UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND SPARBOE FARMS, INC. AND PRELIMINARY CERTIFICATION OF CLASS ACTION FOR PURPOSES OF SETTLEMENT

Dated: June 22, 2009

Respectfully submitted,

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, and for the reasons detailed herein, Direct Purchaser Plaintiffs ("Plaintiffs") respectfully submit this memorandum in support of their motion for: (1) preliminary approval of a settlement between Plaintiffs and Defendant Sparboe Farms, Inc. ("Sparboe") on the terms and conditions set forth in the "Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc." ("Settlement" or "Settlement Agreement"), attached as Exhibit 1 to the Hausfeld Declaration, attached as Exhibit A; and (2) preliminary certification of a class for purposes of the Settlement.[1]

Pursuant to the Settlement Agreement, Plaintiffs cannot use any information obtained from Sparboe until this Court grants preliminary approval of the Settlement Agreement. Thus, Plaintiffs respectfully request that this Court rule as soon as is

[1] All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Settlement Agreement. Moreover, the term "class" refers collectively to the Subclasses identified in the CAC.

practicable on the Motion for Preliminary Approval and, if amenable, expedite the briefing schedule so that the Motion for Preliminary Approval could be heard at the July 1, 2009, hearing.

Plaintiffs have also filed a motion to vacate the briefing schedule pertaining to Defendants' pending motions to dismiss as set forth in Paragraphs 2 and 3 of the May 7, 2009 Order (Doc. 126), and to set a deadline of July 22, 2009 or five (5) days after the grant of preliminary approval, whichever is later, as the deadline for Plaintiffs to move for leave to file a Second Amended Complaint.

I. INTRODUCTION

After several months of intense arm's-length negotiations by the experienced and capable antitrust lawyers designated by this Court to serve as Interim Co-Lead Class Counsel, Plaintiffs reached a settlement with Sparboe. The Settlement requires substantial cooperation from Sparboe, including the production of critical documents and witnesses that Plaintiffs' Counsel believe will materially assist Plaintiffs in pursuing this litigation against the other defendants ("Non-Settling Defendants") and possibly others.

Specifically, Sparboe has already produced to Class Counsel for review documents that Class Counsel believe provide additional material in support of Plaintiffs' allegations regarding: the conspiracy to reduce output and artificially fix and/or inflate the prices of eggs; the true purposes of the conspiracy; the identities of the parties to the conspiracy; the dates and times of meetings among the conspirators; the identities of individuals who were invited to but refused to participate in the conspiracy; and the efforts of those participating in the conspiracy to police its enforcement and retaliate against the non-participants. Sparboe has agreed, once the Settlement Agreement has

been approved, to release the documents that Plaintiffs have reviewed to Plaintiffs. Sparboe has also agreed to allow Plaintiffs interview witnesses that Plaintiffs contend have information related to the allegations and documents in this case.[2]

As set forth in detail below, the Settlement is fair, reasonable and adequate. Morever, the benefit of the information supplied by Sparboe, reached before the commencement of discovery with the Non-Settling Defendants, vastly outweighs Sparboe's continued participation in the litigation as a defendant. Accordingly, Plaintiffs respectfully request that, pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court (1) preliminarily approve the Settlement Agreement; and (2) preliminarily certify a class for purposes of the Settlement.[3]

II. BACKGROUND

A. The Litigation

The operative complaint in this action is the Consolidated Amended Class Action Complaint ("Complaint"), filed on January 30, 2008. The Complaint alleges that Sparboe and the Non-Settling Defendants violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce output and artificially fix and/or inflate the price of eggs in the United States. As a result of Defendants' alleged conduct, the prices paid to Defendants by Plaintiffs and members of the putative class for

[2] Based on information already provided by Sparboe, Plaintiffs intend to amend their Consolidated Amended Class Action Complaint once the Court rules on Plaintiffs' motion for preliminary approval of the Settlement Agreement.

[3] The Settlement Agreement provides that notice will be issued no earlier than 180 days following preliminary approval of the Settlement Agreement by the Court. Settlement Agreement, ¶ 27 (Hausfeld Decl., Ex. 1). Accordingly, Plaintiffs are not presently seeking approval of the form of the notice to be issued and hereby request permission from the Court to file the appropriate motion at a later date.

shell eggs and egg products were higher than they otherwise would have been. The lawsuit seeks injunctive relief, treble damages, attorneys' fees and costs from Defendants.

B. The Settlement Negotiations

Class Counsel and Sparboe's counsel, Stoel Rives LLP, began settlement negotiations in March 2009. The scope of the settlement negotiations is described in the Hausfeld Declaration, submitted concurrently herewith. Class Counsel and Sparboe's counsel, both highly experienced and capable, vigorously advocated their respective clients' positions in the settlement negotiations. The settlement negotiations spanned several months and included numerous telephone conferences and four in-person meetings.

On March 26, 2009, Sparboe's counsel made an initial proffer to Class Counsel describing what Sparboe's cooperation would be and how it would assist Plaintiffs in the prosecution of this lawsuit, identified current and former employees for interview by Class Counsel, and summarized what Sparboe's counsel expects the nature of the witnesses' testimony to be at the time of the interviews. On April 23, 2009, in a second proffer, Sparboe produced documents and permitted an interview with a Sparboe employee. Class Counsel and Sparboe's counsel engaged in several additional telephone conferences to further discuss the cooperation that Sparboe could provide and whether it was sufficiently beneficial to Plaintiffs to warrant settlement.

On May 26, 2009, Sparboe's counsel made a third proffer to Class Counsel including additional documents. Sparboe's counsel also reiterated what he expects the nature of the witnesses' testimony to be at the time of the interviews. On June 3, 2009, in a fourth proffer, Sparboe's counsel produced another set of additional documents and

reviewed what he expects the nature of the witnesses' testimony to be at the time of the interviews.

After in-person meetings and numerous telephone conferences, Class Counsel are convinced that the cooperation provided by Sparboe before the commencement of discovery, including production of documents and access to witnesses, will provide additional material in support of Plaintiffs' allegations as stated in the Complaint.

Based on the totality of the information supplied by Sparboe, Class Counsel have determined that Sparboe's cooperation will significantly enhance and strengthen the claims against the remaining Non-Settling Defendants. Moreover, the assistance provided by Sparboe far outweighs the continued participation by Sparboe as a defendant to the Class. The Sparboe Settlement will also avoid any risks associated with having to litigate against Sparboe, which promised to defend itself vigorously. Accordingly, Class Counsel determined that it was in the Plaintiffs' and the Class's best interests to obtain the assurance of prompt and significant cooperation from Sparboe to assist in the prosecution of this case against the Non-Settling Defendants, particularly where the opportunity to secure the benefit of such cooperation may have been lost without obtaining any greater benefit for Plaintiffs.

