

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

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

**THIS DOCUMENT APPLIES TO:** :  
**All Direct Purchaser Actions** :

**SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS  
AND DEFENDANT MICHAEL FOODS, INC.**

This Settlement Agreement (“Agreement”) is made and entered into this 8<sup>th</sup> day of December 2016 (the “Execution Date”) by and between Michael Foods, Inc., together with its past and present parents, subsidiaries and affiliates (“Michael Foods”), and Direct Purchaser Plaintiffs’ Class representatives (“Plaintiffs”) (as defined herein at Paragraph 11), both individually and on behalf of a Class (as defined herein at Paragraph 5) of direct purchasers of Shell Eggs (as defined herein at Paragraph 16).

WHEREAS, Plaintiffs are prosecuting the above-captioned Direct Purchaser Plaintiff actions currently pending and consolidated in the Eastern District of Pennsylvania, and including all actions transferred for coordination, and all direct purchaser actions currently pending such transfer (including, but not limited to, “tag-along” actions) (the “Action”) on their own behalf and on behalf of the Class against Michael Foods and other Defendants;

WHEREAS, Plaintiffs allege that Michael Foods participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of certain Shell Eggs in the United States at artificially high levels in violation of Section 1 of the Sherman Act;

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

WHEREAS, Michael Foods denies all allegations of wrongdoing in the Action. However, despite its belief that it is not liable for, and has good defenses to, the claims alleged in the Action, Michael Foods desires to settle the Action, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of the Action, or any action or proceeding relating to the matters being fully settled and finally put to rest in this Agreement;

WHEREAS, Class Counsel and Michael Foods' Counsel have engaged in arm's-length settlement negotiations, and this Agreement has been reached as a result of these negotiations;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to Michael Foods only, without costs as to Plaintiffs, the Class, or Michael Foods, and subject to the approval of the Court, on the following terms and conditions:

**A. Definitions**

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

1. "Class Counsel" shall refer to the law firms of Lite DePalma Greenberg, LLC, 1835 Market Street, Suite 2700, Philadelphia, PA 19103; Hausfeld LLP, 1700 K

Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065-8404. "Plaintiffs' Counsel" shall refer to the law firms identified on pages 147-151 of the Third Consolidated Amended Class Action Complaint filed in the Action on January 4, 2013, provided however that Lite DePalma Greenberg, LLC has been substituted for Weinstein Kitchenoff & Asher LLC as Plaintiffs' Counsel (ECF No. 1185).

2. "Michael Foods' Counsel" shall refer to the law firms of Weil, Gotshal & Manges LLP, 1300 Eye Street NW, Washington, DC 20005 and Stinson Leonard Street, 150 South First Street, Suite 2300, Minneapolis, MN 55402.

3. "Counsel" means both Class Counsel and Michael Foods' Counsel, as defined in Paragraphs 1 and 2 above.

4. "Claims Administrator" shall mean Garden City Group, LLC.

5. "Class Member" or "Class" shall mean each member of the settlement class, as defined in Paragraph 18 of this Agreement, who does not timely elect to be excluded from the Class, and includes, but is not limited to, Plaintiffs.

6. "Class Period" shall mean the period from and including September 24, 2004, up to and including December 31, 2008.

7. "Defendant(s)" shall refer to the parties listed as defendants in the Third Consolidated Amended Complaint filed on January 4, 2013 and each of their corporate parents, subsidiaries, and affiliated companies.

8. "Final Approval" shall mean the definition given to that phrase in Paragraph 23 hereof.

9. “Non-Settling Defendants” shall refer to remaining Defendants other than Michael Foods.

10. “Other Settling Defendants” shall refer to Cal-Maine Foods, Moark LLC, Norco Ranch, Inc., Land O’Lakes, Inc., Sparboe Farms, Inc., United Egg Producers, United States Egg Marketers, Hillandale Farms of Pa., Inc. and Hillandale Gettysburg, L.P., National Food Corporation, NuCal Foods, Inc., and Midwest Poultry Services, LP.

11. “Plaintiffs” shall mean each of the following named Class representatives: T.K. Ribbing’s Family Restaurant, LLC; Eby-Brown Company LLC; John A. Lisciandro d/b/a/ Lisciandro’s Restaurant; and Karetas Foods, Inc.

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

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

14. “Settlement Amount” shall refer to \$75,000,000 (seventy-five million) U.S. dollars.

