UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

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

DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANTS MOARK, LLC, NORCO RANCH, INC., AND LAND O' LAKES, INC. FOR PRELIMINARY CERTIFICATION OF CLASS ACTION FOR PURPOSES OF SETTLEMENT, AND FOR APPROVAL OF NOTICE PLAN

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs ("Plaintiffs") move the Court to: (1) preliminarily approve the settlement between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. ("Moark") on the terms and conditions set forth in the "Settlement Agreement between Direct Purchaser Plaintiffs and Moark" ("Settlement" or "Settlement Agreement"), submitted concurrently herewith; (2) preliminarily certify a class for purposes of the Settlement; and (3) approve dissemination of notice of the settlement to the class in the manner suggested herein.

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

1. The Settlement falls within the range of possible approval and 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. *See In re Auto. Refinishing Paint Antitrust Litig.*, MDL NO. 1426, 2004 WL 1068807, at *1 (E.D. Pa. May 11, 2004) (citation omitted).

2. The Settlement is the result of extensive arm's-length negotiations by experienced antitrust and class action lawyers. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004

WL 1068807 at *1 (citations omitted); *Thomas v. NCO Financial Sys.*, No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002).

3. The expense and uncertainty of continued litigation against Moark and the likelihood of appeal militates strongly in favor of approval. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003); *See In re Reneron End-Payor Antitrust Litig.*, No. Civ. 02-2007 FSH, 2005 WL 2230314 at *17 (D.N.J. Sept. 13, 2005).

4. The settlement will provide the proposed class with valuable cash consideration. *See In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807, at *2.

5. Plaintiffs' Counsel believe that Moark's agreement to cooperate, as described in the Settlement Agreement, will greatly assist in pursuing the claims against the other Defendants. *See In re Ikon Office Supplies Inc. Securities Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000).

6. The Settlement Class, as defined in the Settlement Agreement, meets the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3).

7. The notice plan is "the best notice that is practicable under the circumstances," as required by Fed. R. Civ. P. 23(c)(2)(B) and is "reasonable," as required by Fed. R. Civ. P. 23(e).

Dated: June 4, 2010 Respectfully submitted,

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IN THE EASTERN DISTRICT OF PENNSYLVANIA

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THIS DOCUMENT APPLIES TO ALL DIRECT PURCHASER ACTIONS	:	

DIRECT PURCHASER PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANTS MOARK, LLC, NORCO RANCH, INC. AND LAND O' LAKES, INC., FOR PRELIMINARY CERTIFICATION OF CLASS ACTION FOR PURPOSES OF SETTLEMENT, AND FOR APPROVAL OF NOTICE PLAN

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Rules / Statutes

Other Authorities

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs ("Plaintiffs") respectfully submit this memorandum in support of their motion for: (1) preliminary approval of a settlement between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. ("Moark") on the terms and conditions set forth in the "Settlement Agreement between Direct Purchaser Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes" ("Settlement" or "Settlement Agreement"), attached as Exhibit A to the Hausfeld Declaration included as Exhibit 1 hereto; (2) preliminary certification of a class for purposes of the Settlement, and (3) approval of a notice plan.[1]

Pursuant to the Settlement Agreement, Moark's obligation to produce documents commences as soon as this Court grants preliminary approval of the Settlement Agreement. Thus, Plaintiffs respectfully request that this Court rule as soon as is practicable on the Motion for Preliminary Approval.

I. INTRODUCTION

After many months of intense arm's-length negotiations, Plaintiffs successfully obtained a mutually agreeable settlement with Moark. In exchange for a release from this lawsuit, Moark has agreed to pay $25,000,000 into a Fund to provide for the claims of members of the proposed Settlement Class. The Settlement also promises Plaintiffs substantial cooperation from Moark, including the production of critical documents and witnesses that Plaintiffs' Counsel believe will materially assist Plaintiffs in pursuing this litigation against the other remaining Defendants ("Non-Settling Defendants").

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

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

- finds that the proposed settlement with Moark is sufficiently fair, reasonable and adequate to allow dissemination of notice of the settlement to the Settlement Class; and

- approves the form of the notice and plan for dissemination of notice together with the notice of the settlement with Defendant Sparboe Farms, Inc. ("Sparboe"). Proposed Mailing and Publication Notices are attached as Exhibits 2 and 3 hereto.

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

At this time, in considering whether to grant preliminary approval, the Court need determine only whether the proposed settlement is sufficiently fair, reasonable, and adequate to allow notice of the proposed settlement to be disseminated to the Settlement Class. A final determination will be made at the final approval hearing, after Class Members have received notice and have been given an opportunity to object.

As set forth below, Plaintiffs submit that the proposed settlement amply satisfies the required standards, and respectfully request that the Court, pursuant to Fed. R. Civ. P. 23(e), authorize dissemination of notice in the form provided.

II. BACKGROUND

A. The Litigation

This case concerns a conspiracy among the nation's largest egg producers. Plaintiffs allege that Moark, Sparboe, the Non-Settling Defendants and other unnamed co-conspirators violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq*., by engaging in an unlawful conspiracy to reduce output and thereby artificially fix, raise, maintain and/or stabilize the prices of shell eggs and egg products in the United States. As a result of Defendants' alleged conduct, Plaintiffs and members of the Class paid prices for shell eggs and egg products that were higher than they otherwise would have been absent the conspiracy. The lawsuit seeks treble damages, injunctive relief, attorneys' fees and costs from Defendants.

On June 10, 2008, Sparboe entered into a settlement agreement with Plaintiffs. Pursuant to that agreement, Sparboe agreed to cooperate with Plaintiffs, producing documents and witnesses that enabled Plaintiffs to amend their initial Consolidated Amended Class Action Complaint to add specificity and detail to bolster Plaintiffs' claims against the remaining Defendants. On October 23, 2009, this Court preliminarily approved that settlement.

Incorporating information obtained from Sparboe, Plaintiffs, on December 14, 2009, filed their Second Amended Class Action Complaint ("2CAC"). The 2CAC contains extensive information concerning the operation of the conspiracy, including the names of participants, the dates of meetings in which the conspiracy was hatched, and citations to documentary evidence demonstrating clear intent to reduce egg supply in the United States, through both coordinated supply restrictions and coordinated exports to foreign markets, thereby manipulating the nationwide price of shell eggs and egg products.

Faced with this detailed complaint, nine of the Defendants chose to answer rather than move to dismiss. Of the seven defendants who moved to dismiss, none argued that the complaint did not state a claim. Instead, these defendants argued that the complaint did not contain sufficient detail of their involvement in the conspiracy.

B. The Moark Settlement Negotiations

Following the settlement with Sparboe, Interim Co-Lead Counsel for Plaintiffs ("Class Counsel") and Moark's counsel, Eimer Stahl Klevorn & Solberg, LLP, entered into extensive settlement negotiations. The scope and details of the negotiations are described in the Hausfeld Declaration, submitted as Exhibit 1 hereto. Class Counsel and Moark's counsel, both highly experienced and capable, vigorously advocated their respective clients' positions in the settlement negotiations, which were conducted at arm's length. The settlement negotiations spanned multiple weeks and included many telephone conferences and in-person meetings.

Numerous possible settlement amounts were proposed and rejected, and the parties exchanged detailed information, including sales data for the class period.

Only after countless proposals and counterproposals, did the extensive negotiations finally bear fruit, permitting the parties to come to a mutually satisfactory agreement. On May 21, 2010, the Settlement Agreement was fully executed by Class Counsel and Moark's counsel. After factual investigation and legal analysis, it is the opinion of Class Counsel that the Settlement is fair, reasonable and adequate to the Class. Plaintiffs respectfully submit that the Settlement is in the best interests of the Class and should be preliminarily approved by the Court, and that a class should be certified for purposes of the Settlement.

III. PROVISIONS OF THE SETTLEMENT AGREMENT

A. The Settlement Class

The Settlement Agreement defines the proposed 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, including any Defendant, during the Class Period from January 1, 2000 through 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.
>
> a.) Shell Egg SubClass
> All individuals and entities that purchased Shell Eggs produced from caged birds in the United States directly from any Producer including any Defendant, during the Class Period from January 1, 2000 through 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, excluding individuals and entities that purchased only "specialty" Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).
>
> b.) 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, including any Defendant, during the Class Period from January 1, 2000 through 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, excluding individuals and entities that purchased only "specialty" Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types).
>
> Excluded from the Class and SubClasses are Producers, 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.

Settlement Agreement, ¶ 19 (Hausfeld Decl., Ex. A).

B. Cash Consideration to the Proposed Class

The proposed Settlement Agreement provides that on or before June 7, 2010, Moark will pay $25,000,000 in cash (the "Settlement Amount"). *See* Settlement Agreement, ¶ 33-34 (Hausfeld Decl., Ex. A). This money shall be maintained in an escrow account pending approval of the settlement by the Court.

C. Cooperation Provision

In addition to the Settlement Amount, the Settlement Agreement also requires that Moark produce documents related to Plaintiffs' allegations in the Complaint and make witnesses available for informal interviews, depositions and trial. Settlement Agreement, ¶ 39 (Hausfeld Decl., Ex. A). Important information and witnesses that bolster Plaintiffs' claims against the Non-Settling Defendants will be made available to Plaintiffs without the time and expense involved in pursuing formal discovery. Significantly, Moark's involvement in the UEP after Sparboe's exit now provides Plaintiffs with cooperating defendants for the entire length of the proposed class period.