Ultimately, the parties drafted and circulated a settlement agreement after extensive negotiation. On June 8, 2009, the Settlement Agreement was fully executed by Class Counsel and Sparboe's counsel. On June 9, 2009, Sparboe made a first set of documents relating to the allegations in the Complaint available for inspection and review by Class Counsel, and Class Counsel have already begun reviewing those documents and

preparing for witness interviews. On June 22, 2009, Sparboe made additional boxes of documents and transactional information available for review by Class Counsel.

In sum, the Settlement is the result of extensive arm's-length negotiations, after factual investigation and legal analysis, and is, in the opinion of Class Counsel, fair, reasonable and adequate to the Class. Accordingly, 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 AGREMENT

A. The Settlement Class

The Settlement Agreement defines a Settlement Class as follows:

> All persons and entities that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.
>
> a.) Shell Eggs Subclass
> All individuals and entities that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.
>
> b.) Egg Products Subclass
> All individuals and entities that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.
>
> Excluded from the class and subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, 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. Also excluded from the Class and Subclasses are purchases of "specialty" shell egg or egg products (such as "organic," "free-range" or "cage-free") and purchases of hatching eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

Settlement Agreement, ¶ 11 (Hausfeld Decl., Ex. 1).

B. Release Provisions In The Settlement Agreement

In exchange for the consideration provided by Sparboe, Plaintiffs have agreed to release Sparboe from any and all claims arising out of or resulting from the conduct asserted in this lawsuit. The full text of the proposed release, including the limitations thereof, are set forth in the Settlement Agreement, ¶¶ 17-19 (Hausfeld Decl., Ex. 1).

C. Cooperation Provision In The Settlement Agreement[4]

As provided in the Settlement Agreement, Sparboe has agreed to produce documents related to Plaintiffs' allegations in the Complaint and to make witnesses available for informal interviews before the start of formal discovery and, if necessary, to testify at depositions and trial. Settlement Agreement, ¶ 23 (Hausfeld Decl., Ex. 1). Under the cooperation agreement, important information and witnesses that bolster Plaintiffs' claims against the Non-Settling Defendants and possibly others has been made available to Plaintiffs without the time and expense involved in pursuing formal discovery, and sooner than would be possible under the current scheduling orders of the Court and stay of discovery.

In fact, immediately after executing the Settlement Agreement, Sparboe's counsel provided a first round of additional documents to Class Counsel that substantiate the allegations contained in the Complaint. Beginning the week of June 22, 2009, Sparboe began to produce additional documents for review by Class Counsel relevant to this litigation.

[4] If required for adjudication of preliminary approval, Sparboe and Plaintiffs will further describe the nature and scope of the cooperation provided by Sparboe *in camera* if requested by the Court. *See* Settlement Agreement, ¶ 25 (Hausfeld Decl., Ex. 1).

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) a preliminary approval is obtained; and (2) the court schedules 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.*, 2004 WL 1068807 at *1 (E.D. Pa. May 11, 2004); 4 NEWBERG ON CLASS ACTIONS § 11:25, at 38-39 (4th ed. 2002). In this case, given the unique circumstances of the settlement, Plaintiffs are proposing that the Court preliminarily approve the settlement, but delay a ruling on approval of notice. *See* n.3, *supra*. If the Court approves the notice proposal once submitted, and after notice has been disseminated, then Plaintiffs will seek final approval.

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); *In re General 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"). That determination must await the final hearing, at which the fairness, reasonableness, and adequacy of the settlement is assessed. *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).[5] Indeed:

[5] The factors considered for final approval of a class settlement as "fair, adequate and reasonable" 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

> 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.'"

In re Auto. Refinishing Paint Antitrust Litig., 2004 WL 1068807 at *2 [citations omitted]; *Thomas v. NCO Financial Sys.*, 2002 WL 1773035 at *5 (E.D. Pa. July 31, 2002).

A settlement falls within the "range of possible approval" under Rule 23 if there is a conceivable basis for presuming that the standard applied for final approval will be satisfied. The standard for final approval of a settlement is that the settlement is fair, adequate and reasonable to the class. *Walsh v. Great Atlantic & Pacific Tea Co., Inc.*, 726 F.2d 956, 965 (3d Cir. 1983).

Finally, in reviewing the proposed settlement, the Court should consider that "there is an overriding public interest in settling class action litigation, and it should therefore be encouraged." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534-35 (3d Cir. 2004); *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (holding that "the law favors settlement, particularly in

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damages; (6) the risks of maintaining a class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best possible recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 534-35 (3d Cir. 2004); *In re Prudential Ins. Co. of Am. 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). Each of these factors will be addressed fully in connection with final approval.

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 Settlement here clearly is "sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard," the legal standard for preliminary approval of a class action settlement. *In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807 at *1 (E.D. Pa. May 11, 2004) (quotation omitted).

B. The Negotiation Process With Sparboe Supports A Finding That The Settlement Is Fair, Reasonable And Adequate

Settlements negotiated by experienced counsel that result from arm's-length negotiations are generally entitled to deference from the court. *In re Auto. Refinishing Paint Antitrust Litig.*, 2003 WL 23316645 at *6 (E.D. Pa. Sept. 5, 2003); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003) (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) ("the 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 Sparboe is the result of several months of hard-fought, arm's-length negotiations between Class Counsel and Sparboe's counsel, all experienced and capable lawyers. Class Counsel and Sparboe'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. Only after Sparboe's counsel made hundreds of pages of documents available for review, provided summaries of expected witness testimony, and made a Sparboe employee available for an interview, was the Settlement reached. Nothing in the course of the negotiations or in the substance of the proposed Settlement presents any reason to doubt its fairness.

All of these factors strongly support the conclusion that the Settlement is fair, reasonable and adequate to Plaintiffs and falls within the range of possible final approvals.

C. The Expense And Uncertainty Of Continued Litigation Against Sparboe Supports A Finding That The Settlement Is Fair, Reasonable And Adequate

"An antitrust class action is arguably the most complex action to prosecute." *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 639 (E.D. Pa. 2003) (citation omitted); *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"). This action is no different. Continuing this litigation against Sparboe would entail a lengthy and expensive legal battle, involving legal and factual issues specific to Sparboe.[6] It is reasonable to expect that all such matters would be sharply disputed and vigorously contested, as they were in the settlement negotiations. Additionally, Sparboe would assert various defenses, and a jury trial (assuming the case proceeded beyond pretrial motions) might well turn on close questions of proof making the outcome of such trial uncertain for both parties.[7] *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 639 (E.D. Pa. 2003); *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 neglible damages, at trial, or on appeal.").

