

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS
ANTITRUST LITIGATION

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MDL No. 2002
08-md-02002

THIS DOCUMENT RELATES TO:
All Direct Purchaser Actions

DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR ENTRY OF
PROPOSED ALLOCATION ORDER FOR THE MICHAEL FOODS SETTLEMENT

Pursuant to this Court's Order and the Settlement Agreement between Direct Purchaser Class Plaintiffs ("DPPs") and Defendant Michael Foods, Inc. ("Michael Foods" or "MFI"), Direct Purchaser Plaintiffs hereby move for entry of the [Proposed] Allocation Order to distribute the proceeds of the Net Settlement Fund (defined herein) to Authorized Claimants (defined herein). A Memorandum in Support of this Motion is incorporated by reference and submitted herewith, along with the Affidavit of Peter T. Sperry and a [Proposed] Allocation Order.

For the reasons set forth in the accompanying Memorandum, Co-Lead Counsel respectfully submit that the allocation plan is fair, reasonable, and adequate. DPPs respectfully request that the Court enter the Proposed Allocation Order and permit distribution of the Settlement Funds in accordance therewith.

Dated: March 31, 2020

Respectfully submitted,

/s/ Mindee J. Reuben

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

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

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

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

**DIRECT PURCHASER CLASS PLAINTIFFS’ MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION FOR ENTRY OF
PROPOSED ALLOCATION ORDER FOR THE MICHAEL FOODS SETTLEMENT**

Pursuant to this Court’s Order and the Settlement Agreement between Direct Purchaser Class Plaintiffs (“DPPs”) and Defendant Michael Foods, Inc. (“Michael Foods” or “MFI”), Direct Purchaser Plaintiffs hereby move for entry of the [Proposed] Allocation Order to distribute the proceeds of the Net Settlement Fund (defined herein) to Authorized Claimants (defined herein). A copy of the [Proposed] Allocation Order is submitted herewith.

Background

On December 8, 2016, DPPs and Michael Foods entered into a settlement agreement (“MFI Settlement Agreement”). Docket No. 1481-2. Class members have had notice of the settlement since July 20, 2017, when notice of the settlement was initially mailed and published. *See* Declaration of Shandarese Garr Regarding Settlement Administration (“Garr Aff.”) at ¶ 4 (Docket No. 1561-2). No objections were filed to the Agreement. *Id.* at ¶ 11.

On November 17, 2017, this Court granted final approval of the MFI Settlement Agreement, finding the Agreement to be “fair, reasonable and adequate” pursuant to Fed. R. Civ. P. 23(e). Docket No. 1572 at ¶ 7.

The Plan Of Allocation Is Fair, Reasonable, And Adequate

When evaluating a plan of allocation, the court utilizes the same standard for determining whether to approve the settlement; that is, “the proposed plan needs to be fair, reasonable and adequate. *McDonough v. Toys “R” Us, Inc.* 80 F. Supp. 3d 626, 628 (E.D. Pa. 2015). *See also In re Worldcom, Inc. Sec. Litig.*, 2005 WL 2319118, at *21 (S.D.N.Y. Sept. 21, 2005) (“An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.”). “In general, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable.” *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000).

DPPs propose using essentially the same method of allocating the Michael Foods Settlement Funds that was proposed and approved by the Court in connection with the distribution of the Moark Settlement Fund and the Cal-Maine Settlement Fund. *See* Docket Nos. 761 (approving Moark plan of allocation as fair, reasonable and adequate) and 1401 (approving Cal-Maine plan of allocation as fair, reasonable and adequate). However, unlike the Moark and Cal-Maine Settlement Funds, the Michael Foods Settlement Fund does not need to be allocated between two subclasses. The Michael Foods Settlement involves a single class:

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.

Docket No. 1481-2 at ¶ 18.