15. “Settlement Fund” shall refer to the funds accrued in the escrow account established in accordance with Paragraph 32 below.

16. “Shell Eggs” shall mean eggs produced from caged birds that are sold in the shell for consumption or for breaking and further processing, excluding “specialty” Shell Eggs (certified organic, nutritionally enhanced, cage free, free range, and vegetarian fed types) and “hatching” Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

17. “Total Sales” shall mean the sum of the annual U.S. sales by Michael Foods, Non-Settling Defendants, and Other Settling Defendants of Shell Eggs, for the years during the Class Period, to be mutually agreed upon by Counsel.

**B. Class Certification**

18. The class definition for purposes of this settlement between Direct Purchaser Class Plaintiffs and Michael Foods shall be the same as the class certified by the Court in its February 2, 2016 Order (Docket 1372) and is defined as follows:

All individuals and entities that purchased shell eggs from caged birds in the United States directly from Defendants during the Class Period from September 24, 2004 through December 31, 2008.

Excluded from the Class are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, as well as any government entities. Also excluded from the Class are purchasers of “specialty” shell eggs (such as “organic,” “certified organic,” “free range,” “cage free”, “nutritionally enhanced,” or “vegetarian fed”) and purchasers of hatching eggs, which are used by poultry breeders to produce breeder stock or growing stock for laying hens or meat.

**C. Approval of this Agreement and Dismissal of Claims**

19. Plaintiffs and Michael Foods shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking Court approval of this Agreement and securing both the Court’s certification of the Class and the Court’s approval of

procedures, including the giving of Class notice under Federal Rules of Civil Procedure 23(c) and (e), to secure the prompt, complete, and final dismissal with prejudice of the Action as to Michael Foods.

20. Within two (2) business days after the execution of this Agreement by Michael Foods, Counsel shall jointly file with the Court a stipulation for suspension of all proceedings against Michael Foods in the Action pending approval of this Agreement. Within twenty (20) business days after execution of the Agreement by Michael Foods, Plaintiffs shall submit to the Court a motion (the "Motion"): for preliminary approval of the Agreement and certification of a Class for settlement purposes ("Preliminary Approval"), and authorization to disseminate notice of Class certification and the settlement. The Motion shall include: (a) the proposed definition of the Class for settlement purposes as set forth in Paragraph 18 of this Agreement; (b) a proposed form of, method for, and date of dissemination of notice; and (c) a proposed schedule for the filing of Plaintiffs' Motion for Fees and Expenses, the filing of a Motion to approve finally the Settlement Agreement, and a final fairness hearing; and (d) a proposed form of order preliminarily approving the Settlement and certifying the class for settlement purposes. The text of the items referred to in clauses (a) through (d) above shall be proposed by Plaintiffs subject to the agreement of Michael Foods, which agreement shall not be unreasonably withheld. After Preliminary Approval, and subject to approval by the Court of the means for dissemination of notice, individual notice of the Agreement ("Class Notice") shall be mailed to persons and entities who are located in the United States and who purchased Shell Eggs directly from Michael Foods, any Non-Settling Defendant(s) in the Action, or Other Settling Defendants during the Class Period that: are

identified by or were previously identified by Michael Foods; were previously identified by Other Settling Defendants; are identified by or were previously identified by Non-Settling Defendants; and are identified by Plaintiffs and Plaintiffs' Counsel in the Action. In addition, after Preliminary Approval, and subject to Court approval of the means for dissemination of notice, Class Notice shall also be published once in the *Wall Street Journal* and in such other trade journals targeted towards direct purchasers of Shell Eggs, if any, proposed by Class Counsel. Within twenty (20) days after the Execution Date, Michael Foods shall supply to Class Counsel at Michael Foods' expense and in such form as kept in the regular course of business (electronic format if available) such names and addresses of potential Class Members as it has or confirm that it has provided that information previously. If practicable and approved by the Court, Plaintiffs may combine dissemination of notice of the certification of the Class for settlement purposes and the Agreement with the dissemination of notice of other settlement agreements that have been or may be reached with other Defendants in the Action, and may use a common Claim Form that combines claims by Settlement Class members from the Settlement with Michael Foods with claims by Settlement Class members from settlements reached with Other Settling Defendants for which Settlement Class members have not yet submitted claims.

