

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

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

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

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

**DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANT
CAL-MAINE FOODS, INC., FOR CERTIFICATION OF CLASS ACTION FOR
PURPOSES OF SETTLEMENT,
AND FOR LEAVE TO FILE MOTION FOR FEES AND EXPENSES**

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs ("Plaintiffs") move the Court to: (1) preliminarily approve a settlement between Plaintiffs and Defendant Cal-Maine Foods, Inc. ("Cal-Maine") set forth in the "Settlement Agreement between Direct Purchaser Plaintiffs and Defendant Cal-Maine Foods, Inc." ("Settlement" or "Settlement Agreement"), attached as Exhibit A to the Hausfeld Declaration; (2) preliminarily certify a class for purposes of the Settlement; and (3) grant Plaintiffs leave to file a motion for attorneys' fees and reimbursement of expenses.

This motion is based on the accompanying Memorandum of Law in Support and Declaration of Michael D. Hausfeld, submitted herewith, and is made on the following grounds:

1. The Settlement falls within the range of reasonableness, *In re Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.*, 2013 U.S. Dist. LEXIS 18332, at *7 (E.D. Pa. Feb. 11, 2013), and is "sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard," the applicable standards for preliminary approval of a class action settlement, *see In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *1 (E.D. Pa. May 11, 2004) (citation omitted).
2. The Settlement will provide the proposed class with valuable cash consideration, and the Settlement requires Cal-Maine to provide certain factual information through counsel, as

described in the Settlement Agreement and accompanying memorandum. Interim Co-Lead Counsel believe that this will greatly assist them in further analyzing and prosecuting the claims this Action. *See In re Ikon Office Supplies Inc. Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000).

3. The Settlement is fair to the Class as a whole, treats Class Representatives the same as other Settlement Class members, and requires Interim Co-Lead Counsel to seek Court approval of an award for attorneys' fees and expenses from the Settlement Amount.
4. The Settlement is the result of extensive arm's-length negotiations by experienced antitrust and class action lawyers. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807 at *1 (citations omitted); *Thomas v. NCO Fin. Sys.*, No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002).
5. The Settlement Agreement was negotiated and executed after fact discovery was significantly advanced.
6. The expense and uncertainty of continued litigation against Cal-Maine and the likelihood of appeal militates strongly in favor of approval. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003); *In re Remeron End-Payor Antitrust Litig.*, No. Civ. 02-2007, 2005 WL 2230314, at *17 (D.N.J. Sept. 13, 2005).
7. The Settlement Class, as defined in the Settlement Agreement, meets the requirements of Fed. R. Civ. P. 23(a) and (b)(3).

Dated: August 23, 2013

Respectfully submitted,

/s/ Steven A. Asher

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**DIRECT PURCHASER PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT
AGREEMENT BETWEEN PLAINTIFFS AND DEFENDANT CAL-MAINE FOODS,
INC., FOR CERTIFICATION OF CLASS ACTION FOR PURPOSES
OF SETTLEMENT, AND FOR LEAVE TO FILE MOTION FOR FEES AND
EXPENSES**

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs (“Plaintiffs”) respectfully submit this memorandum in support of their motion for: (1) preliminary approval of a settlement between Plaintiffs and Defendant Cal-Maine Foods, Inc. (“Cal-Maine”) set forth in the “Settlement Agreement between Direct Purchaser Plaintiffs and Defendant Cal-Maine Foods, Inc.” (“Settlement” or “Settlement Agreement”), attached as Exhibit A to the Declaration of Michael D. Hausfeld accompanying this Motion and Memorandum;¹ (2) certification of a class for purposes of the Settlement; and (3) leave to file a motion for attorneys’ fees and reimbursement of expenses.²

I. INTRODUCTION

After many months of intense arm’s-length negotiations, Plaintiffs successfully obtained a mutually agreeable settlement with Cal-Maine. In exchange for a release from this lawsuit, Cal-Maine has agreed to pay \$28,000,000 into a Fund to provide for the claims of members of the proposed Settlement Class. The Settlement also obligates Cal-Maine to provide, through a proffer by Cal-Maine’s counsel, factual information regarding the facts and events at issue in this litigation, to authenticate documents, and to provide a witness at trial. Plaintiffs believe these commitments will materially assist Plaintiffs in further analyzing and prosecuting this Action against the remaining Defendants: Daybreak Foods, Inc., Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Rose Acre Farms, Inc. Michael Foods, Inc., Midwest Poultry Services, L.P., NuCal Foods, Inc., National Food Corporation, Ohio Fresh Eggs, LLC, R. W. Sauder, Inc., United Egg Producers, Inc., and United States Egg Marketers, Inc. (“Non-Settling Defendants”).

¹ Class Counsel intend to file a motion for approval of the plan for Class Notice of the Settlement Agreement and form of notice in the coming weeks.

² All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Settlement Agreement.

Plaintiffs respectfully move the Court for an Order (the “Preliminary Approval Order”), in substantially the proposed form submitted herewith, that, among other things:

- finds that the proposed settlement with Cal-Maine is sufficiently fair, reasonable and adequate to allow dissemination of notice of the settlement to the Settlement Class;
- finds that the proposed Settlement Class satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure and approves the proposed Class for settlement purposes; and
- grants leave permitting Plaintiffs to file a motion for an award of attorneys’ fees and litigation expenses as set forth in the Proposed Order attached hereto.

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

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

II. BACKGROUND

A. The Litigation

This case concerns an alleged conspiracy among the nation’s largest egg producers. Plaintiffs allege that Defendants and other named and unnamed co-conspirators violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce output and thereby artificially fix, raise, maintain and/or stabilize the prices of shell eggs and egg products in the United States. As a result of Defendants’ alleged conduct, Plaintiffs and

members of the Class paid prices for shell eggs and egg products that were higher than they otherwise would have been absent the conspiracy. The lawsuit seeks treble damages, injunctive relief, attorneys' fees and costs from Defendants. Cal-Maine has denied all allegations of wrongdoing in the Action.

B. Previous Settlement History

On June 8, 2009, Sparboe entered into a settlement agreement with Plaintiffs providing for cooperation in the continued litigation of the case, and on July 16, 2012, this Court granted final approval of the settlement. ECF No. 698. On May 21, 2010, Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. ("Moark") entered into a settlement agreement with Plaintiffs providing for both continued cooperation and a cash settlement of \$25,000,000.00, and on July 16, 2012 this Court granted final approval of the settlement. ECF No. 700.

C. The Cal-Maine Settlement Negotiations

Interim Co-Lead Counsel for Plaintiffs ("Class Counsel") and Cal-Maine's counsel, Gibson, Dunn & Crutcher, LLP, engaged in extensive arms' length negotiations over the course of a year and a half to reach the current settlement. The scope and details of the negotiations are described in the Hausfeld Declaration, attached hereto. Class Counsel and Cal-Maine's counsel, both highly experienced and capable, vigorously advocated their respective clients' positions in the settlement negotiations. The initial negotiations, which began in March 2012 and continued intermittently into early 2013, were conducted via telephone conferences and email. Hausfeld Decl. ¶¶ 5, 6. Class Counsel and Cal-Maine's counsel agreed to and did mediate the settlement agreement over the course of a full day on June 25, 2013 before the Honorable Daniel Weinstein (Ret.) of JAMS, a respected former jurist, and mediated negotiations continued over the course of the following weeks. *Id.* ¶ 6.

At the time of mediation, Plaintiffs had spent nearly six months intensively reviewing Defendants' document productions—encompassing more than one million documents—in this matter, and key fact witnesses had been deposed. *Id.* ¶ 7. Class Counsel thus had significant knowledge of Defendants' antitrust conspiracy and the strengths and weaknesses of their claims as well as of Defendants' asserted defenses. Class Counsel used the extensive document production produced to date, as well as deposition transcripts and other discovery materials to evaluate Cal-Maine's positions and to advocate for a fair settlement that serves the best interests of the Class. The Parties submitted extensive confidential mediation briefs regarding the strengths and weaknesses of the claims and defenses in aid of the mediation. *Id.* ¶ 6.

