has redacted numerous communications to which no counsel was a party and which contain no other "attorney-client privilege" or "confidential" markings or other indications that they contain privileged communications. None of these documents appear to have been prepared for the purpose of obtaining or providing legal advice. For example:

- Documents UE0200467-69 and UE0661331-33, identified in UEP's Clawback Letter are copies of a letter from Gene Gregory of UEP to the President of Moark's Egg Products Division explaining the role and goals of UEP's Price Discovery Committee. The letter does not request or contain legal advice and contains no "confidential" or "attorney-client privilege" markings. The letter appears to be a non-privileged communication from one executive to another with no apparent involvement of an attorney, and no indication that it was prepared for the purpose of obtaining or providing legal advice. UEP has not produced a privilege log setting forth the basis for this redaction, and on its face the document does not appear to contain any privileged information.
- Document No. 2 (UE0946358) on UEP's Electronic Privilege Log is a one-page email from Gene Gregory of UEP to Mike Bynum and Paul Bahan. The unredacted portions of the email provide an update of recent developments concerning the Certified program. The privilege description provided by UEP states that the redacted portion reflects a "request for legal advice from Irving Isaacson," but Isaacson is not copied on the email, nor is any other attorney.
- Document No. 10 (UE0945198) on UEP's Electronic Privilege Log is an email exchange between Chad Gregory of UEP and Linda Reickard of UEP regarding a "Producer Questionnaire." UEP's privilege log describes the document as a "redacted portion of a confidential email exchange between Chad Gregory and Linda Reickard reflecting request for legal advice from Irving Isaacson (UEP counsel) regarding UEP membership agreement." However, counsel was not copied on this email exchange, and nothing about the email exchange suggests it was prepared for the purpose of obtaining or providing legal advice.
- Document No. 14 (UE0945158-60) on UEP's Electronic Privilege Log is a memorandum from Gene Gregory to members of the Producer Committee for Animal Welfare. UEP's privilege log describes the document as a "redacted portion of a confidential memorandum reflecting legal advice of and request for legal advice from

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Irving Isaacson (UEP counsel) regarding UEP animal welfare program.” However, the unredacted portions of the memorandum merely update the committee on pending issues and motions requiring a vote; it thus seems unlikely that the redacted portion of the document reflects legal advice by or a request for legal advice from counsel, particularly in light of the fact that the memorandum contains no “confidential” designations and because of the fact that counsel was not copied on the memorandum.

- Document No. 88 (UE0946956-57) on UEP’s Electronic Privilege Log is an email exchange between Gene Gregory of UEP and Linda Reickard of UEP regarding invoices and income. UEP’s privilege log describes the document as a “redacted portion of a confidential email exchange between Gene Gregory and Linda Reickard discussing potential settlement of legal challenges to UEP animal welfare program.” Internal discussions of legal matters are not privileged, and counsel was not involved in this email exchange.
- Document No. 6 (CM00717798-804) on UEP’s Co-Defendant Privilege Log appears to be a packet of materials that was faxed by UEP to Cal-Maine Foods. One of the redacted pages is a fax cover sheet. The unredacted portion indicates that the fax was sent by Gene Gregory of UEP to Dolph Baker and Ken Looper of Cal-Maine Foods. No attorney was a recipient of the fax, yet the fax description box is redacted and stamped “attorney-client privilege.” Moreover, the faxed material appears to contain the type of non-privileged material regularly sent to UEP members, including a letter calling for a voluntary flock reduction, supply/demand statistics, and a commitment sheet. Nothing about the documents suggests they were prepared for the purpose of obtaining or providing legal advice.
- Document No. 11 (CM00717700-03) on UEP’s Co-Defendant Privilege Log is a set of documents that includes an email from Gene Gregory to the members of the UEP Animal Welfare Committee. Counsel was not copied on the email, but UEP’s Co-Defendant Privilege Log described it as a “redacted portion of confidential email within document compilation, containing legal advice of Kevin Haley (UEP counsel) and providing an update regarding NAD action initiated by COK regarding UEP animal welfare program.” None of the other documents in the set of documents – an egg advertisement/coupon, a non-privileged UEP letter to a third-party price discovery entity, and a memorandum on Urner Barry PCT Survey findings – were prepared for the purposes of obtaining or providing legal advice, but instead were of the type that were widely distributed and populate the Joint Document Depository.

In addition to the specific examples provided, Plaintiffs have the same concerns about the following entries on UEP’s privilege logs: Document Nos. 47 and 147 on UEP’s Electronic Privilege Log; and Document Nos. 31 and 43 on UEP’s Hard Copy Privilege Log.

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

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F. Communications to which counsel is a party but that do not appear to request or seek legal advice

UEP has also redacted documents that are communications copying counsel but do not appear to be the type of communication that is protected by the attorney-client privilege:

- Document NL000819-21, identified in UEP's Clawback Letter, is an email exchange between Gene Gregory and the employees of several Defendants regarding the marketing of certified products by non-certified producers. UEP counsel Irving Isaacson is copied on only the last email in the exchange, but nothing about the email suggests it was prepared for the purpose of requesting or obtaining legal advice or reflects any legal advice previously given. Various portions of the email chain are redacted, including portions of an email to which counsel was not a party and which appear to be merely discussions of one member's views. There are no "confidential" or "attorney-client privilege" markings on this email chain.
- Document No. 21 (MOARK0039217-22) in UEP's Co-Defendant Privilege Log is a near-duplicate of NL000819-21 and does not appear privileged for the same reasons.