21. Within twenty (20) days of the date on which the Court preliminarily approves the Agreement and certifies a Class for settlement purposes, Michael Foods shall provide to Plaintiffs (to the extent that such data have not already been produced by Michael Foods in discovery in the Action) in a text delimited format, Michael Foods' sales data over the Class Period sufficient to show the dollar volume of annual sales of

Shell Eggs to each of Michael Foods' customers during the Class Period. Within twenty (20) days after expiration of the deadline established by the Court and set forth in the notice by which potential Class Members must request exclusion from the Settlement Class ("Opt-Out Deadline"), Plaintiffs shall provide Michael Foods, through Michael Foods' Counsel, a written list of all potential Class Members that have exercised their right to request exclusion from the Class, the dollar volume of purchases of Shell Eggs during the Class Period for each such potential Class Member and the percentage that each such potential Class Member's purchases represents of the Total Sales as reflected in the data produced in this litigation.

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

- a. As to the Action, approving finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- b. Directing that, as to Michael Foods, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- c. Reserving to the United States District Court for the Eastern District of Pennsylvania exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this settlement;
- d. Determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay, and directing that the final judgment of dismissal as to Michael Foods shall be entered; and
- e. Requiring Class Counsel to file with the Clerk of the Court a record of potential Class Members that timely excluded themselves from



the Class, and to provide a copy of the record to counsel for Michael Foods.

23. This Agreement shall become final only when (a) the Court has entered an order finally approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure; (b) the Court has entered final judgment dismissing the Action against Michael Foods on the merits with prejudice as to all Class Members and without costs, and (c) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in clause (b) above has expired or, if appealed, approval of this Agreement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review ("Final Approval"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times. On the Execution Date, Plaintiffs and Michael Foods shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 28 and 29 of this Agreement.

**D. Release and Discharge**

24. In addition to the effect of any final judgment entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or

damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Defendants, (ii) Defendants' reduction or restraint of supply, Defendants' reduction of or restrictions on production capacity, or (iii) Defendants' pricing, selling, discounting, marketing, or distributing of Shell Eggs in the United States or elsewhere. The claims released hereunder include but are not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, whether or not concealed or hidden, in the Complaints filed in the Action (the "Complaints"), which in whole or in part arise from or are related to the facts and/or actions described in the Complaints, including under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq., from the beginning of time to December 31, 2008, (the "Released Claims"). Releasors shall not, after the date of this Agreement, seek to recover against any of the Releasees for any of the Released Claims. Notwithstanding anything in this Paragraph, Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge, claims based solely on purchases of Shell Eggs outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases. This Release is made without regard to the possibility of subsequent discovery or existence of different or additional facts.

25. Each Releasor waives California Civil Code Section 1542 and similar or comparable present or future law or principle of law of any jurisdiction. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following

provision of California Civil Code Section 1542 (“Section 1542”): “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of this Settlement Agreement, but each Releasor hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, claim whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts.

26. In addition to the provisions of Paragraphs 24 and 25, each Releasor hereby expressly and irrevocably waives and releases, upon this Agreement becoming finally approved by the Court, any and all defenses, rights, and benefits that each Releasor may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in Paragraphs

24 and 25. Each Releasor also expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

27. The release and discharge set forth in Paragraphs 24 through 26 herein do not include claims relating to payment disputes, physical harm, defective product, or bodily injury (the "Excepted Claims") and do not include any Non-Settling Defendant or Other Settling Defendant.

**E. Rescission**

28. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 23 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed, then Michael Foods and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) days of the action giving rise to such option. If this Agreement is rescinded, within ten (10) days of both the notice of rescission to Class Counsel and the Escrow Agent and Michael Foods' written instructions to the Escrow Agent, all amounts in the escrow account created pursuant to Paragraph 32 hereof, less any expenses authorized pursuant to this Agreement, shall be wire transferred to Michael Foods, pursuant to its instructions; provided, however, that simultaneous with its written instructions to the Escrow Agent, Michael Foods shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five (5) business days of receipt of such notice, notify the Escrow Agent of any objections to Michael Foods' instructions and funds shall not be wired until expiration of that objection

deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

29. If Class Counsel notify Michael Foods, pursuant to Paragraph 21, that Class Members whose combined annual purchases of Shell Eggs from Michael Foods, Non-Settling Defendants, and Other Settling Defendants over the Class Period equal or exceed a percentage set forth in a Supplemental Agreement signed by the parties (“Opt-Out Threshold”) have requested exclusion from this Agreement (“Excluded Class Members”), Michael Foods shall have the right and option, within fifteen (15) days after receipt of such notice, to rescind the Agreement.