The Parties reached an agreement in principle on July 17, 2013. *Id.* ¶ 9. On August 2, 2013, the Settlement Agreement was fully executed by Class Counsel and Cal-Maine's counsel. *Id.* After factual investigation and legal analysis, it is the opinion of Class Counsel that the Settlement amount of \$28 million, combined with Cal-Maine's factual information obligations, is fair, reasonable and adequate to the Class. Plaintiffs respectfully submit that the Settlement is in the best interests of the Class and should be preliminarily approved by the Court, and that a class should be certified for purposes of the Settlement.

III. PROVISIONS OF THE SETTLEMENT AGREEMENT

A. The Settlement Class

The Settlement Agreement defines the proposed Settlement Class as follows:

All persons and entities that purchased Shell Eggs 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.

Settlement Agreement, ¶ 20 (Hausfeld Decl., Ex. A). The Agreement defines the Settlement Class as the settlement classes were defined in the Moark and Sparboe settlement agreements.³

B. Cash Consideration to the Proposed Class & Rescission Provisions

The proposed Settlement Agreement provides that within 20 days of its execution, Cal-Maine will pay \$28,000,000 in cash (the "Settlement Amount"). *See* Settlement Agreement ¶¶ 16, 34. This money shall be maintained in an escrow account controlled by Cal-Maine and Class Counsel pending approval of the settlement by the Court. Cal-Maine has the right and option to rescind the Agreement should class members whose combined purchases of Shell Eggs and Egg

³ All of the settlement agreements define the Settlement Classes as "all persons and entities that purchased eggs . . . including Shell Eggs and Egg Products . . . directly from any producer . . ." And all of the Settlement Agreements exclude from the class those who purchased exclusively "specialty shell eggs" or "hatching shell eggs." The Moark and Sparboe Settlement Agreements provide for those exclusions in the class definitions themselves, whereas the Settlement Agreement with Cal-Maine simply defines "shell eggs" and "egg products" as excluding specialty and hatching shell eggs in the definition of those terms in the Agreement, thus incorporating those exclusions into the class definition by reference. *Compare* Cal-Maine Settlement Agreement ¶¶ 8, 18, 20 *with* Moark Settlement Agreement (ECF No. 349-1) ¶ 19 *and* Sparboe Settlement Agreement (ECF No. 172-2) ¶ 11.

Products equal or exceed a percentage of Cal-Maine's Total Sales exclude themselves from the Settlement Class, as set forth in a Supplemental Agreement between the Parties, which will be disclosed to the Court for *in camera* inspection prior to entry of the Preliminary Approval Order.

Id. ¶ 31. Additionally, the Settlement Agreement provides that Class Counsel may seek an award of attorneys' fees and expenses from the Settlement Amount, subject to Court approval, and that Cal-Maine shall have no other obligation to pay any fees or expenses to Class Counsel.

C. The Factual Information Provision

In addition to the Settlement Amount, the Settlement Agreement also requires that Cal-Maine provide an attorney proffer related to Cal-Maine's knowledge, and that of its directors, officers, employees and agents, of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action, provide information related to transactional data produced by Cal-Maine, authenticate documents produced by Cal-Maine and, to the extent possible, authenticate documents produced by non-settling Defendants that were authored or created by Cal-Maine or sent to or received by Cal-Maine, and to make a witness available to testify at trial regarding facts or issues that remain in dispute at the time of trial. *Id.* ¶¶ 40-43.

D. Release Provisions

In exchange for the consideration provided by Cal-Maine, Plaintiffs have agreed to release Cal-Maine from any and all claims arising out of or resulting from: (i) an agreement or understanding between or among two or more Producers of eggs, including any Defendants; (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs and Egg Products in the United States or elsewhere. *Id.* ¶¶ 14, 26-29. The full text of the proposed release, including the limitations thereof, is set forth in the Settlement Agreement.

IV. THE PROPOSED SETTLEMENT IS SUFFICIENTLY FAIR, REASONABLE AND ADEQUATE

A. Standard For Granting Preliminary Approval Of The Settlement

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

When deciding preliminary approval, a court does not conduct a “definitive proceeding on fairness of the proposed settlement.” *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D.C. Md. 1983); *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) (holding that the “preliminary determination establishes an initial presumption of fairness”); *In re Am. Inv. Life Ins. Co. Annuity Mktg. and Sales Practices Litig.*, 263 F.R.D. 226, 238 (E.D. Pa. 2009) (same). That definitive determination must await the final hearing, at which the fairness, reasonableness, and adequacy of the settlement are more fully assessed. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).⁴ Indeed, as one court noted:

⁴ The factors considered for final approval of a class settlement as “fair, reasonable and adequate” include: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best possible recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534-35 (3d Cir. 2004); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F. Supp. 450, 562 (D.N.J. 1997); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 713 (E.D. Pa. 2001). At the preliminary approval stage, “the Court need not

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

Thomas v. NCO Fin. Sys., No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002) (internal citations omitted). In determining at the preliminary approval stage whether an antitrust settlement falls within a “range of reasonableness,” a court examines whether the “(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.”⁵ *In re Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.*, No. 11-md-2284, 2013 U.S. Dist. LEXIS 18332, at *7 (E.D. Pa. Feb. 11, 2013) (quoting *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003) and citing *In re Gen. Motors Corp.*, 55 F.3d at 784). After making such findings, a settlement agreement is entitled to a presumption of fairness and should be preliminarily approved. *See id.* at *8.

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

address these factors, as the standard for preliminary approval is far less demanding.” *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 444 n.7 (E.D. Pa. 2008). Plaintiffs will thus fully address each of these factors in in their memorandum in support of their motion for final approval.

⁵ The last factor, the percentage of objections, is premature at this stage. *In re Imprelis*, U.S. Dist. LEXIS 18332, at *10.

Finally, the Court should consider that “settlement of litigation is especially favored by courts in the class action setting.” *In re Ins. Brokerage Antitrust Litig.*, Case No. 04-5184, 2013 WL 3956378 (D.N.J. Aug. 1, 2013) (citing *In re Gen. Motors Corp.*, 55 F.3d at 784 (holding that “the law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation”)); *Austin v. Pa. Dept of Corr.*, 876 F. Supp. 1437, 1455 (E.D. Pa. 1995) (explaining that “the extraordinary amount of judicial and private resources consumed by massive class action litigation elevates the general policy of encouraging settlements to ‘an overriding public interest’”).

As discussed below, the proposed Settlement here is entitled to a presumption of fairness because it provides for no preferential treatment of class representatives or segments of the class, does not provide for excessive compensation of attorneys, provides significant relief to the Settlement Class, and requires that Cal-Maine provide additional information, and a witness to testify, regarding the facts and events at issue, and was negotiated at arm’s length by experienced Class and Defense counsel after many months of fact discovery.

B. The Settlement Amount, the Factual Information Obligations and the Terms of the Agreement Support Preliminary Approval.

The \$28,000,000 Settlement Amount exceeds the \$25 million settlement amount in the Moark, LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. settlement agreement previously approved by this Court. ECF No. 700. Moreover, the damages Plaintiffs suffered due to Cal-Maine’s alleged conduct remain in the case, and, under joint and several liability, are recoverable from other Defendants. *See In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *2 (preliminarily approving settlement agreement because, *inter alia*, “this settlement does not affect the joint and several liability of the remaining Defendants in this alleged conspiracy”).

