

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

IN RE: PROCESSED EGG PRODUCTS
ANTITRUST LITIGATION

) MDL No. 2002
)
) Case No. 08-md-02002
)
)

THIS DOCUMENT APPLIES TO:
ALL DIRECT PURCHASER PLAINTIFF
ACTIONS

**DECLARATION OF MINDEE J. REUBEN
IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS'
MOTION FOR REIMBURSEMENT OF EXPENSES
AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES**

I, Mindee J. Reuben, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am admitted to practice in the Commonwealth of Pennsylvania and the State of New Jersey, am a member of the Bar of this Court, and am a member in the law firm of Weinstein Kitchenoff & Asher LLC (“WKA”), one of the Interim Co-Lead Counsel and Liaison Counsel for the Direct Purchaser Plaintiffs (“Plaintiffs”) in the above-captioned matter. I submit this declaration in support of Plaintiffs’ Motion for Reimbursement of Expenses and Incentive Awards to Class Representatives (“Plaintiffs’ Motion”).

2. Plaintiffs’ Motion seeks reimbursement and repayment of litigation expenses and for incentive awards to Plaintiffs from the settlements (“Settlements”) with defendants National Food Corporation (“NFC”), Midwest Poultry Services, LP (“Midwest Poultry”), United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”) (collectively, “Settling Defendants”). Each of these Settlements calls for the creation of a settlement fund, and provides that each Class member “shall look solely to the Settlement Amount for settlement satisfaction. *See, e.g.*, NFC Settlement Agreement at ¶¶ 37-38 (ECF 952-2). The Settlements further provide that Plaintiffs’ Counsel may seek reimbursement of expenses and incentive awards therefrom, subject to Court approval. *See, e.g.*, NFC Settlement Agreement at ¶ 39 (ECF 952-2).

3. Specifically, Plaintiffs and Plaintiffs’ Counsel respectfully reimbursement of (i) non-taxable litigation expenses paid from the Litigation Fund in the amount of \$387,425.37 for work undertaken between March 1, 2014 and July 31, 2014 (“Covered Period”); (ii) unpaid, non-taxable expenses chargeable to the Litigation Fund but as yet unpaid through the end of the Covered Period in the amount of \$785,492.96; and (iii) the non-taxable costs associated with notice of the three Settlements in the amount of \$141,634.29, for a total of \$1,314,552.62 in non-

taxable expenses. Plaintiffs and Plaintiffs' Counsel also respectfully request incentive awards of \$25,000 to each Plaintiff, for a total of incentive award payment of \$225,000.

Plaintiffs' Counsel's Prosecution of this Case During Covered Period

4. Plaintiffs' Counsel commenced depositions of Defendants in April 2013. During the Covered Period, Plaintiffs' Counsel conducted over 50 depositions. Each of these depositions required significant preparation by Plaintiffs' Counsel, including targeted document searches, as well as often necessitated travel given the dispersion of witnesses.

5. In addition, each individual Plaintiff was deposed during the Covered Period. Each Plaintiff was prepared for its deposition by Plaintiffs' Counsel and, as necessary, multiple corporate designees were prepared and presented in response to a Rule 30(b)(6) notice.

6. The testimony obtained through these depositions enhanced Plaintiffs' knowledge of the alleged conspiracy and strengthened Plaintiffs' position in negotiating the Settlements, as well as in preparing Plaintiffs' Motion for Class Certification.

7. During the Covered Period, Plaintiffs' Counsel responded to Defendants' Second Set of Interrogatories. Plaintiffs' 18-plus page detailed response (excluding objections), which was a Herculean effort taking several weeks and multiple attorneys, identified documents and deposition testimony that had been compiled by Plaintiffs over the entire course of discovery. Following submission of their response, the parties engaged in meet and confer negotiations, resulted in two rounds of supplementation by Plaintiffs.

8. Plaintiffs also responded to three sets of requests for admissions. The first set, served by jointly by Defendants, contained 68 requests directed to each individual Plaintiff. The second set, served by Daybreak Foods, Inc., consisted of 98 requests. The third set, served by Rose Acre Farms, Inc., was directed to Plaintiff Wixon, Inc. and contained 15 requests. The

compilation of Plaintiffs' responses required an enormous effort by Plaintiffs' Counsel as well as by Plaintiffs.

9. Plaintiffs' Counsel and NFC's counsel engaged in extensive arms' length negotiations intermittently from late 2012/early 2013 until March 2014, when an agreement was finally executed. The initial negotiations, which began in late 2012/early 2013, did not progress very far. Additional discussions about a potential resolution occurred in mid-2013 and were conducted via telephone conferences and email. These discussions were put on hold pending the attempt to globally resolve the litigation including all Defendants. In November 2013, Plaintiffs and NFC re-engaged in substantive negotiations. Following extensive telephone conferences and emails, the parties reached an agreement in principal on February 28, 2014; the settlement agreement was fully executed on March 28, 2014. *See generally* April 25, 2015 Pizzirusso Decl. (ECF 952-2), filed in support of motion for preliminary approval of NFC and Midwest Poultry settlements (ECF 952).