30. The parties intend that the Supplemental Agreement shall be specifically disclosed to the Court and offered for in camera inspection by the Court at or prior to entry of the Preliminary Approval Order, but, subject to the Court's approval, it shall not be filed with the Court before the expiration of the Opt-Out Deadline unless ordered otherwise by the Court. The parties shall seek to keep the Opt-Out Threshold confidential before the Opt-Out Deadline. In the event that the Court directs that the Supplemental Agreement be filed prior to the Opt-Out Deadline, no party shall have any right to any relief by reason of such disclosure. Michael Foods shall give written notice to Class Counsel to invoke rights under this Paragraph to rescind the Agreement. If this Agreement is rescinded, subject to the terms of the Supplemental Agreement, all amounts in the escrow created pursuant to Paragraph 32 hereof, less any expenses, fees, or taxes authorized pursuant to this Agreement, shall be wire transferred to Michael Foods, pursuant to its instructions to the Escrow Agent; provided, however, that simultaneous with its written instructions to the Escrow Agent, Michael Foods shall provide to Class

Counsel notice of such instructions, and Class Counsel shall, within five (5) business days of receipt of such notice, notify the Escrow Agent of any objections to Michael Foods' instructions and funds shall not be wired until expiration of that objection deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

31. In the event of rescission, if Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 23 of this Agreement, Class Counsel and Michael Foods agree that this Agreement, including its exhibits, and any and all negotiations, documents, information, and discussions associated with it shall be without prejudice to the rights of Michael Foods or Plaintiffs, shall not be deemed or construed to be an admission or denial, or evidence or lack of evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity of any of the claims or allegations made in this Action in any pleading, and shall not be used directly or indirectly, in any way, whether in this Action or in any other proceeding, unless such documents and/or information is otherwise obtainable by separate and independent discovery permissible under the Federal Rules of Civil Procedure.

**F. Payment**

32. Michael Foods shall pay or cause to be paid the Settlement Amount in settlement of the Action. The Settlement Amount shall be wire transferred by Michael Foods or its designee within twenty (20) days of the Execution Date into the Settlement Fund, which shall be established as an escrow account at a bank agreed to by Class Counsel and Michael Foods' Counsel, which agreement shall not be unreasonably

withheld, and administered in accordance with the Escrow Agreement attached hereto as Exhibit A.

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

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

35. Upon entry of an order by the Court approving the request for an award of attorneys' fees and expenses and incentive awards for class representatives ("Attorneys' Fees Order") made pursuant to Paragraph 34 above, attorneys' fees may be distributed from the Settlement Fund pursuant to the terms of the fee order, provided however that any Class Counsel seeking to draw down their share of the attorneys' fees prior to Final Approval and the Attorneys' Fees Order becoming final shall secure the repayment of the amount drawn down by a letter of credit or letters of credit on terms, amounts, and by banks acceptable to Michael Foods, which acceptance shall not be unreasonably withheld. The Attorneys' Fees Order becomes final when the time for appeal or to seek permission to appeal from the Attorneys' Fees Order has expired or, if appealed, has been

affirmed by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

36. In order to receive distribution of funds pursuant to Paragraph 34 prior to Final Approval and the Attorneys' Fees Order becoming final above, each Class Counsel shall be required to provide the Claims Administrator the approved letter(s) of credit in the amount of Class Counsel's draw-down, and shall be required to reimburse the Settlement Fund within thirty (30) days all or the pertinent portion of the draw-down with interest, calculated as the rate of interest published in the *Wall Street Journal* for 3-month U.S. Treasury Bills as of the close on the date that the draw-down was distributed, if Final Approval is not granted or if the award of attorneys' fees is reduced or overturned on appeal. The Claims Administrator may present the letter(s) of credit in the event the Class Counsel fails to honor the obligation to repay the amount withdrawn.

37. Disbursements for any payments and expenses incurred in connection with taxation matters relating to this Settlement Agreement shall be made from the Settlement Amount pursuant to section I of this Agreement upon written notice to the Escrow Agent by Class Counsel of such payments and expenses, and such amounts shall not be refundable to Michael Foods in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

**G. Discovery Obligations**

38. Prior to trial in this Action, Michael Foods shall, at the request of Class Counsel and through reasonable means (including, but not limited to, affidavits and declarations by persons qualified to testify as to authenticity) establish the authenticity and status as business records of documents produced by Michael Foods, and, to the



extent possible, any documents produced by Non-Settling Defendants, Settling Defendants, or the alleged co-conspirators in this Action authored or created by Michael Foods or sent to or received by Michael Foods. Class Counsel agree to use reasonable efforts to minimize the burden to Michael Foods of any such authentication or business records testimony.

