

**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:
(1) PRELIMINARY APPROVAL OF THE SECOND AMENDMENT TO THE
SPARBOE SETTLEMENT AGREEMENT,**

AND

**(2) APPROVAL OF NOTICE PLAN FOR THE PROPOSED SETTLEMENTS WITH
MIDWEST POULTRY SERVICES, LP, NATIONAL FOOD CORPORATION, UNITED
EGG PRODUCERS AND UNITED STATES EGG MARKETERS, AND THE
PROPOSED SECOND SPARBOE AMENDMENT**

Direct Purchaser Plaintiffs (“Plaintiffs”) move this Court for an Order (1) preliminarily approving the proposed Second Amendment to the Sparboe Settlement Agreement; and (2) approving a Notice Plan, including the form and content of the Notice, for the Proposed Second Sparboe Amendment and the Settlement Agreements with Defendants Midwest Poultry Services, LP, National Food Corporation, United Egg Producers and United States Egg Marketers, that provides for direct mail notice, publication notice, a website and a toll-free information line. In support of this Motion, Plaintiffs rely on their Memorandum in Support of the Motion and supporting Exhibits. A proposed Order is attached as Exhibit C to the Memorandum in Support.

Dated: June 19, 2014

Respectfully submitted,

/s/ Steven A. Asher

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DIRECT PURCHASER PLAINTIFFS' MEMORANDUM IN SUPPORT OF:
(1) MOTION FOR PRELIMINARY APPROVAL OF THE SECOND AMENDMENT
TO THE SPARBOE SETTLEMENT AGREEMENT,
AND
(2) MOTION FOR APPROVAL OF NOTICE PLAN FOR THE PROPOSED
SETTLEMENTS WITH MIDWEST POULTRY SERVICES, LP, NATIONAL FOOD
CORPORATION, UNITED EGG PRODUCERS AND UNITED STATES EGG
MARKETERS, AND THE PROPOSED SECOND SPARBOE AMENDMENT

I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiffs (“Plaintiffs”) submit this memorandum in support of their: (1) Motion for Preliminary Approval of a Proposed Second Amendment to the Sparboe Settlement Agreement and (2) Motion for Approval of Notice Plan for the Proposed Settlements with Defendants Midwest Poultry Services, LP, National Food Corporation, United Egg Producers and United States Egg Marketers, and the Proposed Second Sparboe Amendment.

These Motions are brought in connection with (a) the June 8, 2009 settlement between Plaintiffs and Defendant Sparboe (“Sparboe Settlement Agreement”)¹; (b) the proposed second amendment to that Agreement executed on June 16, 2014 (“Second Sparboe Amendment,” attached hereto as Exhibit A); (c) the March 28, 2014 settlement between Plaintiffs and Defendant National Food Corporation (“NFC Settlement Agreement”); (d) the March 31, 2014 settlement between Plaintiffs and Defendant Midwest Poultry Services, LP (“Midwest Poultry Settlement Agreement”)²; and (e) the May 21, 2014 settlement between Plaintiffs and Defendants United Egg Producers and United States Egg Marketers (“UEP/USEM Settlement Agreement”).³

¹ The terms of the Sparboe Settlement are set forth in the Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc., originally signed June 8, 2009 and re-executed June 22, 2009 (ECF Nos. 172-2, 172-3).

² The terms of the NFC Settlement Agreement and the Midwest Poultry Settlement Agreement are set forth in the agreements attached as exhibits to the Declarations of James J. Pizzirusso submitted in support of Plaintiffs’ motion for preliminary approval of those settlement agreements. *See* ECF No. 952-2, Ex. 1 (NFC Settlement Agreement) and ECF No. 952-3, Ex. 1 (Midwest Poultry Settlement Agreement).

³ The terms of the UEP/USEM Settlement Agreement are set forth in the Settlement Agreement between Plaintiffs and United Egg Producers and United States Egg Marketers, attached as Exhibit 1 to the Declaration of James J. Pizzirusso submitted in support of Plaintiffs’ motion for preliminary approval of that agreement, filed contemporaneously with these motions.

II. THE PROPOSED SECOND AMENDMENT TO THE SPARBOE SETTLEMENT AGREEMENT SHOULD BE PRELIMINARILY APPROVED

Plaintiffs and Sparboe reached a settlement on June 8, 2009 (ECF No. 172-2, 172-3). Final approval of the Sparboe Settlement Agreement was granted on July 16, 2012 (ECF No. 698). The Class Period in the Sparboe Settlement Agreement runs from January 1, 2000 to October 23, 2009, the date on which the Court preliminarily approved the Sparboe Agreement. *See* October 23, 2009 Order on Preliminary Approval of Sparboe Settlement at 7-8 (ECF No. 214) (certifying class period from Jan. 1, 2000 to the “present”); July 16, 2012 Order Granting Final Approval of the Class Action Settlement Between Direct Purchaser Plaintiffs and Defendant Sparboe Farms, Inc. at 2 n.1 (ECF No. 698) (certifying class period of Jan. 1, 2000 to Oct. 23, 2009).

Under the terms of the Sparboe Settlement Agreement, Plaintiffs and Sparboe agreed to conform the Sparboe Settlement Class definition to the class definition used in any subsequent settlement agreement with Defendants in this Action to the extent the subsequent agreement provides for an expanded settlement class, including an expansion of the Class Period (ECF No. 172-3, ¶ 31). The Sparboe Settlement Agreement also requires Plaintiffs to seek the Court’s approval of such an amendment, and to disseminate notice of the same to the Class:

In the event that Plaintiffs either enter into a settlement agreement with any Non-Settling Defendant, or obtain certification of a litigation class, and the definition of the class in any subsequent settlement agreement or certification order differs from the definition contained in this Agreement in Paragraph 11 (including an expansion of the Class Period), Plaintiffs agree to use their best efforts to modify the class definition and Class Period of this Agreement to conform to any and all subsequent expansion of the class definition or Class Period, including moving for approval of an amendment to this Agreement and the dissemination of notice of the amendment in conjunction either with notice of any subsequent settlement class or notice of the certification of a litigation class, or both in the event that there are more than one

subsequent modification to the class definition or Class Period. In no event shall Sparboe Farms be responsible for any additional notice costs or expenses.

Id. Subsequent settlements with other Defendants in this Action have triggered Plaintiffs' obligation to seek Court approval of proposed amendments to the Sparboe Settlement Agreement.

On August 2, 2013, Plaintiffs entered into a Settlement Agreement with Defendant Cal-Maine Foods, Inc. (ECF No. 848-2, Ex. A), wherein the parties agreed to a class period that is longer than that contained in the Sparboe Settlement Agreement. Accordingly, on September 3, 2013, Plaintiffs moved the Court to preliminarily approve a proposed amendment to the Sparboe Settlement Agreement ("First Sparboe Amendment") and approve a notice plan for disseminating notice thereof (ECF No. 853). On February 28, 2014, the Court granted the motion (ECF No. 908 ¶¶ 12-16) and the notice plan was implemented in April 2014 (ECF No. 975 ¶¶ 6-14). A fairness hearing is scheduled for September 18, 2014 (ECF No. 908 ¶ 16.k); if the First Sparboe Amendment is granted final approval, it will extend the Sparboe Settlement Class Period through February 28, 2014.

In March and May 2014, Plaintiffs entered into three additional settlement agreements: (1) the NFC Settlement Agreement, (2) the Midwest Poultry Settlement Agreement, and (3) the UEP/USEM Settlement Agreement. Like the Cal-Maine Settlement Agreement, these three settlement agreements contain class definitions that are substantially similar to the Sparboe Settlement Agreement.⁴ However, the Class Periods in these three recent settlement agreements

⁴ Like the Cal-Maine Settlement Agreement, the three most recent settlement agreements exclude Producers from the class, whereas the Sparboe Settlement Agreement does not. *Compare* Cal-Maine Settlement Agreement ¶ 20; NFC Settlement Agreement ¶ 22; Midwest Poultry Settlement Agreement ¶ 23; and UEP/USEM Settlement Agreement ¶ 25 *with* Sparboe Settlement Agreement ¶ 11. This difference, however, does not require amendment to the

are longer, running from January 1, 2000 to the date on which the Court preliminarily approves the settlements.

Because the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements expand the Class Period, on June 16, 2014, Plaintiffs and Sparboe executed a Second Amendment to the Sparboe Agreement that conforms the class period in the Sparboe Agreement to the class period in the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements. The proposed Second Amendment provides:

Paragraph 11 of the Sparboe Agreement is amended to provide for the following Class Period: “January 1, 2000 through the date on which the Court enters an order preliminarily approving the settlement agreements with National Food Corporation, the settlement agreement with Midwest Poultry Services, LP, and the settlement agreement with United Egg Producers and United States Egg Marketers, and certifies a corresponding Class for Settlement purposes as to National Food Corporation, Midwest Poultry Services, LP, and United Egg Producers and United States Egg Marketers only. If the Court enters separate preliminary approval and settlement-class certification orders as to any of these three settlements, the date of the last such order shall be deemed the last day of the Class Period.”

Second Amendment ¶ 1, attached hereto as Exhibit A. The proposed Second Amendment does not alter any other provision of the Sparboe Settlement Agreement, and the Sparboe Agreement remains binding on Plaintiffs and the Class. *Id.* ¶ 4. The Second Amendment also requires that notice of the Second Amendment be disseminated to the Class in conjunction with notice of the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements, at no cost to Sparboe. *Id.* ¶ 3.

For the same reasons that the Court preliminarily approved the First Sparboe Amendment in connection with the Cal-Maine Settlement, Plaintiffs respectfully request that the Court

Sparboe Settlement Agreement because the more recent settlement classes, in that respect, are narrower than the Sparboe Settlement Class. The Sparboe Settlement Agreement requires amendment only when a subsequent class definition expands the scope of the class. *See* Sparboe Settlement Agreement ¶ 31.

preliminarily approve the Proposed Second Amendment and authorize the dissemination of notice thereof to the Class according to the Notice Plan described herein.