Specifically, within ten days of executing the Settlement Agreement, Moark's counsel will begin providing Plaintiffs with general information concerning the times, places, and corporate participants involved in the conduct at issue in the action. Immediately following preliminary approval of the Settlement, Moark has agreed to produce for review by Class

Counsel additional documents relevant to this litigation. Upon Final Approval, Moark will be required to produce sworn affidavits substantiating Plaintiffs' case, as well as knowledgeable witnesses for interview, deposition, or testimony at trial.

If required for adjudication of preliminary approval, Moark and Plaintiffs will further describe the nature and scope of the cooperation to be provided by Moark *in camera* if requested by the Court. *See* Settlement Agreement, ¶ 41 (Hausfeld Decl., Ex. A).

D. Release Provisions

In exchange for the consideration provided by Moark, Plaintiffs have agreed to release Moark 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, ¶¶ 25-28 (Hausfeld Decl., Ex. A).

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

A. Standard For Granting Preliminary Approval Of The Settlement

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

When deciding preliminary approval, a court does not conduct a "definitive proceeding on fairness of the proposed settlement." *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1384 (D.C. Md. 1983); *see also In re 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"); *In re American Investors Life Ins. Co. Annuity Marketing and Sales Practices Litig.*, 263 F.R.D. 226, 238 (E.D. Pa. 2009) (same). That definitive determination must await the final hearing, at which the fairness, reasonableness, and adequacy of the settlement are more fully assessed. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).[2] Indeed,

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

Thomas v. NCO Financial Sys., No. CIV.A. 00-5118, 2002 WL 1773035, at *5 (E.D. Pa. July 31, 2002) (internal citations omitted). In determining whether an antitrust settlement falls within the "range of possible approval" under Rule 23, a court examines whether the settlement amount is reasonable given potential damages at trial and other settlements reached in similar antitrust cases. *See In re Auto. Refinishing Paint Antitrust Litig*., 2004 WL 1068807, at *2 (finding that a settlement fell within the range of possible approval by examining "sales of automotive refinishing paint" and "settlements reached in other antitrust class actions").

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[2] The factors considered for final approval of a class settlement as "fair, reasonable and adequate" include: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action through trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best possible recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation. *Girsh v. 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). Plaintiffs will fully address each of these factors in connection with final approval.

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.*, 55 F.3d at 784 (holding that "the law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation"); *Austin v. Pa. Dept of Corr.*, 876 F. Supp. 1437, 1455 (E.D. Pa. 1995) (explaining that "the extraordinary amount of judicial and private resources consumed by massive class action litigation elevates the general policy of encouraging settlements to 'an overriding public interest'").

As discussed below, the Settlement here clearly is "sufficiently fair, reasonable and adequate to justify notice to those affected and an opportunity to be heard," and thereby satisfies the legal standard for preliminary approval of a class action settlement. *In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807, at *1.

B. The Settlement Amount Supports A Finding That The Settlement Is Fair, Reasonable And Adequate

The proposed settlement with Moark is well within the "range of possible approval" required by law. The $25,000,000 Settlement Amount represents over 1% of total Moark egg sales during the class period and almost 28% of Moark's cumulative net profits in the egg division for the last six years.[3] It compares favorably to settlements approved in other antitrust cases. *See, e.g.*, *In re Automotive Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 344 (E.D. Pa. 2007) (approving settlement where class recovery represented 1.5% of relevant sales); *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 627 (E.D. Pa. 2004) (recovery equal to

[3] For the full time period in which reliable data was available (2002-2008), Moark's total shell egg sales to non defendants from 2002-2008 were approximately $2,456,200,000. Moark's net profits from eggs and egg products were approximately $90,516,000.

1.62% of relevant sales); *In re Shopping Carts Antitrust Litig.*, 1983 WL 1950, at *9 (S.D.N.Y. Nov. 18, 1983) (recovery equal to 3% of relevant sales). Moreover, Moark's remaining damages stay in the class, and under joint and several liability, are eligible to be recovered from other Defendants.

Class Counsel, who have substantial experience litigating antitrust class actions, believe the settlement amount is an appropriate amount of cash consideration for the discharge of the claims of the Class against Moark and a highly favorable result for the Class. The Settlement Agreement was entered into after careful review of Moark's sales figures, net profits and market share during the damages period, as well as the likely expense of litigating claims against Moark through trial. Courts have accorded significant weight to the opinion of Class Counsel based on a thorough analysis of the facts. *See, e.g., In re General Instruments Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001); *Stewart v. Rubin*, 948 F. Supp. 1077, 1099 (D.D.C. 1996), *aff'd*, 124 F.3d 1309 (D.C. Cir. 1997) ("A court should defer to the judgment of experienced counsel who have competently evaluated the strength of the proof."); *McGuiness v. Parnes*, No. 87-2728-LFO, 1989 WL 29814, at *1 (D.D.C. Mar. 22, 1989) ("While the evaluation of the fairness and adequacy of a settlement such as this is anything but a scientific process, there is nothing about this Settlement suggesting that the Court should second-guess the product of the negotiations between the skilled and conscientious lawyers who represented parties on both sides of this litigation."); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659, 667 (D. Minn. 1974) ("The recommendation of experienced antitrust counsel is entitled to great weight.").

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

As discussed above, the Settlement Agreement provides for Moark's substantial and immediate cooperation upon approval, which will further enhance and strengthen Plaintiffs' claims against the Non-Settling Defendants while avoiding the risk and expense of continued litigation against Moark. Plaintiffs expect this cooperation to include further documentation and details regarding the meetings held and agreements made in support of the price-fixing conspiracy, testimony from witnesses who can attest to the pretextual nature of the animal husbandry and egg export programs, the stated intent of co-conspirators to artificially increase the price of eggs, and detailed market data and analysis that will further support Plaintiffs' estimate of damages against other defendants. Moark's cooperation may also permit Plaintiffs to identify heretofore unknown co-conspirators and potential defendants who participated in and profited from the alleged conspiracy. 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. *See In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 643 ("The provision of such [cooperation] is a substantial benefit to the classes and strongly militates toward approval of the Settlement Agreement."); *In re Ikon Office Supplies Inc. Sec. Litig.*, 194 F.R.D. 166, 177 (E.D. Pa. 2000) (noting that cooperation agreements are valuable when settling a complex case); *In re Auto. Refinishing Paint Antitrust Litig.*, 2004 WL 1068807, at *2 (acknowledging the assistance that the settling defendants will provide "in pursuing this case against the remaining Defendants").[4]

[4] *See also 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.*, M.D.L. 3101981, WL 2093, at *16 (S.D. Tex. June 4, 1981), *aff'd*, 659 F.2d 1322, 1329 (5th Cir. 1981) ("The

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

The Settlement is particularly reasonable given the risks inherent in moving forward against Moark. It has been often observed that "[a]n antitrust class action is arguably the most complex action to prosecute." *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 639 (citation omitted); *see also Weseley v. Spear*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989) (noting that antitrust class actions are "notoriously complex, protracted, and bitterly fought"). Continuing this litigation against Moark would entail a lengthy and expensive legal battle. This case does not follow a Depart of Justice Investigation or any public indictment. It is reasonable to expect that all such matters would be sharply disputed and vigorously contested, as they were in the settlement negotiations. Additionally, Moark would assert various defenses, and a jury trial (assuming the case proceeded beyond pretrial motions) might well turn on questions of proof, making the outcome inherently uncertain for both parties. *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d at 639; *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 475-76 (S.D.N.Y. 1998) ("Antitrust litigation in general, and class action litigation in particular, is unpredictable. . . . [T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal.").

Moreover, even after trial is concluded, there would very likely be one or more lengthy appeals. *In re Remeron End-Payor Antitrust Litig.*, No. Civ. 02-2007, 2005 WL 2230314, at *17 (D.N.J. Sept. 13, 2005). Given this uncertainty, a "bird in the hand in this litigation is surely

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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.").

worth more than whatever birds are lurking in the bushes." *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

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

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

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

As discussed above and in the accompanying Hausfeld Declaration, the Settlement with Moark is the result of hard-fought, arm's-length negotiations between Class Counsel and Moark's counsel, all experienced and capable lawyers. Class Counsel and Moark'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. 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.

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

It is well-established that a class may be certified for purposes of settlement. *In re Pet Food Products Liability Litig.*, No. 07-2867, 2008 WL 4937632, at *3 (D.N.J. Nov. 18, 2008) ("Class actions certified for the purposes of settlement are well recognized under Rule 23."); *Ikon*, 194 F.R.D. at 188 (class certified for purposes of settlement of securities class action). In the case of settlements, "tentative or temporary settlement classes are favored when there is little or no likelihood of abuse, and the settlement is fair and reasonable and under the scrutiny of the trial judge." *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995) (internal quotation and citation omitted). The settlement here is fair, reasonable, and non-abusive. It is thereby subject to approval by the Court.

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

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

Certification is appropriate under Rule 23(a) if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).

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 and of purchasers of egg products. 2CAC, ¶ 116. Moreover, Representative Plaintiffs are located in California, Illinois, Missouri, New York, North Carolina, Pennsylvania and Wisconsin. 2CAC, ¶¶ 32-28. Putative class members are also geographically dispersed. Thus, joinder of all class members would be impracticable and the Settlement Class is sufficiently numerous to satisfy Rule 23(a)(1). *Stewart*, 275 F.3d at 227-28 (observing that generally the requirement is met if the number of plaintiffs exceeds 40); *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 508-09 (S.D.N.Y. 1996) (holding that class members numbering

a million made joinder impracticable); *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 278 (S.D.N.Y. 1999) (numerosity requirement met where potential class exceeded 20,000).