Moreover, even after trial is concluded, there would very likely be one or more lengthy appeals. *In re Remeron End-Payor Antitrust Litig.*, 2005 WL 2230314 at *17 (D.N.J. Sept. 13, 2005). Given this uncertainty, a certain "bird in the hand in this litigation is surely worth more than whatever birds are lurking in the bushes." *In re*

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[6] For exaple, Sparboe maintains that effective service of process has not yet been perfected on Sparboe, such that the claims against Sparboe may be time barred. Sparboe also maintains that this Court lacks personal jurisdiction over it and that venue may not be proper as to claims against Sparboe in the Eastern District of Pennsylvania. In the event that preliminary approval is not granted, Sparboe expects to assert these defenses.

[7] *See, e.g., U.S. Football League v. Nat'l Football League*, 644 F. Supp. 1040, 1042 (S.D.N.Y. 1986) ("the jury chose to award plaintiffs only nominal damages, concluding that the USFL had suffered only $1.00 in damages"), *aff'd*, 842 F.2d 1335 (2d Cir. 1988); *MCI Commc'ns Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 1166-67 (7th Cir. 1982) (remanding antitrust judgment for new trial and damages).

Chambers Dev. Sec. Litig., 912 F. Supp. 822, 838 (W.D. Pa. 1995). All of these factors have particular weight here, where Sparboe has provided Plaintiffs' counsel with documents indicating that Sparboe actually withdrew from the alleged conspiracy by 2005.

Balancing the complexities of this litigation, the substantial risk, expense and duration of continued litigation against Sparboe and the likely appeal if Plaintiffs did prevail against Sparboe at trial, with the significant benefits of Sparboe's cooperation, Class Counsel firmly believe the Settlement represents a very good resolution of this litigation as to Sparboe. Moreover, it is well established that significant weight should be attributed to the belief of experienced counsel that settlement is in the best interests of the class, as here. *In re General Instruments Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001).

D. The Settlement Agreement's Cooperation Provision Supports A Finding That The Settlement Is Fair, Reasonable And Adequate

An evaluation of the benefits of settlement must be tempered by a recognition that any compromise involves concessions on the part of all of the settling parties. Indeed, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 624 (9th Cir. 1982) (citation omitted). As the Fifth Circuit noted in *Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977):

> The trial court should not make a proponent of a proposed settlement "justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained . . . ."

Id. at 1330 (citation omitted).

As discussed above, the Settlement Agreement provides for Sparboe's substantial and immediate cooperation, which will enhance and strengthen Plaintiffs' claims against the Non-Settling Defendants and possibly others while avoiding the risk, expense and duration of continued litigation against Sparboe. In the opinion of Class Counsel, the Settlement significantly benefits Plaintiffs and will materially assist Class Counsel in the prosecution of claims against the Non-Settling Defendants. *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) ("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 (E.D. Pa. May 11, 2004) (acknowledging the assistance that the settling defendants will provide "in pursuing this case against the remaining Defendants"); *In re Mid-Atlantic 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.*, 1981 WL 2093, at *16 (S.D. Tex. June 4, 1981), *aff'd* 659 F.2d 1322, 1329 (5th Cir. 1981) ("The settlement 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.").[8]

In addition, here, the early nature of Sparboe's cooperation has significant value in and of itself to Plaintiffs as an "ice-breaker" settlement that "should increase the likelihood of future settlements." *In re Linerboard Antitrust Litig*., 292 F. Supp. 2d 631, 643 (E.D. Pa. 2003) ("The Court also notes that this settlement has significant value as an "ice-breaker" settlement--it is the first settlement in the litigation--and should increase the likelihood of future settlements."). The fact that the settlement occurred early in the litigation in advance of the Court's ruling on the Non-Settling Defendants' motions for dismissal for lack of specificity adds enormous value to the Settlement Agreement and may allow Plaintiffs an opportunity to survive motions to dismiss that may have otherwise presented a hurdle to proceeding against the Non-Settling Defendants.

Sparboe has already provided information and documents, and has committed to provide additional information and access to witnesses, that Plaintiffs intend to use to amend the Complaint to strengthen the antitrust claims against the Non-Settling

[8] *In re Beef Industry Antitrust Litig.*, 607 F.2d 167, 180 (5th Cir. Tex. 1979) (court approved settlement in which settling defendant agreed to assist plaintiffs by providing access to witnesses), *cert. denied*, 452 U.S. 905 (1981); *In re Ivan F. Boesky Sec. Litig*., 948 F.2d 1358, 1362 (2nd Cir. 1991) (acknowledging the importance of the defendant's agreement to "provide information to the plaintiffs potentially useful in the litigation against the nonsettling defendants."); *In re Amicillin Antitrust Litig*., 82 F.R.D. 652, 654 (D.D.C. 1979) ("It is apparent that Beecham's assistance in the case against Bristol will prove invaluable to the plaintiffs, and adds substantially to the economic value of the settlement package to the plaintiff classes"); *Denney v. Jenkens & Gilchrist*, 230 F.R.D. 317, 324, 339 (S.D.N.Y. 2005) ("Although the settlement fund by itself represents a fair and reasonable recovery, I note that the settlement also includes significant non-monetary benefits. Pursuant to the settlement, Jenkens has agreed to provide (and has already provided) discovery on plaintiffs' claims. The value of this agreement is hard to determine, but it is not negligible."), *aff'd in part, vacated in part, Denny v. Deutsche Bank AG*, 443 F.3d 253 (2d Cir. 2006); *Minpeco, S.A. v. Hunt*, 127. F.R.D. 460, 463 (S.D.N.Y. 1989) ("[A]greements involving a settling defendant's assistance in procuring the testimony of its employees have been approved in other cases.").

Defendants and possibly add additional defendants. Thus, there can be no question of the Settlement's benefit.

E. Plaintiffs Will Submit a Notice Plan

Although under the Settlement Agreement Plaintiffs currently have access to review the materials from Sparboe, Plaintiffs are only entitled to "use" Sparboe's materials, such as in an Amended Complaint, after the Court preliminarily approves the settlement. If the Court declines to grant preliminary approval, Plaintiffs are not entitled to use the information they have learned through the settlement negotiations or post-execution document reviews. Sparboe requested this provision to ensure it would not find itself in the untenable position of having provided the cooperation that is the consideration for the settlement, only then to have preliminary approval denied. Because the Settlement Agreement also provides that notice will be issued no earlier than 180 days following preliminary approval of the Settlement Agreement by the Court, Settlement Agreement, ¶ 27 (Exhibit 1 hereto), Plaintiffs have not included a formal notice plan as part of these preliminary approval papers.[9]

Plaintiffs believe that the announcement of this Agreement, particularly if the Court grants preliminary approval, might spur other Defendants to also seek to settle with the Class. As such, rather than submit a notice plan that will need to be amended (or require an additional, but substantially similar second notice of any subsequent settlement), it is in the interests of the Class and judicial economy to issue one notice with as many settling Defendants as possible. If no other settlements are obtained within

[9] However, if the Court requires a notice plan to be submitted to it *before* it will grant preliminary approval of the Sparboe Settlement, Plaintiffs can and will do so.