As the Court previously has explained, "merely copying an attorney on a communication does not establish that the communication is privileged." (Magistrate Judge Rice Privilege Order at 10-11 (quotation and alterations omitted).) Magistrate Judge Rice rejected UEP's claim of privilege over a memorandum from Sparboe's president to Gene Gregory of UEP and certain producers even though Irving Isaacson was one of the recipients of the memorandum, because nothing in the document suggested that it was prepared in connection with a request for or the provision for legal advice. (*Id.* at pp. 11-13.) Like the non-privileged Sparboe documents addressed in Magistrate Judge Rice's Privilege Order, the documents above contain no indication that they were prepared for the purpose of obtaining or providing legal advice. To the contrary, the unredacted portions suggest that Irving Isaacson was merely copied on the final email of a chain that discussed UEP's policies for permitting non-certified companies to market certified eggs.

We believe these documents should be produced. If, after a review of these documents, UEP intends to maintain its claim of privilege or protection over any of them, please state with specificity the basis for each such assertion.

G. Documents not available on the JDD

UEP has provided bates numbers in its privilege logs for certain documents that have been redacted on grounds of privilege, but which are not available at the identified bates numbers on the Joint Document Depository. Plaintiffs request that UEP clarify whether it intends to withhold these documents in their entirety or will produce them in redacted form. If a redacted document should have been produced, please produce it promptly. The following documents identified on UEP's Co-Defendant Privilege Log are not available:

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<u>Begbates</u>	<u>Endbates</u>
RA85520	RA85542
NL012000455	
NL012000453	NL012000454
NL012000448	NL012000452
NL012000456	NL012000458
NL012000437	NL012000443
NL012000429	NL012000432
NL012000422	NL012000424
NL012000495	NL012000497
NL012000498	NL012000500
RA85543	RA85545

In addition, the following two documents identified on UEP's Electronic Privilege Log not only have been entirely redacted, but appear to have been redacted without legitimate grounds. Plaintiffs request that UEP produce these documents:

- Document No. 1 (UE0753734) on UEP's Electronic Privilege Log is a one-page document that has been entirely redacted. The document is described in UEP's Electronic Privilege Log as the "redacted portion of a confidential letter reflecting legal advice from Irving Isaacson (UEP counsel) regarding Capper-Volstead," but it was sent by Al Pope to Bob Dominic, Board member of Dissolving UEP Member Northwest Egg Producers. Counsel was not a party to the communication. Based on UEP's own description of the document, it appears it was not a document prepared for the purpose of obtaining or providing legal advice.
- Document No. 151 (UE0619325-26) on UEP's Electronic Privilege Log also is entirely redacted. The document is described in UEP's Electronic Privilege Log as a "confidential email exchange reflecting provision of and request for legal advice from Kevin Haley (UEP counsel) regarding Capper-Volstead," but the email was from McGriff to Gene Gregory, copying Chad Gregory. Again, counsel was not a party to the communication. Based on UEP's own description of the document, it appears it was not a document prepared for the purpose of obtaining or providing legal advice.

H. Documents regarding the Capper-Volstead Act

UEP has withheld and redacted many documents on the grounds that they purportedly request, provide, or reflect legal advice from counsel regarding the Capper-Volstead Act. This position is, however, inconsistent with UEP's defense in this action that UEP and its members had a good faith belief that their conduct was exempt from the federal antitrust laws under the Capper-Volstead Act. (*See* Docket Entry No. 748, Defs.' Statement of Law, at 47.)

Since Defendants undeniably received legal advice from UEP counsel about this issue, the nature of that advice is necessarily relevant to the question of whether Defendants, in fact, had a good-faith belief that their conduct was protected by the Capper Volstead Act. Indeed, several

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Defendants expressly represented in response to Plaintiffs' Joint Interrogatory No. 6 that their purported good-faith belief in Capper-Volstead immunity was based on communications that UEP had with its counsel on this issue – some of which admittedly have been withheld as privileged. (See, e.g., National Food Corp.'s Response to Joint Interrogatory No. 6 (“NFC personnel were aware that UEP and USEM regularly consulted their attorneys on antitrust and Capper-Volstead issues. . . . These communications, some of which have been produced while others have been withheld by UEP or USEM as privileged, formed a significant part of the basis for [NFC’s] belief.”).)

UEP cannot use the attorney-client privilege as both “a sword” and “a shield” by arguing that it had a good-faith belief that its actions were protected by Capper-Volstead, and then refusing to disclose communications with counsel that bear directly on that issue. See, e.g., *Merck Sharp & Dohme Pharmaceuticals SRL v. Teva Pharmaceuticals USA*, 2008 U.S. Dist. LEXIS 89661, at *2 (D.N.J. Nov. 5, 2008); *Moran v. Davita, Inc.* 2008 U.S. Dist. LEXIS 74326, at *2-3 (D.N.J. Sept. 26, 2008) (“Defendants cannot claim that all of their actions with respect to Plaintiff were taken for legitimate business reasons related to [an applicable statute] . . . and then refuse to disclose the opinion sought regarding the application of [that statute]. . . . Defendants seek to use the privilege as a shield, by refusing to disclose the [] opinion letter authored by [their outside counsel], and as a sword, by arguing that they acted upon a good faith business reason . . .”).

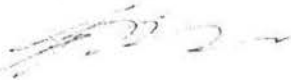
Accordingly, to the extent UEP intends to maintain its “good faith” defense, UEP must produce all documents regarding legal advice from counsel regarding Capper-Volstead that have been withheld or redacted as privileged. Please let us know whether UEP will agree to do so, or whether it will agree to withdraw its good faith defense.

* * *

In addition, please let us know when UEP will be providing an updated Log reflecting the clawed-back documents identified in your April 29, 2013 letter.

Finally, we confirm Plaintiffs' understanding that the parties are at an impasse regarding UEP's claim of privilege over document UE0153457 (which is Pope Exhibit 14). We trust there is no disagreement about this given our extensive correspondence.

Very truly yours,



Steig D. Olson