And, as discussed above, the proposed Settlement Agreement provides for Cal-Maine's immediate assistance in providing to Plaintiffs factual information about Cal-Maine's knowledge of the documents and events at issue in this Action. Class Counsel believe that this will further enhance and strengthen Plaintiffs' claims in this Action, while avoiding the risk and expense of continued litigation against Cal-Maine. Plaintiffs expect this assistance to include further documentation and details, through an attorney proffer, regarding Cal-Maine's knowledge of the meetings held and agreements that Plaintiffs allege were made in support of the price-fixing conspiracy. Moreover, Cal-Maine will make available a knowledgeable witness to testify at trial regarding issues that remain in dispute at that time, such as the alleged concerted supply restraint agreements, UEP's animal welfare guidelines and their intent and role in reducing production, and USEM's egg export programs and their intent to and effect of reducing egg supply. In the opinion of Class Counsel, the proposed Settlement significantly benefits Plaintiffs and will materially assist Class Counsel in further analyzing their claims and in the further prosecution of this Action. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 643 ("The provision of such [cooperation] is a substantial benefit to the classes and strongly militates toward approval of the Settlement Agreement."); *In re Ikon Office Supplies Inc. Sec. Litig.*, 194 F.R.D. 166, 177 (E.D. Pa. 2000) (noting that cooperation agreements are valuable when settling a complex case); *In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807, at *2 (acknowledging the assistance that the settling defendants will provide "in pursuing this case against the remaining Defendants").⁶

⁶ *See also In re Mid-Atl. Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D.C. Md. 1983) ("[T]he commitment [the] Distributor defendants have made to cooperate with plaintiffs will certainly benefit the classes, and is an appropriate factor for the court to consider in approving a settlement"); *In re Corrugated Container Antitrust Litig.*, MDL 3101981, WL 2093, at *16 (S.D. Tex. June 4, 1981), *aff'd*, 659 F.2d 1322, 1329 (5th Cir. 1981) ("The settlement

Class Counsel, who have substantial experience litigating antitrust class actions, believe the settlement amount is an appropriate amount of cash consideration for the discharge of the claims of the Class against Cal-Maine and a highly favorable result for the Class. The Settlement Agreement was entered into after review of Cal-Maine's sales figures and market share during the damages period, as well as the likely expense of and risks associated with litigating claims against Cal-Maine through trial.

Courts have accorded significant weight to the opinion of Class Counsel based on a thorough analysis of the facts. *See, e.g., In re Gen. Instruments Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001); *Stewart v. Rubin*, 948 F. Supp. 1077, 1099 (D.D.C. 1996), *aff'd*, 124 F.3d 1309 (D.C. Cir. 1997) ("A court should defer to the judgment of experienced counsel who have competently evaluated the strength of the proof."); *McGuinness v. Parnes*, No. 87-2728-LFO, 1989 WL 29814, at *1 (D.D.C. Mar. 22, 1989) ("While the evaluation of the fairness and adequacy of a settlement such as this is anything but a scientific process, there is nothing about this Settlement suggesting that the Court should second-guess the product of the negotiations between the skilled and conscientious lawyers who represented parties on both sides of this litigation."); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659, 667 (D. Minn. 1974) ("The recommendation of experienced antitrust counsel is entitled to great weight.").

Finally, the Settlement Agreement is fair to the class as a whole. It provides no preferential treatment to Class Representatives, and Class Counsel anticipate the allocation of settlement funds will, as in the Moark settlement, be distributed pro-rata based on each class

agreements provided for cooperation from the settling defendants that constituted a substantial benefit to the class. Those provisions were intended to save plaintiffs time and expense in the continuing litigation . . . [and] made certain information and expertise available to the class which might not have been available through normal discovery.").

member's (including Class Representative's) purchases of shell eggs and egg products. Class representatives will benefit from the Settlement Agreement in the same way as any other Settlement Class member. *See* Allocation Order, Nov. 9, 2012 (ECF No. 761) (finding pro rata allocation of settlement funds to be fair, reasonable, and adequate). And, as noted, the Agreement requires that any award for payment of attorneys' fees and costs is subject to proper motion to, and approval by, the Court.

C. The Negotiation Process With Cal-Maine Supports Preliminary Approval.

Settlements that result from arm's-length negotiations between experienced counsel are generally entitled to deference from the court. *In re Auto. Refinishing Paint Antitrust Litig.*, No. MDL 1426, 2003 WL 23316645, at *6 (E.D. Pa. Sept. 5, 2003); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 640 (holding that "[a] presumption of correctness is said to attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel" (*citing Hanrahan v. Britt*, 174 F.R.D. 356, 366 (E.D. Pa. 1997))); *Lake v. First Nationwide Bank*, 156 F.R.D. 615, 628 (E.D. Pa. 1994) (giving "due regard to the recommendations of the experienced counsel in this case, who have negotiated this settlement at arms-length and in good faith"); *Petruzzi's Inc. v. Darling-Delaware Co.*, 880 F. Supp. 292, 301 (M.D. Pa. 1995) ("[T]he opinions and recommendations of such experienced counsel are indeed entitled to considerable weight"); 2 NEWBERG ON CLASS ACTIONS, § 11.41 (3d ed. 1992) ("There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval."). This deference reflects the understanding that vigorous negotiations between seasoned counsel protect against collusion and advance the fairness considerations of Rule 23(e).

As discussed above and in the accompanying Hausfeld Declaration, the Settlement with Cal-Maine is the result of hard-fought, arm's-length negotiations between Class Counsel and

Cal-Maine's counsel, all experienced and capable lawyers in complex class actions and antitrust matters.⁷ Class Counsel and Cal-Maine's counsel vigorously advocated their respective clients' positions in the settlement negotiations and were prepared to litigate the case fully if no settlement was reached. Hausfeld Decl. ¶ 4. And the Parties engaged the services of an experienced, neutral mediator to facilitate the settlement negotiations, which continued with the mediator's assistance in the weeks following the initial in-person mediation session. *Id.* ¶ 6. As part of that process, the Parties exchanged, and provided to the mediator, comprehensive confidential mediation briefs laying out the strengths and weaknesses of the claims and defenses. *Id.* Nothing in the course of the negotiations or in the substance of the proposed Settlement presents any reason to doubt its fairness.

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

At the time the Parties began their mediation, and by the time they had entered into the Settlement Agreement, fact discovery was well advanced. Not only had document requests been served, but Defendants had produced more than one million documents, a substantial portion of which had been reviewed by Class Counsel. Additionally, depositions of fact witnesses had commenced, including the depositions of the two critical witnesses—UEP's former and current presidents, Al Pope and Gene Gregory. Hausfeld Decl. ¶ 7. Accordingly, the degree of discovery supports a finding that the Settlement is within the range of reasonableness. *In re Imprelis*, 2013 U.S. Dist. LEXIS 18332, at *9-10 (finding settlement within range of reasonableness where “[a] considerable amount of preliminary discovery was conducted,

⁷ The experience and qualifications of Interim Co-Lead Class Counsel are described in Interim Co-Lead Counsel's Submission in Support of Permanent Appointment of Interim Leadership Structure. No. 08-cv-4653 (E.D. Pa.), ECF No. 26, and accompanying exhibits.

including the review of some 500,000 pages of documents . . . , the hiring and consultation of several experts, and a deposition of [Defendant's] product manager").

E. The Expense and Uncertainty of Continued Litigation Against Cal-Maine Supports Preliminary Approval.

The Settlement is particularly reasonable given the risks inherent in moving forward against Cal-Maine. It has been often observed that "[a]n antitrust class action is arguably the most complex action to prosecute." *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 639 (citation omitted); see also *Weseley v. Spear*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989) (noting that antitrust class actions are "notoriously complex, protracted, and bitterly fought"). Continuing this litigation against Cal-Maine would entail a lengthy and expensive legal battle, which has already consumed nearly five-years. This case does not follow a Department of Justice investigation or any public indictment. It is reasonable to expect that all such matters would be sharply disputed and vigorously contested, as they were in the settlement negotiations. Additionally, Cal-Maine has asserted various defenses, and a jury trial (assuming the case proceeded beyond pretrial motions) might well turn on questions of proof, making the outcome inherently uncertain for both parties. *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 639; *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475-76 (S.D.N.Y. 1998) ("Antitrust litigation in general, and class action litigation in particular, is unpredictable. . . . [T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal."). And, as the Court is aware, Defendants' Omnibus Motion to Dismiss Plaintiffs' Claims for the period prior to September 25, 2004 on statute of limitations grounds (ECF No. 805) remains pending. Plaintiffs thus also face the uncertainty associated with the scope of the relevant period.