First, the Court previously granted final approval to the Sparboe Settlement Agreement, and found its terms to be sufficiently fair, reasonable and adequate to the Sparboe Class (including the provision expressly anticipating that the Class Period would be expanded under the circumstances presented here). Second, the Sparboe Settlement Agreement provided for only cooperation; there was no settlement fund created. Thus, members of the original Sparboe Settlement Class and members under the First Sparboe Amendment suffer no dilution of the value of the Settlement to them by including additional Class members. Third, Class Members under both the prior class periods and the expanded period benefit equally from the value of Sparboe's cooperation in assisting with the prosecution of this Action against the remaining Defendants. Fourth, any direct purchaser who will become a member of the Class solely by virtue of the Second Amendment (*i.e.*, they had no purchases of eggs or egg products in the prior class periods) will have the opportunity to exclude themselves from the amended Class or object to the Second Amendment. Finally, any existing Class Member also will have the opportunity to object to expansion of the Class. For these reasons, the Second Amendment should be preliminarily approved and notice should be disseminated to the Class.

III. THE NOTICE PLAN SHOULD BE APPROVED AS SATISFYING THE REQUIREMENTS OF RULE 23.

On April 25, 2014, Plaintiffs moved for Preliminary Approval of the Settlement Agreements with Defendants National Food Corporation and Midwest Poultry Services, LP. (ECF No. 952). During a May 12, 2014 hearing regarding that preliminary approval motion, the Court requested that Plaintiffs present a proposed plan for disseminating notice of these settlements (ECF No. 965). Soon thereafter, Plaintiffs and Defendants United Egg Producers

and United States Egg Marketers entered into a Settlement Agreement dated May 21, 2014. Contemporaneously with the instant Motion, Plaintiffs are filing their Motion for Preliminary Approval of the UEP/USEM Settlement Agreement.

Plaintiffs now respectfully move the Court for approval of the Plan for, and Form of, Notice for these three Settlement Agreements and the Proposed Second Amendment to the Sparboe Agreement. The proposed notice plan and form of notice directs that notice of these agreements be sent to all Class Members in a “reasonable manner to all class members who [will] be bound by the proposal” and provides for the “best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort,” as required by Rules 23(e)(1) and 23(c)(2)(B) of the Federal Rules of Civil Procedure.⁵

a. The Notice Plan

Plaintiffs propose the same multi-faceted and comprehensive Notice Plan that this Court previously approved twice; first, to provide notice of the Moark and Sparboe Settlements (Sparboe & Moark Notice Plan Order at 1 (ECF No. 388)), and, second, to provide notice of the Cal-Maine Settlement and the First Sparboe Amendment (ECF No. 908 at 6-11, ¶¶ 12-16).

Plaintiffs again have retained Garden City Group (“GCG”), which developed the Moark/Sparboe and Cal-Maine/First Sparboe Amendment notice plans and forms of notice, to

⁵ The parties have agreed that the costs of providing notice and administering the settlements shall be paid from the three Settlement Amounts according to the following allocation: \$25,000 from the UEP/USEM Settlement Amount, with any additional costs over \$25,000 paid equally from the Midwest Poultry Settlement Amount and the NFC Settlement Amount. *See* Declaration of James J. Pizzirusso, Ex. B hereto. Although this allocation differs from the terms of the Settlement Agreements (*compare* UEP/USEM Settlement Agreement ¶ 48; Midwest Poultry Settlement Agreement ¶ 46; NFC Settlement Agreement ¶ 45), the parties have determined that this revised agreement as to cost allocation does not require any amendments to the Settlement Agreements. However, the agreement is incorporated into the Proposed Order submitted herewith. *See* Ex. C ¶ 6.h.

implement the same plan of notice for the Second Sparboe Amendment and the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements. GCG is a nationally recognized leader in notice and settlement administration with substantial experience in developing and implementing comprehensive notice plans in connection with class action settlements. The expertise of GCG in settlement administration is set forth in paragraphs 2-3 of the declaration of Jennifer M. Keough, submitted on May 30, 2014 regarding Notice Dissemination and Claims Administration in connection with the Cal-Maine Settlement and the First Sparboe Amendment (ECF No. 975).

Specifically, the Notice Plans for the Moark/Sparboe and Cal-Maine/First Sparboe Amendment included the following elements, which will be implemented to provide notice for the Second Sparboe Amendment and the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements:

- Sending the Long-Form Notice by first-class mail to all persons and entities identified by National Food Corporation and Midwest Poultry⁶ and non-settling Defendants⁷ as direct purchasers of eggs in the United States during the Class Period or otherwise identified by GCG based on its administration of prior Settlements;
- Posting the Long-Form Notice, along with court documents, the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements and the Second Sparboe Amendment,⁸ on the specially created web site designed to provide notice of the settlements in this litigation, www.eggproductssettlement.com, which has been in

⁶ The NFC and Midwest Poultry Settlement Agreements require that these settling Defendants provide to Plaintiffs, within 20 days of entry of the Preliminary Approval Order, sales and customer data from the Class Period. NFC Settlement Agreement ¶ 25 (ECF No. 952-2); Midwest Poultry Settlement Agreement ¶ 26 (ECF No. 952-3). The UEP/USEM Settlement Agreement omits such a provision because neither UEP nor USEM are in the business of selling Shell Eggs or Egg Products.

⁷ Plaintiffs' Proposed Order for Preliminary Approval includes the directive that non-settling Defendants provide confidential customer lists to GCG, as was done in the Moark Settlement (ECF No. 388 ¶ 3) and the Cal-Maine Settlement (ECF No. 908 ¶ 16.b).

⁸ The Sparboe Settlement Agreement has been available on the website since September 2010; the First Sparboe Amendment has been available on the website since May 2014.

place for nearly four years and is easily accessible through Internet search engines;

- Publishing Summary Notice (“Publication Notice”) on one occasion in the national edition of *The Wall Street Journal*, on one-sixth of one page;
- Publishing Summary Notice on one occasion in each of the following industry publications likely to reach egg purchasers: *Restaurant Business*, *Convenience Store News*, *Hotel F&B*, *Nation’s Restaurant News*, *Food Service Director*, *Progressive Grocer*, *Food Manufacturing*, *Supermarket News*, *Stores*, *Egg Industry*, *Bake*, *Food Processing*, *Long Term Living*, *Pet Food Industry* and *School Nutrition*;⁹
- Issuing a press release that consists of the language of the Publication Notice through PR Newswire to nearly 1,000 journalists covering the restaurant and food industry, which is anticipated, as in prior notices, to generate press articles regarding the Second Sparboe Amendment and the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements; and
- Staffing a toll-free hotline (866-881-8306), accessible 24 hours per day and seven days per week, to answer any Settlement Class member’s questions. Class members who call the toll-free number during business hours will have the option to speak directly to a live representative, and those who call during other hours may leave a voice message requesting the Long-Form Notice or a return call from a call center representative.

Fed. R. Civ. P. 23(c)(2)(B) provides that “the court must 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.” The proposed Notice Plan meets this requirement. Here, the proposed Notice Plan provides for both direct notice (which, in prior settlements, resulted in mailings to more than 16,700 potential class members¹⁰), and, to ensure that any Class members who do not receive individual notice are notified of the Second Sparboe

⁹ See Decl. of Jennifer M. Keough ¶ 11 (ECF No. 975), identifying the publications utilized in implementing the Notice Plan for the Cal-Maine Settlement and First Sparboe Amendment. Some of the publications included in earlier Court-approved publication notice plans are no longer in print, specifically, *Restaurants & Institutions*, see Order ¶ 5(b) (ECF No. 388) , and *Modern Baking*, see Order ¶ 16.d.iv (ECF No. 908). In addition, *Baking Buyer* is now known as *Bake*. See Decl. of Jennifer M. Keough ¶ 11 nn.2-3 (ECF No. 975).

¹⁰ See Decl. of Jennifer M. Keough ¶ 8 (ECF No. 975).

Amendment and the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements, an extensive Publication Notice plan with an estimated combined circulation exceeding 2 million, a website, and a toll-free information line. “It is well settled that in the usual situation first-class mail and publication in the press fully satisfy the notice requirements of both Fed. R. Civ. P. 23 and the due process clause.” *Zimmer Paper Prods., Inc. v. Berger & Montague P.C.*, 758 F.2d 86, 90 (3d Cir. 1985). Individual mail notice is the “best notice practicable” where, as here, the names and addresses of potential class members are ascertainable,¹¹ and publication notice plans have been endorsed by the Third Circuit as the best notice practicable, even in the absence of direct mail notice.¹²

b. The Proposed Notice Plan Timeline

As outlined in the Proposed Order attached hereto as Exhibit C, Plaintiffs propose the following settlement administration timeline, with deadlines measured from the date of the Court’s preliminary approval order:

- **Within 45 days:** Defendants make supplemental data productions (Ex. C, ¶ 6.b);
- **Within 90 days:** GCG staffs the toll-free settlement hotline, mails the Direct Notice, and publishes relevant documents to the settlement website (*id.* ¶¶ 6.c-e);
- **Within 100 days:** GCG publishes the Publication Notice (*id.* ¶ 6.f);
- **Within 120 days:** Filing of GCG’s affidavit regarding implementation of the Notice Plan (*id.* ¶ 6.g);

¹¹ See, e.g., *Larson v. AT&T Mobility LLC*, 687 F.3d 109, 126 (3d Cir. 2012) (citing *Greenfield v. Villager Indus.*, 483 F.2d 824, 832 (3d Cir. 1973)).

¹² *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 252 (3d Cir. 2009) (approving settlement administrator’s plan to mail notice to settlement class members, publish notice of the fairness hearing in multiple periodicals, and establish a website and toll-free number to provide details of the proposed settlement and to offer assistance to the settlement class members); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004) (concluding that notice in publications likely to be read by class members, along with a call center, website and downloadable materials, was reasonable and the best notice practicable).

- **Within 140 days:** Filing of Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, and Incentive Awards (*id.* ¶ 6.i);
- **Within 180 days:** Deadline for objections and requests for exclusion from the Midwest Poultry, NFC, and UEP/USEM Settlement Agreements, and the Second Sparboe Amendment (*id.* ¶¶ 6.j-m);
- **Within 195 days:** Filing of final approval motions for the Midwest Poultry, NFC, and UEP/USEM Settlement Agreements, and the Second Sparboe Amendment (*id.* ¶ 6.n);
- **Within 230 days:** Fairness Hearing (*id.* ¶ 6.o).

This is the same schedule contained in the Court's earlier Order approving the notice plan for the First Sparboe Amendment and the Cal-Maine Settlement (ECF No. 908 ¶ 16.b-k), with one exception.

