

**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**

**DIRECT PURCHASER CLASS PLAINTIFFS’
MOTION FOR ENTRY OF [PROPOSED] ALLOCATION ORDER FOR THE
MIDWEST POULTRY, NFC, UEP/USEM, NUCAL & HILLANDALE SETTLEMENTS**

Pursuant to this Court’s Orders and the Settlement Agreements between Direct Purchaser Class Plaintiffs (“DPPs”) and Defendants Midwest Poultry Services LP (“Midwest Poultry”), National Food Corporation (“NFC”), United Egg Producers and United States Egg Marketers (collectively, “UEP/USEM”), NuCal Foods, Inc. (“NuCal”), and Hillandale Farms of Pa., Inc. and Hillandale-Gettysburg, L.P. (collectively, “Hillandale”), 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 with this Motion.

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: May 18, 2020

Respectfully submitted,

/s/ Mindee J. Reuben

Mindee J. Reuben

LITE DEPALMA GREENBERG, LLC

1835 Market Street, Suite 2700

Philadelphia, PA 19103

(267) 314-7980 (MJR Direct)

(973) 623-0858 (fax)

mreuben@litedepalma.com

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

Michael D. Hausfeld

HAUSFELD LLP

1700 K. Street NW, Suite 650

Washington, DC 20006

(202) 540-7200

(202) 540-7201 (fax)

mhausfeld@hausfeldllp.com

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

Stanley D. Bernstein

BERNSTEIN LIEBHARD LLP

10 East 40th Street, 22nd Floor

New York, New York 10016

(212) 779-1414

(212) 779-3218 (fax)

bernstein@bernlieb.com

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

Stephen D. Susman

SUSMAN GODFREY L.L.P.

560 Lexington Avenue, 15th Floor

New York, NY 10022-6828

(212) 336-8330

(212) 336-8340 (fax)

ssusman@susmangodfrey.com

***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**

**DIRECT PURCHASER CLASS PLAINTIFFS’ MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION FOR ENTRY OF
[PROPOSED] ALLOCATION ORDER FOR THE MIDWEST POULTRY, NFC,
UEP/USEM, NUCAL & HILLANDALE SETTLEMENTS**

Pursuant to this Court’s Orders and the Settlement Agreements between Direct Purchaser Class Plaintiffs (“DPPs”) and Defendants Midwest Poultry Services LP (“Midwest Poultry”), National Food Corporation (“NFC”), United Egg Producers and United States Egg Marketers (collectively, “UEP/USEM”), NuCal Foods, Inc. (“NuCal”), and Hillandale Farms of Pa., Inc. and Hillandale-Gettysburg, L.P. (collectively, “Hillandale”), 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 attached as Exhibit A.

Background

Midwest Poultry. On March 31, 2014, DPPs and Midwest Poultry entered into a settlement agreement (“Midwest Poultry Settlement Agreement”). Class members have had notice of the settlement since October 27-28, 2014, when notice of the settlement was mailed and published. See Affidavit of Jennifer M. Keough Regarding Notice Dissemination (“Keough Aff.”) at ¶¶ 8, 11 (Docket No. 1144-5).

NFC. On March 28, 2014, DPPs and NFC entered into a settlement agreement (“NFC Settlement Agreement”). Class members have had notice of the settlement since October 27-28, 2014, when notice of the settlement was mailed and published. *See* Keough Aff. at ¶¶ 8, 11. No objections were filed to the Agreement. *Id.* at ¶ 16.

UEP/USEM. On May 21, 2014 DPPs and UEP/USEM entered into a settlement agreement (“UEP/USEM Settlement Agreement”). Class members have had notice of the settlement since October 27-28, 2014, when notice of the settlement was mailed and published. *See Id.* at ¶¶ 8, 11 (Docket No. 1144-5).

NuCal. On August 1, 2014, DPPs and NuCal entered into a settlement agreement (“NuCal Settlement Agreement”). Class members have had notice of the settlement since February 11 and 24, 2015, when notice of the settlement was mailed and published. Affidavit of Jennifer M. Keough Regarding Notice Dissemination (“Second Keough Aff.”) at ¶¶ 8, 11 (Docket No. 1199-4).

Hillandale. On October 22, 2014, DPPs and Hillandale entered into a settlement agreement (“Hillandale Settlement Agreement”). Class members have had notice of the settlement since February 11 and 24, 2015, when notice of the settlement was mailed and published. Second Keough Aff.” at ¶¶ 8, 11.

No objections were filed to any of the foregoing Agreements. *See* Keough Aff. at ¶ 16; Second Keough Aff. at ¶¶ 15-16. On June 30, 2016, the Court granted final approval to of each Agreement pursuant to Fed. R. Civ. P. 23(e). Docket No. 1418 at ¶ 7; Docket No. 1419 at ¶ 7.

The Plan Of Allocation Is Fair, Reasonable And Adequate

When evaluating a plan of allocation, the court uses 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 the same method of allocating the foregoing Settlement Funds that was proposed and approved by the Court for distribution of the Moark Settlement Fund and 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). The plan of allocation is designed to ensure that each Settlement Fund is allocated to Authorized Claimants¹ of that Fund based on each Authorized Claimant’s approximate *pro rata* share of the total claims submitted by all Authorized Claimants from a particular Fund. *See generally* Affidavit of Peter T. Sperry Regarding Allocation of Midwest Poultry Services, LP, National Food Corporation, United Egg Producers/United States Egg Marketers, NuCal Foods, Inc., and Hillandale Farms of Pa., Inc., and Hillandale -Gettysburg, L.P. Settlement Funds (“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,

¹ 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.

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.”). Authorized Claimants for each Fund are as follows:

a. For the Midwest, NFC, and UEP/USEM settlements:

Claimants must have purchased Shell Eggs and/or Egg Products in the United States directly from any Producer, including any Defendant (or from the parents, subsidiaries and affiliates of Producers or Defendants) during the Class Period from January 1, 2000 through July 30, 2014.

b. For the NuCal settlement:

Claimants must have purchased Shell Eggs and/or Egg Products in the United States directly from any Producer, including any Defendant (or from the parents, subsidiaries and affiliates of Producers or Defendants) during the Class Period from January 1, 2000 through October 3, 2014.

c. For the Hillandale Settlement:

Claimants must have purchased Shell Eggs and/or Egg Products in the United States directly from any Producer, including any Defendant (or from the parents, subsidiaries and affiliates of Producers or Defendants) during the Class Period from January 1, 2000 through December 19, 2014.

Sperry Aff. at ¶ 5. Excluded from each Class are:

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.

Sperry Aff. at ¶ 5.

For each of the five settlements, the Net Settlement Fund² will first be allocated between Shell Egg purchases and Egg Products purchases. The valuations and allocations for the Net Settlement Fund for each of the five settlements, assuming the adjustments set forth in footnote 2, *infra*, are as follows:

- Midwest Poultry: \$1,686,122.99 is available for distribution. The Shell Egg SubClass will be allocated 67.42% of the Midwest Settlement Fund and the Egg Products Subclass will be allocated 32.58% of the Midwest Settlement Fund.
- NFC: \$577,414.45 is available for distribution. The Shell Egg SubClass will be allocated 67.42% of the NFC Settlement Fund and the Egg Products Subclass will be allocated 32.58% of the NFC Settlement Fund.
- UEP/USEM: \$296,736.53 is available for distribution. The Shell Egg SubClass will be allocated 67.42% of the UEP/USEM Settlement Fund and the Egg Products Subclass will be allocated 32.58% of the UEP/USEM Settlement Fund.
- NuCal: \$874,737.62 is available for distribution. The Shell Egg SubClass will be allocated 67.41% of the NuCal Settlement Fund and the Egg Products Subclass will be allocated 32.59% of the NuCal Settlement Fund.
- Hillandale: \$1,833,201.22 is available for distribution. The Shell Egg SubClass will be allocated 67.43% of the Hillandale Settlement Fund and the Egg Products Subclass will be allocated 32.57% of the Hillandale Settlement Fund.

Sperry Aff. at ¶¶ 4, 6. The allocation of Net Settlement Fund between the two Settlement SubClasses in each of these five Settlements reflects the approximate percentage of claims filed for each SubClass. Sperry Aff. at ¶ 6.

² The “Net Settlement Fund” for each of the five Settlements is the amount of Settlement Funds available for distribution after (i) payments and expenses authorized under the Settlement Agreement and as approved by the Court, including tax payments, Claims Administrator’s fees and expenses, and attorneys’ fees and costs (Docket No. 1417), (ii) payment of expenses incurred to prosecute the actions and incentive awards previously authorized by the Court (Docket Nos. 1420, 1421), and (iii) the addition of any interest accrued on the Settlement Funds. Regarding (i), unreimbursed expenses related to notice and claims administration for the Midwest, NFC, and UEP/USEM Settlements from inception through the date of Mr. Sperry’s Affidavit are \$17,128.00 (Epiq received a prior payment of \$141,634.29 for its work). Sperry Aff. at ¶ 4 n.1. Unreimbursed expenses related to notice and claims administration for the NuCal and Hillandale Settlements from inception through the date of Mr. Sperry’s Affidavit are \$151,789.00. *Id.*

Next, each Authorized Claimant shall be entitled to a payment from the appropriate Individual Settlement Fund(s) for which they are eligible on a *pro rata* basis based on the percentage of the Authorized Claimant's eligible purchases compared to the total purchases from all Authorized Claimants for that Individual Fund.³ Sperry Aff. at ¶ 7. If the sum of an Authorized Claimant's *pro rata* payments from Settlement Fund for which it is eligible is less than \$25, the Authorized Claimant will receive a base payment of \$25.⁴ The base payment will be deducted from each Individual Fund on a *pro rata* basis based on the percentage of the Authorized Claimant's eligible purchases from that Individual Fund. Sperry Aff. at ¶ 7. Epiq calculated this *pro rata* amount to ensure that each Net Settlement Fund for each of the five Settlements is not exhausted before Authorized Claimants can be paid. The *pro rata* deduction from each Fund will change only if the required expenses differ from those anticipated by Epiq, if one or more claims are subsequently denied, or if the amount of any claims are adjusted following resolution of disputes over the payment amounts, if any. Sperry Aff. at ¶ 8. Any change to this percentage will be applied equally to all Authorized Claimants within each Settlement. Sperry Aff. at ¶ 8.

If there are any excess amounts remaining in the Net Settlement Fund(s) for a particular settlement, then the initial authorized payments will be increased by an equal percentage until the particular Net Settlement Fund is exhausted. Sperry Aff. at ¶ 13

Within 20 days of an order approving this plan of Allocation, Epiq will identify and submit to Co-lead Counsel an accounting of the payments to each Authorized Claimant that Epiq

³ Class members may be eligible for one fund and not another because the Class Periods differ for each of the Settlements.

⁴ Epiq recommends a minimum payment because, in its experience, low value checks are often misplaced or not cashed. Sperry Aff. at ¶ 10. The proposed minimum payment affects 103 Authorized Claimants. Without this minimum payment, 59 of those Authorized Claimants would receive between \$0.07 and \$9.79. Instituting this minimum payment will reduce the amounts available for claimants with total *pro rata* payments above \$25 by only \$1,557.27 across all five Settlement Funds. Sperry Aff. at ¶ 9.

intends to pay. At the same time, Epiq will provide counsel for Midwest, NFC, UEP/USEM, NuCal, and Hillandale 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. Sperry Aff. at ¶ 15.

Within 14 days of such notice, Co-lead Counsel will either approve the payments as calculated by Epiq or identify any issues with the payments calculated by Epiq. Upon approval of Co-lead Counsel, Epiq will notify each Authorized Claimant of the amount of their payment. The Authorized Claimants will have 30 days to object to the proposed payment. Attached to the Sperry Affidavit is the proposed letter Epiq intends to send to Authorized Claimants. Sperry Aff. at ¶ 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. Sperry Aff. at ¶ 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. Sperry Aff. at ¶ 18.

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: May 18, 2020

Respectfully submitted,

/s/ Mindee J. Reuben

Mindee J. Reuben

LITE DEPALMA GREENBERG, LLC

1835 Market Street, Suite 2700

Philadelphia, PA 19103

(267) 314-7980 (MJR Direct)

(973) 623-0858 (fax)

mreuben@litedepalma.com

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

Michael D. Hausfeld

HAUSFELD LLP

1700 K. Street NW, Suite 650

Washington, DC 20006

(202) 540-7200

(202) 540-7201 (fax)

mhausfeld@hausfeldllp.com

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

Stanley D. Bernstein

BERNSTEIN LIEBHARD LLP

10 East 40th Street, 22nd Floor

New York, New York 10016

(212) 779-1414

(212) 779-3218 (fax)

bernstein@bernlieb.com

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

Stephen D. Susman

SUSMAN GODFREY L.L.P.

560 Lexington Avenue, 15th Floor

New York, NY 10022-6828

(212) 336-8330

(212) 336-8340 (fax)

ssusman@susmangodfrey.com

***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
	§	
<hr/>	§	
THIS DOCUMENT RELATES TO	§	
All Direct Purchaser Actions	§	

**AFFIDAVIT OF PETER T. SPERRY REGARDING ALLOCATION OF MIDWEST
POULTRY SERVICES, LP, NATIONAL FOOD CORPORATION, UNITED EGG
PRODUCERS/UNITED STATES EGG MARKETERS, NUCAL FOODS, INC., AND
HILLANDALE FARMS OF PA., INC. AND HILLANDALE-GETTYSBURG, L.P.
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 Midwest Poultry Services, LP (“Midwest”), National Food Corporation (“NFC”), United Egg Producers/United States Egg Marketers (“UEP/USEM”), NuCal Foods, Inc. (“NuCal”), and Hillandale Farms of Pa., Inc. and Hillandale Gettysburg, L.P. (“Hillandale”) settlement proceeds will be distributed to appropriate class members if approved by the Court.

3. As used herein, the available Settlement Funds are defined as the amount of Midwest, NFC, UEP/USEM, NuCal, and Hillandale 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. 1417), (ii) any adjustment for the payment of attorneys' fees and expenses and class representative awards previously authorized by the Court (Docket Nos. 1420, 1421), and (iii) the addition of any interest accrued on the Settlement Funds.

4. The total funding currently available is \$5,268,212.81.¹ Epiq anticipates that the following values will be available from each of the following Settlement Funds:

- a. The total Midwest settlement funding available for distribution is \$1,686,122.99;
- b. The total NFC settlement funding available for distribution is \$577,414.45;
- c. The total UEP/USEM settlement funding available for distribution is \$296,736.53;
- d. The total NuCal settlement funding available for distribution is \$874,737.62; and
- e. The total Hillandale settlement funding available for distribution is \$1,833,201.22.

5. The five Settlement Funds 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 definitions:

- a. For the Midwest, NFC, and UEP/USEM settlements:

Claimants must have purchased Shell Eggs and/or Egg Products in the United States directly from any Producer, including any Defendant (or from the parents, subsidiaries and affiliates of Producers or Defendants) during the Class Period from

¹ Unreimbursed expenses related to the notice administration for the Midwest, NFC, UEP/USEM settlements, from inception through the date of this declaration, are \$17,128.00. Unreimbursed expenses related to the notice administration for the NuCal and Hillandale settlements, from inception through the date of this declaration, are \$151,789.00.

January 1, 2000 through July 30, 2014.

b. For the NuCal settlement:

Claimants must have purchased Shell Eggs and/or Egg Products in the United States directly from any Producer, including any Defendant (or from the parents, subsidiaries and affiliates of Producers or Defendants) during the Class Period from January 1, 2000 through October 3, 2014.

c. For the Hillandale settlement:

Claimants must have purchased Shell Eggs and/or Egg Products in the United States directly from any Producer, including any Defendant (or from the parents, subsidiaries and affiliates of Producers or Defendants) during the Class Period from January 1, 2000 through December 19, 2014.

The Midwest, NFC, UEP/USEM, NuCal, and Hillandale settlements exclude the following:

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.

6. Authorized Claimants’ purchases under the terms of the Midwest, NFC, UEP/USEM, NuCal, and Hillandale settlements will be allocated between the Shell Egg SubClass and the Egg Products SubClass. Funding for each SubClass will be allocated in the following manner:

- a. Midwest Settlement Funds (“Midwest Funds”) – The Shell Egg SubClass will be allocated 67.42% of the Midwest Funds and the Egg Products SubClass will be allocated 32.58% of the Midwest Funds.
- b. NFC Settlement Funds (“NFC Funds”) – The Shell Egg SubClass will be allocated 67.42% of the NFC Funds and the Egg Products SubClass will be allocated 32.58% of the NFC Funds.
- c. UEP/USEM Settlement Funds (“UEP/USEM Funds”) –The Shell Egg SubClass will be allocated 67.42% of the UEP/USEM Funds and the Egg Products SubClass

will be allocated 32.58% of the UEP/USEM Funds.

- d. NuCal Settlement Funds (“NuCal Funds”) – Shell Egg SubClass will be allocated 67.41% of the NuCal Funds and the Egg Products SubClass will be allocated 32.59% of the NuCal Funds.
- e. Hillandale Settlement Funds (“Hillandale Funds”) – Shell Egg SubClass will be allocated 67.43% of the Hillandale Funds and the Egg Products SubClass will be allocated 32.57% of the Hillandale Funds.

The distribution between the two SubClasses reflects the approximate percentages of claims filed by Authorized Claimants under the terms of each particular settlement.

7. Next, each Authorized Claimant shall be entitled to a payment from each Settlement Fund in the following amounts:

- a. Midwest Funds – approximately 0.0038% of an Authorized Claimant’s actual total purchase price of each Settlement Product.
- b. NFC Funds – approximately 0.0013% of an Authorized Claimant’s actual total purchase price of each Settlement Product.
- c. UEP/USEM Funds – approximately 0.0007% of an Authorized Claimant’s actual total purchase price of each Settlement Product.
- d. NuCal Funds – approximately 0.0020% of an Authorized Claimant’s actual total purchase price of each Settlement Product.
- e. Hillandale Funds – approximately 0.0041% of an Authorized Claimant’s actual total purchase price of each Settlement Product.

If an Authorized Claimant’s total collective payment from the Midwest Funds, NFC Funds, UEP/USEM Funds, NuCal Funds, and Hillandale Funds does not add up to \$25, a base payment

of \$25 will be applied. Base payments will be deducted on a *pro rata* basis from each Fund to which the Authorized Claimant is eligible.

8. Epiq has calculated the approximate percentage of actual purchase price to be paid based on the Midwest, NFC, UEP/USEM, NuCal, and Hillandale Settlement Funds. In addition, Epiq has calculated this approximate percentage to ensure that each 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.

9. Epiq recommends that a \$25 base payment be approved for Authorized Claimants. This proposed minimum payment affects 103 Authorized Claimants. Without this minimum payment, 59 of those Authorized Claimants would receive between \$0.07 and \$9.79. Instituting this minimum payment will affect the Midwest, NFC, UEP/USEM, NuCal, and Hillandale Settlement Funds by a total of \$1,557.27. Reductions are as follows:

- a. Midwest Funds – \$805.22 from the Midwest Funds (0.0478%) will be allocated towards the minimum base payments for Authorized Claimants. \$465.74 will be paid from Shell Egg SubClass' funds and \$339.48 will be paid from the Egg Products SubClass' funds.
- b. NFC Funds – \$275.74 from the NFC Funds (0.0478%) will be allocated towards the minimum base payments for Authorized Claimants. \$159.49 will be paid from Shell Egg SubClass' funds and \$116.25 will be paid from the Egg Products SubClass' funds.

- c. UEP/USEM Funds – \$141.71 from the UEP/USEM Funds (0.0478%) will be allocated towards the minimum base payments for Authorized Claimants. \$81.97 will be paid from Shell Egg SubClass’ funds and \$59.74 will be paid from the Egg Products SubClass’ funds.
- d. NuCal Funds – \$418.70 from the NuCal Funds (0.0479%) will be allocated towards the minimum base payments for Authorized Claimants. \$243.16 will be paid from Shell Egg SubClass’ funds and \$175.54 will be paid from the Egg Products SubClass’ funds.
- e. Hillandale Funds – \$933.63 from the Hillandale Funds (0.0509%) will be allocated towards the minimum base payments for Authorized Claimants. \$564.77 will be paid from Shell Egg SubClass’ funds and \$368.86 will be paid from the Egg Products SubClass’ funds.

10. 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 \$1,557.27 that the \$25 base payment will engender.

11. 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.

12. Any funds remaining in the Midwest, NFC, UEP/USEM, NuCal, and Hillandale Settlement Funds for each Authorized Claimant after these payments are “Excess Amounts.”

13. If there are Excess Amounts, then the Initial Authorized Payments for the Authorized Claimants will be increased by an equal percentage until the Midwest, NFC, UEP/USEM, NuCal, and Hillandale Settlement Funds would be exhausted.

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


15. 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 counsel for Midwest, NFC, UEP/USEM, NuCal, and Hillandale 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.

16. 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.

17. 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.

18. 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 23rd day of
April, 2020



NOTARY PUBLIC



Exhibit A

In re Processed Egg Products Antitrust Litigation

c/o Epiq

P.O. Box 9476

Dublin, OH 43017-4576

Name

Date: Today's Date

Address 1

Address 2

Claim No:

Address 3

City, State Zip

NOTICE OF CLAIM DETERMINATION

Dear Claimant:

You submitted a Claim Form relating to the *In re Processed Egg Products Antitrust Litigation* (Midwest Poultry Services, LP, National Food Corporation, United Egg Producers/United States Egg Marketers, NuCal Foods, Inc., and Hillandale Farms of Pa., Inc. and Hillandale Gettysburg, L.P.). 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 following approximate amounts:

- Midwest Poultry Services, LP ("Midwest") – 0.0038% of their actual purchase price of documented and approved Settlement Products.
- National Food Corporation Settlement Funds ("NFC") – 0.0013% of their actual purchase price of documented and approved Settlement Products.
- United Egg Producers/United States Egg Marketers ("UEP/USEM") – 0.0007% of their actual purchase price of documented and approved Settlement Products.
- NuCal Foods, Inc. ("NuCal") – 0.0020% of their actual purchase price of documented and approved Settlement Products.
- Hillandale Farms of Pa., Inc. and Hillandale Gettysburg, L.P. ("Hillandale") – 0.0041% of their actual purchase price of documented and approved Settlement Products.

Eligible Class Members are entitled to a payment of their collective amount sum from the Midwest, NFC, UEP/USEM, NuCal, and Hillandale Settlement Funds, or a total sum of \$25.00, whichever is greater. Following review of your Claim Form, the Claims Administrator determined that you submitted the following in eligible Shell Egg and Egg Product purchases:

- Midwest, NFC, UEP/USEM Settlements – **~~\$X,XXX,XXX.XX~~**.
- NuCal Settlement – **~~\$X,XXX,XXX.XX~~**.
- Hillandale Settlement – **~~\$X,XXX,XXX.XX~~**.

Based on the above totals, the Claim Administrator anticipates your total share of the Midwest, NFC, UEP/USEM, NuCal, and Hillandale Settlement Funds will be approximately **~~\$XX.XX~~**.

If you object to these determinations and have evidence that the proposed payment calculations are 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.

Questions? Call Toll-Free 1-866-881-8306 or Visit www.EggProductsSettlement.com

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 MIDWEST POULTRY, NFC, UEP/USEM, NUCAL & HILLANDALE SETTLEMENTS**, 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.

Liaison Counsel

Jan P. Levine, Esquire
PEPPER HAMILTON LLP
3000 Two Logan Square
18th & Arch Streets
Philadelphia, PA 19103
levinej@pepperlaw.com

Defendants' Liaison Counsel

William J. Blechman, Esquire
KENNY NACHWALTER, P.A.
1100 Miami Center
201 South Biscayne Boulevard
Miami, FL 33131
wblechman@kennynachwalter.com

Direct Action Plaintiffs' Liaison Counsel

Date: May 18, 2020

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