2. There are common questions of law and fact

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

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

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

Whether Defendants entered into an illegal agreement to reduce production and fix the prices of eggs is a factual question common to all class members. because this question is an essential element of proving an antitrust violation. Common legal questions include whether, if such an agreement was reached, Defendants violated antitrust laws. "Indeed, consideration of the conspiracy issue would, of necessity focus on Defendants' conduct, not the individual conduct of the putative class members." *Flat Glass*, 191 F.R.D. at 484; *Transamerican Refining Corp. v. Dravo Corp.*, 130 F.R.D. 70, 75 (S.D. Tex. 1990) ("[T]he conspiracy issue … is susceptible of generalized proof since it deals primarily with what the Defendants themselves did and said.");

In re Catfish Antitrust Litig., 826 F. Supp. 1019, 1039 (N.D.Miss. 1993) ("Evidence of a national conspiracy … would revolve around what the defendants did, and said, if anything, in pursuit of a price fixing scheme."); *In re Warfarin*, 391 F.3d at 528 ("In other words, while liability depends on the conduct of DuPont, and whether it conducted a nationwide campaign of misrepresentation and deception, it does not depend on the conduct of individual class members."). Because there are several common legal and factual questions related to potential liability, the commonality requirement of Rule 23(a)(2) is met.

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

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

> The typicality inquiry is intended to assess whether the action can be efficiently maintained as a class and whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented. The typicality criterion is intended to preclude certification of those cases where the legal theories of the named plaintiffs potentially conflict with those of the absentees by requiring that the common claims are comparably central to the claims of the named plaintiffs as to the claims of the absentees."
>
> Typicality entails an inquiry whether "the named plaintiff's individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based." Commentators have noted that cases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.

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

Moreover, "factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members,

and if it is based on the same legal theory." *Hoxworth v. Blinder, Robinson & Co., Inc.*, 980 F.2d 912, 923 (3d Cir. 1992) (internal citations omitted). "Even if there are 'pronounced factual differences among the plaintiffs, typicality is satisfied as long as there is a strong similarity of legal theories and the named plaintiff does not have any unique circumstances.'" *Microcrystalline*, 218 F.R.D. at 84; *see also 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. 2CAC, ¶¶ 489. Moreover, Plaintiffs allege that all putative class members were direct purchasers of eggs and/or egg products and suffered injury as a result of Defendants' alleged anticompetitive conduct. *Id.* Accordingly, the Rule 23(a)(3) typicality requirement is satisfied.

4. <u>The Representative Plaintiffs will fairly and adequately protect the interests of the Class</u>

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

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

Id. at 449.

Here, Class Counsel have extensive experience and expertise in antitrust disputes, complex litigation and class action proceedings throughout the United States. Class Counsel are qualified and able to conduct this litigation, as this Court recognized when appointing them as Interim Co-Lead Counsel. Class Counsel have vigorously represented Plaintiffs in the settlement negotiations with Moark 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."[5] 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.*

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

Windsor, 521 U.S.591, 614-15 (1997). 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) predominance requirement insures that a proposed class is "sufficiently cohesive to warrant certification." *In re Hydrogen Peroxide Antitrust Litig.* 552 F.3d 305, 311 (3d Cir. 2008); *see also Mercedes-Benz*, 213 F.R.D. at 186 ("Predominance requires that common issues be both numerically and qualitatively substantial in relation to the issues peculiar to individual class members."). A plaintiff seeking certification of an antitrust class action must show that common or class-wide proof will predominate with respect to: "(1) a violation of the antitrust laws… (2) individual injury resulting from that violation, and (3) measurable damages." *In re Hydrogen Peroxide*, 552 F.3d at 311; *Danny Kresky Enter. Corp. v. Magid*, 716 F.2d 206, 209-10 (3d Cir. 1983); *In re Linerboard*, 305 F.3d at 156. The Rule 23(b)(3) test of predominance can be "readily met" in antitrust cases. *Amchem Products*, 521 U.S. at 625.

The Third Circuit most recently discussed the predominance inquiry in the specific context of antitrust settlements in *In re Ins. Brokerage Antitrust Litigation*, 579 F.3d 241 (3d Cir. 2009) (applying *Hydrogen Peroxide* in a settlement context). The case involved allegations of bid rigging and steering among brokers and insurers in the property and casualty insurance industry. As here, plaintiffs brought class action claims arising under Section 1 of the Sherman Act. On review, the Third Circuit examined the propriety of the standards applied by the district court in certifying two settlement-only classes against individual defendants. The district court had granted certification to both classes.

In evaluating a challenge to the predominance of common issues for each settlement class, the Third Circuit first noted that "because the 'clear focus' of an antitrust class action is on

the allegedly deceptive conduct of defendant and not on the conduct of individual class members, common issues necessarily predominate." *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d at 267. The court then turned to the specific common issues identified by the district court with respect to the antitrust claims:

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

Id.

Finding these issues satisfied predominance, the court "examine[d] [each of] the elements of plaintiffs' claim through the prism of Rule 23." The court analyzed whether common questions of law or fact existed with respect to the four elements of a Sherman Act Section One conspiracy claim, which require a plaintiff to show: "(1) concerted action by the defendants; (2) that produced anticompetitive effects within the relevant product and geographic markets; (3) that the concerted actions were illegal; and (4) that it was injured as a proximate result of the concerted action." *Id.*

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

Thus, as here, the issues common to the class in *Insurance Brokerage* concerned whether Defendants "engaged in illegal concerted action" and whether that action "reduced competition," and "produced an increase in the cost" of the commodity in the relevant market. *Id*. There, as here, it is clear that the same set of core operative facts and theory of liability apply to each class member. As discussed above, whether Defendants entered into an illegal agreement to reduce production and artificially fix, raise, maintain, and/or stabilize the prices of eggs is a factual question common to all class members. If 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 the first three elements of Defendants' violation of antitrust law will predominate.

After examining the first three elements of the Sherman Act conspiracy claim, the court in *Insurance Brokerage* turned to the final element: injury or antitrust impact. The court found that "the task for plaintiffs is to demonstrate that the element of antitrust impact is capable of proof at trial through evidence that is common to the class rather than individual to its members." *Id.* The plaintiffs in that case argued antitrust injury was a common question because the overcharge attributable to the conspiracy was "built into every commercial premium for commercial insurance products, and the conspiratorial conduct of all Defendants reduced or eliminated competition for insurance products, thereby raising the insurance premiums paid by Plaintiffs and all members of the class." *Id.* The court agreed, finding that "whether the named plaintiffs and absent class members were proximately injured by the conduct of the … Defendants is a question that is capable of proof on a class-wide basis" *Id.* After a brief discussion of the flow of injury through the insurance brokerage market, the court concluded that "we are satisfied that the element of antitrust injury – that is, the fact of damages – is susceptible

to common proof, even if the amount of damage that each plaintiff suffered could not be established by common proof." *Id.*

The *Insurance Brokerage* decision, expressly accounting for the Third Circuit's earlier ruling in *Hydrogen Peroxide*, also accords with earlier cases holding that the fact of antitrust injury is susceptible to common proof, even where individual damages may differ. *See e.g., K-Dur*, 2008 WL 2699390, at *20; *Flat Glass*, 191 F.R.D. at 486 ("[T]he proof plaintiffs must adduce to establish a conspiracy to fix prices, and that defendants' base price was higher than it would have been absent the conspiracy, would be common to all class members."); *In re Plywood Antitrust Litig.*, 76 F.R.D 570, 584 (E.D. La. 1976) ("[I]f the members of each of the classes prove they purchased softwood plywood during the relevant period and that defendants conspiratorially increased or stabilized plywood prices, then the trier of fact may conclude that the requisite fact of injury occurred."); *Hedges 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 Defendants to artificially maintain or inflate the price of eggs by eliminating the risk that customers would be able to avoid the non-competitive price, thus working an antitrust injury onto the entire class. *See* 2CAC, ¶¶ 514-515. Accordingly, common or class-wide proof will also predominate with respect to the fact of injury or impact in this case.[6]

[6] 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."

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 class claims, "because litigating all of these claims in one action is far more desirable than numerous separate actions litigating the same issues." *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d at 259. Absent class action certification, the Court may be faced with dozens of individual lawsuits, all of which would arise out of the same set of operative facts. By proceeding as a class action, resolution of common issues alleged in one action will be a more efficient use of judicial resources and bring about a single outcome that is binding on all class members. Also, as in most antitrust lawsuits, potential plaintiffs are likely to be geographically

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Microcrystalline, 218 F.R.D. at 92 (*citing In re Fine Paper Antitrust Litig.*, 82 F.R.D 143, 151-52 (E.D. Pa. 1979)) (noting that diversity of product, marketing practices, and pricing have not been fatal to class certification in numerous cases where conspiracy is "the overriding predominant question"). Accordingly, the need to determine the amount of damage sustained by each plaintiff is an insufficient basis for which to decline class certification. *In re Community Bank of Northern Virginia*, 418 F.3d 277, 305-306 (3d Cir. 2005) ("Although the calculation of individual damages is necessarily an individual inquiry, the courts have consistently held that the necessity of this inquiry does not preclude class action treatment where class issues predominate."); *In re Warfarin Sodium Antitrust Litigation*, 212 F.R.D. 231, 242 (D. Del 2003) ("[T]he need for individual damages calculations does not defeat predominance and class certification") *aff'd*, 391 F.3d 516, 534-35 (3d Cir. 2004).

dispersed, as are the Representative Plaintiffs. As such, the realistic alternative to a class action is many scattered lawsuits with possibly contradictory results for some plaintiffs and Defendants. These very issues led the Supreme Court to acknowledge that the unique qualities of antitrust litigation often mean that a class action is superior to individual lawsuits. *Amchem*, 521 U.S. at 617. Finally, this is an 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. 2CAC, ¶ 26. This is also the forum selected by the Judicial Panel on Multidistrict Litigation.