Plaintiffs respectfully request that the Court approve a slightly extended schedule to allow for the possibility of combining notice of the Midwest Poultry, NFC, and UEP/USEM Settlement Agreements and the Second Sparboe Amendment with notice of yet additional settlement(s). Specifically, Plaintiffs propose that the settlement administration timeline utilized for the Cal-Maine Settlement be extended here by approximately 30 days. Thus, whereas with the Cal-Maine Settlement notice was mailed 63 days after the Court's entry of its preliminary approval order (ECF No. 908 ¶ 16.c), here Plaintiffs propose that notice be mailed 90 days after preliminary approval, with all other deadlines adjusted accordingly.¹³ *See* Ex. C ¶ 6.d. This extended schedule will provide a window during which Plaintiffs hope to consummate an

¹³ For the deadline governing Defendants' production of updated transaction data, Plaintiffs propose a 15-day extension, instead of the 30-day extension proposed for other events in the administration. GCG has informed Plaintiffs' counsel that, based on its experience in administering the Cal-Maine Settlement, a schedule that allows additional time between its receipt of Defendants' supplemental productions and the mailing deadline will better enable it to process the new data and incorporate them into the Notice Plan. Accordingly, whereas in the Cal-Maine Settlement the Court ordered that Defendants' supplemental data productions be made within 30 days of preliminary approval (ECF No. 908 ¶ 16.b), here Plaintiffs proposed that such productions be made within 45 days of preliminary approval. *See* Ex. C ¶ 6.b.

additional settlement(s), file a motion for preliminary approval thereof, and propose revised notices that incorporate information about any additional settlement(s). With the Court's approval, Plaintiffs then would disseminate notice of all such proposed settlement(s) together with notice of the Midwest Poultry, NFC, and UEP/USEM Settlement Agreements and the Second Sparboe Amendment.

Allowing a short, 30-day extension of the Notice Plan (as compared to the Cal-Maine timeline) is in the best interests of the Class, because it will allow dissemination of a single Notice. As opposed to implementing multiple notice plans relatively close in time, combining all of the most recent information into a single Notice, disseminated via a single mailing and publication program, has clear advantages. It avoids the unnecessary expense of an additional, successive notice program (the cost of which is likely to be in six figures), and prevents any Class member confusion that potentially could arise from receipt of multiple mailings in close succession. For these reasons, Plaintiffs respectfully request that the Court adopt the settlement administration timeline contained in the Proposed Order.

c. The Form and Content of the Proposed Notices

Plaintiffs also seek approval of the proposed form and content of the Direct and Publication Notices for the Second Sparboe Amendment and the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements, attached hereto as Exhibits D and E, respectively.

Rule 23 requires that the notice state "clearly and concisely . . . in plain, easily understood language" the following information:

- the nature of the action;
- the definition of the class certified;
- the class claims, issues or defenses;

- that a class member may enter an appearance through an attorney if the member so desires;
- that the court will exclude from the class any member who requests exclusion;
- the time and manner for requesting exclusion; and
- the binding effect of a class judgment on members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(B). Both the Direct Mail and the Publication Notices proposed here include each of these required elements for the Second Sparboe Amendment and the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements:

- Nature of the action—Direct ¶ 2, Publication at 1;
- Class Definition—Direct ¶ 3(NFC, Midwest Poultry, and UEP/USEM Settlements) & ¶ 7 (Sparboe extended Class Period), Publication at 1;
- Class Claims, Issues & Defenses—Direct ¶ 2, Publication at 1;
- Right to appear—Direct ¶ 12, Publication at 2;
- Right to exclude/Time & Manner to Request Exclusion—Direct at 1-2 & ¶ 14; Publication at 1;
- Binding effect—Direct at 1 & ¶ 6 (NFC, Midwest Poultry, and UEP/USEM Settlement) and 1 & ¶ 9 (Sparboe); Publication at 1.

Additionally, the Direct Notice informs potential Class Members about the history of the litigation and prior settlements; the general nature of the Second Sparboe Amendment and the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements; where to access the complete Settlement Agreements and Second Amendment and other Court documents; how the lawyers will be paid and when they will file any petition for an award of attorneys' fees, expenses and incentive awards; Class Members' right to object and how to do so; the date and time of the Fairness Hearing, among other information. This additional information conforms with Rule 23(e)'s requirement for distribution of the settlement notice in a reasonable manner. *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 327 (3d Cir. 1998)

(“The Rule 23(e) notice is designed to summarize the litigation and the settlement and to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings filed in the litigation.”) (quotations and citations omitted).

Moreover, these notices are provided in substantially the same format and use the same plain and concise language, wherever possible, that was used in the Moark/Sparboe and Cal-Maine/First Sparboe Amendment notices previously approved by the Court. *See* Moark/Sparboe Notice Plan Order (ECF No. 388) at Exs. A-1, A-2, B-1, B-2; Plaintiffs’ Motion for Approval of Notice Plan, Ex. B (ECF No. 853-3) & Ex. C (ECF No. 853-4); Cal-Maine/First Sparboe Amendment Notice Plan Order ¶¶ 16.c-d (ECF No. 908) (approving notice “in substantially the same format as that proposed at” ECF Nos. 853-3 & 853-4). They differ only minimally in substance or form from the Cal-Maine/Sparboe Amendment Notice previously approved by the Court in the following respects:

- Information pertaining to the filing of claims has been removed, as no distribution from the NFC, Midwest Poultry or UEP/USEM Settlement Funds is contemplated at the present time. The Direct Notice explains to potential Class Members that a distribution may occur at an appropriate time, possibly in conjunction with future settlements, and encourages Class Members to retain their purchase records for use in any such claims process. *See* Proposed Direct Notice (Ex. D) ¶ 5.
- The Direct Mail and Publication Notices make clear that the only Sparboe Class Members who may now opt-out of the Sparboe Agreement are those made a member of the Sparboe Class by virtue of the Second Amendment. *See id.* at 1 & ¶¶ 9, 14.b; Publication Notice at 1 (Ex. E). Sparboe Class Members who were included in the original Sparboe Settlement Class (purchases between Jan. 1, 2000 and Oct. 23, 2009) or under the definition contained in the First Sparboe Amendment, and did not exclude themselves by the corresponding opt-out deadlines may not now exclude themselves; they are already bound by the Settlement. But the Direct Notice makes clear that *any* member of the Sparboe Class, as amended, may object to the Sparboe Amendment. Ex. D ¶ 13.b.

For the reasons stated above, the proposed Notice Plan and Form of Notice fulfill the requirements of Rule 23 and due process. Accordingly, approval of the Notice Plan and Form of Notice is appropriate.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court: (1) preliminarily approve the Second Sparboe Amendment; and (2) approve the proposed Notice Plan described herein and the Form and content of Notices attached hereto.

Dated: June 19, 2014

Respectfully submitted,

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EXHIBIT A

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 :

**SECOND AMENDMENT TO SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS
AND SPARBOE FARMS, INC.**

This Second Amendment to the Settlement Agreement by and between Sparboe Farms, Inc. (“Sparboe Farms”) and Direct Purchaser Class Plaintiffs (“Plaintiffs”) executed on June 8, 2009 (and re-signed on June 22, 2009) (the “Sparboe Agreement”) is made and entered into this 16th day of June 2014.

WHEREAS, the Court granted final approval to the Sparboe Agreement on July 16, 2012 (Order Granting Final Approval of the Class Action Settlement Between Direct Purchaser Plaintiffs and Defendant Sparboe Farms, Inc. (ECF No. 698) (“Final Approval Order”));

WHEREAS, the United States District Court for the Eastern District of Pennsylvania retains jurisdiction over the implementation, enforcement, and performance of the Sparboe Agreement (Final Approval Order, at 4 ¶ 9);

WHEREAS, paragraph 31 of the Sparboe Agreement provides that if any subsequent settlement agreement between Plaintiffs and any Non-Settling Defendant provides for a more expansive class definition or Class Period compared to the Sparboe Agreement, Plaintiffs shall use best efforts to modify the class definition and Class Period to conform to the expanded definition or period;

WHEREAS, paragraph 34 of the Sparboe Agreement provides that the Agreement may be amended only by a writing executed by Plaintiffs and Sparboe Farms, and approved by the Court;

WHEREAS, the Class Period under paragraph 11 of the Sparboe Agreement was defined as January 1, 2000 through October 23, 2009 (Final Approval Order, at 2 n.1);

WHEREAS, on August 29, 2013, Plaintiffs and Sparboe Farms executed an Amendment to Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc., to modify the Class Period in the Sparboe Agreement so as to be consistent with the longer class period contained in the Settlement Agreement entered into on August 2, 2013 between Plaintiffs and Defendant Cal-Maine Foods, Inc., which Amendment was submitted for Court approval on September 3, 2013 (Direct Purchaser Plaintiffs' Motion for (1) Preliminary Approval of Amendment to the Sparboe Settlement Agreement, and (2) Approval of Notice Plan for the Proposed Cal-Maine Settlement Agreement & Proposed Sparboe Amendment (ECF No. 853));

WHEREAS, the Court issued an Order on February 28, 2014 preliminarily approving the Amendment to the Sparboe Agreement and directing that notice of the proposed amendment be provided to the Settlement Class (Order dated Feb. 28, 2014 ¶¶ 12-16 (ECF No. 908));

WHEREAS, Plaintiffs subsequently have entered into three additional settlement agreements: (1) the March 28, 2014 settlement between Plaintiffs and Defendant National Food Corporation ("NFC Settlement Agreement"); (2) the March 31, 2014 settlement between Plaintiffs and Defendant Midwest Poultry Services, LP ("Midwest Poultry Settlement Agreement"); and (3) the May 21, 2014 settlement between Plaintiffs and Defendants United Egg Producers and United States Egg Marketers ("UEP/USEM Settlement Agreement"), all of which provide for a Class Period of greater duration—from January 1, 2000 through the date on

which the Court enters an order preliminarily approving these agreements and certifies corresponding Classes for Settlement purposes.

NOW, THEREFORE, it is agreed by and among the undersigned as follows:

1. Paragraph 11 of the Sparboe Agreement is amended to provide for the following Class Period: “January 1, 2000 through the date on which the Court enters an order preliminarily approving the settlement agreements with National Food Corporation, the settlement agreement with Midwest Poultry Services, LP, and the settlement agreement with United Egg Producers and United States Egg Marketers, and certifies a corresponding Class for Settlement purposes as to National Food Corporation, Midwest Poultry Services, LP, and United Egg Producers and United States Egg Marketers only. If the Court enters separate preliminary approval and settlement-class certification orders as to any of these three settlements, the date of the last such order shall be deemed the last day of the Class Period.”