180 days, however, Plaintiffs will seek leave to distribute notice to the class of the Sparboe settlement and will present a detailed notice plan to this Court for consideration. Although this may ultimately delay final approval of this settlement for a few months, Plaintiffs' Counsel believe that this provides the ultimate benefit to the Class while similarly providing efficiencies and conservation of judicial and counsel's resources. Accordingly, Plaintiffs are not presently seeking approval of the form of the notice to be issued and will file the appropriate motion at a later date.

Rule 23(e), which regulates the dismissal or compromise of class actions, provides: "[t]he class action shall not be dismissed or compromised without the approval of the court and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." While it is a general practice, there is no requirement that a notice plan be considered and approved as part of the *preliminary* approval papers.[10] Notice must be approved and distributed, where required, prior to *final* approval of a settlement and Plaintiffs will do so here, in accordance with the Settlement Agreement, after 180 days. Plaintiffs are merely seeking to delay notice of the settlement to see if any notice may be combined with other potential settlements.

[10] Indeed, courts have recognized that in some instances, notice is not required at all as part of preliminary approval. *See generally* "Notice to Class Members," 3 NEWBERG ON CLASS ACTIONS § 8:18 (4th ed.). For example, in *Green v. American Express Co.*, 200 F.R.D. 211 (S.D.N.Y. 2001), the court approved a class settlement and dispensed with notice requirements where there was no evidence of collusion between the parties and when the settlement provided no monetary relief to the class. *Id.* at 212-213. Here, the Settlement provides no direct compensation to the Class Members, but significant cooperation that will aid in prosecution of Plaintiffs' claims against the Non-Settling Defendants. Nevertheless, Plaintiffs are not seeking to dispense with notice requirements here.

V. PRELIMINARY CERTIFICATION OF THE PROPOSED SPARBOE SETTLEMENT CLASS IS WARRANTED

The proposed Settlement Class consists of all persons and entities that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present. The Shell Eggs Subclass consists of all individuals and entities that purchased shell eggs from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present. The Egg Products Subclass consists of all individuals and entities that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present. The Settlement Class excludes Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, 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 families. Also excluded are purchases of "specialty" shell egg or egg products (such as "organic," "free-range" or "cage-free") and purchases of hatching eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat). Settlement Agreement, ¶ 11 (Hausfeld Decl., Ex. 1).

It is well-established that a class may be certified for purposes of settlement. *In re Pet Food Products Liability Litig.*, 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) (quoting *In re Beef Indus. Antitrust Litig.*, 607 F.2d 167, 174 (5th Cir. 1979), *cert. denied*, 452 U.S. 905 (1981)). Here, there is no likelihood of abuse of the class action device, and the settlement is fair and reasonable and is subject to approval by the Court.

Rule 23 governs the issue of class certification, whether the proposed class is a litigation class or, as here, a settlement class. All the criteria for certification of a class for litigation purposes, except manageability, apply to certification for settlement purposes. Thus, 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 516, 527-30 (3d Cir. 2004).

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).

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 Medical Corp.*, 246 F.R.D. 480, 484 (E.D. Pa. 2007).

Here, the Settlement Class is comprised of purchasers of hundreds of millions of cases of shell eggs. Complaint, ¶ 121. Moreover, Representative Plaintiffs are located in California, Illinois, Missouri, New York, North Carolina, Pennsylvania and Wisconsin. Complaint, ¶¶ 12-21. Putative class members are also likely to be 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. <u>There are common questions of law and fact</u>

"[A]llegations concerning the existence, scope and efficacy of an alleged conspiracy present questions adequately common to class members to satisfy the commonality requirement." *In re Flat Glass Antitrust Litig.*, 191 F.R.D. 472, 478 (W.D. Pa. 1999), citing 4 NEWBERG ON CLASS ACTIONS, § 18.05-15 (3d ed. 1992). Moreover, to satisfy commonality:

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

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

Antitrust cases like this one easily meet the commonality requirement of Rule 23(a)(2). *In re K-Dur Antitrust Litig.*, 2008 WL 2699390, at *4 (D.N.J. April 14, 2008) (holding that common issues predominate with respect to whether defendants violated antitrust law); *Weisfeld v. Sun Chemical 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. August 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).

Whether Defendants entered into an illegal agreement to reduce production and artificially fix and/or inflate the prices of eggs is a factual question common to all class members because it 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." *Flat Glass*, 191 F.R.D. at 484. 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." Fed. R. Civ. P. 23(a)(3). 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. [Citation omitted.] 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. [Citation omitted.]
>
> 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." [Citations omitted.] 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. [Citation omitted.]

Id. at 57-58.

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) (citations omitted). "Even if there are 'pronounced factual differences among the plaintiffs, typicality is satisfied as long as there is a strong similarity of legal theories and the named plaintiff does not have any unique circumstances.'" *Microcrystalline*, 218 F.R.D. at 84; *see also Mercedez-Benz*, 213 F.R.D at 185 ("[W]hile the Court must ensure that the interests of the plaintiffs

are congruent, the Court will not reject the plaintiffs' claim of typicality on speculation regarding conflicts that may arise in the future.").

Here, typicality is satisfied because the claims of the Representative Plaintiffs 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. Complaint, ¶¶ 1, 2, 9, 96, 102, 104. Moreover, Plaintiffs allege that all putative class members suffered injury as a result of Defendants' alleged anticompetitive conduct. Complaint, ¶ 1. Accordingly, the Rule 23(a)(3) typicality requirement is satisfied.

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

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

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

Id. at 449.

Here, Class Counsel have extensive experience and expertise in antitrust disputes, complex litigation and class action proceedings throughout the United States, and are qualified and able to conduct this litigation, as this Court recognized when appointing them as Co-Lead Counsel. Class Counsel have vigorously represented Plaintiffs in the

settlement negotiations with Sparboe and have vigorously prosecuted this action. Moreover, the named class representatives have adequately represented the absent Class Members' interests and have no conflicts with them. Adequate representation under Rule 23(a)(4) is therefore satisfied.

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

In addition to satisfying Rule 23(a), plaintiffs must show that each putative class falls under at least one of the three subsections of Rule 23(b). Here, the Settlement Class qualifies under Rule 23(b)(3), which authorizes class certification if "the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). 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); *K-Dur*, 2008 WL 2699390, at *11 ("At its essence, Rule 23(b)(3) requires that '[i]ssues common to the class must predominate over individual issues, and the class action device must be superior to other means of handling the litigation.'" [citations omitted]). Certification of the Settlement Class under Rule 23(b)(3) will serve these purposes.