VI. THE NOTICE PLAN SHOULD BE APPROVED

The notice plan and forms of notice suggested by Plaintiffs satisfy the requirements of Rule 23(e)(1). Under Rule 23(e)(1), "[the] court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Here, the proposed mailed notice identifies the following in plain, easily understood language:

- the nature of the action;
- the definition of the class certified;
- a description of the settlement, including a full recital of the release terms;
- how to object to the settlement, the request for attorneys' fees and costs, and the request for incentive awards, as well as the deadline for doing so;
- the binding effect of the final judgment on class members; and,
- the final approval hearing date and location.

Class Plaintiffs propose that the Notice be distributed together with the separate notice of the Sparboe Settlement. Both notices, attached hereto as Exhibits 2 and 3, will be sent by First-Class mail to all persons and entities identified by Defendants as direct purchasers of Eggs in the

United States during the Class Period. Copies of the Notice will also be posted on a specially created web site. In addition, a Summary Notice, which explains how to obtain a copy of the Notice, will be published in the national edition of *The Wall Street Journal* and again in a series of Industry Publications. The Summary Notice will be published shortly after the Court grants preliminary approval of the settlement and after the Notice is mailed.

This type of notice program is frequently used in class action cases. It complies with the requirements of Rule 23 that "the court… direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Rule 23(c)(2)(B). *See, e.g.*, 5 *Moore's Federal Practice* (3d ed. 2003) at §23.63[8][a] ("Notice of the class action is normally sent to the identified individual class member by first-class mail."); *see also id.* at §23.63[8][b] ("Publication of notice is often the best notice practicable for class members who cannot be identified or located specifically through reasonable efforts."); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-77 (1974) (due process is satisfied by mailed notice to all class members who reasonably can be identified).

The proposed plan for disseminating the Notice fulfills the requirements of Rule 23 and due process. Accordingly, approval of the notice program is appropriate.

VII. CONCLUSION

For the reasons set forth above, Plaintiffs request that the Court: (1) preliminarily approve the Settlement Agreement; (2) preliminarily certify a class for purposes of the Settlement (a proposed order is attached as Exhibit 4); and (3) approve the proposed plan for notice.

Dated: June 4, 2010

Respectfully submitted,

/s/ Steven A. Asher

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EXHIBIT 1

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

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

DECLARATION OF MICHAEL D. HAUSFELD IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT BETWEEN PLAINTIFFS AND DEFENDANTS MOARK, LLC, NORCO RANCH, INC., AND LAND O' LAKES, INC., FOR PRELIMINARY CERTIFICATION OF CLASS ACTION FOR PURPOSES OF SETTLEMENT, AND FOR APPROVAL OF NOTICE PLAN

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 Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. ("Moark"), although all Interim Co-Lead Counsel for Direct Purchasers were actively involved in these negotiations.

4. Moark was fully prepared to defend itself and litigate this case. Nevertheless, Moark was interested in seeing if an agreement could be reached to resolve this litigation. There were protracted discussions over the course of the last eight months between Interim Co-Lead Counsel and counsel for Moark.

5. Preliminary contact with Moark about a potential settlement occurred in August 2009.

6. During the Fall of 2009, Moark provided sales data and other financial information that permitted Plaintiffs to accurately estimate the range of damages that could be proven at trial.

7. Direct settlement negotiations began in March, 2010. Negotiations were intense and at arm's length. Prior to entering into the Settlement Agreement, the Interim Co-Lead Counsel also wanted to be convinced that the monetary compensation afforded to the Class Members was fair, reasonable and adequate and that the cooperation provided would substantially assist Plaintiffs in advancing claims against the non-settling defendants. Thus, as part of these negotiations, Moark described the nature and extent of the cooperation that it would agree to provide as part of any settlement. On Friday, May 21, 2010 the Settlement Agreement was fully executed by the Co-Leads and Moark's Counsel. A true and complete copy of this Agreement is attached as Exhibit A. An addendum to that agreement, executed on June 1, 2010 is attached as Exhibit B.

8. Pursuant to ¶39 of the Settlement Agreement, Moark has agreed to undertake significant cooperation to support Plaintiffs' prosecution of this action. Moark's counsel have agreed to meet with Plaintiffs' to "to begin to provide a general description of the times, places, and corporate participants relating to the conduct at issue in the Action." Further cooperation is mandated after Preliminary and Final Approval of the Settlement Agreement.

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

Dated: June 4, 2010

Michael D. Hausfeld

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	:	

SETTLEMENT AGREEMENT BETWEEN
DIRECT PURCHASER PLAINTIFFS AND DEFENDANTS
MOARK, LLC, NORCO RANCH, INC., AND LAND O' LAKES, INC.

This Settlement Agreement ("Agreement") is made and entered into this 21st day of May, 2010 (the "Execution Date"), by and between Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. (collectively the "Moark Defendants"), together with their past and present parents, subsidiaries, and affiliates, and plaintiff Class representatives ("Plaintiffs")(as defined herein at Paragraph 11), both individually and on behalf of a Class (as defined herein at Paragraph 4) of direct purchasers of Shell Eggs and Egg Products (as defined herein at Paragraphs 7 and 17).

WHEREAS, Plaintiffs are prosecuting the above-captioned actions 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 Moark Defendants and other Defendants;

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

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

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

WHEREAS, Moark Defendants deny all allegations of wrongdoing in the Action. However, despite their belief that they are not liable for, and have good defenses to, the claims alleged in the Action, Moark Defendants desire to settle the Action, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of the Action, or any action or proceeding relating to the matters being fully settled and finally put to rest in this Agreement;

WHEREAS, Moark Defendants agree to cooperate with Class Counsel (defined in Paragraph 1 below) and the Class by providing information related to the claims asserted by Plaintiffs in this Action against Non-Settling Defendants, or other parties not currently named as Defendants, with regard to the sale of Shell Eggs and Egg Products;

WHEREAS, arm's-length settlement negotiations have taken place between Class Counsel and Moark Defendants' Counsel, and this Agreement has been reached as a result of these negotiations;

NOW, THERFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to Moark Defendants only, without

costs as to Plaintiffs, the Class or Moark Defendants, subject to the approval of the Court, on the following terms and conditions:

A. Definitions

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

1. "Class Counsel" shall refer to the law firms of Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065-8404. "Plaintiffs' Counsel" shall refer to the law firms identified on pages 133-137 of the Second Consolidated Amended Class Action Complaint filed in the Action on April 7, 2010.

2. "Moark Defendants' Counsel" shall refer to the law firm of Eimer Stahl Klevorn & Solberg LLP, 224 South Michigan Avenue, Suite 1100, Chicago, Illinois 60604.

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

4. "Class Member" or "Class" shall mean each member of the settlement class, as defined in Paragraph 19 of this Agreement, who does not timely elect to be excluded from the Class, and includes, but is not limited to, Plaintiffs.

5. "Class Period" shall mean the period from and including January 1, 2000 up to and including the date 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)" shall refer to the parties listed as defendants in the Second Consolidated Amended Complaint as filed on January 30, 2010, and each of their corporate parents, subsidiaries, and affiliated companies.

7. "Egg Products" shall mean the whole or any part of eggs that have been removed from their shells and may be processed, with or without additives, into dried, frozen or liquid forms.

8. "Final Approval" shall mean the definition given to that phrase in Paragraph 24 hereof.

9. "Non-Settling Defendants" shall refer to Defendants other than Moark Defendants.

10. "Claims Administrator" shall mean the Garden City Group, Inc.

11. "Plaintiffs" shall mean 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.; John A. Lisciandro d/b/a/ Lisciandro's Restaurant, and SensoryEffects Flavor Co. d/b/a SensoryEffects Flavor Systems.

12. "Producer" shall mean any person or entity that owns, contracts for the use of, leases or otherwise controls hens for the purpose of producing eggs for sale.

13. "Releasees" shall refer, jointly and severally, and individually and collectively, to Moark Defendants, their 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.

14. "Releasors" shall refer, jointly and severally, and individually and collectively, to 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.

15. "Settlement Amount" shall refer to $25,000,000 U.S. dollars.

16. "Settlement Fund" shall mean the funds accrued in the escrow account established in accordance with Paragraph 33 below.

17. "Shell Eggs" shall mean eggs that are sold in the shell for consumption or for breaking and further processing.

18. "Total Sales" shall mean the sum of the annual U.S. sales of all Producers, to be mutually agreed upon by Counsel, of Shell Eggs and Egg Products for the years during the Class Period.

B. Settlement Class Certification

19. Subject to Court approval, the following Class shall be certified for settlement purposes only as to Moark Defendants:

> 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, including any Defendant, during the Class Period from January 1, 2000 through 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.
>
> a.) Shell Egg SubClass
> All individuals and entities that purchased Shell Eggs produced from caged birds in the United States directly from any Producer including any Defendant, during the Class Period from January 1, 2000 through 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, excluding individuals and entities that purchased only "specialty" Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

b.) 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, including any Defendant, during the Class Period from January 1, 2000 through 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, excluding individuals and entities that purchased only "specialty" Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types).