10. Plaintiffs' Counsel and Midwest Poultry's counsel engaged in substantive arms' length negotiations beginning in January 2014. Discussions about a potential resolution were conducted via telephone conferences and email, and an agreement in principal was reached on February 10, 2014. The parties negotiated a settlement agreement which was finally executed on March 31, 2014. *See generally* April 25, 2015 Pizzirusso Decl. (ECF 952-3), filed in support of motion for preliminary approval of NFC and Midwest Poultry settlements (ECF 952).

11. In January 2014, Plaintiffs' Counsel approached counsel for UEP/USEM regarding settlement of the litigation. After several rounds of telephone calls and email exchanges, the parties reached a settlement in principal and signed a term sheet laying out the terms of their settlement in March 2014, which involved both a monetary component and the

production of documents previously withheld on the basis of attorney-client privilege. Because UEP/USEM was unwilling to permit Plaintiffs' Counsel to preview the privileged documents, the parties requested that Magistrate Judge Rice facilitate the discussions by reviewing the documents in camera to ensure that they did indeed provide value to the class. A settlement agreement was finally executed on May 21, 2014. *See generally* June 19, 2014 Pizzirusso Decl. (ECF 997-2) filed in support of motion for preliminary approval of UEP/USEM settlement (ECF 997).

12. In January 2014, Plaintiffs' Counsel began substantive settlement negotiations with NuCal Foods, Inc. The parties were far apart, and talks initially seemed unlikely to be successful. After the NFC and Midwest Poultry settlements were reached, however, the parties began to discuss settlement again in earnest. NuCal shared financial information with Plaintiffs' Counsel in April 2014, after which several rounds of telephone calls and email exchanges ensued. The parties reached an agreement in principal in May 2014, although substantive negotiations regarding the terms of the settlement agreement took another two months. The settlement agreement was fully executed on August 1, 2014, one day after the close of the Covered Period herein. *See generally* August 28, 2014 Pizzirusso Decl. (ECF 1041-2) filed in support of motion for preliminary approval of NuCal settlement (ECF 1041).

13. On May 30, 2014, Plaintiffs' Counsel prepared and filed their Motion for Class Certification (ECF 978). Plaintiffs' supporting memorandum is over 80 pages long, and is supported by a detailed expert report and 188 exhibits culled principally from the documents produced and reviewed in this litigation. Dr. Rausser was deposed on June 19 and June 20, 2014. Other related briefing, report preparation, and expert depositions occurred after the Covered Period.

14. On April 25, 2014, Plaintiffs moved for preliminary approval of the settlements with NFC and Midwest Poultry, as well as for leave to file a motion for fees, expenses and incentive awards (ECF 952). Oral argument was held on May 12, 2014, and preliminary approval was granted on July 30, 2014 (ECF 1027).

15. On June 19, 2014, Plaintiffs moved for preliminary approval of the settlement with UEP/USEM and for leave to file a motion for fees, expenses and incentive awards (ECF 997), as well as for preliminary approval of the proposed Second Sparboe Amendment (ECF 998). Oral argument was held on July 14, 2014, and preliminary approval was also granted on July 30, 2014 (ECF 1027).

Notice Provided

16. The Garden City Group, Inc. (“GCG”), the Court-appointed Claims Administrator, effectuated a notice program that ensured Settlement Class members are apprised of their rights. Pursuant to the July 30, 2014 Order granting preliminary approval, on October 27, 2014, GCG mailed 19,502 Notice Packets to Class members whose addresses GCG had compiled from Defendants’ sales data. Notice was published in *The Wall Street Journal* on October 28, 2014, and in a variety of trade magazines that specifically cater to the restaurant and food industries. Further details regarding the notice program and its effectiveness can be found in the Affidavit of Jennifer M. Keough Regarding Notice Dissemination and Claims Administration. (ECF 1105.)

17. The Notice Packets expressly notified potential Class Members that Settlement Counsel would be seeking Court approval of, *inter alia*, (i) reimbursement of litigation expenses and (ii) incentive awards not to exceed \$25,000 per representative, or up to \$225,000 total. *See*

Long Form Notice at ¶ 11 (ECF 1105-1). In the section entitled “How will the lawyers be paid?” the notice provides:

These attorneys and their respective firms are referred to as Class Counsel. The Court will decide how much Class Counsel will be paid. Class Counsel, in compensation for their time and risk in prosecuting the litigation on a wholly contingent fee basis, intend to apply to the Court ..., from the Midwest, NFC, and UEP/USEM Settlement Funds, [for] ... fees and costs expended while providing Notice to the Class.