1. Common legal and factual questions predominate

The Rule 23(b)(3) requirement that common issues predominate insures that a proposed class is "sufficiently cohesive to warrant certification." *Newton v. Merrill*

Lynch, Pierce, Fenner & Smith, Inc., 259 F.3d 154, 187 (3d Cir. 2001). "Predominance requires that common issues be both numerically and qualitatively substantial in relation to the issues peculiar to individual class members." *Mercedes-Benz*, 213 F.R.D. at 186. A plaintiff seeking certification of an antitrust class action must show that common or class-wide proof will predominate with respect to: (1) violation of the applicable antitrust law; (2) fact of injury or impact; and (3) the amount of damages. *Danny Kresky Enter. Corp. v. Magid*, 716 F.2d 206, 209-10 (3d Cir. 1983); *In re Linerboard Antitrust Litig.*, 305 F.3d 145, 156 (3d Cir. 2002). The Rule 23(b)(3) test of predominance is "readily met" in antitrust cases. *Amchem Products*, 521 U.S. at 625.

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 and/or inflate the prices of eggs is a factual question common to all class members because it is an essential element of proving an antitrust violation. Common legal questions include whether, if such an agreement was reached, Defendants violated antitrust laws. If Representative Plaintiffs 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 Defendants' violation of antitrust law will predominate.

The fact of damage has been held susceptible to common proof in antitrust class actions. *See 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 Enterprises, Inc. v. Continental Group, 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). Here, the alleged conspiracy is the overriding predominant question in this case. Moreover, as alleged in the Complaint, the conspiracy permitted all of the Defendants to artificially fix 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 on the entire class. Complaint, ¶¶ 1, 5-8, 157-168, 406. Accordingly, common or class-wide proof will predominate with respect to the fact of injury or impact in this case.

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"). Nor does the need for individualized damages calculations preclude class certification, especially in the context of an ice-breaker settlement with no monetary component. Accordingly, the need to determine the amount of damage sustained by each Plaintiff is an insufficient basis for which to decline class certification.

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 America 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 this litigation because 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 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 Representative Plaintiffs. Accordingly, the realistic alternative to a class action is many scattered lawsuits with possibly contradictory results for some plaintiffs. These very issues led the Supreme Court to acknowledge that the unique qualities of antitrust litigation mean that a class action is superior to individual lawsuits. *Amchem*, 521 U.S. at 617. Finally, this is the appropriate forum to litigate the case because two of the Representative Plaintiffs 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. Complaint, ¶¶ 11, 16, 18.

VI. CONCLUSION

For the reasons set forth above, Plaintiffs request that the Court: (1) preliminarily approve the Settlement Agreement; and (2) preliminarily certify a class for purposes of the Settlement. A proposed order is attached as Exhibit B.

Dated: June 22, 2009

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

DECLARATION OF MICHAEL D. HAUSFELD IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND SPARBOE FARMS, INC. AND PRELIMINARY CERTIFICATION OF CLASS ACTION FOR PURPOSES OF SETTLEMENT

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 Purchasers in the above-captioned action.

2. I submit this declaration in support of the motion for preliminary approval of the proposed settlement filed by the Plaintiffs.

3. I was one of the principal negotiators of the proposed Settlement Agreement with Defendant Sparboe Farms, Inc. ("Sparboe"), although all Interim Co-Lead Counsel for Direct Purchasers were actively involved in these negotiations.

4. Sparboe was fully prepared to defend itself and litigate this case. Nevertheless, Sparboe was interested in seeing if an agreement could be reached to resolve this litigation. There were protracted, arm's length settlement discussions over the course of the last three months between Interim Co-Lead Counsel and Sparboe.

5. In addition to numerous teleconferences in furtherance of settlement, Sparboe began cooperating with Plaintiffs through a total of four in-person proffers to Plaintiffs' Counsel, which included a review of Sparboe documents and an interview with a Sparboe employee.

6. Negotiations with Sparboe began in mid-March, 2009. Negotiations were tense and at arm's-length. Prior to entering into the Settlement Agreement, the Interim Co-lead Counsel wanted to be convinced that there was real benefit to the Class as part of the settlement given that the agreement was for cooperation without direct monetary compensation to the Class Members.

7. On March 26, 2009, Sparboe made an initial attorney proffer to representatives of Plaintiffs' Interim Co-Lead Counsel in Washington, DC regarding what Sparboe's information would show and how it would assist Plaintiffs' in the prosecution of their case.

8. On, April 23, 2009, Sparboe proffered both hundreds of pages of documents and live witness testimony from Sparboe employee Wayne Carlson in Minneapolis to additional representatives of the Interim Co-Lead Counsel.

9. Plaintiffs' counsel were not initially convinced that they should enter into a settlement agreement at this time. Thus, Sparboe's counsel and Plaintiffs' Co-Lead Counsel engaged in several additional telephone conferences regarding the cooperation that Sparboe could provide. At several points during this period, it appeared that no settlement would be reached.

10. On May 26, 2009, Sparboe made a third attorney proffer to Plaintiffs' Counsel in Washington, DC, by providing hundreds of pages of additional documents, as well as identifying several executives and current and former Sparboe employees who could offer testimony in the case that may corroborate the information contained in the documents, as well as provide additional information.

11. On June 3, 2009, Sparboe made a fourth attorney proffer of documents and proffered additional descriptions of expected witness testimony to representatives of all four Interim Co-Lead Counsel.

12. I believe that Sparboe's documents and proffer support Plaintiffs' allegations that there was a conspiracy to reduce egg supply through various means and that Sparboe opposed

and eventually withdrew from this conspiracy. Further, Sparboe produced documents from its in-house counsel that it may have otherwise withheld had Sparboe litigated this case.

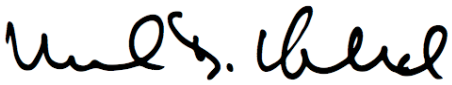
13. On Monday, June 8, 2009 the Settlement Agreement was fully executed by the Co-Leads and Sparboe's Counsel (attached as Exhibit 1).

14. On Tuesday, June 9, 2009, Sparboe made documents related to the allegations in the Consolidated Amended Complaint available for inspection and review by Plaintiffs' Counsel in Minneapolis.

15. Plaintiffs have continued to review Sparboe's documents and prepare for witness interviews and believe that there is significant value to the Class, given that these documents would not otherwise have been available through discovery until a later time frame and also particularly with regard to information that might otherwise have been withheld.

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

Dated: June 22nd, 2008.



Michael D. Hausfeld

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS AND SPARBOE FARMS, INC.

This Settlement Agreement ("Agreement") is made and entered into this 8th day of June, 2009 (the "Execution Date"), by and between Sparboe Farms, Inc. ("Sparboe Farms"), together with its past and present parents, subsidiaries and affiliates, and plaintiff class representatives ("Plaintiffs"), as defined herein at Paragraph 7, both individually and on behalf of a class of direct purchasers of Shell Eggs and Processed Egg Products (as described herein at Paragraph 11) in the United States during the period January 1, 2000 through the present.