39. Should a trial occur in this Action where the Direct Purchaser Plaintiff Class is a party, Michael Foods agrees that it will fully comply with a trial subpoena to produce up to four witnesses at the trial. Michael Foods' counsel agrees to accept service of the aforementioned subpoenas on Michael Foods behalf via email. Michael Foods agrees that it will not attempt to quash up to four trial subpoenas served by counsel for the Direct Purchaser Plaintiff Class for any reason. In addition, Michael Foods agrees that for purposes of this provision all Michael Foods' witnesses, limited to current employees, are deemed to "reside" within 100 miles of the Eastern District of Pennsylvania and will travel to the trial at the sole expense of Michael Foods. With respect to former employees, Michael Foods agrees it will cooperate in assisting Direct Purchaser Plaintiffs to locate and serve subpoenas, and if these witnesses elect to appear at trial, such appearance will be at the sole expense of Michael Foods.

#### **H. Notice of Settlement to Class Members**

40. Class Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement ("Notice") and the date of the hearing scheduled by the Court to consider the fairness, adequacy, and reasonableness of this Agreement is provided in accordance with the Federal Rules of Civil Procedure and any Court orders. Class Counsel will undertake all reasonable efforts to obtain from Non-Settling

Defendants the names and addresses of those persons that purchased Shell Eggs directly from any Non-Settling Defendant during the Class Period. Class Notice will be issued after Preliminary Approval by the Court and subject to any Court orders regarding the means of dissemination of notice.

41. Subject to court approval, disbursements for any payments and expenses incurred in connection with the costs of Notice and administration of the Settlement Agreement by the Claims Administrator shall be made from the Settlement Amount upon written notice to the Escrow Agent by Class Counsel of such payments and expenses, and such amounts, up to a maximum of \$350,000, shall not be refundable to Michael Foods in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

**I. Taxes**

42. Class Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Amount. Further, Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Escrow Funds ("Tax Expenses"). Class Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including reasonable professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable Escrow Fund by notifying the Escrow Agent in writing and as provided in paragraph 37 herein. Michael Foods shall have no responsibility to make any tax filings relating to this Settlement Agreement.

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

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

**J. Miscellaneous**

45. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Action against any Non-Settling Defendant or any potential defendant other than the Releasees. All rights of any Class Member against

Non-Settling Defendants or any other person or entity other than the Releasees are specifically reserved by Plaintiffs and the Class Members. The sales of Shell Eggs by Michael Foods to Class Members shall remain in the case against the Non-Settling Defendants in the Action as a basis for damage claims and shall be part of any joint and several liability claims against Non-Settling Defendants in the Action or other persons or entities other than the Releasees.

46. Subject to Court approval, the United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and Michael Foods. This Agreement shall be governed by and interpreted according to the substantive laws of the Commonwealth of Pennsylvania without regard to its choice of law or conflict of laws principles. Michael Foods submits to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. Michael Foods otherwise retain all defenses to the Court's exercise of personal jurisdiction over Michael Foods.

47. This Agreement, together with the Supplemental Agreement provided under paragraph 30 and incorporated by reference herein, constitutes the entire agreement among Plaintiffs (and the other Releasers) and Michael Foods (and the other Releasees) pertaining to the settlement of the Action against Michael Foods only and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Michael Foods in

connection therewith. In entering into this Agreement, Plaintiffs and Michael Foods have not relied upon any representation or promise made by Plaintiffs or Michael Foods not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Michael Foods and approved by the Court.

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

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

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

51. In the event this Agreement is not approved or is terminated, or in the event that the order and final judgment approving the settlement is entered but is substantially reversed, modified, or vacated, the pre-settlement status of the litigation (including, without limitation, any applicable tolling of all statutes of limitations) shall be restored, and the Agreement shall have no effect on the rights of Michael Foods or Plaintiffs to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to Class certification, raise personal jurisdictional

defenses, or any other defenses, which rights are specifically and expressly retained by Michael Foods.

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

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

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

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

For the Class:

Mindee J. Reuben  
LITE DEPALMA & GREENBERG, LLC  
1835 Market Street, Suite 2700  
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56. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: December 8, 2016



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