Moreover, even after trial is concluded, there would very likely be one or more lengthy appeals. *In re Remeron End-Payor Antitrust Litig.*, No. Civ. 02-2007, 2005 WL 2230314, at *17 (D.N.J. Sept. 13, 2005). The degree of uncertainty supports preliminary approval of the proposed Settlement Agreement. *See In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

Class counsel have considered the complexities of this litigation, the risks, expense and duration of continued litigation against Cal-Maine, and the likely appeal if Plaintiffs do prevail at trial. After weighing these against the guaranteed recovery to the Class and what Class Counsel believe to be the significant benefits of Cal-Maine's factual information obligations, Class Counsel firmly believe the Settlement represents a desirable resolution of this litigation as to Cal-Maine.

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

V. PRELIMINARY CERTIFICATION OF THE PROPOSED CAL-MAINE SETTLEMENT CLASS IS WARRANTED

It is well-established that a class may be certified for purposes of settlement. *In re Pet Food Prods. Liability Litig.*, No. 07-2867, 2008 WL 4937632, at *3 (D.N.J. Nov. 18, 2008) (“Class actions certified for the purposes of settlement are well recognized under Rule 23.”); *Ikon*, 194 F.R.D. at 188 (class certified for purposes of settlement of securities class action). In the case of settlements, “tentative or temporary settlement classes are favored when there is little or no likelihood of abuse, and the settlement is fair and reasonable and under the scrutiny of the

trial judge.” *In re Prudential Sec. Inc. Ltd. P’ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995) (internal quotation and citation omitted). The settlement here is fair, reasonable, and non-abusive. It is thereby subject to approval by the Court.

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

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

Certification is appropriate under Rule 23(a) if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). This Court has already held that the similarly defined settlement class satisfies Rule 23(a)’s prerequisites in its July 16, 2012 Order granting final approval to the Moark, LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. settlement agreement:

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

Order, July 16, 2012 (ECF No. 700) ¶ 4.

1. *The Settlement Class is sufficiently numerous.*

Class certification under Rule 23(a)(1) is appropriate where a class contains so many members that joinder of all would be “impracticable.” *Robidoux v. Celani*, 987 F.2d 931, 935

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

Here, the proposed Settlement Class is comprised of purchasers of hundreds of millions of cases of shell eggs and of purchasers of egg products. Third Consolidated Amended Class Action Complaint (“3CAC”), ¶ 108 (ECF No. 779). In the Moark Settlement, notice of the Settlement Agreement was sent to more than 13,000 potential class members, and nearly 700 class members filed claims and received distributions from the Settlement Fund. *See* Mem. in Supp. of DPP’s Motion to Pay Costs of Settlement Administration (ECF No. 823-2) at 2, 6. Moreover, Class Representatives are located in California, Illinois, Missouri, New York, North Carolina, Pennsylvania and Wisconsin. 3CAC, ¶¶ 32-38. Putative class members are also geographically dispersed. Thus, joinder of all class members would be impracticable and the Settlement Class is sufficiently numerous to satisfy Rule 23(a)(1). *Stewart*, 275 F.3d at 227-28 (observing that generally the requirement is met if the number of plaintiffs exceeds 40); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 508-09 (S.D.N.Y. 1996) (holding that class members numbering a million made joinder impracticable); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 278 (S.D.N.Y. 1999) (numerosity requirement met where potential class exceeded 20,000).

2. There are common questions of law and fact.

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

Moreover, to satisfy commonality:

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

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

Whether Defendants entered into an illegal agreement to reduce production and fix the prices of eggs is a factual question common to all class members because this question is an essential element of proving an antitrust violation. Common legal questions include whether, if such an agreement was reached, Defendants violated antitrust laws. “Indeed, consideration of the conspiracy issue would, of necessity focus on Defendants’ conduct, not the individual conduct of the putative class members.” *In re Flat Glass Antitrust Litig.*, 191 F.R.D. 472, 484 (W.D. Pa. 1999); *Transamerican Refining Corp. v. Dravo Corp.*, 130 F.R.D. 70, 75 (S.D. Tex. 1990) (“[T]he conspiracy issue ... is susceptible of generalized proof since it deals primarily with what the Defendants themselves did and said.”); *In re Catfish Antitrust Litig.*, 826 F. Supp. 1019, 1039 (N.D. Miss. 1993) (“Evidence of a national conspiracy . . . would revolve around what the

defendants did, and said, if anything, in pursuit of a price fixing scheme.”); *In re Warfarin*, 391 F.3d at 528 (“In other words, while liability depends on the conduct of DuPont, and whether it conducted a nationwide campaign of misrepresentation and deception, it does not depend on the conduct of individual class members.”). Because there are several common legal and factual questions related to potential liability, the commonality requirement of Rule 23(a)(2) is met.

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

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

The typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees’ interests will be fairly represented. The typicality criterion is intended to preclude certification of those cases where the legal theories of the named plaintiffs potentially conflict with those of the absentees by requiring that the common claims are comparably central to the claims of the named plaintiffs as to the claims of the absentees.”

Typicality entails an inquiry whether “the named plaintiff’s individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based.” Commentators have noted that cases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.

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

Moreover, “factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory.” *Hoxworth v. Blinder, Robinson & Co., Inc.*, 980 F.2d 912, 923 (3d Cir. 1992) (internal citations omitted). “Even if there are ‘pronounced factual

differences among the plaintiffs, typicality is satisfied as long as there is a strong similarity of legal theories and the named plaintiff does not have any unique circumstances.’’

Microcrystalline, 218 F.R.D. at 84; *see also Mercedes-Benz*, 213 F.R.D at 185 (“[W]hile the Court must ensure that the interests of the plaintiffs are congruent, the Court will not reject the plaintiffs’ claim of typicality on speculation regarding conflicts that may arise in the future.”).

Here, typicality is satisfied because the claims of the Class Representatives and absent class members rely on the same legal theories and arise from the same alleged “conspiracy” and “illegal agreement” by Defendants, namely, Defendants’ agreement to reduce production and artificially fix and/or inflate the prices of eggs. 3CAC, ¶¶ 536. Moreover, Plaintiffs allege that all putative class members were direct purchasers of eggs and/or egg products and suffered injury as a result of Defendants’ alleged anticompetitive conduct. *Id.* ¶¶ 32-38. And the Class is divided into subclasses to address any differences between shell egg purchases and purchases of processed egg products. Accordingly, the Rule 23(a)(3) typicality requirement is satisfied.

4. *The Class Representatives will fairly and adequately protect the interests of the Class.*

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

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

Id. at 449.

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

B. The Class Representatives' Claims Satisfy The Prerequisites Of Rule 23(b)(3).

In addition to satisfying Rule 23(a), Plaintiffs must show that each putative class falls under at least one of the three subsections of Rule 23(b). Here, the Settlement Class qualifies under Rule 23(b)(3), which authorizes class certification if “the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”⁸ Fed. R. Civ. P. 23(b)(3). This Court has already found that a similar settlement class satisfies Rule 23(b)'s prerequisites in its July 16, 2012 Order approving the Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. settlement classes. Order, July 16, 2012 (ECF No. 700); *see also* Mem. in Supp. of Order (ECF No. 699).

⁸ Since this is a settlement class, the Court need not examine the manageability of the class at trial. “[I]n a settlement-only class action . . . the court certifying the class need not examine issues of manageability. *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 306 (3d Cir. 2005) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S.591, 620 (1997)) (explaining that issues of individual liability and damages are even less likely to defeat predominance in settlement-only class actions).

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

1. Common legal and factual questions predominate.

The Rule 23(b)(3) predominance requirement “tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation” *Sullivan v. DB Inv., Inc.*, 667 F.3d 273, 297 (3d Cir. 2011) *cert. denied*, 132 S. Ct. 1876 (2012) (quoting *In re Ins. Broker. Antitrust Litig.*, 579 F.3d 241, 266 (3d Cir. 2009) (internal quotations omitted)); *In re Hydrogen Peroxide Antitrust Litig.* 552 F.3d 305, 311 (3d Cir. 2008); *see also Mercedes-Benz*, 213 F.R.D. at 186 (“Predominance requires that common issues be both numerically and qualitatively substantial in relation to the issues peculiar to individual class members.”).

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

The Third Circuit recently discussed the predominance inquiry in the specific context of Section 1 antitrust settlements in *In re Ins. Brokerage Antitrust Litigation*, 579 F.3d 241 (3d Cir. 2009) (applying *Hydrogen Peroxide* in a settlement context). The case involved allegations of bid rigging and steering among brokers and insurers in the property and casualty insurance

industry. As here, plaintiffs brought class action claims arising under Section 1 of the Sherman Act. On review, the Third Circuit examined the propriety of the standards applied by the district court in certifying two settlement-only classes against individual defendants. The district court had granted certification to both classes.

In evaluating a challenge to the predominance of common issues for each settlement class, the Third Circuit first noted that “because the ‘clear focus’ of an antitrust class action is on the allegedly deceptive conduct of defendant and not on the conduct of individual class members, common issues necessarily predominate.” *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d at 267; *see also Sullivan*, 667 F.3d at 299 (finding that *Wal-Mart Stores Inv. v. Dukes*, 131 S. Ct. 2541 (2011), bolstered a finding that common issues predominated in an antitrust case where the answers to the questions of alleged anticompetitive conduct and the harm it caused are common as to all class members). The court then turned to the specific common issues identified by the district court with respect to the antitrust claims:

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

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

Finding these issues satisfied predominance, the court “examine[d] [each of] the elements of plaintiffs’ claim through the prism of Rule 23.” The court analyzed whether common questions of law or fact existed with respect to the four elements of a Sherman Act Section One conspiracy claim, which require a plaintiff to show: “(1) concerted action by the defendants; (2) that produced anticompetitive effects within the relevant product and geographic markets; (3)

that the concerted actions were illegal; and (4) that it was injured as a proximate result of the concerted action.” *Id.*

The court found that “[b]ecause the first and third elements of a Sherman Act violation focus on the conduct of the defendants . . . common questions abound with respect to whether the defendants engaged in illegal, concerted action” and that “[t]he second element of a Sherman Act violation, which focuses on the effects of the defendants’ challenged conduct, also involves common questions in the present case, including whether the . . . Defendants’ actions reduced competition for insurance, whether the . . . Defendants’ actions resulted in a consolidation of the insurance industry, and whether the . . . Defendants’ actions produced an increase in the cost of premiums for commercial insurance.” *Id.* at 268.

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

After examining the first three elements of the Sherman Act conspiracy claim, the court in *Insurance Brokerage* turned to the final element: injury or antitrust impact. The court found that “the task for plaintiffs is to demonstrate that the element of antitrust impact is capable of

proof at trial through evidence that is common to the class rather than individual to its members.”

Id. The plaintiffs in that case argued antitrust injury was a common question because the overcharge attributable to the conspiracy was “built into every commercial premium for commercial insurance products, and the conspiratorial conduct of all Defendants reduced or eliminated competition for insurance products, thereby raising the insurance premiums paid by Plaintiffs and all members of the class.” *Id.* The court agreed, finding that “whether the named plaintiffs and absent class members were proximately injured by the conduct of the . . .

Defendants is a question that is capable of proof on a class-wide basis” *Id.* After a brief discussion of the flow of injury through the insurance brokerage market, the court concluded that “we are satisfied that the element of antitrust injury—that is, the fact of damages—is susceptible to common proof, even if the amount of damage that each plaintiff suffered could not be established by common proof.” *Id.*

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

475 (E.D. Pa. 1979) (proof of a conspiracy to establish a “base” price would establish at least the fact of damage, even if the extent of the damages suffered by the plaintiffs would vary).

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

Here, the alleged conspiracy is the overriding predominant question in this case. And, as alleged in the Complaint, the conspiracy permitted all Defendants to artificially maintain or inflate the price of eggs by eliminating the risk that customers would be able to avoid the non-competitive price, thus working an antitrust injury onto the entire class. *See* 3CAC, ¶¶ 496, 530-531. Accordingly, common or class-wide proof will also predominate with respect to the fact of injury or impact in this case.⁹

⁹ Regarding the amount of damages, “[a]ntitrust cases nearly always require some speculation as to what would have happened under competitive conditions, to estimate the damage done by restraints on trade or other collusion, but this is not fatal to class certification.” *Microcrystalline*, 218 F.R.D. at 92 (citing *In re Fine Paper Antitrust Litig.*, 82 F.R.D 143, 151-52 (E.D. Pa. 1979)) (noting that diversity of product, marketing practices, and pricing have not been fatal to class certification in numerous cases where conspiracy is “the overriding predominant question”). Accordingly, the need to determine the amount of damage sustained by each plaintiff is an insufficient basis for which to decline class certification. *In re Cmty. Bank of N. Va.*, 418 F.3d at 305-306 (“Although the calculation of individual damages is necessarily an individual inquiry, the courts have consistently held that the necessity of this inquiry does not preclude class action treatment where class issues predominate.”); *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 242 (D. Del 2003) (“[T]he need for individual damages

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

“The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternate available methods of adjudication.” *In re The Prudential Ins. Co. of Am. Sales Practices Litig. Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998), *cert. denied*, *Krell v. Prudential Ins. Co. of Am.*, 525 U.S. 1114 (1999). In evaluating the superiority of a class action, the Court should inquire as to the class members’ interest in individually controlling the prosecution of separate actions, the extent and nature of any litigation concerning the controversy already commenced by members of the class, and the desirability or undesirability of concentrating the litigation of the claims in the particular forum. Fed. R. Civ. P. 23(b)(3).

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

calculations does not defeat predominance and class certification”) *aff’d*, 391 F.3d 516, 534-35 (3d Cir. 2004).

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

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

Plaintiffs also seek leave to file a motion for an award of attorneys' fees and for reimbursement of litigation expenses from the Settlement Amount.¹⁰ As specified in the Proposed Order filed herewith, Class Counsel's motion for attorneys' fees and for reimbursement of expenses shall be filed 45 days in advance of the Settlement objection and opt-out deadline, and shall be posted on the www.eggproductssettlement.com website. The timing and form of notice will provide the potential class members with both sufficient notice of the motion and a reasonable opportunity to review it prior to determining whether to object to the motion or Settlement Agreement or opt-out of the class.¹¹ Additionally, as set forth in the Proposed Order, the Class Notice of the Settlement Agreement shall include the date on which the motion for attorneys' fees and expenses shall be filed, and inform the Class that the motion will be made available on the settlement website at that time.

VII. CONCLUSION

For the reasons set forth above, Plaintiffs request that the Court: (1) preliminarily approve the Settlement Agreement; (2) certify a class for purposes of the Settlement; and (3) grant

¹⁰ See Order, July 18, 2012 (ECF No. 704) n.1 (directing Plaintiffs, pursuant to CMO No. 1, to seek leave of Court prior to filing a motion for fees and expenses).

¹¹ See Order, Aug. 15, 2013 (ECF No. 727) n.2 (concluding that the class must have sufficient notice of, and adequate opportunity to object to, a motion for fees and expenses prior to the objection deadline).

Plaintiffs leave to file a motion for attorneys' fees and reimbursement of litigation expenses as provided in the Proposed Order.

Dated: August 23, 2013

Respectfully submitted,

/s/ Steven A. Asher

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**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 :
DIRECT PURCHASER ACTIONS :**

**DECLARATION OF MICHAEL D. HAUSFELD IN SUPPORT OF DIRECT
PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS
AND DEFENDANT CAL-MAINE FOODS, INC.**

I, Michael D. Hausfeld, declare as follows:

1. I am one of the founding partners and Chairperson of the law firm Hausfeld LLP.

I am one of the Court-appointed Interim Co-Lead Counsel for Direct Purchaser Class Plaintiffs in the above captioned action, along with counsel from Weinstein Kitchenoff & Asher LLC, Susman Godfrey LLP, and Bernstein Liebhard LLP.

2. I submit this declaration in support of the accompanying motion for preliminary approval of the proposed settlement agreement between Cal-Maine Foods, Inc. ("Cal-Maine") and Direct Purchaser Class Plaintiffs.

3. I was among the principal negotiators of the proposed Settlement Agreement with Cal-Maine, along with other Interim Co-Lead Counsel for Direct Purchasers, and Stephen Neuwirth of Quinn Emanuel Urquhart & Sullivan LLP.

4. The settlement negotiations with Cal-Maine were conducted by experienced counsel on both sides at arm's length over a period of nearly a year and a half. Cal-Maine and Class Counsel were prepared to fully litigate the case against Cal-Maine if no settlement could be reached.

5. Preliminary discussions between Interim Co-Lead Counsel and counsel for Cal-Maine about the prospects for a potential resolution occurred in March 2012 after the Court denied Defendants' Motion to Dismiss, and continued into April 2012. Interim Co-Lead counsel determined that the monetary compensation offered by Cal-Maine at that time would not adequately compensate the Class, and, as a result, no agreement was reached. The Parties resumed discussions in late October 2012, when document production was well underway, and just two months prior to the deadline for substantial completion of such production. These intermittent discussions continued into 2013, through teleconferences and e-mail exchanges.

6. Negotiations resumed in earnest in February 2013, through teleconferences and email exchanges. Thereafter, the Parties agreed to attend a formal mediation before a neutral third party. The in-person mediation occurred over the course of a full day on June 25, 2013 before the Honorable Daniel Weinstein (Ret.) of JAMS, a respected former jurist. In support of their positions, the Parties prepared for Judge Weinstein comprehensive confidential mediation briefs analyzing the strengths and weaknesses of the claims and defenses in this matter. The mediated negotiations continued via telephone during the weeks following the initial mediation session.

7. At the time of the mediation, after nearly six months of document review and depositions of key fact witnesses, Direct Purchaser Plaintiffs had significant knowledge of Defendants' antitrust conspiracy and the strengths and weaknesses of their claims and Defendants' asserted defenses. Defendants in this action produced more than one million documents, a substantial portion of which had been reviewed by the time of the mediation and execution of the Settlement Agreement. By the time the Agreement was executed, Plaintiffs had

taken several depositions, including depositions of the current and former President and CEO of Defendant United Egg Producers, who are key fact witnesses in this case.

8. Interim Co-Lead Counsel analyzed documents, deposition transcripts and other discovery materials, as well as all the contested legal and factual issues posed by the litigation, in order to accurately evaluate Cal-Maine's positions, advocate for a fair settlement that serves the best interests of the class, and to make an accurate demand of Cal-Maine.

9. The Parties reached an agreement in principle on July 17, 2013. On Friday, August 2, 2013, the Settlement Agreement was fully executed by the Co-Leads and Cal-Maine's Counsel. A true, correct and complete copy of this Agreement is attached as Exhibit A.

10. Pursuant to ¶ 40 of the Settlement Agreement, Cal-Maine has agreed to provide a proffer through counsel regarding Cal-Maine's knowledge, and that of its directors, officers, employees and agents, of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action, to authenticate documents, and to provide a witness to testify at trial.

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

Dated: August 22, 2013

/s/ Michael D. Hausfeld
Michael D. Hausfeld

Exhibit A

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

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

THIS DOCUMENT APPLIES TO:
All Direct Purchaser Actions

:
:
:
:
:

**SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS
AND DEFENDANT CAL-MAINE FOODS, INC.**

This Settlement Agreement (“Agreement”) is made and entered into this 2nd day of August 2013 (the “Execution Date”) by and between Cal-Maine Foods, Inc., together with its past and present parents, subsidiaries and affiliates (“Cal-Maine”), and Direct Purchaser Plaintiffs’ Class representatives (“Plaintiffs”) (as defined herein at Paragraph 12), both individually and on behalf of a Class (as defined herein at Paragraph 5) of direct purchasers of Shell Eggs and Egg Products (as defined herein at Paragraphs 8 and 18).

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) (the “Action”) on their own behalf and on behalf of the Class against Cal-Maine and other Defendants;

WHEREAS, Plaintiffs allege that Cal-Maine participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of certain Shell Eggs and Egg

Products in the United States at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement with Cal-Maine according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Class;

WHEREAS, Cal-Maine denies all allegations of wrongdoing in the Action. However, despite its belief that it is not liable for, and has good defenses to, the claims alleged in the Action, Cal-Maine desires to settle the Action, 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 and Cal-Maine Counsel have engaged in arm's-length settlement negotiations, and this Agreement has been reached as a result of these negotiations;

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 Cal-Maine only, without costs as to Plaintiffs, the Class, Cal-Maine, 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. “Cal-Maine’s Counsel” shall refer to the law firm of Gibson, Dunn & Crutcher LLP, 2100 McKinney Avenue, Suite 1100, Dallas, Texas 75201.
3. “Counsel” means both Class Counsel and Cal-Maine’s Counsel, as defined in Paragraphs 1 and 2 above.
4. “Claims Administrator” shall mean the Garden City Group, Inc.
5. “Class Member” or “Class” shall mean each member of the settlement class, as defined in Paragraph 20 of this Agreement, who does not timely elect to be excluded from the Class, and includes, but is not limited to, Plaintiffs.
6. “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.
7. “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.

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. “Final Approval” shall mean the definition given to that phrase in Paragraph 25 hereof.

10. “Non-Settling Defendants” shall refer to Defendants other than Cal-Maine.

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

12. “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.

13. “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.

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

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

16. “Settlement Amount” shall refer to \$28,000,000 (twenty-eight million) U.S. dollars.

17. “Settlement Fund” shall refer to the funds accrued in the escrow account established in accordance with Paragraph 34 below.

18. “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).

19. “Cal-Maine’s Total Sales” shall mean the sum of the annual U.S. sales by Cal-Maine of Shell Eggs and Egg Products, excluding sales to Producers, for the years during the Class Period, to be mutually agreed upon by Counsel.

B. Settlement Class Certification

20. 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 only as to Cal-Maine:

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.

C. Approval of this Agreement and Dismissal of Claims

21. Plaintiffs and Cal-Maine 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 Cal-Maine.

22. Within two (2) days after the execution of this Agreement by Cal-Maine, Counsel shall jointly file with the Court a stipulation for suspension of all proceedings against Cal-Maine in the Action pending approval of this Agreement. Within twenty (20) days after execution of the Agreement by Cal-Maine, Plaintiffs shall submit to the Court a motion (the "Motion"): for preliminary approval of the Agreement and certification of a Class for settlement purposes ("Preliminary Approval"), and authorization to disseminate notice of Class certification and the settlement. The Motion shall include: (a) the proposed definition of the Class for settlement purposes as set forth in Paragraph 20 of this Agreement; (b) a proposed form of, method for, and date of dissemination of notice; and (c) a proposed schedule for the filing of Plaintiffs' Motion for Fees and Expenses and incentive awards for class representatives, the filing of a Motion to approve finally the Settlement Agreement, and a final fairness hearing; and (d) a proposed form of order preliminarily approving the Settlement and certifying the class for settlement purposes. The text of the items referred to in clauses (a) through (d) above shall be proposed by Plaintiffs subject to the agreement of Cal-Maine, which agreement shall not be unreasonably withheld. After Preliminary Approval, and subject to approval by the Court of the 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 Cal-Maine, any Non-Settling Defendant(s) in the Action, or Other Settling Defendants during the Class Period that: are identified by Cal-Maine; 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

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, subject to the agreement of Cal-Maine, which agreement shall not be unreasonably withheld. Within twenty (20) days after the Execution Date, Cal-Maine shall supply to Class Counsel at Cal-Maine's expense and in such form as kept in the regular course of business (electronic format if available) such names and addresses of potential Class Members as it has. If practicable and approved by the Court, Plaintiffs may combine dissemination of notice of the certification of the Class for settlement purposes and the Agreement with the dissemination of notice of other settlement agreements that may be reached with other Defendants in the Action.

23. Within twenty (20) days of the date on which the Court preliminarily approves the Agreement and certifies a Class for settlement purposes, Cal-Maine shall provide to Plaintiffs (to the extent that such data have not already been produced by Cal-Maine in discovery in the Action) in a text delimited format, Cal-Maine's sales data over the Class Period sufficient to show the dollar volume of annual sales of Shell Eggs and Egg Products to each of Cal-Maine's customers during the Class Period. Within twenty (20) days after expiration of the deadline established by the Court and set forth in the notice by which potential Class Members must request exclusion from the Settlement Class ("Opt-Out Deadline"), Plaintiffs shall provide Cal-Maine, through Cal-Maine's Counsel, a written list of all potential Class Members that have exercised their right to request exclusion from the Class, the dollar volume of purchases of Shell Eggs and Egg Products during the Class Period for each such potential Class Member and the

percentage that each such potential Class Member's purchases represents of Cal-Maine's Total Sales as reflected in the data Cal-Maine shall have produced pursuant to this paragraph.

24. Plaintiffs shall, in accordance with the schedule set forth in the Preliminary Approval Order, seek entry of an order and final judgment, the text of which shall be proposed by Plaintiffs subject to the agreement of Cal-Maine, which agreement shall not be unreasonably withheld:

- a. As to the Action, approving 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. Directing that, as to Cal-Maine, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- c. Reserving 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;
- d. Determining 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 Cal-Maine shall be entered; and
- e. Requiring Class Counsel to file with the Clerk of the Court a record of potential Class Members that timely excluded themselves from the Class, and to provide a copy of the record to counsel for Cal-Maine.

25. This Agreement shall become final only when (a) the Court has entered an order finally approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure; (b) the Court has entered final judgment dismissing the Action against Cal-Maine 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 ("Final Approval"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining if the conditions for Final Approval have been satisfied. On the Execution Date, Plaintiffs and Cal-Maine shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 30 and 31 of this Agreement.

D. Release and Discharge

26. In addition to the effect of any final judgment entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants, including any entities or individuals that may later be added as a defendant to the Action, (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs and Egg Products in the United States or elsewhere, including

but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, whether or not concealed or hidden, in the Complaints filed in the Action (the “Complaints”), which in whole or in part arise from or are related to the facts and/or actions described in the Complaints, including under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq., from the beginning of time to the date on which the Court enters an order preliminarily approving the Settlement and certifying a Class for settlement purposes (the “Released Claims”). Releasors shall not, after the date of this Agreement, seek to recover against any of the Releasees for any of the Released Claims. Notwithstanding anything in this Paragraph, Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge, claims based solely on purchases of Shell Eggs and Egg Products outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases. This Release is made without regard to the possibility of subsequent discovery or existence of different or additional facts.

27. 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 Settlement 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, without regard to 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, without regard to the subsequent discovery or existence of such other or different facts.

28. In addition to the provisions of Paragraphs 26 and 27, 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 26 and 27. 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.

29. The release and discharge set forth in Paragraphs 26 through 28 herein do not include claims relating to payment disputes, physical harm, defective product, or bodily injury (the “Excepted Claims”) and do not include any Non-Settling Defendant or Other Settling Defendant.

E. Rescission

30. 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 25 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 Cal-Maine and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) days of the action giving rise to such option. If this Agreement is rescinded, within ten (10) days of both the notice of rescission to Class Counsel and the Escrow Agent and Cal-Maine’s written instructions to the Escrow Agent, all amounts in the escrow account created pursuant to Paragraph 34 hereof, less any expenses authorized pursuant to this Agreement, shall be wire transferred to Cal-Maine, pursuant to its instructions; provided, however, that simultaneous with its written instructions to the Escrow Agent, Cal-Maine shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five days of receipt of such notice, notify the Escrow Agent of any objections to Cal-Maine’s instructions and funds shall not be wired until expiration of that objection deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

31. If Class Counsel notify Cal-Maine, pursuant to Paragraph 23, that Class Members whose combined annual purchases of Shell Eggs and/or Egg Products from Cal-Maine over the Class Period equal or exceed a percentage of Cal-Maine's Total Sales set forth in a Supplemental Agreement signed by the parties ("Opt-Out Threshold") have requested exclusion from this Agreement ("Excluded Class Members"), Cal-Maine shall have the right and option, within fifteen (15) days after receipt of such notice, to rescind the Agreement. The parties intend that the Supplemental Agreement shall be specifically disclosed to the Court and offered for in camera inspection by the Court at or prior to entry of the Preliminary Approval Order, but, subject to the Court's approval, it shall not be filed with the Court before the expiration of the Opt-Out Deadline unless ordered otherwise by the Court. The parties shall seek to keep the Opt-Out Threshold confidential before the Opt-Out Deadline. In the event that the Court directs that the Supplemental Agreement be filed prior to the Opt-Out Deadline, no party shall have any right to any relief by reason of such disclosure. Cal-Maine shall give written notice to Class Counsel to invoke rights under this Paragraph to rescind the Agreement. If this Agreement is rescinded, subject to the terms of the Supplemental Agreement, all amounts in the escrow created pursuant to Paragraph 34 hereof, less any expenses, fees, or taxes authorized pursuant to this Agreement, shall be wire transferred to Cal-Maine, pursuant to its instructions to the Escrow Agent; provided, however, that simultaneous with its written instructions to the Escrow Agent, Cal-Maine shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five days of receipt of such notice, notify the Escrow Agent of any objections to Cal-Maine's instructions and funds shall not

be wired until expiration of that objection deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

32. In the event of rescission, if Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 25 of this Agreement, Class Counsel and Cal-Maine 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 Cal-Maine 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.

33. Class Counsel further agree that in the event of rescission the originals and all copies of any notes, memos or records related to the Factual Information Obligations pursuant to paragraph 40 shall be returned to Cal-Maine at Cal-Maine's expense or destroyed by Class Counsel at their own expense, provided however that such attorney notes, memoranda or records may be destroyed rather than produced if an affidavit of such destruction is promptly provided by Class Counsel to Cal-Maine's counsel.

F. Payment

34. Cal-Maine shall pay or cause to be paid the Settlement Amount in settlement of the Action. The Settlement Amount shall be wire transferred by Cal-Maine

or its designee within twenty (20) days of the Execution Date into the Settlement Fund, which shall be established as an escrow account at a bank agreed to by Class Counsel and Cal-Maine's Counsel, which agreement shall not be unreasonably withheld, and administered in accordance with the Escrow Agreement attached hereto as Exhibit A.

35. 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.

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

37. 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 36 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 Cal-Maine, 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.

38. In order to receive distribution of funds pursuant to Paragraph 36 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) 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.