The MFI plan of allocation is designed to ensure that the Net Settlement Fund¹ is allocated to Authorized Claimants² based on each Authorized Claimant's approximate *pro rata* share of the total claims submitted by all Authorized Claimants. *See generally* Affidavit of Peter T. Sperry Regarding Allocation of Michael Foods, Inc. Settlement Funds, a copy of which is submitted herewith ("Sperry Aff."). Because all claimants allegedly suffered the same type of damages, *i.e.*, overcharge damages, this method of *pro rata* distribution is the most fair and reasonable way to allocate damages among claimants. *See, e.g., Bradburn Parent Teacher Store v. 3M*, 513 F. Supp. 2d 322 (E.D. Pa. 2007) (finding that proposed distribution plan to allocate settlement fund among class members based on *pro rata* share of the class's total tape purchases from defendant during the damages period was "fair, reasonable, and adequate"); *In re Remeron Direct Purchaser Antitrust Litig.*, Civ. A. No. 03-0085, 2005 WL 3008808, *11 (D.N.J. Nov. 9, 2005) ("Plaintiffs propose to allocate the Settlement funds, net of Court approved attorneys' fees, incentive award, and expenses ... in proportion to the overcharge damages incurred by each Class member due to Defendants' alleged conduct in restraint of trade. Such a method of allocating the Net Settlement Fund is inherently reasonable.").

The total value of the Net Settlement Fund for the MFI settlement at present is \$47,814,070.01.³ Sperry Aff. at ¶ 4. Each Authorized Claimant that is a member of the MFI

¹ The Net Settlement Fund is defined as the amount of MFI settlement funds expected to remain available for distribution after (i) payments and expenses authorized under the Settlement Agreement and as approved by the Court, including those in connection with taxation matters or payments to the Claims Administrator (Docket No. 1481); (ii) any adjustment for the payment of attorneys' fees and expenses previously authorized by the Court (Docket Nos. 1481, 1570); and the addition of any interest accrued on the Settlement Fund. Sperry Aff. at ¶ 3.

² An "Authorized Claimant" is a claimant that filed a valid, sworn, and timely Claim Form and who submitted documents that the Claims Administrator determined are valid proof of purchase and purchase price. Sperry Aff. at ¶ 5.

³ Expenses related to notice and claims administration for the MFI Settlement, from inception through January 31, 2020, are \$188,693.61. The Claims Administrator estimates that an

Settlement Class shall be entitled to a payment from the Net Settlement Fund for which they are eligible in the amount of approximately 0.95% of the total of their actual purchase price of shell eggs, or a total sum of \$25, whichever is greater. Sperry Aff. at ¶ 6. Epiq calculated this approximate percentage to ensure that the Net Settlement Fund is not exhausted before each Authorized Claimant can be paid. Sperry Aff. at ¶ 7. That percentage may change if the expenses differ from those anticipated by Epiq, one or more claims are subsequently denied, the amount of any claims are adjusted following resolution of disputes over the payment amounts, if any, and the addition of interest. *Id.* Any change to this percentage will be applied equally to all Authorized Claimants. *Id.*

The minimum payment of \$25 affects only two Authorized Claimants. Sperry Aff. at ¶ 8. Without this minimum payment, the single Authorized Claimants would receive as little as \$0.83. *Id.* Instituting this minimum payment will affect the Net Settlement Fund by a total of \$25.28 (0.00000009% of the Net Settlement Fund). *Id.*

In Epiq's experience, low value checks are often misplaced or not cashed. The reissuance and cancelling of these checks can require a significant amount of administrative time, thereby increasing administrative costs for the Class. If funds were to remain unclaimed, further administration work would need to occur to disburse them, either to the claimants or as the Court otherwise directed. The additional costs associated with having to handle reissues and disbursement of these funds would certainly be greater than the \$25.28 that the \$25 base payment will engender. Sperry Aff. at ¶ 9. The increase to administrative and attorney time may also drain the settlement proceeds available for distribution to claimants. Moreover, the expense associated with sending payment to claimants with very small claim values can vastly outweigh

additional \$29,483.25 will be expended as part of the allocation process described herein and as set forth in the Proposed Allocation Order.

the value of payment. Sperry Aff. at ¶ 10. Therefore, based upon Epiq's recommendation, Co-Lead Counsel for the Direct Purchaser Plaintiffs determined that the \$25 minimum payment⁴ to Authorized Claimants would ease administration costs and be the most fair, reasonable, and adequate plan for allocating the settlement proceeds.

Any funds remaining in the Net Settlement Fund after these payments are "Excess Amounts." Sperry Aff. at ¶ 11. If there are Excess Amounts, then the payments to the MFI Authorized Claimants will be increased by an equal percentage until the Net Settlement Funds are exhausted. Sperry Aff. at ¶ 12. Through this approach, each Authorized Claimant will receive their approximate *pro rata* share of the entire settlement proceeds available for distribution. Sperry Aff. at ¶ 13.

Within 20 days of the issuance of the Proposed Allocation Order, Epiq will identify and submit to Co-Lead Counsel an accounting of the payments to each Authorized Claimant that Epiq intends to pay. Sperry Aff. at ¶ 14. At the same time, Epiq will provide Michael Foods' counsel sufficient information to (i) identify, for each Individual Settlement Fund, the aggregate of all amounts Epiq intends to pay to Authorized Claimants and (ii) explain the calculation as provided for in this Allocation Order. *Id.*

Within 14 days of such notice, Co-Lead Counsel will identify any issues or communicate their agreement with the payments proposed to be made by Epiq. Sperry Aff. at ¶ 15. If Co-

⁴ Minimum payments are designed to ensure that the administrative costs of processing, printing, and mailing settlement checks does not exceed the value of a claim, and have been consistently upheld in federal courts, even in amounts greater than the \$20 requested here. *See, e.g., In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02 MDL 1484, 2007 U.S. Dist. LEXIS 93423, at *32 (S.D.N.Y. Dec. 20, 2007) (approving \$50 minimum distribution amount "to foster the efficient administration of the settlement"); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 463 (E.D. Pa. 2008) (\$50 minimum payment approved).

Lead Counsel agrees with the payments proposed to be made by Epiq, then Epiq will notify each Authorized Claimant of the proposed payments. *Id.* The Authorized Claimants will then have 30 days to object to the proposed payment. *Id.* If an Authorized Claimant believes that the calculation of their recovery is inaccurate, then that Authorized Claimant will be required to submit additional information proving the correct calculation with their objection. Sperry Aff. at ¶ 16. If no such objections are received, then Epiq shall distribute payments accordingly. Sperry Aff. at ¶ 17. If any objections are received, Co-Lead Counsel will attempt to resolve those objections. *Id.* If Co-Lead Counsel and Epiq are unable to agree on the appropriate payments to be made or to resolve any outstanding issues, then they will seek the assistance of the Court. *Id.*

For the foregoing reasons, Co-Lead Counsel respectfully submit that the allocation plan is fair, reasonable, and adequate. Therefore, DPPs respectfully request that the Court enter the Proposed Allocation Order and permit distribution of the Settlement Funds in accordance therewith.

Dated: March 31, 2020

Respectfully submitted,

/s/ Mindee J. Reuben

Mindee J. Reuben

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***Co-Lead Counsel for Direct Purchaser
Plaintiffs***

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

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

§
§ **MDL No. 2002**
§ **08-md-02002**

**THIS DOCUMENT RELATES TO §
All Direct Purchaser Actions §**

**AFFIDAVIT OF PETER T. SPERRY
REGARDING ALLOCATION OF MICHAEL FOODS, INC., SETTLEMENT FUNDS**

STATE OF WASHINGTON :
: ss.
COUNTY OF KING :

I, Peter T. Sperry, being duly sworn, states as follows:

1. I am a Project Manager in Client Services at Epiq Class Action & Claims Solutions, Inc. (“Epiq”), the Court-approved claims administration entity for the above-captioned litigation. The following statements are based upon my personal knowledge and information provided by other experienced Epiq employees working under my supervision, and, if called on to do so, I could and would testify competently thereto.

2. Epiq provides this Affidavit to assist Co-Lead Counsel in explaining how the Michael Foods, Inc. (“MFI”) settlement proceeds will be distributed to appropriate class members if approved by the Court.

3. As used herein and in the Proposed Allocation Order, the Net Settlement Fund is defined as the amount of MFI settlement funds expected to remain available for distribution after (i) payments and expenses authorized under the Settlement Agreement and as approved by the

Court, including those in connection with taxation matters or payments to the Claims Administrator (Docket No. 1481); (ii) any adjustment for the payment of attorneys' fees and expenses previously authorized by the Court (Docket Nos. 1481, 1570); and (iii) the addition of any interest accrued on the Settlement Fund.

4. The total value of the Net Settlement Fund, at present, is \$47,814,070.01.¹

5. The Net Settlement Fund will be allocated to Authorized Claimants. An Authorized Claimant is a claimant that filed a valid, sworn, and timely Claim Form and who submitted documents that the Claims Administrator determined are valid proof of purchase and purchase price. Additionally, an Authorized Claimant must meet the following definition:

All individuals and entities that purchased Shell Eggs from caged birds in the United States directly from Defendants during the Class Period from September 9, 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.

Authorized Claimants eligible under the terms of the MFI Settlement have submitted a total of \$5,000,173,925.00 in valid Shell Egg purchases.

6. Next, each Authorized Claimant shall be entitled to a payment from the MFI Settlement Fund for the eligible Shell Egg purchases claimed for approximately 0.95% of their actual total purchase price of each Settlement Product, or a total sum of \$25, whichever is greater.

¹ Expenses related to notice and claims administration for the MFI Settlement, from inception through January 31, 2020, are \$188,693.61. The Claims Administrator estimates that an additional \$29,483.25 will be expended as part of the allocation process described herein and as set forth in the Proposed Allocation Order.

7. Epiq calculated the approximate percentage of actual purchase price to be paid based on the MFI Settlement Fund. In addition, Epiq calculated this approximate percentage to ensure that the MFI Settlement Fund is not exhausted before each Authorized Claimant could be paid. That percentage may change if the required expenses differ from those anticipated by Epiq, one or more claims are subsequently denied, the amount of claims are adjusted following final audits or resolution of disputes over the payment amounts, if any, and the addition of any interest. Any change to this percentage will be applied equally to all Authorized Claimants.

8. With the Court's approval, Epiq recommends that a \$25 base payment be authorized for Authorized Claimants. This proposed minimum payment affects only two (2) Authorized Claimants. Without this minimum payment, the Authorized Claimants would receive as little as \$0.83. Instituting this minimum payment will affect the Net Settlement Fund by a total of \$25.28 (0.00000009% of Net Settlement Fund).

9. In Epiq's experience, low value checks are often misplaced or not cashed. The reissuance and cancelling of these checks can require a significant amount of administrative time, thereby increasing administrative costs for the Class. If funds were to remain unclaimed, further administration work would need to occur to disburse them, either to the claimants or as the Court otherwise directed. The additional costs associated with having to handle reissues and disbursement of these funds would certainly be greater than the \$25.28 that the \$25 base payment will engender.

10. The increase to administrative and attorney time may also drain the settlement proceeds available for distribution to claimants. Moreover, the expense associated with sending payment to claimants with very small claim values can vastly outweigh the value of payment.

11. Any funds remaining in the MFI Settlement Fund for each Authorized Claimant after these payments are “Excess Amounts.”

12. If there are Excess Amounts, then the Initial Authorized Payments for the Authorized Claimants will be increased by an equal percentage until the MFI Settlement Fund would be exhausted.