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

WHEREAS, Plaintiffs allege that Sparboe Farms participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of Shell Eggs and Processed 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 Sparboe Farms according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of the Plaintiffs and the class;

WHEREAS, Sparboe Farms, despite its belief that it is not liable for and has good defenses to the claims alleged in the Action, desires to settle the Action, and thus avoid the 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, Sparboe Farms agrees to further cooperate with Plaintiffs' Counsel and the class by providing information related to possible violations of the Sherman Act that have or may have been committed by other Defendants to this Action, or other parties not named as Defendants, with regard to the sale of Shell Eggs and Processed Egg Products;

WHEREAS, arm's-length settlement negotiations have taken place between Class Counsel (as defined below) and counsel for Sparboe Farms, and this Agreement has been reached as a result of those 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 Sparboe Farms only, without costs as to Plaintiffs or the class, subject to the approval of the Court, on the following terms and conditions:

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 133-138 of the Consolidated Amended Class Action Complaint filed in the Action on January 30, 2009.

2. "Sparboe Farms' Counsel" shall refer to the law firm of Stoel Rives LLP, 33 South Sixth Street, Suite 4200, Minneapolis, MN 55402.

3. "Counsel" means both Plaintiffs' Counsel and Sparboe Farms' Counsel, as defined in Paragraphs 1 and 2 above.

4. "Class Member" means each member of the class, as defined in Paragraph 11 of this Agreement, who does not timely elect to be excluded from the class, and includes, but is not limited to, Plaintiffs.

5. "Class Period" means the period from and including January 1, 2000 up to and including the date when Notice of the Court's entry of an order preliminarily approving this settlement and certifying a class for settlement purposes is first published.

6. "Defendant(s)" refers to the persons or entities who are now or are prior to the time of notice added as Defendants in this Action, including, but not limited to, United Egg Producers, Inc.; United Egg Association; United States Egg Marketers, Inc.; Michael Foods, Inc.; Land O'Lakes Inc.; Moark LLC; Norco Ranch, Inc.; Rose Acre Farms, Inc.; National Food Corporation; Cal-Maine Foods, Inc.; Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms East, Inc.; Hillandale Farms, Inc.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; Midwest Poultry Services, L.P.; NuCal Foods, Inc.; R.W. Sauder, Inc., Sparboe Farms, Inc.,

and each of their corporate parents, subsidiaries, and affiliated companies, as well as all individuals, partnerships, corporations and associations not named as Defendants but which participated as co-conspirators in the alleged violations.

7. "Plaintiffs" means each of the following 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.; and SensoryEffects Flavor Co. d/b/a SensoryEffects Flavor Systems.

8. "Releasees" shall refer, jointly and severally, and individually and collectively to Sparboe Farms, its parents, subsidiaries, and affiliated companies, and their past and present officers, directors, employees, agents, insurers, attorneys, shareholders, joint venturers that are not Non-Settling Defendants, partners and representatives, as well as the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

9. "Releasors" shall refer jointly and severally and individually to the Plaintiffs, the Class Members and to 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.

10. "Non-Settling Defendants" refers to the persons or entities, other than Sparboe Farms, who are now or are prior to the time of notice added as Defendants in this Action, including, but not limited to, United Egg Producers, Inc.; United Egg Association; United States Egg Marketers, Inc.; Michael Foods, Inc.; Land O'Lakes Inc.; Moark LLC; Norco Ranch, Inc.; Rose Acre Farms, Inc.; National Food Corporation; Cal-Maine Foods, Inc.; Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms East, Inc.; Hillandale Farms, Inc.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; Midwest Poultry Services, L.P.; NuCal Foods, Inc.;

R.W. Sauder, Inc., and each of their corporate parents, subsidiaries, and affiliated companies, as well as all individuals, partnerships, corporations and associations not named as Defendants but which participated as co-conspirators in the alleged violations.

Settlement Class Certification

11. Subject to Court approval, the following class shall be certified for settlement purposes only as to Sparboe Farms:

> All persons and entities that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.
>
> a.) Shell Egg Subclass
> All individuals and entities that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.
>
> b.) Egg Products Subclass
> All individuals and entities that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.
>
> Excluded from the class and subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, 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. Also excluded from the Class and Subclasses are purchases of "specialty" shell egg or egg products (such as "organic," "free-range" or "cage-free") and purchases of hatching eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

Approval of this Agreement and Dismissal of Claims

12. Plaintiffs and Sparboe Farms shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking Court approval of the Settlement 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 Sparboe Farms.

13. Within (2) two business days after the execution of this Agreement by Sparboe Farms, Counsel shall jointly file with the Court a stipulation for suspension of all proceedings against Sparboe Farms pending approval of this Agreement. As soon as practicable after execution of the Agreement by Sparboe Farms, Plaintiffs shall submit to the Court a motion: (a) for certification of a class for settlement purposes; and (b) for preliminary approval of the settlement, and authorization to disseminate notice of class certification, the settlement, and the final judgment contemplated by this Agreement to all potential Class Members. The Motion shall include: (a) the definition of the class for settlement purposes as set forth in Paragraph 11 of this Agreement; (b) a proposed form of, method for, and date of dissemination of notice; and (c) a proposed form of final judgment order. The text of the items referred to in clauses (a) -- (c) above shall be agreed upon by Plaintiffs and Sparboe Farms before submission of the Motion. If possible, Plaintiffs shall combine dissemination of notice of the proposed certification of the class for settlement purposes and the Agreement with notice of other settlement agreements. Individual notice of the Agreement shall be mailed to persons and entities identified by Sparboe Farms, and, as ordered by the Court, those identified by Plaintiffs and Plaintiffs' Counsel or other Non-Settling Defendants in the Action, who are located in the United States and who purchased Shell Eggs and Processed Egg Products directly from Sparboe Farms or any Non-Settling Defendant(s) in the Action during the Class Period, and Notice of the Settlement shall be published once in the Wall Street Journal and in such other publications, if any, as Sparboe

Farms and Class Counsel agree to or as ordered by the Court. Within twenty (20) business days after the Execution Date, Sparboe Farms shall supply to Class Counsel at Sparboe Farms' 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.

14. Within twenty (20) business days after the end of the opt-out period established by the Court and set forth in the notice, Plaintiffs shall provide Sparboe Farms, through its counsel, Stoel Rives LLP, a written list of all potential Class Members who have exercised their right to request exclusion from the class.

15. If the Court approves this Agreement, Plaintiffs and Sparboe Farms shall jointly seek entry of an order and final judgment, the text of which Plaintiffs and Sparboe Farms shall agree upon as provided for in Paragraphs 12 and 13 of this Agreement:

(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 Sparboe Farms, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;

(c) reserving 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 Sparboe Farms shall be entered; and

(e) requiring Class Counsel to file with the Clerk of the Court a record of potential Class Members who timely excluded themselves from the class, and to provide a copy of the record to counsel for Sparboe Farms.