Excluded from the Class and SubClasses are Producers, 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.

C. Approval of this Agreement and Dismissal of Claims

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

21. Within two (2) business days after the execution of this Agreement by Moark

Defendants, Counsel shall jointly file with the Court a stipulation for suspension of all proceedings against Moark Defendants pending approval of this Agreement. Ten (10) business days after execution of the Agreement by Moark Defendants, Plaintiffs shall submit to the Court a motion (the "Motion"): (a) for certification of a Class for settlement purposes; and (b) for preliminary approval of the Agreement, 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 19 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) through (c) above shall be agreed upon by Plaintiffs and Moark Defendants before submission of the Motion. Individual notice of the Agreement shall be mailed to persons and entities identified by Moark Defendants 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 Egg Products directly from Moark Defendants 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 trade journals targeted towards direct purchasers of Shell Eggs and Egg Products, if any, as Moark Defendants and Class Counsel agree to or as ordered by the Court. Within twenty (20) business days after the Execution Date, Moark Defendants shall supply to Class Counsel at Moark Defendants' expense and in such form as kept in the regular course of business (electronic format if available) such names and addresses of potential Class Members as it has. If practicable, Plaintiffs may combine dissemination of notice of the proposed certification of the Class for settlement purposes and the Agreement with the dissemination of notice of other

settlement agreements. However, the notice of this Agreement and the proposed certification of the Class shall be separate from any other notice.

22. 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 Moark Defendants, through Moark Defendants' Counsel, a written list of all potential Class Members who have exercised their right to request exclusion from the Class, the dollar volume of purchases of Shell Eggs and Egg Products during the Class Period for each such potential Class Member and the percentage that such potential Class Member's purchases represents of the Total Sales.

23. Within sixty (60) business days of preliminary approval of this Agreement by the Court, Plaintiffs and Moark Defendants shall jointly seek entry of an order and final judgment, the text of which Plaintiffs and Moark Defendants shall agree upon, as provided for in Paragraphs 20 and 21 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 Moark Defendants, 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 Moark Defendants 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 Moark Defendants.

24. 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 Moark Defendants 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 ("Final Approval"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated time. On the Execution Date, Plaintiffs and Moark Defendants shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 29 and 32 of this Agreement.

D. Release and Discharge

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

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

26. Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"): "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any

equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of this Settlement Agreement, but each Releasor hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, claim whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts.

27. In addition to the provisions of Paragraphs 25 and 26, each Releasor hereby expressly and irrevocably waives and releases, upon this Agreement becoming finally approved by the Court, any and all defenses, rights, and benefits that each Releasor may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in Paragraphs 25 and 26. 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.

28. The release and discharge set forth in Paragraphs 25 through 27 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.

E. Rescission

29. 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 23 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 Moark Defendants and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) business days of the action giving rise to such option. If this Agreement is rescinded, all amounts in the escrow created pursuant to Paragraph 33 hereof, less any expenses authorized pursuant to this Agreement, shall be wire transferred to the Moark Defendants, pursuant to their instructions, within ten (10) business days of the notice of rescission.

30. 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 23 of this Agreement, Class Counsel agree that this Agreement, including its exhibits, and any and all negotiations, documents, information and discussions associated with it shall be without prejudice to the rights of Moark Defendants, 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, unless such documents and/or information is otherwise obtainable by separate and independent discovery permissible under the Federal Rules of Civil Procedure.

31. Class Counsel further agree that, in the event of rescission, the originals and all copies of documents provided by or on behalf of Moark Defendants pursuant to this Agreement,

together with all documents and electronically stored information containing information provided by Moark Defendants, including, but not limited to, notes, memos, records, and interviews, shall be returned to Moark Defendants at Moark Defendant's expense, or destroyed by Class Counsel at their own expense, provided that attorney notes or memoranda may be destroyed rather than produced if an affidavit of such destruction is promptly provided to Moark Defendants through their counsel.

32. If Class Counsel notify Moark Defendants, pursuant to Paragraph 22, that Class Members whose purchases represent 7.5% or more of the Total Sales have requested exclusion from this Agreement ("Excluded Class Members"), Moark Defendants shall have the right and option within fifteen (15) business days after receipt of such notice to either (1) rescind the Agreement or (2) reduce the Settlement Amount by the percentage that the total purchases reported to Moark Defendants pursuant to Paragraph 22 represents of the Total Sales (example: total purchases of Excluded Class Members / Total Sales). Within ten (10) business days of the exercise of option (2), the amount by which the Settlement Amount was reduced shall be wire transferred from the escrow established pursuant to Paragraph 33 to a newly established Escrow Account of Moark Defendants' choosing ("Reduction Escrow"). Distribution of the Reduction Escrow to Moark Defendants shall occur only upon written notice to Class Counsel by Moark Defendants' Counsel that actual settlement or judgment has occurred between Moark Defendants and any Excluded Class Member(s) ("Reduction Distribution"). Any Reduction Distribution shall only be for the actual amount of any settlement or judgment between an Excluded Class Member and Moark Defendants. Any unclaimed remainder in the Reduction Escrow that exists at the later of the termination of this Action or any action brought by an Excluded Class Member shall revert to the benefit of the Class. Moark Defendants shall have no claim to any Settlement

Amount other than from the Reduction Distribution Escrow. Moark Defendants shall give written notice to Class Counsel in order to invoke rights under this Paragraph to rescind or reduce the Settlement Amount.

F. Payment

33. Moark Defendants shall pay or cause to be paid the Settlement Amount in settlement of the Action. The Settlement Amount shall be wire transferred by Moark Defendants or their designee within ten (10) business days of the Execution Date into the Settlement Fund, which shall be established as an escrow account at a bank agreed to by Class Counsel and Moark Defendants' Counsel, and administered in accordance with the Escrow Agreement attached hereto as Exhibit A.

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

35. Class Counsel may seek an award of attorneys' fees and reasonable litigation expenses approved by the Court, to be paid out of the Settlement Amount after the Final Approval of the Agreement. Moark Defendants agree not to object to Class Counsel's petition to the Court for payment of attorneys' fees, costs, and expenses from the Settlement Amount. The Moark Defendants shall have no obligation to pay any fees or expenses for Class Counsel.

36. Upon entry of an order by the Court approving the request for an award of attorneys' fees ("Attorneys' Fees Order") made pursuant to Paragraph 35 above, attorneys' fees may be distributed from the Settlement Fund pursuant to the terms of the fee order, provided however that any Class Counsel seeking to draw down their share of the attorneys' fees prior to Final Approval and the Attorneys' Fees Order becoming final shall secure the repayment of the

amount drawn down by a letter of credit or letters of credit on terms, amounts, and by banks acceptable to Moark Defendants. The Attorneys' Fees Order becomes final when the time for appeal or to seek permission to appeal from the Attorneys' Fees Order has expired or, if appealed, has been affirmed by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

37. In order to receive distribution of funds pursuant to Paragraph 36 prior to Final Approval and the Attorneys' Fees Order becoming final above, each Class Counsel shall be required to provide the Claims Administrator the approved letter(s) of credit in the amount of Class Counsel's draw-down, and shall be required to reimburse the Settlement Fund within thirty (30) business days all or the pertinent portion of the draw-down with interest, calculated as the rate of interest published in the Wall Street Journal for 3-month U.S. Treasury Bills as of the close on the date that the draw-down was distributed, if Final Approval is not granted or if the award of attorneys' fees is reduced or overturned on appeal. The Claims Administrator may present the letter(s) of credit in the event the Class Counsel fails to honor the obligation to repay the amount withdrawn.

38. Disbursements for any payments and expenses incurred in connection with taxation matters relating to this Settlement Agreement shall be made from the Settlement Amount upon written notice by Class Counsel of such payments and expenses to the Claims Administrator, and such amounts shall not be refundable to Moark Defendants in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

G. Cooperation

39. Moark Defendants shall provide cooperation pursuant to this Agreement. All cooperation shall be coordinated in such a manner so that all unnecessary duplication and

expense is avoided. Moark Defendants' cooperation obligations shall only apply to Releasors who act with, by or through Class Counsel pursuant to this Agreement in this Action.

(a) **Proffers.** Upon execution of this Settlement Agreement, Moark Defendants shall begin to undertake to support Class Plaintiffs' prosecution of the Action. Beginning within ten (10) business days of the Execution Date, Moark Defendants agree that its counsel will meet with Class Counsel to begin to provide a general description of the times, places, and corporate participants relating to the conduct at issue in the Action.

(b) **Production of Documents.** No later than ten (10) business days after the Execution Date, Moark Defendants shall begin to confer with Class Counsel about agreed-upon categories of documents from an agreed-upon list of custodians for production purposes. Within one (1) business day after preliminary approval of this Agreement by the Court, Moark Defendants shall begin to produce the agreed-upon categories of documents from an agreed-upon list of custodians to Class Counsel.

(b) **Final Approval Cooperation.** Upon Final Approval of the Agreement, and the rescission right having lapsed, Moark Defendants shall begin providing the following cooperation:

(i) Interviews: At an agreed-upon time and at Moark Defendants' expense, Moark Defendants shall make available for one interview with Class Counsel and counsel for any other parties with which Moark Defendants have settled and/or their experts each then current directors, officers, and employees of Moark Defendants who possess information that, based on Class Counsel's good faith belief, would assist Plaintiffs in preparing and prosecuting the Action. The Moark Defendants would use their best efforts to assist Class Counsel in arranging interviews with former directors, officers, and employees of Moark Defendants.

(ii) Declarations and Affidavits: Moark Defendants shall make available to Class Counsel, upon reasonable notice, any then current directors, officers, and employees of Moark Defendants for the preparation of declarations and/or affidavits to be used in the prosecution of the Action. Moark Defendants shall use their best efforts to assist Class Counsel in arranging for declarations and/or affidavits of former directors, officers, and employees of Moark Defendants to be used in the prosecution of the Action.

(iii) Depositions: At an agreed-upon time and at Moark Defendants' expense, Moark Defendants shall make available for one deposition in the consolidated cases each of the then current directors, officers, and employees of the Moark Defendants, designated by Class Counsel, who

possess information that, based on Class Counsel's good faith belief, would assist Plaintiffs in preparing and prosecuting the Action. Written notice by Class Counsel upon Moark Defendants' counsel shall constitute sufficient service for such depositions. Moark Defendants shall use their best efforts to assist Class Counsel in arranging the deposition of former directors, officers, and employees of the Moark Defendants.

(iv) Testimony at Trial: Upon reasonable notice and at Moark Defendants' expense, Moark Defendants shall make available for testimony at trial, each of the then current directors, officers, and employees of Moark Defendants, designated by Class Counsel, who possess information, based on Class Counsel's good faith belief, that would assist Plaintiffs in trial of the Plaintiffs' claims as alleged in the Action. Moark Defendants shall use their best efforts to assist class Counsel in arranging for the appearance of former directors, officers, and employees at trial.

(c) **Attorney Client Privilege.** Moark Defendants shall make available for testimony or interview, upon reasonable notice and at Moark Defendants' expense, each of the then current directors, officers, and employees of Moark Defendants who Plaintiffs believe possess non-privileged information relating to any assertion of privilege by a third party, to the extent permissible under the law. Consistent with all applicable legal and ethical rules, Moark Defendants shall be under no obligation to produce documents that UEP claims are privileged until such time as any dispute as to such claimed privilege is resolved.

(d) **Quantum Meruit.** Moark Defendants will not object to any application made by Class Member or Class Counsel for quantum meruit from any entity or person who opts out of this Settlement.

(e) **Termination.** The Moark Defendants' obligations to cooperate under the Agreement terminate when final judgment has been rendered, with no remaining rights of appeal, in the Action against all Defendants.

40. Neither the entry into this Agreement nor any performance under it shall constitute a waiver of Moark Defendants' own attorney-client privilege or work product immunity.

41. Should the Moark Defendants or Plaintiffs 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 Moark Defendants to Class Counsel shall be subject to the protective order entered in the Action, and any documents or electronically stored information designated as "Confidential" or "Highly Confidential" by Moark Defendants shall have the same equivalent protection as under the protective order.

H. Use of Information and Documents

42. Class Counsel agree to use any and all of the information and documents obtained from Moark Defendants only for the purpose of this litigation, and agree to be bound by the terms of the protective order described above in Paragraph 41. Any person who receives information or documents produced in accordance with this Agreement shall agree to be bound by all the terms of this Agreement and shall not receive such material prior to such 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 shall information or documents be shared with any person, counsel, Class Counsel or Plaintiffs' Counsel who is also (i) counsel for any plaintiff in any state or federal action against one or more of the Releasees, (ii) counsel for any plaintiff or Class Member who or which 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), or (v) any third party not associated with Plaintiffs' Counsel in this Action.

43. Notwithstanding the provisions of Paragraph 42 above, Class Counsel shall coordinate, organize, and/or manage any and all cooperation provided pursuant to this Agreement with any other potential civil plaintiffs as agreed to by Counsel.

I. Notice of Settlement to Class Members

44. 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 Agreement is provided in accordance with the Federal Rules of Civil Procedure and any Court orders. Class Counsel will undertake all reasonable efforts to obtain from Non-Settling Defendants the names and addresses of those persons who purchased Shell Eggs or Egg Products directly from any Non-Settling Defendant during the Class Period. Notice of this Settlement will be issued after Preliminary Approval of this Settlement Agreement by the Court.

45. Class Counsel is authorized to use up to a maximum of $350,000.00 of the Settlement Amount towards the costs of notice of the Settlement under this Agreement.

J. Taxes

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

Defendants shall have no responsibility to make any tax filings relating to this Settlement Agreement.

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

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

K. Miscellaneous

49. This Agreement does not settle or compromise any claim by Plaintiffs or any

Class Member asserted in the Action against any Non-Settling Defendant or any potential defendant other than the Releasees. All rights of any Class Member against Non-Settling Defendants or any other person or entity other than the Releasees are specifically reserved by Plaintiffs and the Class Members. The sales of Shell Eggs and Egg Products by Moark Defendants to Class Members shall remain in the case against the Non-Settling Defendants in the Action as a basis for damage claims and shall be part of any joint and several liability claims against Non-Settling Defendants in the Action or other persons or entities other than the Releasees.

50. 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 Moark Defendants. This Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Pennsylvania without regard to its choice of law or conflict of laws principles. Moark Defendants submit to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement and performance thereof. Moark Defendants otherwise retain all defenses to the Court's exercise of personal jurisdiction over Moark Defendants.

51. This Agreement constitutes the entire agreement among Plaintiffs (and the other Releasors) and Moark Defendants (and the other Releasees) pertaining to the settlement of the Action against Moark Defendants only, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Moark Defendants in connection therewith. In entering into this

Agreement, Plaintiffs and Moark Defendants have not relied upon any representation or promise made by Plaintiffs or Moark Defendants not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Moark Defendants, and approved by the Court.

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

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

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

55. In the event this Agreement is not approved or is terminated, or in the event that the order and final judgment approving the settlement is entered but is substantially reversed, modified, or vacated, the pre-settlement status of the litigation shall be restored and the Agreement shall have no effect on the rights of the Moark Defendants or Plaintiffs to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to Class certification, raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by Moark Defendants.

56. Neither Moark Defendants nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law,

or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

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

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

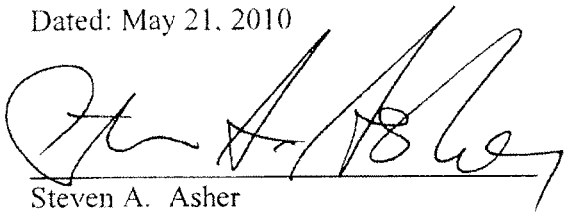
59. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

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

For Moark Defendants:
Nathan P. Eimer
EIMER STAHL KLEVORN & SOLBERG LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
neimer@eimerstahl.com

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

Dated: May 21, 2010



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(On Behalf of Moark Defendants)

4837-3552-1030

Dated: May 21, 2010

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(On Behalf of Moark Defendants)

4837-3552-1030

Dated: May 21, 2010

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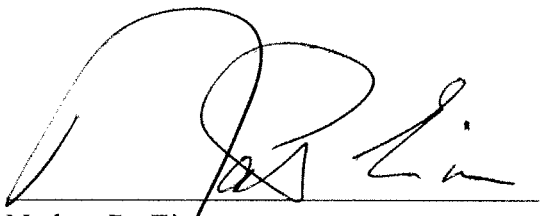

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(On Behalf of Moark Defendants)

4837-3552-1030

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	:	

FIRST ADDENDUM TO
SETTLEMENT AGREEMENT BETWEEN
DIRECT PURCHASER PLAINTIFFS AND DEFENDANTS
MOARK, LLC, NORCO RANCH, INC., AND LAND O' LAKES, INC.

Pursuant to Paragraph 51 of the Settlement Agreement, Paragraph 33 is hereby modified by striking "within ten (10) business days" and replacing it with "within sixteen (16) business days."

Dated: June 1, 2010

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(On Behalf of Moark Defendants)

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

If you purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer from January 1, 2000 through the present, you could be a class member in a proposed class action settlement.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.
PLEASE READ THIS NOTICE CAREFULLY.

The purpose of this notice is to inform you that Plaintiffs in this class action reached a settlement with Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. ("Moark"). If you fall within the definition of the "Settlement Class," as defined herein, you will be bound by the settlement unless you expressly exclude yourself in writing pursuant to the instructions below. This notice is also to inform you of the nature of the action and of your rights in connection with it.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the settlement with Moark (the "Moark Settlement") and of your rights with respect to it, including, but not limited to, the right to remain a member of the Settlement Class or to exclude yourself from the Settlement Class.

These rights and options, and the deadlines to exercise them, are explained in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
TAKE NO ACTION	You will receive the benefits of the Moark Settlement and give up the right to sue Moark with respect to the claims asserted in this case.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS POSTMARKED NO LATER THAN [NOVEMBER 30, 2010]	This is the only option that allows you to ever be a part of any other lawsuit against Moark with respect to the claims asserted in this case.
OBJECT NO LATER THAN [NOVEMBER 30, 2010]	Write to the Court and explain why you do not like the Moark Settlement.
GO TO THE HEARING ON [FEBRUARY 7, 2011] AFTER FILING A TIMELY OBJECTION	Speak in Court about the fairness of the Moark Settlement.

1. Why did I receive this notice?

This legal notice is to inform you of the Moark Settlement that has been reached in the class action lawsuit, *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania. You are being sent this notice because you have been identified as a potential customer of one of the defendants in the lawsuit.

2. What is this lawsuit about?

In this lawsuit, Plaintiffs allege that Defendants, certain producers of shell eggs and egg products, conspired to decrease the supply of eggs. Plaintiffs allege that this supply conspiracy limited fixed, raised, stabilized, or maintained the price of eggs, which caused direct purchasers to pay more for eggs than they would have otherwise paid. The term "eggs" refers to both shell eggs and egg products, which are eggs removed from their shells for further processing into a dried, frozen, or liquid form.