2. Class Counsel shall move the Court to approve this Second Amendment to the Sparboe Agreement at or around the time it files its Motion for Approval of the Plan and Form of Class Notice for the Settlement Agreements with National Food Corporation, Midwest Poultry Services, LP, and United Egg Producers and United States Egg Marketers.

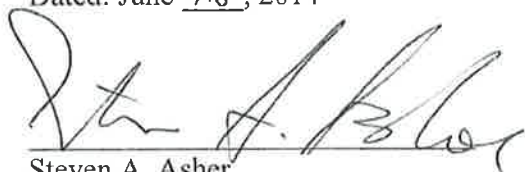
3. Class Counsel shall disseminate notice of this Second Amendment in connection with the Class Notice of the Settlement Agreements with National Food Corporation, Midwest Poultry Services, LP, and United Egg Producers and United States Egg Marketers. Sparboe shall not be obligated to pay or reimburse any party for any costs or fees, including notice costs.

4. Aside from the amendment of the settlement class period in Paragraph 11, all other provisions of the Sparboe Agreement shall remain unchanged and binding on the Plaintiffs.

5. 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 Second Amendment, subject to Court approval.

6. This Second Amendment may be executed in counterparts by Plaintiffs and Sparboe Farms, and an electronically-scanned (in either .pdf or .tiff format) or facsimile signature will be considered as an original signature for purposes of execution of this Amendment.

Dated: June 16, 2014



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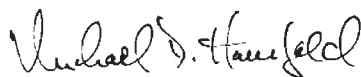
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(On Behalf of the Direct Purchaser Class Plaintiffs)

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(On Behalf of the Direct Purchaser Class Plaintiffs)

5. 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 Second Amendment, subject to Court approval.

6. This Second Amendment may be executed in counterparts by Plaintiffs and Sparboe Farms, and an electronically-scanned (in either .pdf or .tiff format) or facsimile signature will be considered as an original signature for purposes of execution of this Amendment.

Dated: June ____, 2014

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(On Behalf of the Direct Purchaser Class Plaintiffs)

5. 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 Second Amendment, subject to Court approval.


6. This Second Amendment may be executed in counterparts by Plaintiffs and Sparboe Farms, and an electronically-scanned (in either .pdf or .tiff format) or facsimile signature will be considered as an original signature for purposes of execution of this Amendment.

Dated: June ____, 2014

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(On Behalf of the Direct Purchaser Class Plaintiffs)



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(On Behalf of Sparboe Farms, Inc.)

EXHIBIT B

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

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

**DECLARATION OF JAMES J. PIZZIRUSSO IN SUPPORT OF DIRECT PURCHASER
PLAINTIFFS’ MOTION FOR: (1) PRELIMINARY APPROVAL OF THE SECOND
AMENDMENT TO THE SPARBOE SETTLEMENT AGREEMENT, AND
(2) APPROVAL OF NOTICE PLAN FOR THE PROPOSED SETTLEMENTS WITH
MIDWEST POULTRY SERVICES, LP, NATIONAL FOOD CORPORATION, UNITED
EGG PRODUCERS AND UNITED STATES EGG MARKETERS, AND THE
PROPOSED SECOND SPARBOE AMENDMENT**

I, James J. Pizzirusso, declare as follows:

- 1) I am one of the founding partners of the law firm Hausfeld LLP and am one of the attorneys at my firm principally responsible for handling this case. My firm is appointed Interim Co-Lead Counsel for Direct Purchasers in the above captioned action, along with counsel from Weinstein Kitchenoff & Asher LLC, Susman Godfrey LLP, and Bernstein Liebhard LLP.
- 2) I submit this declaration in support of the accompanying motion for preliminary approval of the proposed Second Amendment to the Sparboe Settlement Agreement (“Second Sparboe Amendment”)¹ and for approval of a proposed Notice Plan for the Second Sparboe Amendment and the March 28, 2014 settlement between Plaintiffs and Defendant National Food Corporation (“NFC Settlement Agreement”); the March 31, 2014 settlement between Plaintiffs and

¹ The Second Amendment to the Sparboe Settlement Agreement is Exhibit A to the accompanying Memorandum of Law in Support of Direct Purchaser Plaintiffs' Motion for (1) Preliminary Approval of the Second Amendment to the Sparboe Settlement Agreement, and (2) Approval of Notice Plan for the Settlements with Midwest Poultry Services, LP, National Food Corporation, United Egg Producers and United States Egg Marketers, and The Proposed Second Sparboe Amendment.

Defendant Midwest Poultry Services, LP (“Midwest Poultry Settlement Agreement”)²; and the May 21, 2014 settlement between Plaintiffs and Defendants United Egg Producers and United States Egg Marketers (“UEP/USEM Settlement Agreement”).³

3) Direct Purchaser Plaintiffs’ proposed Notice Plan seeks to disseminate notice of the Second Sparboe Amendment together with notice of the NFC Settlement Agreement, Midwest Poultry Settlement Agreement, and the UEP/USEM Settlement Agreement. Under the Second Sparboe Amendment, Sparboe has no obligation to pay or reimburse any party for any costs or fees of providing such notice or related settlement administration. *See* Second Sparboe Amendment ¶ 3.

4) The NFC Settlement Agreement, the Midwest Poultry Settlement Agreement, and the UEP/USEM Settlement Agreement each contain provisions authorizing disbursements from their respective Settlement Amounts for any payments and expenses incurred in connection with the costs of notice and administration of those Settlement Agreements. *See* NFC Settlement Agreement ¶ 45; Midwest Poultry Settlement Agreement ¶ 46; UEP/USEM Settlement Agreement ¶ 48.

5) The NFC Settlement Agreement and the Midwest Poultry Settlement Agreement provide that if notice of the agreement is combined with dissemination of notice of other settlement agreements, the costs of the combined notice and settlement administration shall be apportioned equally. *See* NFC Settlement Agreement ¶ 45; Midwest Poultry Settlement Agreement ¶ 46. The

² The NFC Settlement Agreement and the Midwest Poultry Settlement Agreement are attached as exhibits to the Declarations of James J. Pizzirusso submitted in support of Plaintiffs’ motion for preliminary approval of those agreements. *See* ECF No. 952-2, Ex. 1 (NFC Settlement Agreement) and ECF No. 952-3, Ex. 1 (Midwest Poultry Settlement Agreement).

³ The UEP/USEM Settlement Agreement is attached as Exhibit 1 to the Declaration of James J. Pizzirusso submitted in support of Plaintiffs’ motion for preliminary approval of that agreement, filed separately today.

UEP/USEM Settlement Agreement provides that the costs of any combined notice and settlement administration shall be apportioned on a pro rata basis. *See* UEP/USEM Settlement Agreement ¶ 48.

6) On June 16, 2014, counsel for Direct Purchaser Plaintiffs, NFC, Midwest Poultry, and UEP/USEM conferred regarding the settlement agreements' provisions for apportioning costs.

7) Specifically, the parties agreed that the costs of the combined notice and settlement administration for the NFC, Midwest Poultry, and UEP/USEM Settlement Agreements shall be apportioned according to the following allocation: \$25,000 is to be disbursed from the UEP/USEM Settlement Amount, with any additional costs over \$25,000 to be disbursed on an equal basis from the Midwest Poultry Settlement and the NFC Settlement Amounts.

8) The parties have determined that this revised agreement as to the allocation of notice and settlement administration costs does not require any amendments to the NFC, Midwest Poultry, or UEP/USEM Settlement Agreements. However, the agreement is incorporated into the Proposed Order submitted with this motion.

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

Dated: June 17, 2014

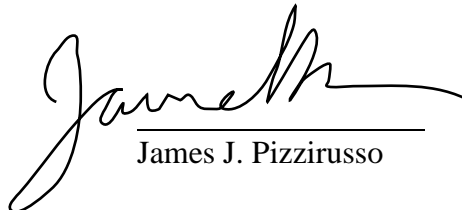

James J. Pizzirusso

EXHIBIT C

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

IN RE: PROCESSED EGG PRODUCTS : MDL No. 2002
ANTITRUST LITIGATION :

:
:
:
:
:
:
:

THIS DOCUMENT APPLIES TO : Case No: 08-md-02002
ALL DIRECT PURCHASER ACTIONS :

ORDER

**(1) GRANTING PRELIMINARY APPROVAL OF THE PROPOSED
SECOND AMENDMENT TO SETTLEMENT AGREEMENT BETWEEN
DIRECT PURCHASER PLAINTIFFS AND SPARBOE FARMS, INC.;**
AND (2) APPROVING THE PARTIES' NOTICE PLAN

AND NOW, this _____ day of _____, 2014, upon consideration of Direct Purchaser Plaintiffs' Motion for (1) Preliminary Approval of the Second Amendment to the Sparboe Settlement Agreement, and (2) Approval of Notice Plan for the Settlements with Midwest Poultry Services, LP, National Food Corporation, United Egg Producers and United States Egg Marketers, and The Proposed Second Sparboe Amendment (Docket No. _____); and following a hearing on these Motions on _____, **it is HEREBY ORDERED and DECREED that:**

1. **Direct Purchaser Plaintiffs' Motion for (1) Preliminary Approval of the Second Amendment to the Sparboe Settlement Agreement, and (2) Approval of Notice Plan for the Settlements with Midwest Poultry Services, LP, National Food Corporation, United Egg Producers and United States Egg Marketers, and The Proposed Second Sparboe Amendment (Docket No. _____) is GRANTED.**

2. The Sparboe Settlement Agreement contains a provision requiring the Sparboe Settlement Class Period to expand to meet the characteristics of more expansive definitions in

any subsequent settlements with other Defendants (Docket No. 172-2, at ¶ 31). This Court previously granted preliminary approval to the Proposed First Sparboe Amendment, which temporally extended the Sparboe Settlement Class Period to be consistent with the Cal-Maine Settlement Class Period. (Docket No. 908).