13. Through this approach, each Authorized Claimant will receive their approximate *pro rata* share of the entire settlement proceeds available for distribution.

14. Within 20 days of the issuance of the Proposed Allocation Order, Epiq will identify and submit to Co-lead Counsel an accounting of the payments to each Authorized Claimant that Epiq intends to pay. At the same time, Epiq will provide MFI’s counsel sufficient information to (i) identify the aggregate of all amounts Epiq intends to pay to Authorized Claimants and (ii) explain the calculation as provided for in this Allocation Order.

15. Within 14 days of such notice, Co-lead Counsel will identify any issues or communicate their agreement with the payments proposed to be made by Epiq. If Co-lead Counsel agrees with the payments proposed to be made by Epiq, then Epiq will notify each Authorized Claimant of the proposed payments. The Authorized Claimants will then have 30 days to object to the proposed payment. Attached hereto as **Exhibit A** is the proposed letter Epiq intends to send to Authorized Claimants.

16. If an Authorized Claimant believes that the calculation of their recovery is inaccurate, then that Authorized Claimant will be required to submit additional information proving the correct calculation along with their objection.

17. If no objections are received, then Epiq shall distribute payments according to the payment accounting as approved by Counsel. If any objections are received, Co-lead Counsel will attempt to resolve those objections. If Co-lead Counsel and Epiq are unable to agree on the

appropriate payments to be made or to resolve any outstanding issues, then they will seek the assistance of the Court.


PETER T. SPERRY

Sworn before me this 27th day of
March, 2020


NOTARY PUBLIC

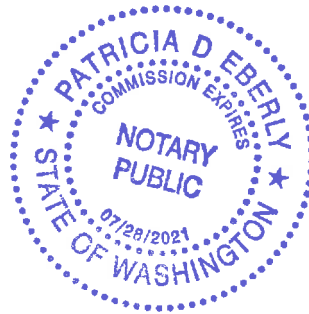


Exhibit A

In re Processed Egg Products Antitrust Litigation
c/o Epiq
P.O. Box 9476
Dublin, OH 43017-4576

Name
Address 1
Address 2
Address 3
City, State Zip

Date: Today's Date

Claim No:

NOTICE OF CLAIM DETERMINATION

Dear Claimant:

You submitted a Claim Form relating to the *In re Processed Egg Products Antitrust Litigation* (Michael Foods, Inc.). Your claim has been reviewed and determined to be eligible for payment.

Pursuant to the Court's Allocation Order, eligible Class Members are entitled to a payment in the amount of approximately 0.95% of their actual purchase price of documented and approved Settlement Products, or a total sum of \$25.00, whichever is greater. Following review of your Claim Form, the Claims Administrator determined that you had submitted **\$X,XXX,XXX.XX** in eligible Shell Egg purchases from named Defendants. The Claim Administrator anticipates your share of the Net Settlement Fund will be approximately **\$XX.XX**.

If you object to this determination and have evidence the proposed payment calculation is inaccurate, you may submit such evidence to *In re Processed Egg Products Antitrust Litigation*, c/o Epiq, P.O. Box 9476, Dublin, OH 43017-4576. Any response must be submitted to the Claims Administrator no later than [**Today's Date + 30 Days**] and be accompanied by a copy of this letter.

Sincerely,

The Claims Administrator

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 :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DIRECT PURCHASER CLASS PLAINTIFFS' MOTION FOR ENTRY OF PROPOSED ALLOCATION ORDER FOR THE MICHAEL FOODS SETTLEMENT**, with supporting Memorandum and Affidavit of Peter Sperry, was served upon Liaison Counsel via electronic mail and all counsel registered to receive electronic notice via this Court's ECF service.

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Direct Action Plaintiffs' Liaison Counsel

Date: March 31, 2020

BY: /s/ Mindee J. Reuben
Mindee J. Reuben