In the fall and winter of 2008, lawsuits were filed in several federal courts generally alleging this conspiracy to depress egg supply. On December 2, 2008, the Judicial Panel on Multidistrict Litigation transferred those cases for coordinated proceedings before the Honorable Gene E. K. Pratter, United States District Judge in the United States District Court for the Eastern District of Pennsylvania. On January 30, 2009, Plaintiffs filed their first consolidated amended complaint alleging a wide-ranging conspiracy to fix egg prices that injured direct egg purchasers.[1] Soon thereafter, Plaintiffs and Defendant Sparboe Farms, Inc. ("Sparboe") commenced settlement discussions. On June 8, 2009, Plaintiffs and Sparboe reached a settlement. By settling with Sparboe, Plaintiffs learned many more details about the alleged conspiracy. These details were included in a second consolidated amended complaint that Plaintiffs filed on December 11, 2009.

After an exchange of relevant sales data, Plaintiffs and Moark entered into settlement discussions in March of 2010. After extensive and arm's-length negotiations, on May 21, 2010, Plaintiffs and Moark reached a settlement.

Plaintiffs represent both themselves (the named plaintiffs) and the entire class of direct egg purchasers across the United States. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the class present and share common questions of law and fact. Plaintiffs claim that Defendants' actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably

[1] This lawsuit alleges injuries to *direct* egg purchasers only, that is, entities or individuals who bought eggs directly from egg producers. A separate case is pending wherein the plaintiffs allege a wide-ranging conspiracy to fix egg prices that injured *indirect* egg purchasers. An indirect egg purchaser bought eggs from a direct purchaser of eggs or another indirect purchaser. The Moark Settlement does not affect your rights, if any, as an indirect egg purchaser.

restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from 2000 to the present. Plaintiffs allege that Defendants and unnamed co-conspirators controlled the egg supply through various methods that were all part of a wide-ranging conspiracy. These methods include, but are not limited to, agreements to limit or dispose of hen flocks, a pre-textual animal husbandry program that was a cover to further reduce egg supply, agreements to export eggs in order to remove eggs from the domestic supply, and the unlawful coercion of producers and customers to ensure compliance with the conspiracy. Plaintiffs allege that by collectively agreeing to lower the supply of eggs, the defendants caused prices to be higher than they otherwise would have been. Moark and the other defendants deny all of Plaintiffs' allegations.

3. Who is included in the Settlement?

Plaintiffs and Moark have agreed that, for purposes of the Moark Settlement, the Settlement Class is defined 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 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.

Persons or entities that come within the definition of the Settlement Class and do not exclude themselves will be bound by the results of this litigation.[2]

4. What does the Moark Settlement provide?

After several months of extensive settlement discussions, Plaintiffs and Moark reached a Settlement on May 21, 2010. The Moark Settlement is between Plaintiffs and Defendant Moark only; it does not affect any of the remaining non-settling defendants, against whom this case continues. Pursuant to the terms of the Moark Settlement, Plaintiffs will release Moark from all pending claims. In exchange, Moark has agreed to pay $25,000,000 to a fund to compensate class members and to provide substantial and

[2] The Settlement Class consists of two subclasses. The first subclass, called the "Shell Egg Subclass," is made up of "[a]ll 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 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." The second subclass, called the "Egg Products Subclass," is comprised of "[a]ll 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 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." Excluded from the Class and the 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 the subclasses are purchases of "specialty" shell egg or egg products (such as "organic," "free-range," or "cage-free"), as well as purchases of hatching eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

immediate cooperation with Plaintiffs, including producing documents and making witnesses available for interviews, which will provide important information in support of Plaintiffs' claims against the non-settling defendants and possibly others who participated in the alleged conspiracy. It is the opinion of Plaintiffs' attorneys that this cooperation will provide significant benefits to members of the Settlement Class and will materially assist Plaintiffs in the prosecution of claims against the non-settling defendants.

On _____ 2010, the Court granted preliminary approval of the Moark Settlement, finding it sufficiently fair, reasonable, and adequate to warrant notifying the Settlement Class.

The Moark Settlement should not be taken as an admission by Moark of any allegation by Plaintiffs or of wrongdoing of any kind. Finally, the Court ordered that Plaintiffs shall provide notice of the Moark Settlement to all members of the Settlement Class who can be identified through reasonable effort.

5. What is the effect of the Court's final approval of the Moark Settlement?

If the Court grants final approval, the Moark Settlement will be binding upon you and all other members of the Settlement Class. By remaining part of the Moark Settlement, if approved, you will give up any claims against Moark relating to the claims made or which could have been made in this lawsuit. By remaining a part of the Moark Settlement, you will retain all claims against all other defendants, named and unnamed.

6. Who represents the Settlement Class?

The Settlement Class is represented by the following attorneys:

Steven A. Asher WEINSTEIN KITCHENOFF & ASHER LLC 1845 Walnut Street, Suite 1100 Philadelphia, PA 19103	Michael D. Hausfeld HAUSFELD LLP 1700 K Street NW, Suite 650 Washington, DC 20006
Stanley D. Bernstein BERNSTEIN LIEBHARD LLP 10 East 40th Street, 22nd Floor New York, New York 10016	Stephen D. Susman SUSMAN GODFREY LLP 654 Madison Avenue, 5th Floor New York, New York 10065

7. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court has scheduled a "Fairness Hearing" at ____ __.m. on [February 7, 2011] at the following address:

United States District Court
James A. Byrne Federal Courthouse
601 Market Street, Courtroom ___ , Philadelphia, PA 19106-1797

The purpose of the Fairness Hearing is to determine whether the Moark Settlement is fair, reasonable, and adequate, and whether the Court should enter judgment granting final approval of it. You do not need to attend this hearing. You or your own lawyer may attend the hearing if you wish, at your own expense. Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind.

8. How do I object to the Moark Settlement?

If you are a Settlement Class member and you wish to participate in the Moark Settlement, but you object to or otherwise want to comment on any term of the Moark Settlement, you may file with the Court an objection in writing. In order for the Court to consider your objection, your objection must be sent by mail and postmarked by [November 30, 2010] to each of the following:

The Court:	**Counsel for Plaintiffs:**	**Counsel for Moark:**
United States District Court James A. Byrne Federal Courthouse, 601 Market Street, Office of the Clerk of the Court, Room 2609 Philadelphia, PA 19106-1797	Steven A. Asher WEINSTEIN KITCHENOFF & ASHER LLC 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103	Nathan P. Eimer EIMER STAHL KLEVORN & SOLBERG LLP 224 South Michigan Avenue, Suite 1100 Chicago, IL 60604

Your objection must be in writing and must provide evidence of your membership in the Settlement Class. The written objection should state the precise reason or reasons for the objection, including any legal support you wish to bring to the Court's attention and any evidence you wish to introduce in support of the objection. You may file the objection through an attorney. You are responsible for any costs incurred in objecting through an attorney.

If you are a Settlement Class member, you have the right to voice your objection to the Moark Settlement at the Fairness Hearing. In order to do so, you must follow all instructions for objecting in writing (as stated above). You may object in person and/or through an attorney. You are responsible for any costs incurred in objecting through an

attorney. You need not attend the Fairness Hearing in order for the Court to consider your objection.

9. How do I exclude myself from the Settlement?

If you are a Settlement Class member and you do not wish to participate in the Moark Settlement, the Court will exclude you from the Moark Settlement if you request exclusion. Your request for exclusion must be hand delivered or sent by mail postmarked by [November 30, 2010] to the following address:

In re Processed Egg Products Antitrust Litigation– EXCLUSIONS
c/o The Garden City Group, Inc., Claims Administrator
P.O. Box ____
Dublin, OH 43017-____

Do not request exclusion if you wish to participate in the Moark Settlement as a member of the Settlement Class. If you intend to bring your own lawsuit against Moark, you should exclude yourself from the Settlement Class.

If you remain in the class, it does not prejudice your right to exclude yourself from any other past, present or future settlement class or certified litigation class in this case.

10. What happens if I do nothing?

If you do nothing, you will remain a member of the Class. As a member of the Settlement Class, you will be represented by the law firms listed above in Question No. 6, and you will not be charged a fee for the services of such counsel and any other class counsel. Rather, counsel will be paid, if at all, as allowed by the Court in some portion of whatever money they may ultimately recover for you and other members of the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. Where do I get additional information?

For more detailed information concerning matters relating to the Moark Settlement, you may wish to review the "Settlement Agreement Between Plaintiffs and Moark Farms, Inc." (signed May 21, 2010) and the "Order on Preliminary Approval of Moark Settlement" (entered _____). These documents are available on the settlement website, www.eggproductssettlement.com, which also contains answers to "Frequently Asked Questions," as well as more information about the case. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 7. You may also obtain more information by calling the toll-free helpline at (866) 881-8306. If your present address is different from the address on the

envelope in which you received this notice, or if you did not receive this notice directly but believe you should have, please call the toll-free helpline in order to provide your new address.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS LAWSUIT.

Dated: _____, 2010 **The Honorable Gene E. K. Pratter**

EXHIBIT 3

Legal Notice

If you or your company purchased eggs, including shell eggs and egg products produced from caged birds in the U.S. from January 1, 2000 to the present, your rights could be affected by a proposed class action settlement.

A proposed settlement in *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md- 02002, pending in the United States District Court for the Eastern District of Pennsylvania, (the "Moark Settlement") has been reached between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. ("Moark") in a class action involving alleged price fixing.