3. Plaintiffs have entered into Settlement Agreements with Midwest Poultry, LP (the “Midwest Poultry Settlement Agreement”), National Food Corporation (the “NFC Settlement Agreement”), and United Egg Producers and United States Egg Marketers (the “UEP/USEM Settlement Agreement”). Because these Settlement Agreements contain class definitions that run from January 1, 2000 to the date of preliminary approval, the Sparboe Settlement Class Period must be temporally extended again to the date of the Court’s Preliminary Approval Order of these settlements, as reflected in the Proposed Second Sparboe Amendment.

- a. Under the Proposed Second Sparboe Amendment, any existing members of the Sparboe Settlement Class, as well as any class members who become members of the Sparboe Settlement Class solely because of the expansion of the Class Period, may object to the Second Sparboe Amendment. Persons or entities who become members of the Sparboe Settlement Class solely on account of the Second Sparboe Amendment’s expansion of the Class Period may opt out.
- b. Pursuant to the Sparboe Settlement Agreement, Sparboe shall bear none of the cost of notice of the Proposed Second Sparboe Amendment. Notice of the Proposed Second Sparboe Amendment shall be provided together with notice of the Proposed Midwest Poultry, NFC, and UEP/USEM Settlement Agreements, as detailed below.

4. The Court finds, consistent with its earlier findings, *see generally* 284 F.R.D. 249; 284 F.R.D. 278, that the Proposed Second Sparboe Amendment is sufficiently fair, reasonable, and adequate so as to warrant preliminary approval and dissemination of notice of the Second Amendment.

5. **The Court hereby approves the Proposed Notice Plan for the Proposed Midwest Poultry, NFC, and UEP/USEM Settlement Agreements and the Proposed Second Sparboe Amendment as "the best notice that is practicable under the circumstances," as required by Federal Rule of Civil Procedure 23(c)(2)(B).** The Notice Plan includes Direct Mail Notice, Publication Notice, a website, and a toll-free hotline.

6. **The Notice Plan; the Proposed Midwest Poultry, NFC, and UEP/USEM Settlement Agreements; and the Proposed Second Sparboe Amendment shall proceed in the following manner and on the following schedule:**

- a. **Garden City Group ("GCG") is appointed Claims Administrator and is approved to implement the Notice Plan.**
- b. **By [within 45 days of this Order],** each Defendant shall provide to GCG a supplemental production that shall include the names and addresses of all customers in the United States (i) to whom that Defendant sold Shell Eggs or Egg Products in the United States between the date of that Defendant's most recent customer name and address production to GCG and the date of the entry of this Order; and (ii) that were not included in that Defendant's most recent customer name and address production to GCG. The customer information transmitted by Defendants to GCG:

- i. Shall be produced in a mutually agreeable electronic format or, if not available electronically, in the form in which such information is regularly maintained;
 - ii. 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
 - iii. Shall not be shared with Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, their counsel, or their experts.
- c. **By [within 90 days of this Order]**, GCG will staff a toll-free hotline, 866-881-8306, to answer any Settlement Class member's questions.
- d. **By [within 90 days of this Order]**, GCG shall send notice by U.S. First Class mail, postage prepaid, to all individuals whose names and addresses were produced by Defendants to GCG (Direct Mail Notice). The Direct Mail Notice shall be in substantially the same format as that proposed at Docket No. _____.
- e. **By [within 90 days of this Order]**, GCG shall publish Direct Mail Notice, relevant Court documents, the Midwest Poultry, NFC, and UEP/USEM Settlement Agreements, the Second Sparboe Amendment, any Settlement updates, and answers to "Frequently Asked Questions" at www.eggproductssettlement.com.
- f. GCG shall publish notice in substantially the same format as that proposed at Docket No. _____ (Publication Notice), as follows:

- i. **By [within 100 days of this Order]**, on one occasion, in the National Edition of *The Wall Street Journal*, on one-sixth of the page.
- ii. **By [within 100 days of this Order]**, or as close thereto as publication schedules permit, on one occasion, in the following industry publications: Restaurant Business, Convenience Store News, Hotel F&B, Nation's Restaurant News, Food Service Director, Progressive Grocer, Food Manufacturing, Supermarket News, Stores, Egg Industry, Bake, Food Processing, Long Term Living, Pet Food Industry, and School Nutrition.
- iii. **By [within 100 days of this Order]**, GCG shall issue press releases, consisting of substantially the same language of the Publication Notice, through (a) PR Newswire and (b) 1000 journalists in the restaurant and food industry.
- g. **By [within 120 days of this Order]**, Direct Purchaser Plaintiffs shall file an affidavit prepared by GCG that details the process engaged in by GCG to effect the Notice Plan, and confirms that the requirements regarding Direct Mail Notice, Publication Notice, the website, and the toll-free hotline have been completed in accordance with this Order.
- h. The costs of implementing the Notice Plan and administering these settlements shall be paid from the Midwest Poultry, NFC, and UEP/USEM Settlement Amounts according to the following allocation: \$25,000 from the UEP/USEM Settlement Amount, with any additional costs over \$25,000 paid

equally from the Midwest Poultry Settlement Amount and the NFC Settlement Amount.

- i. Direct Purchaser Plaintiffs shall submit any Motion for Attorneys' Fees, Litigation Expenses, and Incentive Awards by **[within 140 days of this Order]**, which date shall be inserted in the Direct Mail Notice.
- j. **Requests for exclusion from the Midwest Poultry, NFC, and UEP/USEM Settlements** must be First-Class Mail postmarked or hand-delivered to GCG, at the address indicated in the relevant notice, **by [within 180 days of this Order]**, which date shall be inserted in the Direct Mail Notice and Publication Notice.
- k. **Objections to the Midwest Poultry, NFC, and UEP/USEM Settlements** must be First-Class Mail postmarked or hand-delivered to the Court, Counsel for Direct Purchaser Plaintiffs, and Counsel for the relevant settling defendant, at the addresses indicated in the notice, **by [within 180 days of this Order]**, which date shall be inserted in the Direct Mail Notice and Publication Notice.
- l. **Requests for exclusion from the Sparboe Settlement, as amended by the Second Sparboe Amendment**, by individuals or entities who become members of the Sparboe Settlement Class solely by virtue of the Second Sparboe Amendment (*i.e.*, those who had no direct purchases of Shell Eggs or Egg Products from any Producer in the United States between January 1, 2000, and February 28, 2014, but that did make such purchases between March 1, 2014, and the date of this Order) must be First-Class Mail postmarked or hand-delivered to GCG, at the address indicated in the relevant

notice, **by [within 180 days of this Order]**, which date shall be inserted in the Direct Mail Notice and Publication Notice.

- m. **Objections to the Second Sparboe Amendment** by any member of the Sparboe Settlement Class, as amended, must be First-Class Mail postmarked or hand delivered to the Court, Counsel for Direct Purchaser Plaintiffs, and Counsel for Sparboe, at the addresses indicated in the relevant notice, **by [within 180 days of this Order]**, which date shall be inserted in the Direct Mail Notice and Publication Notice.
- n. **By [within 195 days of this Order]**, the Direct Purchaser Plaintiffs must file their:
- i. Motion for Final Approval of the Midwest Poultry, NFC, and UEP/USEM Settlement Agreements, and
 - ii. Motion for Final Approval of the Second Sparboe Amendment.
- o. The Court will hold a **Fairness Hearing for the Midwest Poultry, NFC, and UEP/USEM Settlements and the Second Sparboe Amendment on [within 230 days of this Order]**, in Courtroom 10B, United States Courthouse, 601 Market Street, Philadelphia, PA 19106. This date shall be inserted into the Direct Mail Notice and Publication Notice. The date, time, and location of this hearing are subject to change, and Settlement Class members are advised to check www.eggproductsettlement.com for any updates.

IT IS SO ORDERED.

BY THE COURT:

GENE K. PRATTER
United States District Judge

EXHIBIT D

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

If you purchased Shell Eggs or Egg Products, produced in the United States directly from any Producer from January 1, 2000 through _____, 2014, 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 the *In re Processed Egg Products Antitrust Litigation* reached settlements with Defendants Midwest Poultry Services, LP, National Food Corporation, United Egg Producers and United States Egg Marketers, together with their past and present parents, subsidiaries, and affiliates. If you fall within the definition of the "Settlement Class" as defined herein, you will be bound by the settlements 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.

This notice also informs you that the Settlement Class for the prior settlement agreement with Sparboe Farms, Inc. ("Sparboe Settlement") has been amended for a second time. The original Sparboe Settlement included direct purchases of Shell Eggs and Egg Products between January 1, 2000 and October 23, 2009, as described in the Notice dated July 15, 2010. The first amendment to the Sparboe Settlement extended the Class Period to include direct purchases of Shell Eggs and Egg Products between October 24, 2009 and February 28, 2014 (the "First Sparboe Amendment"), as described in the Notice dated February 28, 2014. The Sparboe Settlement now has been amended a second time to include direct purchases of Shell Eggs and Egg Products between March 1, 2014 and _____, 2014 ("Second Sparboe Amendment"). If you become a member of the Sparboe Settlement Class solely because of this second extension of the Class Period (i.e., you purchased Shell Eggs or Egg Products between March 1, 2014 and _____, but not before this period), you will be bound by the terms of that agreement unless you expressly exclude yourself in writing pursuant to the instructions below. If you were a member of the prior Sparboe Class, either under the original Sparboe Settlement class definition or the expanded definition in the First Sparboe Amendment, and took no action in response to the previous notice of the Sparboe Settlement dated July 15, 2010 or the notice of the First Sparboe Amendment dated February 28, 2014, you may not now exclude yourself and you remain bound by the Settlement.

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 settlements with Midwest Poultry Services, LP ("Midwest"), National Food Corporation ("NFC"), United Egg Producers ("UEP") and United States Egg Marketers ("USEM") (collectively, the "Midwest, NFC, and UEP/USEM Settlements") and of the Second Sparboe Amendment, and of your rights with respect to them, including, but not limited to, the right to remain a member of these Settlement Classes or to exclude yourself from them.