39. 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 I 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 Cal-Maine in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

G. Factual Information Obligations

40. Cal-Maine agrees that, as soon as practicable after the Execution Date, Cal-Maine's Counsel shall make themselves available to Class Counsel to provide

information concerning Cal-Maine's knowledge, and that of its directors, officers, employees and agents, of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action (the "Proffer"). Plaintiffs and Class Counsel agree that they shall maintain all statements made by Cal-Maine's Counsel under this paragraph as strictly confidential and that they shall not use directly or indirectly the information so received for any purpose other than prosecution of the Action and that such information may not be used to prosecute any claim or action against Releasees. Class Counsel may use information contained in the Proffer in the prosecution of the Action without attributing the source of the information. Class Counsel agree, unless ordered by a court and consistent with due process, that under no circumstances shall information or documents be shared with any person, counsel, Class Counsel or Plaintiffs' Counsel who is also (i) counsel for any plaintiff in any state or federal action against one or more of the Releasees, (ii) counsel for any plaintiff or Class Member that elects to opt out of the proposed class for settlement purposes under this Agreement or from a litigation class that may be certified, (iii) any counsel representing or advising indirect purchasers of Shell Eggs or Processed Eggs, or (iv) any third party not associated with Class Counsel in this Action except in connection with prosecution of this Action. At the conclusion of the Action, Class Counsel shall destroy all notes, memoranda, or records related to the Proffer, and any copies thereof, and shall certify in writing to Cal-Maine Plaintiffs' compliance with this requirement.

41. Cal-Maine shall, upon request by Class Counsel, clarify transactional and other data produced by Cal-Maine in discovery in the Action, including providing, if necessary and appropriate, follow-up information in response to questions Plaintiffs may

have concerning such data. Class Counsel agrees to use reasonable efforts to minimize the burden of any such clarification or follow-up requests.

42. Prior to trial in this Action, Cal-Maine 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) establish the authenticity of documents or business records produced by Cal-Maine, and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by Cal-Maine or sent to or received by Cal-Maine. Class Counsel agree to use reasonable efforts to minimize the burden to Cal-Maine of any such authentication or business records testimony.

43. Upon the request of Class Counsel, Cal-Maine shall make available from among its current or former directors, officers or employees a representative who Cal-Maine and Class Counsel believe in good faith to have knowledge regarding Plaintiffs' claims as alleged in the Action to testify at trial regarding facts or issues that remain in dispute at the time of trial.

H. Notice of Settlement to Class Members

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

will be issued after Preliminary Approval by the Court and subject to any Court orders regarding the means of dissemination of notice.

45. Subject to court approval, disbursements for any payments and expenses incurred in connection with the costs of Notice and administration of the Settlement 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, and such amounts, up to a maximum of \$350,000, shall not be refundable to Cal-Maine in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

I. Taxes

46. Class Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Amount. Further, Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Escrow Funds (“Tax Expenses”). Class Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including reasonable professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable Escrow Fund by notifying the Escrow Agent in writing and as provided in paragraph 39 herein. Cal-Maine shall have no responsibility to make any tax filings relating to this Settlement Agreement.

47. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “Administrator” of the

Settlement Amount shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Settlement Amount (including, without limitation, all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B 2(1)).

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

J. Miscellaneous

49. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Action against any Non-Settling Defendant or any potential defendant other than the Releasees. All rights of any Class Member against Non-Settling Defendants or any other person or entity other than the Releasees are specifically reserved by Plaintiffs and the Class Members. The sales of Shell Eggs and

Egg Products by Cal-Maine to Class Members shall remain in the case against the Non-Settling Defendants in the Action as a basis for damage claims and shall be part of any joint and several liability claims against Non-Settling Defendants in the Action or other persons or entities other than the Releasees.

50. Subject to Court approval, the United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and Cal-Maine. 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. Cal-Maine submits to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. Cal-Maine otherwise retain all defenses to the Court's exercise of personal jurisdiction over Cal-Maine.

51. This Agreement, together with the Supplemental Agreement provided under paragraph 31 and incorporated by reference herein, constitutes the entire agreement among Plaintiffs (and the other Releasors) and Cal-Maine (and the other Releasees) pertaining to the settlement of the Action against Cal-Maine only, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Cal-Maine in connection therewith. In entering into this Agreement, Plaintiffs and Cal-Maine have not relied upon any representation or promise made by Plaintiffs or Cal-Maine not contained in this

Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Cal-Maine and approved by the Court.

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

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

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

55. In the event this Agreement is not approved or is terminated, 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 Cal-Maine or Plaintiffs to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to Class certification, raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by Cal-Maine.

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

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

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

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

For the Class:

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

For Cal-Maine:

Veronica S. Lewis
GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Avenue, Suite 1100
Dallas, TX 75201
vlewis@gibsondunn.com

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

Dated: August 2, 2013

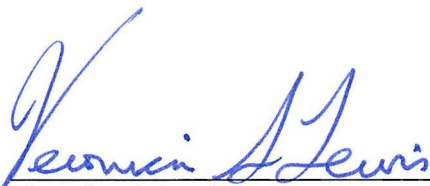
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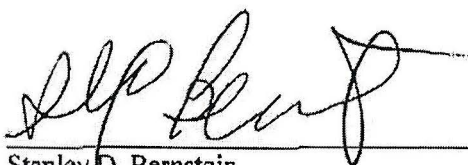
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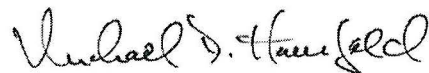
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(On Behalf of Cal-Maine Foods, Inc.)

**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 CAL-MAINE FOODS, INC., CERTIFYING THE CLASS FOR
PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE MOTION FOR
FEES AND EXPENSES**

It is hereby ORDERED AND DECREED as follows:

1. The motion of Direct Purchaser Plaintiffs for preliminary approval of the proposed settlement, which Defendant Cal-Maine Foods, Inc. (“Cal-Maine”) does not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with Cal-Maine, as set forth in the Settlement Agreement, subject to final determination following an approved form of and plan for notice and a fairness hearing, 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 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.

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. 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 set forth in this Order.

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

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

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

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

SIGNIFICANT DATES

7. Direct Purchaser Plaintiffs' Motion for Fees and Expenses: Must be filed 90 days prior to the Fairness Hearing (exact date to be inserted in Direct Mail Notice and Publication Notice).
8. Objections to the Cal-Maine Settlement: Must be postmarked 45 days prior to the Fairness Hearing (exact date to be inserted in Direct Mail Notice and Publication Notice).
9. Requests for Exclusion from the Cal-Maine Settlement: Must be postmarked or hand delivered 45 days prior to the Fairness Hearing (exact date to be inserted in Direct Mail Notice and Publication Notice).
10. Motion for Final Approval: Must be filed at least 30 days prior to the Fairness Hearing.
11. Fairness Hearing: _____, at __:__ .m. [approximately 6 months from preliminary approval], United States District Court, Eastern District of Pennsylvania, 601 Market Street, Courtroom ____, Philadelphia, PA 19106-1797 (exact date to be inserted in 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.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date:_____

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August 2013, a copy of **DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANT CAL-MAINE FOODS, INC., FOR CERTIFICATION OF CLASS ACTION FOR PURPOSES OF SETTLEMENT, AND FOR LEAVE TO FILE MOTION FOR FEES AND EXPENSES**, along with copies of the accompanying Memorandum of Law, Declaration of Michael D. Hausfeld, and Proposed Order in support thereof, were filed with the Clerk of the Court, per the Local Rules, will be available for viewing and downloading via the CM/ECF system, and the CM/ECF system will send notification of such filing to all attorneys of record. On this date, the document was also served, via electronic mail, on (1) all counsel on the Panel Attorney Service List pursuant to Case Management Order No. 1; and (2) the below-listed Liaison Counsel for Defendants, Indirect Purchaser Plaintiffs, and Direct Action Plaintiffs.

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Direct Action Plaintiffs' Liaison Counsel

Date: August 23, 2013

BY: /s/ Jeremy S. Spiegel
WEINSTEIN KITCHENOFF & ASHER LLC