Who is included in the Moark Settlement?

The "Class" includes 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 from January 1, 2000 through 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. For a copy of the ***Full Notice of Settlement*** contact the Claims Administrator at the address below.

What is this case about?

Plaintiffs claim that Defendants conspired from 2000 to the present to limit the supply of shell eggs and egg products (eggs processed into dried, frozen or liquid forms), which raised the prices of shell eggs and egg products and, therefore, violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. Moark denies all of Plaintiffs' allegations.

What does this Moark Settlement provide?

The Moark Settlement is between Plaintiffs and Moark only; the case is continuing against the remaining defendants. The Moark Settlement provides that Plaintiffs will release all claims against Moark. In exchange, Moark will provide the class with $25,000,000 from which claims can be paid. Moark will also provide Plaintiffs with information that Plaintiffs' attorneys believe will aid Plaintiffs in the prosecution of their claims against the non-settling defendants.

What do I do now?

If you are a member of the Class your legal rights are affected, and you now have a choice to make. **Participate in the Moark Settlement:** No action is required to remain part of the Moark Settlement. If the Court grants final approval, the Moark Settlement will be binding upon you and all other members of the Class. By remaining part of the Moark Settlement, you will give up any claims you may have against Moark relating to the claims alleged in this lawsuit. **Ask to be excluded:** If you do not want to participate in the Moark Settlement and wish to retain your rights to pursue your own lawsuit against Moark relating to the claims alleged in this lawsuit, you must formally exclude yourself

from the Class by sending a signed letter postmarked on or before [NOVEMBER 30, 2010] to the following address: *In re Processed Egg Products Antitrust Litigation* EXCLUSIONS; c/o The Garden City Group, Inc., Claims Administrator, P.O. Box ____, Dublin, OH 43017-____. If you remain in the class, it does not prejudice your right to exclude yourself from any other past, present or future settlement class or certified litigation class in this case. **Object to the Moark Settlement or any of its terms:** You may notify the Court that you object to the Moark Settlement by mailing a statement of your objection to the Court, Plaintiffs' counsel, and Defense Counsel postmarked by [NOVEMBER 30, 2010]. You may object in person and/or through an attorney. You are responsible for any costs incurred in objecting through an attorney. **Detailed instructions on how to object are found on the settlement website, listed below.**

Who represents you?

The Court has appointed Steven A. Asher of Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Michael D. Hausfeld of Hausfeld LLP, 1700 K Street NW, Ste. 650, Washington, D.C. 20006; Stanley D. Bernstein of Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Stephen D. Susman of Susman Godfrey LLP, 654 Madison Avenue, 5th Floor, New York, NY, 10016 as Interim Co- Lead Class Counsel. You do not have to pay them or anyone else to participate. You may hire your own lawyer at your own expense.

When will the Court decide whether to approve the Moark Settlement?

At _____ __.m. on [FEBRUARY 7, 2011], at the United States District Court, James A. Byrne Federal Courthouse, 601 Market Street, Courtroom _____, Philadelphia, PA 19106-1797, the Court will hold a hearing to determine the fairness and adequacy of the Moark Settlement. You may appear at the hearing, but you are not required to do so.

How can I learn more?

This notice is only a summary. For more information, call (866) 881-8306, or visit the settlement website, www.eggproductssettlement.com. The website contains a more detailed settlement notice, as well as more information about the case, relevant court filings, and procedures for excluding and objecting. Detailed information about the case can also be examined free of charge during regular business hours at the James A. Byrne Federal Courthouse.

EXHIBIT 4

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF PENNSYLVANIA

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

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED SETTLEMENT WITH MOARK, LLC, NORCO RANCH, INC., AND LAND O' LAKES, INC. AND APPROVING DISSEMINATION OF NOTICE

It is hereby ORDERED AND DECREED as follows:

1. The motion of Plaintiffs for preliminary approval of the proposed settlement, which Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. (collectively "Moark") do not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with Moark, 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, including any Defendant, during the Class Period from January 1, 2000 through 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.
>
> a.) Shell Egg SubClass
> All individuals and entities that purchased Shell Eggs produced from caged birds in the United States directly from any Producer including any Defendant, during the Class Period from January 1, 2000 through 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, excluding individuals and entities that purchased only

"specialty" Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

b.) 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, including any Defendant, during the Class Period from January 1, 2000 through 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, excluding individuals and entities that purchased only "specialty" Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types).

Excluded from the Class and SubClasses are Producers, 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.

3. For purposes of settlement and on the basis of the entire record before the Court, the Court finds that the Settlement Class fully complies with the requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the Settlement Classes; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the Settlement Classes; and (4) the representative parties will fairly and adequately protect the interests of the class. Additionally, for purposes of settlement, the Court finds that Federal Rule of Civil Procedure 23(b)(3) is also met and that there are questions of law or fact common to class members which predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. In accordance with the holding in *In re Community Bank of Northern Virginia*, 418 F.3d 277, 306 (3d Cir. 2005), this Court makes no determination concerning the manageability of this action as a class action if it were to go to trial.

4. The proposed Notice Plan is hereby APPROVED:

A. The Notice Plan proposed by Direct Purchaser Plaintiffs and described herein, which includes Direct Mail Notice, Publication Notice, a website, and a toll-free hotline, is "the best notice that is practicable under the circumstances," as required by Fed. R. Civ. P. 23(c)(2)(B);

B. The manner of providing notice to all class members who would be bound by the Notice Plan is "reasonable," as required by Fed. R. Civ. P. 23(e), and The Garden City Group, Inc. ("GCG") is hereby approved to implement the Notice Plan.

NOTICE PLAN

5. By _____ [JUNE 18, 2010], each Defendant who has not already done so shall produce the names and addresses of all customers who purchased Shell Eggs or Egg Products, produced from caged birds in the United States, from January 1, 2000 through the date of entry of this Order, to GCG.

(a) The customer information shall be produced in a mutually agreeable electronic format or, if not available electronically, in the form in which such information is regularly maintained;

(b) The customer information transmitted by Defendants to GCG shall be treated as confidential, and shall only be used by GCG for purposes of creating and maintaining a customer database and for disseminating notice; and

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

6. By _____ [SEPTEMBER 6, 2010] GCG shall send notice by U.S. First Class mail, postage prepaid, to all individuals produced by Defendants to GCG (Direct Mail Notice). The Direct Mail Notice shall be in the same format as that attached hereto as Exhibit A.

7. GCG shall publish notice (Publication Notice) in the same format as attached hereto as Exhibit B, as follows:

(a) During the week of _____ [SEPTEMBER 13, 2010], on one occasion, in the National Edition of the Wall Street Journal, on one-sixth of one page;

(b) During the week of _____ [SEPTEMBER 13, 2010], or as close thereto as publication schedules permit, on one occasion, in the following industry publications:

Restaurants and Institutions, Restaurant Business, Convenience Store News, Hotel F&B, Nation's Restaurant News, School Nutrition, Food Service Director, Progressive Grocer, Food Manufacturing, Supermarket News, Stores, Egg Industry Magazine, Baking Buyer, Modern Baking, Food Processing, Long Term Living, and PetFood Industry.

8. On or before _____ [SEPTEMBER 6, 2010], GCG shall establish and maintain a website at www.eggproductssettlement.com to provide Settlement Class members with information such as the Direct Mail Notice, relevant Court documents, Settlement updates, and answers to "Frequently Asked Questions."

9. On or before _____ [SEPTEMBER 6, 2010], GCG will also establish and staff a toll-free hotline, (866) 881-8306, to answer any Settlement Class member's questions.

10. On or before _____ [OCTOBER 12, 2010], Plaintiffs shall file an affidavit prepared by GCG that details the process engaged in by GCG to effect the Notice Plan,

and confirms that the requirements regarding Direct Mail Notice, Publication Notice, the website, and the toll-free hotline have been completed in accordance with this Order.

SIGNIFICANT DATES

11. Objections to the Moark Settlement: Must be postmarked by _____ [NOVEMBER 30, 2010].

12. Requests for Exclusion from the Settlement: Must be postmarked or hand delivered by _____ [NOVEMBER 30, 2010].

13. Motion for Final Approval: Must be filed by _____ [JANUARY 7, 2011].

14. Fairness Hearing: _____ [FEBRUARY 7, 2011], at __:__ _.m., United States District Court, Eastern District of Pennsylvania, 601 Market Street, Courtroom ___, Philadelphia, PA 19106-1797 (exact date to be inserted in Direct Mail Notice and Publication Notice). The date, time, and location of this hearing are subject to change and Settlement Class members are advised to check www.eggsproductssettlement.com for any updates.

BY THE COURT:

_____

Gene E.K. Pratter
United States District Judge

Date:_____

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of June 2010, the foregoing Direct Purchaser Plaintiffs' Motion for Preliminary Approval of Class Action Settlement between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc. and Land O' Lakes, Inc., for Preliminary Certification of Class Action for Purposes of Settlement, and for Approval of Notice Plan, Memorandum in Support, and Exs. 1-4, were filed via the CM/ECF system, and will be available for viewing and downloading via the CM/ECF system and the CM/ECF system will send notification of such filing to all attorneys of record. On this date, the foregoing papers were also served, via electronic mail, on (1) all counsel on the Panel Attorney Service List in this action (which includes counsel for the Moark Defendants and Defendant Sparboe Farms, Inc.) and (2) the below-listed Liaison Counsel for Defendants and Indirect Purchaser Plaintiffs:

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