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

YOUR LEGAL RIGHTS AND OPTIONS REGARDING THE MIDWEST, NFC, AND UEP/USEM SETTLEMENTS:	
TAKE NO ACTION	You will receive the non-monetary benefits of the Midwest, NFC, and UEP/USEM Settlements and give up the right to sue Midwest, NFC, UEP and USEM with respect to the claims asserted in this case. You may be eligible to submit a claim at a later date to receive money from these settlements.
EXCLUDE YOURSELF FROM THE MIDWEST, NFC, OR UEP/USEM SETTLEMENT CLASSES BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, _____	This is the only option that allows you to ever be a part of any other lawsuit against Midwest, NFC, UEP or USEM with respect to the claims asserted in this case. You will not become a member of the Settlement Classes. If you exclude yourself, you will be able to bring a separate lawsuit against Midwest, NFC, UEP or USEM with respect to the claims asserted in this case.
OBJECT TO THE MIDWEST, NFC, OR UEP/USEM SETTLEMENTS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, _____	You will remain a member of the Midwest, NFC, and UEP/USEM Settlement Classes, but you also have the right to comment on the terms of the Settlements.
GO TO THE FAIRNESS HEARING ON _____ AFTER FILING A TIMELY	If you file a timely objection, you may speak in Court about the fairness of the Midwest, NFC, or UEP/USEM Settlements.

OBJECTION TO THE MIDWEST, NFC, OR UEP/USEM SETTLEMENTS	
YOUR LEGAL RIGHTS AND OPTIONS REGARDING THE SECOND SPARBOE AMENDMENT:	
TAKE NO ACTION	<p>If you become a member of the Sparboe Settlement Class solely because of the expanded Class Period under the Second Sparboe Amendment (i.e., you did not purchase Shell Eggs or Egg Products prior to March 1, 2014), you will receive the benefits of the Sparboe Settlement and give up the right to sue Sparboe.</p> <p>If you were a member of the original Sparboe Settlement Class (i.e., you purchased Shell Eggs or Egg Products on or before October 23, 2009) and took no action in response to the prior notice of that Settlement dated July 15, 2010, you remain bound by the Sparboe Settlement.</p> <p>If you were a member of the Sparboe Settlement Class solely because of the expanded Class Period under the First Sparboe Amendment (i.e., you purchased Shell Eggs or Egg Products between October 24, 2009 and February 28, 2014, but not before this period), and took no action in response to the prior notice of the First Sparboe Amendment dated February 28, 2014, you remain bound by the Sparboe Settlement.</p>
EXCLUDE YOURSELF FROM THE EXTENDED SPARBOE SETTLEMENT CLASS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, _____, 2014	<p>If you become a member of the Sparboe Settlement Class solely because of the expanded Class Period under the Second Sparboe Amendment (i.e., you did not purchase Shell Eggs or Egg Products prior to March 1, 2014), this is the only option that allows you to ever be a part of any lawsuit against Sparboe with respect to the claims asserted in this case.</p> <p>If you purchased Shell Eggs or Egg Products on or before February 28, 2014, you may not now exclude yourself from the Sparboe Settlement Class.</p>
OBJECT TO THE SECOND SPARBOE AMENDMENT BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, _____, 2014	<p>You will remain a member of the expanded Sparboe Class, but you also have the right to comment on the terms of the Second Sparboe Amendment.</p>
GO TO THE FAIRNESS HEARING ON _____ AFTER FILING A TIMELY OBJECTION TO THE SECOND SPARBOE AMENDMENT	<p>If you file a timely objection, you may speak in Court about the fairness of the Second Sparboe Amendment.</p>

ABOUT THIS NOTICE & LITIGATION**1. Why did I receive this notice?**

This legal notice is to inform you of the Midwest, NFC, and UEP/USEM Settlements that have 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, and of the expanded Class Period under the Second Sparboe Amendment. You are being sent this notice because you have been identified as a potential customer of one or more 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), but do not include specialty Shell Eggs, such as cage-free, organic, or nutritionally enhanced eggs, eggs used for growing, or Egg Products produced from such eggs.

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 In December 2009, Plaintiffs filed their second consolidated amended complaint adding new allegations against the Defendants. On September 26, 2011, the Court dismissed claims against certain defendants, but permitted Plaintiffs to proceed against all other Defendants. Plaintiffs filed their third consolidated amended class action complaint on January 4, 2013. On August 23, 2013, the Court dismissed claims under the third amended complaint for damages incurred by the class prior to September 24, 2004. Claims for damages incurred after that date are proceeding.

To date, nine defendants have settled with Plaintiffs in this matter, as described below:

The Sparboe Settlement. On June 8, 2009, Plaintiffs and Defendant Sparboe Farms Inc. (“Sparboe”) reached a settlement. A Notice dated July 15, 2010 regarding the Sparboe Settlement was sent to potential Class Members in September 2010. The original Sparboe Settlement Agreement released all claims arising from this action between January 1, 2000 and June 8, 2009 in exchange for cooperation that substantially assisted Plaintiffs in prosecuting the claims in this Action. The Sparboe Agreement was finally approved by the Court on July 16, 2012. Since that time, Plaintiffs and Sparboe have amended the Sparboe Agreement twice. It was first amended to expand the Class Period from January 1, 2000 through October 23, 2009, to include claims arising from this action between October 24, 2009 and February 28, 2014 (“First Sparboe Amendment”). A Notice dated February 28, 2014 regarding the First Sparboe Amendment was sent to potential Class Members in April 2014. The Court will hold a Fairness Hearing on September 18, 2014 to consider whether to approve the First Sparboe Amendment. The Sparboe Agreement was amended a second time to expand the Class Period from January 1, 2000 through February 28, 2014, to include claims arising from this action between March 1, 2014 and _____ (“Second Sparboe Amendment”).

The Moark Settlement. Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. (“Moark Defendants”) entered into a settlement on May 21, 2010 providing \$25 million to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants. Notice of the Moark Agreement was sent to potential Class Members in September 2010. The Court approved the Moark Settlement on July 16, 2012, and checks were mailed to eligible Moark Settlement Class Members on July 3, 2013.

The Cal-Maine Settlement. Plaintiffs and Defendant Cal-Maine Foods, Inc. (“Cal-Maine”) entered into a settlement on August 2, 2013, to provide \$28 million to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants. A Notice dated February 28, 2014 regarding the Cal-Maine Settlement was sent to potential Class Members in April 2014. The Court will hold a Fairness Hearing on September 18, 2014 to consider whether to approve the Cal-Maine Settlement.

The NFC Settlement. Plaintiffs and Defendant National Food Corporation (“NFC”) entered into a settlement agreement on March 28, 2014 to provide \$1 million to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants.

The Midwest Settlement. Plaintiffs and Defendant Midwest Poultry Services, LP (“Midwest”) entered into a settlement on March 28, 2014 to provide \$2.5 million to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants.

The UEP/USEM Settlement. Plaintiffs and Defendants United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”) entered into a settlement agreement on May 21, 2014 to provide \$500,000 to a fund to compensate Class Members and substantial cooperation to assist Plaintiffs in pursuing their claims against the remaining Defendants.

The Court will hold a Fairness Hearing on _____ to consider whether to approve the Midwest, NFC and UEP/USEM Settlements and the Second Sparboe Amendment.

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

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 buys eggs from a direct purchaser of eggs or another indirect purchaser.

of law and fact. Plaintiffs claim that Defendants' actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from the year 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 allegedly include, but are not limited to, agreements to limit or dispose of hen flocks, a pre-textual animal welfare 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, Defendants caused Shell Egg and Egg Product prices to be higher than they otherwise would have been. Midwest, NFC, UEP and USEM and the other Defendants deny all of Plaintiffs' allegations.

The Defendants remaining in this case include: Michael Foods, Inc.; Rose Acre Farms, Inc.; Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P.; Ohio Fresh Eggs, LLC; Daybreak Foods, Inc.; NuCal Foods, Inc.; and R.W. Sauder, Inc.

THE MIDWEST, NFC, AND UEP/USEM SETTLEMENTS

3. Who is included in the Midwest, NFC, and UEP/USEM Settlements?

Midwest, NFC, and UEP/USEM entered into separate Settlement Agreements with Plaintiffs, but all three agreements include the same Class definition. For purposes of these Agreements, the Settlement Class is defined as follows:

All persons and entities that purchased Shell Eggs and Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through _____.

Excluded from the Settlement Class are:

- a. Midwest, NFC, and UEP/USEM, the Defendants that remain in the case, prior Settling Defendants (Moark Defendants, Sparboe and Cal-Maine), and their respective parents, subsidiaries and affiliates;
- b. Egg Producers, defined as any person or entity that owns, contracts for the use of, leases, or otherwise controls hens for the purpose of producing eggs for sale, and the parents, subsidiaries, and affiliated companies of such Producers;
- c. 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.
- d. Purchases of "specialty" Shell Eggs (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types), purchases of Egg Products produced from specialty Shell Eggs, and purchases of "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat), and any person or entity that purchased exclusively specialty or hatching eggs.

Persons or entities that fall within the definition of the Settlement Class and do not exclude themselves will be bound by the terms of the Settlement Agreements.²

4. Why are there Settlements with Midwest, NFC, and UEP/USEM and what do they provide?

The Midwest Settlement. Plaintiffs and Defendant Midwest Poultry Services, LP ("Midwest") entered into settlement discussions beginning in January 2014. After approximately two months of extensive arm's-length negotiations, on March 31, 2014, Plaintiffs and Midwest reached a settlement providing \$2.5 million to a fund to compensate Class Members. The settlement amount was based primarily on Midwest's uncertain financial condition and the fact that the great majority of its egg sales were made to entities that are not members of the settlement class. Under the settlement, Midwest also will provide information concerning Midwest's knowledge of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action, and a witness to testify at trial. It is the opinion of Plaintiffs' attorneys that these nonmonetary benefits will materially assist Plaintiffs in further analyzing and prosecuting this Action against the remaining Defendants. Pursuant to the terms of the Midwest Settlement, Plaintiffs will release Midwest from all pending claims. If Class Members whose combined purchases equal or exceed a threshold percentage of Midwest's Total Sales, agreed to by Plaintiffs and Midwest under a separate agreement provided to the Court for review, choose to exclude themselves from the Settlement Agreement, Midwest has the right to terminate the Settlement.

² For all three agreements, 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 in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through _____." The second subclass, called the "Egg Products Subclass," is comprised of "[a]ll individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through _____."