16. This Agreement shall become final only when (a) the Court has entered an order approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Action against Sparboe Farms on the merits with prejudice as to all

Class Members and without costs has been entered, and (b) 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 (a) 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 ("Finally Approved"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. §1651, shall be taken into account in determining the above-stated times. On the Execution Date, Plaintiffs and Sparboe Farms shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraph 20 of this Agreement.

Release and Discharge

17. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming Finally Approved, and for other valuable consideration as described herein, the 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 conduct concerning any agreement among Defendants, the reduction or restraint of supply, the reduction of or restrictions on production capacity, or the pricing, selling, discounting, marketing, or distributing of Shell Eggs and Processed 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 arise from or are predicated on the facts and/or actions described in the Complaints under any federal, state or foreign 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 of this Agreement (the "Released Claims"). The 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 Processed 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.

a. Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Plaintiffs hereby certify that they are aware of and have 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.

18. In addition to the provisions of Paragraph 17, each Releasor hereby expressly and irrevocably waives and releases, upon this Agreement becoming Finally Approved, 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 Paragraph 17. 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.

19. The release and discharge set forth in Paragraphs 17 and 18 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.

Rescission if the Agreement is Not Approved

20. 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 15 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 Sparboe Farms and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety.

21. 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 15 of this Agreement, Class Counsel agrees that this Settlement Agreement, including its exhibits, and any and all negotiations, documents, information and discussions associated with it shall be without prejudice to the rights of Sparboe Farms, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth 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 except as otherwise subsequently and independently obtained by Class Counsel pursuant to the Federal Rules of Civil Procedure.

22. Class Counsel further agrees that, in the event of rescission, the originals and all copies of documents provided by or on behalf of Sparboe Farms pursuant to this Agreement, together with all documents and electronically stored information containing information provided by Sparboe Farms, including but not limited to, notes, memos, records, interviews, shall be returned or produced to Sparboe Farms, provided that attorney notes or memoranda may be destroyed rather than produced if an affidavit of such destruction is promptly provided to Sparboe Farms through its counsel.

Cooperation Agreement

23. Following the Execution Date of this Agreement, and continuing through the conclusion of this litigation, Sparboe Farms will provide Plaintiffs with such cooperation as may

be reasonably requested by Class Counsel for the prosecution of the pending action or any other released claims pursuant to Paragraphs 17 and 18 related to Shell Eggs or Processed Egg Products. Prior to preliminary approval of the Settlement Agreement, such cooperation shall include, but shall not be limited to: making documents related to the claims asserted in this action available for review and making witnesses with knowledge related to the claims asserted in this action available for informal interviews and, as necessary, consultation with Plaintiffs' Counsel as Class Counsel might reasonably request. In addition, within five (5) business days of the Court's grant of preliminary approval of this Settlement Agreement, or as soon as practicable thereafter, Sparboe Farms shall continue to cooperate with Class Counsel, including but not limited to producing documents related to the claims asserted in this action and by making witnesses available at an appropriate time to testify at depositions and at trial, subject to the limitations agreed upon below. Sparboe Farms agrees to provide discovery to Plaintiffs in the pending Action as if Sparboe Farms were a party subject to all rules for discovery. Sparboe Farms has no obligation to cooperate with respect to any Excepted Claims.

Further:

(a) With respect to witnesses, if requested in good faith by Class Counsel, Sparboe Farms agrees to use its best efforts to produce interviewees, at a location to be chosen by Sparboe Farms, who are current or former directors, officers, or employees of Sparboe Farms for deposition at the time discovery in this Action commences subject to the limitations imposed by the Federal Rules of Civil Procedure or by any additional limitations imposed by any order or stipulation in this Action governing the depositions of any Non-Settling Defendant, and make those persons available for trial testimony, if requested in good faith by Plaintiffs'

Counsel. Should it be reasonably necessary, and if requested in good faith by Class Counsel, Sparboe Farms shall also make witnesses, including corporate designees, available to testify at deposition and trial, for the prosecution of the pending Action or any other action related to Shell Eggs and Processed Egg Products (except for the Excepted Claims) to which this Settlement Agreement applies to release the claims asserted therein, which testimony may pertain to knowledge of and/or participation by Sparboe Farms, including but not limited to its officers, directors and employees, regarding present and future claims asserted in the pending Action or any other actions related to Shell Eggs or Processed Egg Products, except for the Excepted Claims to which this Settlement Agreement applies to release the claims asserted therein. Notwithstanding anything in this Paragraph, the cooperation of individuals shall be subject to their individual rights and obligations.

(b) With regard to documents and electronic data, Sparboe Farms will produce, at a location of its choosing, pursuant to and subject to the limitations imposed by Rule 30(b)(6) and the other Federal Rules of Civil Procedure as well as any additional limitation imposed by order or stipulation in this Action governing the authentication of documents or corporate representative testimony related to any Non-Settling Defendant, a corporate representative sufficiently qualified to authenticate and make admissible under the applicable rules of evidence, as well as under the rules of any state, all Sparboe Farms documents and electronic data as may in good faith be requested by Plaintiffs' Counsel in the

pending Action related to Shell Eggs or Processed Egg Products, except for the Excepted Claims.

24. Plaintiffs, Class Counsel and Plaintiffs' Counsel agree not to assert that Sparboe Farms waived its attorney-client privilege, work product immunity or any other privilege or protection with respect to information or documents provided or identified to Class Counsel or Plaintiffs' Counsel pursuant to this Agreement. Nor should anything in this Agreement be construed as a waiver of any such privilege, immunity or protection.

Confidentiality and Non-Use of Information and Documents

25. Should the Settling Parties be required to submit any information or documentation to the Court to obtain preliminary approval, such submission shall be, to the full extent permitted, for review by the court in camera only. All information and documents provided by Sparboe Farms to Class Counsel shall be subject to the protective order entered in this action, and any documents or electronically stored information designated as "Confidential" or "Attorneys Eyes Only" by Sparboe Farms shall have the same equivalent protection under the protective order.

26. Class Counsel agree to use any and all of the information obtained from Sparboe farms only for the purpose of this litigation, and agrees to be bound by the terms of the protective order described above in Paragraph 25. Any Plaintiffs' Counsel who receives information or documents produced in accordance with this Agreement agrees to be bound by all of the terms of this Agreement. Notwithstanding the foregoing, or the terms of the protective order, Class Counsel agree, unless ordered by a court and consistent with due process, that under no circumstances will information or documents be shared with any person, counsel, Class Counsel or Plaintiffs' Counsel who is also (i) counsel for any plaintiff in any other foreign, state or

federal action against one or more of the Releasees or Non-Settling Defendants, (ii) counsel for any plaintiff or Class Member who elects to opt out of the proposed litigation class upon Plaintiffs' motion for class certification or who elects to opt out of the proposed class for settlement purposes under this Agreement, (iii) any counsel representing or advising indirect purchasers of Shell Eggs or Processed Eggs, or (iv) any counsel representing or advising direct or indirect purchasers of "specialty" shell egg or egg products (such as "organic," "free range," or "cage free") and purchasers of hatching eggs (used by poultry breeders or produce breeder stock or growing stock for laying hens or meat).

