

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

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

O R D E R

(1) GRANTING PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS AND HILLANDALE FARMS OF PA., INC., AND HILLANDALE-GETTYSBURG, L.P.; (2) CERTIFYING THE CLASS FOR PURPOSES OF SETTLEMENT; (3) GRANTING LEAVE TO FILE MOTION FOR FEES AND EXPENSES; AND (4) APPROVING THE NOTICE PLAN FOR THE PRELIMINARILY APPROVED SETTLEMENT AGREEMENTS BETWEEN DIRECT PURCHASER PLAINTIFFS AND NUCAL FOODS, INC., HILLANDALE FARMS OF PA., INC., AND HILLANDALE-GETTYSBURG, L.P.

AND NOW, this 19th day of December, 2014, upon consideration of Direct Purchaser Plaintiffs’ Motion for Preliminary Approval of Class-Action Settlement with Defendants Hillandale Farms of Pa., Inc., and Hillendale-Gettysburg, L.P., and for Certification of Class Action for Purposes of Settlement, and for Leave to File Motion for Fees and Expenses (Docket No. 1093), and Direct Purchaser Plaintiffs’ Motion for Approval of Plan of Notice for the Proposed Settlements with Nucal Foods, Inc., and Hillandale Farms of Pa., Inc., and Hillendale-Gettysburg, L.P., (Doc. No. 1094), and following yesterday’s hearing on these Motions, **it is HEREBY ORDERED and DECREED that:**

- 1. Direct Purchaser Plaintiffs’ Motion for Preliminary Approval of Class-Action Settlement with Defendants Hillandale Farms of Pa., Inc., and Hillendale-Gettysburg, L.P., for Certification of Class Action for Purposes of Settlement, and for Leave to File Motion for Fees and Expenses (Docket No. 1093) is GRANTED.**

2. The background of this consolidated multidistrict litigation has been extensively recounted elsewhere. Defendants, some of the nation's largest egg producers, including Hillendale Farms of Pa., Inc., and Hillendale-Gettysburg, L.P., (collectively, "Hillendale"), allegedly conspired to reduce egg output and thus fix, raise, maintain, and/or stabilize the prices of eggs and egg products in the United States. Direct Purchaser Plaintiffs allegedly paid higher prices as a result of this conspiracy, and they now seek treble damages, injunctive relief, attorneys' fees, and costs. Earlier in this litigation, Direct Purchaser Plaintiffs reached settlement agreements, for which the Court granted final approval in 2012, with the Moark Defendants and Sparboe. *See generally, e.g., In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 249 (E.D. Pa. 2012) (Moark); *In re Processed Egg Prods. Antitrust Litig.*, 284 F.R.D. 278 (E.D. Pa. 2012) (Sparboe). Direct Purchaser Plaintiffs have also reached settlement agreements with Defendants Cal-Maine Foods, National Food Corporation, Midwest Poultry Services, United Egg Producers, United States Egg Marketers, and NuCal Foods, Inc. *See generally* Feb. 28, 2014 Order (Doc. No. 908) (Cal-Maine); July 30, 2014 Order (Doc. No. 1027) (National Food, Midwest, UEP, and USEM); October 3, 2014 Order (Doc. No. 1073) (NuCal).

3. After four months of arm's-length negotiations between experienced counsel, mature fact discovery of over one million documents, and numerous depositions of fact witnesses, the Direct Purchaser Plaintiffs and Hillendale have reached a Settlement Agreement ("Hillendale Settlement Agreement," Doc No. 1093-2, Ex. 1) for which they now seek the Court's preliminary approval.

4. The Hillendale Settlement Agreement defines the Settlement Class as follows:

All persons and entities that purchased Shell Eggs and 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.

5. The Hillandale Settlement Agreement establishes \$3 million as the Settlement Amount. Class members will receive distributions from the Settlement Amount based pro-rata on each Class member's purchases, and the cost of the Notice Plan and any award of attorneys' fees and litigation expenses will be paid from the Settlement Amount.

6. The Hillandale Settlement Agreement also requires Hillandale to cooperate with Direct Purchaser Plaintiffs' prosecution of the case by authenticating documents.

7. In exchange for the Settlement Amount, the Direct Purchaser Plaintiffs release Hillandale from any and all claims they raised or could have raised regarding any agreement or understanding among Defendant Producers; the reduction or restraint of supply; or the pricing, selling, discounting, marketing, or distributing of Shell Eggs and Egg Products.

8. The preliminary approval determination requires the Court to consider whether "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the

proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003) (citing *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785-86 (3d Cir. 1995)); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 233 n.18 (3d Cir. 2001). If, after consideration of those factors, a court concludes that the settlement should be preliminarily approved, “an initial presumption of fairness” is established. *In re Linerboard*, 292 F. Supp. 2d at 638 (citing *In re Gen. Motors Corp.*, 55 F.3d at 785). Here, based on these factors, the Court concludes that the Proposed Hillandale Settlement Agreement falls within the range of reasonableness for settlement of claims such as these, including the context of other settlements heretofore reached with this litigation and as to which these Plaintiffs and Plaintiff Classes can, will, and may participate, all as more particularly discussed on the record of the December 18, 2014 proceedings in open court.

9. In addition, where, as here, the Court has not already certified a class, the Court must also determine whether the proposed settlement class satisfies the requirements of Rule 23. *Amchem v. Windsor*, 521 U.S. 591, 620 (1997). At the preliminary approval stage, the Court may conditionally certify the class for purposes of providing notice. David F. Herr, *Annotated Manual for Complex Litigation* § 21.632 (West, 4th ed. 2013) (“The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).”). Accordingly, at this stage, the Court must determine whether the proposed class should be conditionally certified, and leave the final certification decision for the Fairness Hearing.

- a. Rule 23(a) requires that the parties moving for class certification demonstrate that “(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). Accordingly, the Court finds that:

- i. The members of the Hillandale Settlement Class, defined above, are ascertainable from objective criteria, such as Hillandale’s records, and that they are so numerous that their joinder before the Court would be impracticable.
 - ii. The commonality requirement is satisfied insofar as Direct Purchaser Plaintiffs have alleged one or more questions of fact and law common to the Hillandale Settlement Class, including whether Hillandale violated federal antitrust law.
 - iii. The Class Representatives have claims that are typical of the claims of the Class, because the Representatives’ claims rely on the same legal theories and arise from the same illegal agreement. All putative Class members were direct purchasers of Shell Eggs or Egg Products, as reflected in the two SubClasses.
 - iv. The requirement of adequacy of representation is met because Class Counsel are extensively experienced litigators and there are no apparent conflicts of interest.
- b. Under Federal Rule of Civil Procedure 23(b)(3), a class action may be maintained if “the court finds that the questions of law or fact common to class members 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.” Fed R. Civ. P. 23(b)(3).

The Court finds that these requirements are met, and a class can be conditionally certified, except as provided in paragraph 10 immediately below.

10. The Court makes no determination concerning the manageability of this action as a class action if it were to go to trial. *See In re Cmty. Bank of N. Va.*, 418 F.3d 277, 306 (3d Cir. 2005).

11. **Direct Purchaser Plaintiffs' request for leave to file a Motion for Attorneys' Fees and Litigation Expenses is GRANTED.** The Motion for Attorneys' Fees and Litigation Expenses for the Hillandale Settlement and for the NuCal Settlement must be filed by April 7, 2015.

12. **The Notice Plan, the Proposed NuCal Foods, Inc., ("NuCal") Settlement Agreement, and the Proposed Hillandale Settlement Agreement shall proceed in the following manner and on the following schedule:**

- a. **Garden City Group ("GCG") is appointed Claims Administrator and is approved to implement the Notice Plan for the Hillandale and NuCal Settlement Agreements.**
- b. **By January 16, 2015**, each Defendant shall provide to 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 the entry of this Order; and (ii) that were not included in that Defendant's most recent customer name and address production to GCG. The customer information transmitted by Defendants to GCG:

- i. Shall be produced in a mutually agreeable electronic format or, if not available electronically, in the form in which such information is regularly maintained;
 - i. 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
 - ii. shall not be shared with Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, their counsel, or their experts.
- c. **By February 16, 2015**, GCG will staff a toll-free hotline, 866-881-8306, to answer any Settlement Class member's questions.
- d. **By February 16, 2015**, GCG shall send notice by U.S. First Class mail, postage prepaid, to all individuals whose names and addresses were produced by Defendants to GCG (Direct Mail Notice). The Direct Mail Notice shall be in substantially the same format as that proposed at **Docket No. 1094-2**.
- e. **By February 16, 2015**, GCG shall publish Direct Mail Notice, relevant Court documents, the NuCal and Hillandale Settlement Agreements, any Settlement updates, and answers to "Frequently Asked Questions" at www.eggproductssettlement.com.
- f. GCG shall publish notice, in substantially the same format as that proposed at **1094-3**, as follows:
 - i. **By February 26, 2015**, on one occasion, in the National Edition of *The Wall Street Journal*, on one-sixth of the page.
 - ii. **By February 26, 2015**, GCG shall issue press releases, consisting of substantially the same language of the Publication Notice, through (a) PR Newswire and (b) 1000 journalists in the restaurant and food industry.

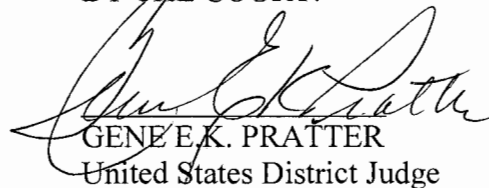
- iii. **By March 18, 2015**, or as close thereto as publication schedules permit, on one occasion, in the following industry publications: Restaurant Business, Convenience Store News, Hotel F&B, Nation's Restaurant News, Food Service Director, Progressive Grocer, Food Manufacturing, Supermarket News, Stores, Egg Industry, Bake, Food Processing, Long Term Living, Pet Food Industry, and School Nutrition.
- g. **By March 27, 2015**, Direct Purchaser Plaintiffs shall file an affidavit prepared by GCG that details the process engaged in by GCG to effect the Notice Plan, and confirms that the requirements regarding Direct Mail Notice, Publication Notice, the website, and the toll-free hotline have been completed in accordance with this Order.
- h. **The costs of implementing the Notice Plan** and administering these settlements shall be paid, in equal amounts, from the NuCal and Hillandale Settlement Amounts.
- i. Direct Purchaser Plaintiffs shall submit any Motion for Attorneys' Fees, Litigation Expenses, and Incentive Awards by **April 7, 2015**, which date shall be inserted in the Direct Mail Notice and Publication Notice.
- j. **Requests for exclusion from the NuCal and Hillandale Settlements** must be First-Class Mail postmarked or hand-delivered to GCG, at the address indicated in the relevant notice, **by May 22, 2015**, which date shall be inserted in the Direct Mail Notice and Publication Notice.
- k. **Objections to the NuCal and Hillandale Settlements** must be First-Class Mail postmarked or hand-delivered to the Court, Counsel for Direct Purchaser Plaintiffs, and Counsel for the relevant settling defendant, at the addresses

indicated in the notice, **by May 22, 2015**, which date shall be inserted in the Direct Mail Notice and Publication Notice.

- l. **By June 1, 2015**, the Direct Purchaser Plaintiffs must file their Motion for Final Approval of the NuCal and Hillandale Settlement Agreements.
 - m. The Court will hold a **Fairness hearing for the NuCal and Hillandale Settlements at 10:00 AM on Monday, June 22, 2015**, in Courtroom 10B, United States Courthouse, 601 Market Street, Philadelphia, PA 19106. This date shall be inserted into the Direct Mail Notice and Publication Notice. The date, time, and location of this hearing are subject to change, and Settlement Class members are advised to check www.eggproductssettlement.com for any updates.
13. The previously filed Motion for Approval of Plan of Notice of Direct Purchaser Plaintiffs' Settlement with NuCal Foods (Doc. No. 1047), is hereby deemed MOOT.

IT IS SO ORDERED.

BY THE COURT:



GENE E.K. PRATTER
United States District Judge