The NFC Settlement. Plaintiffs and Defendant National Food Corporation (“NFC”) entered into settlement discussions in late 2012 and early 2013. Those discussions continued on an intermittent basis during 2013 and into 2014, during which time Plaintiffs’ counsel reviewed more than 100,000 NFC documents and NFC’s financial statements. After extensive arm’s-length negotiations, on March 28, 2014, Plaintiffs and NFC reached a settlement providing \$1 million to a fund to compensate Class Members. The settlement amount was based primarily on NFC’s uncertain financial condition and limited egg sales volume. Under the settlement, NFC also will provide information concerning NFC’s knowledge of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action, and as many as two witnesses to testify at trial. It is the opinion of Plaintiffs’ attorneys that these nonmonetary benefits will materially assist Plaintiffs in further analyzing and prosecuting this Action against the remaining Defendants. Pursuant to the terms of the NFC Settlement, Plaintiffs will release NFC from all pending claims.

The UEP/USEM Settlement. Plaintiffs and Defendants United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”) entered into settlement discussions beginning in July 2013. Those discussions continued on an intermittent basis during 2013 and into 2014. After extensive arm’s length negotiations, on May 21, 2014, Plaintiffs and UEP/USEM reached a settlement providing \$500,000 to a fund to compensate Class Members. The settlement amount was based primarily on the limited financial resources of UEP and USEM and the fact that neither UEP nor USEM is a producer of eggs or egg products. Under the settlement, UEP and USEM agree to produce documents previously withheld on the ground of privilege and which pertain to one of Defendants’ primary defenses in this Action. Prior to entering into the settlement agreement, a selection of such documents was reviewed by a magistrate judge, who confirmed to Plaintiffs’ counsel that the documents were likely to provide material value in prosecuting this Action. UEP and USEM also will provide witnesses selected by Plaintiffs’ counsel to testify at trial. It is the opinion of Plaintiffs’ attorneys that these nonmonetary benefits will materially assist Plaintiffs in further analyzing and prosecuting this Action against the remaining Defendants. Pursuant to the terms of the UEP/USEM Settlement, Plaintiffs will release UEP and USEM from all pending claims.

The Midwest, NFC, and UEP/USEM Settlements should not be taken as an admission by Midwest, NFC, UEP or USEM of any allegation by Plaintiffs or of wrongdoing of any kind. These settlements are between Plaintiffs and Midwest, NFC, and UEP/USEM only; they do not affect any of the remaining non-settling Defendants, against whom this case continues. Finally, the Court ordered that Plaintiffs shall provide notice of the Midwest, NFC, and UEP/USEM Settlements to all members of the Settlement Class who can be identified through reasonable effort.

5. When will the Midwest, NFC, and UEP/USEM Settlement Funds be distributed?

At an appropriate time, possibly in conjunction with future settlements, Plaintiffs’ Counsel may propose, subject to the Court’s approval, a plan to allocate and distribute the Midwest, NFC, and UEP/USEM Settlement Funds, net of the costs of notifying the settlement class and administering the settlement, and any attorneys’ fees, incentive awards and/or expense reimbursement awarded by the Court, among Settlement Class Members. It is common in cases like this one for the proceeds of settlements to be distributed on a pro rata basis among the members of the Class who timely and properly submit a valid Claim Form. This was the approach proposed for distribution of the Cal-Maine Settlement Fund, as described in the Notice dated February 28, 2014. As part of the Court’s later consideration of any proposed plan of allocation and distribution, Settlement Class Members will have an opportunity to comment on and/or object to the proposed plan.

Please keep all documentation that shows your purchases of Shell Eggs and Egg Products during the relevant time period for use in filing a claim later. Having documentation may be important to filing a successful claim.

6. What is the effect of the Court’s final approval of the Midwest, NFC, and/or UEP/USEM Settlements?

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

THE SECOND AMENDMENT TO THE SPARBOE SETTLEMENT CLASS PERIOD

7. Who is included in the Sparboe Settlement as Amended?

The original Sparboe Settlement executed on June 8, 2009 defined the Sparboe Settlement Class substantially the same as the Classes under the Midwest, NFC, and UEP/USEM Settlements, as described above, except that the original Sparboe Class Period included only those persons or entities that purchased Shell Eggs or Egg Products directly from

any Producer between January 1, 2000 and October 23, 2009. On August 28, 2013, Plaintiffs and Sparboe amended the Class Period of the Sparboe Settlement to also include purchases of Shell Eggs and Egg Products from October 24, 2009 through February 28, 2014 (the "First Sparboe Amendment"), providing for an extended Class Period. On February 28, 2014, the Court granted preliminary approval to the First Sparboe Amendment, and a Notice of the First Sparboe Amendment, dated February 28, 2014, was disseminated to the Class in April 2014.

On June 16, 2014, Plaintiffs and Sparboe agreed to a second amendment to the Sparboe Settlement to further extend the Class Period by including purchases of Shell Eggs and Egg Products from March 1, 2014 through _____ (the "Second Sparboe Amendment"). On _____, the Court granted preliminary approval to the Second Sparboe Amendment. All other provisions of the Sparboe Agreement are unchanged and remain binding on the Plaintiffs.

A copy of the Second Sparboe Amendment is available on the settlement website at www.eggproductssettlement.com.

8. What does the Sparboe Settlement provide?

The Sparboe Settlement is between Plaintiffs and Defendant Sparboe only; it does not affect any of the remaining non-settling Defendants, against whom this case continues. Under the Sparboe Settlement, Plaintiffs released Sparboe from all claims arising from the facts in Plaintiffs' complaint. In exchange, Sparboe agreed to provide substantial and immediate cooperation with Plaintiffs, which the Court determined, in granting final approval to the Sparboe Settlement, conferred real and substantial benefits upon the Class. Plaintiffs included details obtained from Sparboe's cooperation and relating to the conspiracy in their second amended consolidated complaint filed in December 2009 and the third amended consolidated complaint filed in January 2013. The Sparboe Settlement is based entirely on cooperation; there is no financial compensation component to the Sparboe Settlement.

Notice of the original Sparboe Settlement was sent to potential Class Members in September 2010. Objections to and exclusions from the Sparboe Settlement were due on November 16, 2010. The Court granted final approval to the Sparboe Settlement on July 16, 2012, finding the Settlement to be sufficiently fair, reasonable, and adequate to the Sparboe Settlement Class.

The Original Sparboe Settlement, the Class Notice of that Settlement, and the Order granting final approval of the Settlement are available on the settlement website at www.eggproductssettlement.com.

9. What is the effect of the Court's final approval of the Second Sparboe Amendment?

If the Court grants final approval to the Second Sparboe Amendment and you became a member of the Sparboe Settlement Class solely because of the extended Class Period under the Second Sparboe Amendment (i.e., you made no purchases of Shell Eggs or Egg Products directly from any Producer between January 1, 2000 and February 28, 2014, but purchased Shell Eggs or Egg Products between March 1, 2014 and _____), and if you do not exclude yourself from the Class, you will be bound by the Sparboe Settlement. By remaining part of the Sparboe Settlement Class as amended you will give up any claims against Sparboe relating to the claims made or which could have been made in this lawsuit as provided in the Settlement Agreement, but you will retain all claims against all other non-settling Defendants.

If you were included in the Settlement Class as originally defined under the Sparboe Settlement, or as defined under the First Sparboe Amendment, and you did not exclude yourself, you are already bound by the terms of the Sparboe Agreement and have given up any claims you may have had against Sparboe relating to the claims made or which could have been made in this lawsuit as provided in the Settlement Agreement. You may not now exclude yourself.

WHO REPRESENTS THE SETTLEMENT CLASSES AND HOW WILL THEY BE PAID?

10. Who represents the Midwest, NFC, and UEP/USEM and Sparboe Settlement Classes?

The Midwest, NFC, and UEP/USEM and Sparboe Settlement Classes are 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, NY 10016

Stephen D. Susman
SUSMAN GODFREY LLP
560 Lexington Avenue, 15th Floor
New York, NY 10022-6828

11. How will the lawyers be paid?

These attorneys and their respective firms are referred to as Class Counsel. The Court will decide how much Class Counsel will be paid. Class Counsel, in compensation for their time and risk in prosecuting the litigation on a wholly contingent fee basis, intend to apply to the Court for an award, from the Midwest, NFC, and UEP/USEM Settlement Funds, of attorneys' fees in an amount not to exceed thirty percent of \$4 million, as well as the costs and expenses incurred (the "Fee Petition"), including fees and costs expended while providing notice to the Class.

Class Counsel also may request awards be paid to the Class Representatives who worked with Class Counsel on behalf of the entire Class. Class Counsel will request an award not to exceed \$25,000 each or \$225,000 total.

Class Counsel will file their Fee Petition on or before _____. The Fee Petition, which will identify the specific amount of fees and incentive awards requested and the expenses to be reimbursed, will be available on the settlement website, www.eggproductssettlement.com, on that date. Any attorneys' fees, incentive awards and reimbursement of costs will be awarded only as approved by the Court in amounts it determines to be fair and reasonable.

If you are a Class Member and you wish to object to the Fee Petition, you may file with the Court an objection to the Petition in writing. In order for the Court to consider your objection, your objection must be sent according the instructions provided under Question No. 13.c below.

FINAL FAIRNESS HEARING

12. When and where will the Court hold a hearing on the fairness of the Midwest, NFC, and UEP/USEM Settlements and the Second Sparboe Amendment?

The Court has scheduled a "Fairness Hearing" at _____ a.m./p.m. on _____ at the following address:

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

The purpose of the Fairness Hearing is to: (a) determine whether the Midwest, NFC, and UEP/USEM Settlements are fair, reasonable, and adequate and whether the Court should enter judgment granting final approval of these Settlements; and (b) determine whether the Court should grant final approval to the Second Sparboe Amendment. 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. Class Members are advised to check www.eggproductssettlement.com for any updates.

YOUR LEGAL RIGHTS AND OPTIONS

13. How do I object to the Midwest, NFC, and UEP/USEM Settlements or the Second Sparboe Amendment?

- a. If you are a member of the Midwest, NFC, or UEP/USEM Settlement Classes and you wish to participate in the Settlements but you object to, or otherwise want to comment on, any term of the Settlements (including the Fee Petition), you may file with the Court an objection by following the instructions under Question 13.c below.
- b. If you are a member of the Sparboe Settlement Class as amended,³ and you wish to participate in the Sparboe Settlement or are already a participant under the prior Class definitions, but you object to the Second Sparboe Amendment, you may file with the Court an objection by following the instructions under Question 13.c below.
- c. In order for the Court to consider your objection to either the Midwest, NFC, or UEP/USEM Settlements or the Second Sparboe Amendment, your objection must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, _____ to each of the following:

The Court:
United States District Court
James A. Byrne Federal Courthouse
601 Market Street
Office of the Clerk of the Court, Room 2609

³ If you are a member of the Midwest, NFC, and UEP/USEM Settlement Classes, you are also a member of the Sparboe Settlement Class as amended.

Philadelphia, PA 19106-1797

Counsel for Plaintiffs:

Steven A. Asher
WEINSTEIN KITCHENOFF
& ASHER LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103

**Counsel for Midwest (if objecting
to the Midwest Settlement):**

Kathy L. Osborn
FAEGRE BAKER DANIELS LLP
300 N. Meridian St., Ste. 2700
Indianapolis, IN 46204

**Counsel for NFC (if objecting to the
NFC Settlement):**

Marvin L. Gray, Jr.
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101-3045

**Counsel for UEP and USEM
(if objecting to the UEP/USEM
Settlement):**

Jan P. Levine
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799

**Counsel for Sparboe
(if objecting to the Second Sparboe
Amendment):**

Troy Hutchinson
HUTCHINSON P.A.
1907 East Wayzata Blvd., Suite 330
Wayzata, MN 55391

Your objection(s) must be in writing and must provide evidence of your membership in the Midwest, NFC, and UEP/USEM Settlements Classes and the Sparboe Settlement Class as amended. The written objection should state the precise reason or reasons for the objection(s), 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(s) through an attorney. You are responsible for any costs incurred in objecting through an attorney.

If you are a member of the Midwest, NFC, and UEP/USEM Settlement Classes and the Sparboe Settlement Class as amended, you have the right to voice your objection to the Midwest, NFC, and UEP/USEM Settlements and/or the Second Sparboe Amendment at the Fairness Hearing. In order to do so, you must follow all instructions for objecting in writing (as stated above in Question No. 13). 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.

14. How do I exclude myself from the Settlements?

- a. If you are a member of the Midwest, NFC, and UEP/USEM Settlement Classes and you do not wish to participate in one or more of those Settlements, the Court will exclude you if you request exclusion according to the instructions under Question 14.c below.
- b. If your only purchases of Shell Eggs or Egg Products from any Producer were made on or after March 1, 2014, such that you have become a member of the Sparboe Settlement Class solely because of the Second Sparboe Amendment, and you do not wish to participate in the Sparboe Settlement, the Court will exclude you if you request exclusion according to the instructions under Question 14.c below.

If you were a member of the original Sparboe Settlement Class (that is, you purchased Shell Eggs or Egg Products directly from any defendant between January 1, 2000 and October 23, 2009), you may not exclude yourself from the Sparboe Settlement Class as amended.

If you were a member of the Sparboe Settlement Class solely because of the First Sparboe Amendment (that is, you purchased Shell Eggs or Egg Products directly from any defendant between October 24, 2009 and February 28, 2014, but not before that period), you may not exclude yourself from the Sparboe Settlement Class as amended.

- c. Your request(s) for exclusion must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,⁴ _____ to the following address:

In re Processed Egg Products Antitrust Litigation– EXCLUSIONS
c/o GCG, Claims Administrator
P.O. Box 9476

⁴ If you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: In re Processed Egg Products Antitrust Litigation (EGC), c/o GCG, 1531 Utah Avenue South, Suite 600, Seattle, WA 98134.

Dublin, OH 43017-4576

Your written request should specify that you wish to be excluded from all or some of the Midwest, NFC, or UEP/USEM Settlements or the Sparboe Settlement as amended. Do not request exclusion if you wish to participate in the Midwest, NFC, and/or UEP/USEM Settlements and/or the Sparboe Settlement as amended as a member of the Settlement Class. If you intend to bring your own lawsuit against Midwest, NFC, UEP, USEM or Sparboe, you should exclude yourself from the Settlement Classes.

If you remain in the Settlement Classes, 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.

15. What happens if I do nothing?

If you do nothing, you will remain a member of the Midwest, NFC, and UEP/USEM Settlement Classes and the Sparboe Settlement Class as amended. As a member of these Settlement Classes, you will be represented by the law firms listed above in Question No. 10, 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 from 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.

FOR MORE INFORMATION

For more detailed information concerning matters relating to the Midwest, NFC, and UEP/USEM Settlements, you may wish to review the Settlement Agreements and the "Order (1) Granting Preliminary Approval of the Proposed Settlement Agreement between Direct Purchaser Plaintiffs and Midwest Poultry, National Food Corporation and United Egg Producers/United States Egg Marketers; (2) Certifying the Classes for Purposes of Settlement; (3) Granting Leave to File Motion for Fees and Expenses; (4) Granting Preliminary Approval of the Proposed Second Amendment to Settlement Agreement Between Direct Purchaser Plaintiffs and Sparboe Farms, Inc.; and (5) Approving the Parties' Notice Plan" (entered _____).

For more detailed information concerning matters relating to the Sparboe Settlement, you may wish to review the "Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc." (signed June 8, 2009), the "Order Granting Final Approval of the Class Action Settlement between Direct Purchaser Plaintiffs and Defendant Sparboe Farms, Inc." (entered July 16, 2012), the "Amendment to Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc." (signed August 28, 2013), and the "Second Amendment to Settlement Agreement Between Plaintiffs and Sparboe Farms, Inc." (signed June 16, 2014).

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. 13. 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.

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

Dated: _____

The Honorable Gene E. K. Pratter

EXHIBIT E

Legal Notice

If you purchased shell eggs or egg products produced in the United States directly from any producer from January 1, 2000 through _____, you could be a Class Member in a proposed class action settlement.

This legal notice is to inform you of proposed Settlements between Plaintiffs and Defendants Midwest Poultry Services, LP ("Midwest"), National Food Corporation ("NFC"), and United Egg Producers/United States Egg Marketers ("UEP/USEM"), 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, and also to inform you of a second amendment to the Sparboe Settlement.

Who is included in the Settlements & Second Sparboe Amendment?

The Settlement "Classes" include all persons and entities in the United States that purchased shell eggs and egg products, in the United States directly from any producer from January 1, 2000 through _____. Due to the recent Settlements, the prior Sparboe Settlement is amended to add to the Sparboe Settlement Class direct purchases of shell eggs and egg products from March 1, 2014 through _____, expanding the Class Period to make it comparable to the more recent Settlement Classes.

What is this case about?

Plaintiffs claim that Defendants conspired to limit the supply of shell eggs and egg products, which raised the price of shell eggs and egg products and, therefore, violated the Sherman Antitrust Act, a federal statute that prohibits agreements that unreasonably restrain competition. The settling Defendants deny all of Plaintiffs' allegations.

What do the Settlements provide?

Under the settlements, Plaintiffs will release all claims against Midwest, NFC and UEP/USEM. In exchange, Midwest will pay \$2.5 million; NFC will pay \$1 million; and UEP/USEM will pay \$500,000, into a settlement fund for the benefit of the Classes. Plaintiffs also will receive documents and information that Plaintiffs' attorneys believe will aid in their analysis and prosecution of this Action.

What does the Sparboe Settlement provide?

There is no monetary relief under the Sparboe Settlement. Sparboe agreed to provide substantial and immediate cooperation to Plaintiffs, which the Court already found conferred substantial benefits upon the Class. The second amendment merely conforms the Sparboe Class to the recent Settlement Classes.

What do I do now?

If you are a Class Member your legal rights are affected, and you now have a choice to make.

Participate in the Settlements: No action is required to remain part of the recent Settlements or the amended Sparboe Settlement. If the Court grants final approval to the Settlements and the Second Sparboe Amendment, they will be binding upon you and all other Class Members. By remaining part of the Settlements, you will give up any potential claims that you may have against Midwest, NFC, UEP/USEM and Sparboe relating to the claims alleged in this lawsuit. You may be eligible to receive a settlement payment at a future date.

Ask to be excluded: If you wish to exclude yourself from the Sparboe Settlement as amended (*if you had no purchases before March 1, 2014*) and/or the recent Settlements and wish to retain your rights to pursue your own lawsuit relating to the claims alleged in this lawsuit, you must formally exclude yourself from the Classes by sending a signed letter to the Claims Administrator postmarked on or before _____.

Object: You may notify the Court that you object to the recent Settlements and/or Second Sparboe Amendment by mailing a statement of your objection(s) to the Court, Plaintiffs' Counsel, and Defense Counsel postmarked by _____. Detailed instructions on how to participate, opt out or object are on the settlement website.

Who represents you?

The Court appointed Steven A. Asher of Weinstein Kitchenoff & Asher LLC; Michael D. Hausfeld of Hausfeld LLP; Stanley D. Bernstein of Bernstein Liebhard LLP; and Stephen D. Susman of Susman Godfrey LLP 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 Settlements and/or the Second Sparboe Amendment?

At ____ a.m./p.m. on _____, at the United States District Court, James A. Byrne Federal Courthouse, 601 Market Street, Philadelphia, PA 19106, the Court will hold a hearing to determine the fairness and adequacy of the recent Settlements and the Second Sparboe Amendment, and consider any motion for an award of attorneys' fees and incentive awards and reimbursement of litigation costs. You may appear at the hearing, but are not required to do so.

Please note that the Court may change the date and/or time of the Fairness Hearing. Settlement Class members are advised to check www.eggproductssettlement.com for any updates.

How can I learn more?

This notice is only a summary. For more information, visit www.eggproductssettlement.com.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2014, a copy of DIRECT PURCHASER PLAINTIFFS' MOTION FOR (1) PRELIMINARY APPROVAL OF THE SECOND AMENDMENT TO THE SPARBOE SETTLEMENT AGREEMENT, AND (2) APPROVAL OF NOTICE PLAN FOR THE PROPOSED SETTLEMENTS WITH MIDWEST POULTRY SERVICES, LP, NATIONAL FOOD CORPORATION, UNITED EGG PRODUCERS AND UNITED STATES EGG MARKETERS, AND THE PROPOSED SECOND SPARBOE AMENDMENT, together with copies of the accompanying Memorandum and attached Exhibits, were filed with the Clerk of the Court and, per the Local Rules, will be available for viewing and downloading via the CM/ECF system, and the CM/ECF system will send notification of such filing to all attorneys of record.

/s/ Mindee J. Reuben
Mindee J. Reuben
WEINSTEIN, KITCHENOFF & ASHER LLC