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

Class Counsel will file their Fee Petition on or before January 15, 2015. The Fee Petition, which will identify the specific amount of ... incentive awards requested and the expenses to be reimbursed, will be available on the Settlement website, www.eggproductsettlement.com, on that date. [I]ncentive awards and reimbursement of costs will be awarded only as approved by the Court in amounts it determines to be fair and reasonable.

Id. The notice also explains the process of, and sets deadlines for, opting out of the settlement as well as objecting to the settlement. *See generally* Long Form Notice (ECF 1105-1).

18. The schedule approved by the Court requires Plaintiffs to file their motion for reimbursement and recovery of expenses and for incentive awards in advance of the deadline for asserting objections consistent with Rule 23(f). (ECF 1027 at ¶ 35j (setting forth relevant portion of schedule)). Objections to the Settlements, including this motion, are due no later than March 6, 2015. *See, e.g.*, Long Form Notice at ¶ 14 (ECF 1105 at ¶ 13). Accordingly, Class members have approximately seven weeks after the filing of this motion to lodge their objections to Plaintiffs’ proposed reimbursement of expenses and incentive awards. This motion will be available on the Settlement website.

Request for Reimbursement and Recovery of Non-Taxable Litigation Expenses

19. As detailed below, Plaintiffs’ Counsel seek reimbursement and recovery of (i) non-taxable litigation expenses paid from the Litigation Fund in the amount of \$387,425.37 for

work undertaken during the Covered Period, *see* Exhibit A (Analysis of Litigation Fund); (ii) unpaid, non-taxable expenses chargeable to the Litigation Fund but as yet unpaid through the end of the Covered Period in the amount of \$785,492.96; and (iii) the non-taxable costs associated with notice of the Settlements in the amount of \$141,634.29, for a total of \$1,314,552.62 in non-taxable expenses. These expenses were reasonable and necessary to the litigation of this case, and include, among other things, costs for experts, electronic discovery costs, and notice.

20. Plaintiffs' Litigation Fund pays expenses which are incurred collectively by Plaintiffs' Counsel, rather than by individual firms. Thus, for example, the Litigation Fund will pay the costs of expert fees, electronic discovery costs (such as maintenance of the joint document depository) and deposition transcripts. Plaintiffs' Counsel are seeking (i) reimbursement of certain non-taxable expenses paid from the Litigation Fund through the Covered Period, and (ii) recovery of non-taxable expenses chargeable to the Litigation Fund that were incurred through the end of the Covered Period but which are awaiting payment.

21. Non-taxable expenses paid by the Litigation Fund during the Covered Period are \$387,425.37. A significant portion of these expenses are expert fees related to class certification and the costs of electronic database and discovery providers. Interim Co-Lead Counsel reviewed the bills to ensure they were appropriate and accurate prior to payment out of the Litigation Fund. If awarded, this amount will be reimbursed to the Litigation Fund.

22. Non-taxable expenses chargeable to the Litigation Fund that were incurred through the end of the Covered Period but which are awaiting payment are \$785,492.96. These expenses consist of expert fees related to class certification and they have been reviewed by Interim Co-Lead Counsel.

23. Finally, the Claims Administrator, Garden City Group, has expended \$141,634.29 in connection with the dissemination of notice of the NFC, Midwest Poultry and UEP/USEM Settlements. Interim Co-Lead Counsel reviewed the bills to ensure they were appropriate and accurate.

Request for Incentive Awards

24. This litigation was commenced in October 2008. Over the course of the past six plus years, the Class representatives have actively participated in many significant aspects of the litigation.

25. Broadly stated, the Class representatives made themselves available to Plaintiffs' Counsel on an as-needed basis. The Class representatives participated in the discovery process, including, *inter alia*, the production of documents, responding to interrogatories and requests for admissions, and depositions. The Class representatives also monitored the litigation on behalf of the Class, including reviewing pleadings, motions and settlements throughout the course of the litigation. Some of the Class representatives also placed themselves at risk of retaliation simply by participating in this litigation, as they continued to purchase eggs and egg products from Defendants after its inception. By agreeing to act as Class representatives in this litigation, these individuals have assisted the Class in achieving \$53 million in settlements to date.

26. Each of the nine Class representatives was required to preserve and collect responsive documents in this litigation. This process initially involved communicating with Plaintiffs' Counsel regarding the appropriate custodians, the particular sources of documents (*e.g.*, hard and electronic storage) and preservation policies. Each of the Class representatives then coordinated with an electronic discovery specialist to ensure the capture and preserve electronically-stored documents.

27. In total, the Class representatives have produced 1,333,381 pages to date in this litigation (including transactional data). The obligation of the representatives to continue producing transactional data pursuant to the July 27, 2013 Stipulation and Order is ongoing. (ECF 829).

28. Defendants served Plaintiffs with a request for production containing 124 requests. Although the requests were slightly modified following meet and confer negotiations, there is no question that the Class representatives were required to meet and consult with Plaintiffs' Counsel, to review their previously-identified document sources and custodians to ensure that all responsive documents were captured, and to review and approve the final responses and objections to the requests for production.

29. Defendants served Plaintiffs with two sets of interrogatories. Plaintiffs' response to the first set of interrogatories not only required the production of transactional information, but detailed interviews with each Class representative to identify who, what, when, where and how of all of its purchases. *See* February 28, 2013 Order (ECF 799) (ordering Plaintiffs to supplement their response to this interrogatory). The supplemental responses of the Class representatives ranged anywhere from 5 to 54 pages, and were individually verified by each Class representative.

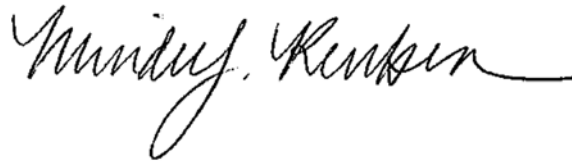
30. Each individual Class representative was required to respond to Defendants' 68 joint requests for admissions and to Daybreak Food, Inc.'s 98 requests for admission. Each individual Class representative was required to assist Plaintiffs' Counsel in responding and to ensure the accuracy of the responses. Class representative Wixon, Inc. also had to respond to fifteen requests for admission from Rose Acre Farms, Inc.

31. Each of the nine Class representatives was served with a Rule 30(b)(6) notice for deposition. The notices typically identified approximately 30 different topics with additional sub-topics. Each of the nine Class representatives produced corporate designees in response to the notice, with one representative, Eby-Brown Company, LLC, producing three witnesses in order to adequately respond to the notice. In addition to their appearance and testimony, each designee met with Plaintiffs' Counsel in advance of the deposition.

32. Finally, none of the Class representatives has been promised an incentive award by Plaintiffs' Counsel. None of the Class representatives has received a windfall in this litigation. The recovery of the Class representatives, like all other Class members who have submitted a claim, has been calculated on a *pro rata* basis.

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

BY:

A handwritten signature in cursive script that reads "Mandy Kenyon". The signature is written in black ink and is positioned to the right of the "BY:" text.

Dated: January 15, 2015

EXHIBIT A

| | A | B | C | D | E | F | G | H | I | J | K | |
|----|---|---|---|---|---|---|---------------|--------------------|--------------|----------------|---|---------------|
| 1 | IN RE PROCESSED EGG ANTITRUST LITIGATION MDL 2002, E.D. PA. 08-MD-2002 | | | | | | | | | | | |
| 2 | ANALYSIS OF LITIGATION FUND - MARCH 1, 2014 THROUGH JULY 31, 2014 | | | | | | | | | | | |
| 3 | | | | | | | | | | | | |
| 4 | OPENING BALANCE | | | | | | | | | | | \$ 142,766.97 |
| 5 | | | | | | | | | | | | |
| 6 | INTEREST ADDED | | | | | | | | | | | \$ 7.11 |
| 7 | | | | | | | | | | | | |
| 8 | ASSESSMENTS RECEIVED | | | | | | | | | | | \$ 525,000.00 |
| 9 | | | | | | | | | | | | |
| 10 | EXPENDITURES | | | | | | | Non-Taxable | | Taxable | | |
| 11 | | Experts | | | | | \$ 283,831.59 | | | | | |
| 12 | | Hearing Transcripts | | | | | | | \$ 268.05 | | | |
| 13 | | Deposition Transcripts | | | | | | | \$ 13,615.65 | | | |
| 14 | | Electronic Database & Discovery Providers | | | | | \$ 103,511.44 | | | | | |
| 15 | | Mediation | | | | | \$ - | | | | | |
| 16 | | Process & Filing Fees | | | | | | | \$ - | | | |
| 17 | | Copying Fees | | | | | | | \$ 2,507.32 | | | |
| 18 | | Other ¹ | | | | | \$ 82.34 | | | | | |
| 19 | TOTAL EXPENSES | | | | | | | \$ 387,425.37 | | \$ 16,391.02 | | |
| 20 | | | | | | | | | | | | |
| 21 | BALANCE AS OF JULY 31, 2014 | | | | | | | | | | | \$ 263,957.69 |
| 22 | | | | | | | | | | | | |
| 23 | | | | | | | | | | | | |
| 24 | | | | | | | | | | | | |
| 25 | | | | | | | | | | | | |
| 26 | ¹ Courier Fees, new checks, and/or fund administration | | | | | | | | | | | |