Notice of Settlement to Class Members

27. Class Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement and the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of this Settlement Agreement is provided in accordance with the Federal Rules of Civil Procedure and Court order. Class Counsel will undertake all reasonable efforts to obtain from the Non-Settling Defendants the names and addresses of those persons who purchased shell eggs or egg products directly from any Non-Settling Defendant during the Class Period. Notice of this Settlement will be issued no earlier than 180 days following Preliminary Approval of this Settlement Agreement by the Court, but as soon as practicable thereafter, unless otherwise ordered by the Court.

28. Within three months from the date of Final Approval, Sparboe Farms agrees to reimburse Plaintiffs up to a maximum of $350,000.00 towards the costs of notice of the Settlement under this Agreement, provided the occurrences described below in Paragraph 29 do not occur.

29. In the event Plaintiffs enter into a cash settlement with any Non-Settling Defendant and receive preliminary approval of that settlement prior to the issuance of notice under this Agreement (such that the settlement notices can be combined), Plaintiffs shall apply those settlement funds towards the cost of notice, thus reducing or eliminating Sparboe Farms' obligation to reimburse Plaintiffs for the notice costs of this Agreement. In the event Plaintiffs obtain certification of a litigation class prior to the issuance of notice under this Agreement (such that the notice of this Settlement Agreement and the notice of class certification can be combined), then Plaintiffs agree to be fully responsible for costs of the combined notice without any cash contribution by Sparboe Farms.

30. In the event Plaintiffs enter into a cash settlement with any Non-Settling Defendants after notice of this settlement has been issued and paid for, in whole or in part, once that cash settlement has been Finally Approved, Plaintiffs shall release Sparboe Farms from any obligation to reimburse Plaintiffs for the notice costs of this Agreement. Forgiveness of Sparboe Farms's obligation to reimburse Plaintiffs for costs of notice of this Agreement will not exceed the value of such cash settlements, as Finally Approved. Under no circumstances shall Sparboe Farms be responsible for any costs or expenses in excess of $350,000.00.

Subsequent Modification of Class Definition or Class Period

31. In the event that Plaintiffs either enter into a settlement agreement with any Non-Settling Defendant, or obtain certification of a litigation class, and the definition of the class in any subsequent settlement agreement or certification order differs from the definition contained in this Agreement in Paragraph 11 (including an expansion of the Class Period), Plaintiffs agree to use their best efforts to modify the class definition and Class Period of this Agreement to conform to any and all subsequent expansion of the class definition or Class Period, including

moving for approval of an amendment to this Agreement and the dissemination of notice of the amendment in conjunction either with notice of any subsequent settlement class or notice of the certification of a litigation class, or both in the event that there are more than one subsequent modification to the class definition or Class Period. In no event shall Sparboe Farms be responsible for any additional notice costs or expenses.

Miscellaneous

32. 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 unnamed co-conspirator other than the Releasees. All rights of any Class Member against Non-Settling Defendants or unnamed co-conspirators 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 Processed Egg Products by Sparboe Farms 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.

33. 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 Sparboe Farms. This Agreement shall be governed by and interpreted according to the substantive laws of the State of Pennsylvania without regard to its choice of law or conflict of laws principles. Sparboe Farms only submits to the jurisdiction in the Eastern District of Pennsylvania for the purposes of this Settlement Agreement and the

implementation, enforcement and performance thereof. Sparboe Farms otherwise retains all defenses to the Court's exercise of personal jurisdiction over Sparboe Farms.

34. This Agreement constitutes the entire agreement among Plaintiffs (and the other Releasors) and Sparboe Farms (and the other Releasees) pertaining to the settlement of the Action against Sparboe Farms only and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Sparboe Farms in connection therewith. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Sparboe Farms, and approved by the Court.

35. 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.

36. This Agreement may be executed in counterparts by Plaintiffs and Sparboe Farms, and a facsimile signature will be considered as an original signature for purposes of execution of this Agreement.

37. 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.

38. 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 shall be restored and the Agreement shall have no effect on the rights of the Settling Parties 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 Sparboe Farms.

39. Neither Sparboe Farms 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.

40. 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, Sparboe Farms, and Releasees any right or remedy under or by reason of this Agreement.

41. 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 facsimile or letter by overnight delivery to:

For the class:

Steven A. Asher
WEINSTEIN KITCHENOFF & ASHER LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103
(215) 545-7200
(215) 545-6536 (fax)
asher@wka-law.com

For Sparboe Farms:

Troy J. Hutchinson
STOEL RIVES, LLP
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402
(612) 373-8800
(812) 373-8881 (fax)
tjhutchinson@stoel.com

42. 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.

Originally Signed: June 5, 2009
Resigned: June 22, 2009 (to account for edits to Paragraph 11)

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(On Behalf of the class, Plaintiffs, Class Counsel and Plaintiffs' Counsel)

Originally Signed: June 8, 2009
Resigned: June 22, 2009 (to account for edits to Paragraph 11)

Eric A. Bartsch
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eabartsch@stoel.com
tjhutchinson@stoel.com

(On Behalf of Sparboe Farms, Inc.)

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH SPARBOE FARMS, INC.

It is hereby ORDERED AND DECREED as follows:

1. The motion of Plaintiffs for preliminary approval of the proposed settlement, which Defendant SPARBOE Farms, Inc. ("SPARBOE") does not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with SPARBOE, 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 possible approval 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 eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.
>
> a.) Shell Eggs Subclass
> All individuals and entities that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.
>
> b.) Egg Products Subclass
> All individuals and entities that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through the present.
>
> Excluded from the class and subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, 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. Also excluded from the Class and Subclasses are purchases of "specialty" shell egg or egg products (such as "organic," "free-range" or "cage-free") and purchases of hatching eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

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 requirement of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Classes are 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. The Court makes no determination, in accordance with *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 527-530 (3d Cir. 2004), concerning the manageability of this action as a class action if the matter were to go to trial.

4. The form of notice will be approved by separate order. After 180 days from the entry of this Order, Plaintiff shall file with the Court a proposed form and content of the: (a) Notice of Proposed Settlements, and (b) a plan for publication of the Notice and which provides due and sufficient notice to all persons entitled thereto and complies fully with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States. At this time, a date will be determined by which Plaintiffs' counsel shall file with the Court and serve on the parties their motion for final approval of the Settlement Agreement. Further, The Court will

set a date to hold a fairness hearing to determine the fairness, reasonableness, and adequacy of the proposed settlement with SPARBOE. Such notice shall be submitted by Plaintiffs no later than _____, 2009.

5. The litigation against SPARBOE in this action is hereby stayed, pending further order of the Court.

This_____ day of _____, 2009

_____

HONORABLE GENE PRATTER
DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA