

**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 :

DIRECT PURCHASER PLAINTIFFS'
MOTION FOR AN AWARD OF ATTORNEYS' FEES
AND FOR REIMBURSEMENT OF EXPENSES

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Direct Purchaser Plaintiff class representatives (“Plaintiffs”) through Weinstein Kitchenoff & Asher LLC; Hausfeld LLP (“WKA”); Bernstein Liebhard LLP; and Susman Godfrey LLP (“Interim Co-Lead Counsel”), and the other counsel whom Interim Co-Lead Counsel have directed to work on this case, respectfully move this Court for an award of attorneys’ fees and reimbursement of litigation expenses from the settlement with Moark LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. This Motion is based on Plaintiffs’ Memorandum of Law and the Declaration of Steven A. Asher with supporting exhibits, submitted herewith. A proposed form of Order is attached.

Dated: April 14, 2011

Respectfully submitted,

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**DIRECT PURCHASER PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
OF THEIR MOTION FOR AN AWARD OF ATTORNEYS' FEES AND FOR
REIMBURSEMENT OF EXPENSES**

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I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, the Direct Purchaser Plaintiff class representatives (“Plaintiffs”) through Weinstein Kitchenoff & Asher LLC; Hausfeld LLP (“WKA”); Bernstein Liebhard LLP; and Susman Godfrey LLP (“Interim Co-Lead Counsel”), and the other counsel whom Interim Co-Lead Counsel have directed to work on this case¹ (Interim Co-Lead Counsel and these other firms are collectively referred to herein as “Designated Counsel”), respectfully move for an award of attorneys’ fees and reimbursement of litigation expenses from the settlement with the Moark defendants² (“Moark Settlement”).

Plaintiffs are direct purchasers of egg products in the United States, and bring this action on their own behalf and on behalf of a class of similarly situated entities (the “Class”).³ Plaintiffs assert that Defendants, including Moark, violated Section 1 of the Sherman Act, 15 U.S.C. § 1, by engaging in an unlawful combination and conspiracy to fix, raise, maintain, and/or stabilize prices for egg products in the United States. Plaintiffs allege that this conduct resulted in direct purchasers of eggs suffering damages in the form of overcharges for their egg purchases.

These cases, and the successes achieved to date, are the product of the initiative, investigation, and hard work of skilled counsel over the course of several years. As a result of Designated Counsel’s efforts, Plaintiffs have entered into two settlement agreements which both provide a significant benefit to potential Class members: one with Sparboe Farms, Inc.

¹ Such counsel includes Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”) and others who have played an active role in this case.

² The “Moark defendants” consist of Moark LLC, Norco Ranch, Inc., and Land O’Lakes, Inc., and will be collectively referred to as “Moark.”

³ The Class is more fully defined in Plaintiffs’ Second Consolidated Amended Complaint (Dkt. No. 291), at ¶¶ 481-96.

("Sparboe"), which resulted in cooperation that has enhanced Plaintiffs' ability to prosecute successfully this action against the other Defendants ("Sparboe Settlement"); and the Moark Settlement, which will confer a substantial monetary benefit on Class members in addition to cooperation.

The Moark Settlement provides, *inter alia*, for a payment of \$25 million to the Class. This amount has been deposited into escrow, where it is earning interest. Plaintiffs moved for final approval of this settlement on January 26, 2011. *See* Dkt. No. 465.

Pursuant to the Court's order of July 15, 2010 (Dkt. No. 388), potential Class members were directly mailed Notice Packets on September 2, 2010 ("Notice"), and Summary Notices were also published in The Wall Street Journal on September 13, 2010. The Notice discussed the settlement, and expressly notified potential Class members that Designated Counsel could seek up to 30% of the settlement fund as compensation for several years of work, as well as out-of-pocket expenses advanced by Designated Counsel. Not a single class member has objected to the Moark Settlement, regarding either the substantive settlement details or the fee and expense notification provisions.

In light of the substantial benefits conferred on members of the proposed Class through the hard work of counsel, Plaintiffs and Designated Counsel respectfully request an award of a reasonable attorneys' fee and reimbursement of expenses from the Moark Settlement fund.

II. BACKGROUND

A. Overview of the Litigation

This case was commenced in late 2008 when a series of actions were filed in different federal courts. On December 2, 2008, the Judicial Panel on Multidistrict Litigation transferred these cases for coordinated proceedings before this Court. Plaintiffs allege that Defendants, certain producers of shell eggs and egg products, unlawfully combined and conspired to decrease

the supply of eggs⁴ in order to raise egg prices to supracompetitive levels. As a result, direct purchasers of eggs paid more for eggs than they otherwise would have paid.⁵ On January 30, 2009, Plaintiffs filed their first consolidated amended complaint (“CAC”), detailing these allegations.

Later in 2009, Plaintiffs and Sparboe commenced settlement discussions. On June 8, 2009, Plaintiffs and Sparboe reached a settlement that entailed Sparboe providing immediate and ongoing cooperation to Plaintiffs in exchange for a release from liability in this action. *See* Declaration of Steven A. Asher, Esq. in Support of Direct Purchaser Plaintiffs’ Motion for Attorneys’ Fees and Expenses (the “Asher Decl.”) ¶ 10 (submitted herewith as Exhibit 1). By settling with Sparboe, Plaintiffs were able to uncover more details about the egg industry, the alleged conspiracy, and the specific actions taken by the remaining Defendants in furtherance of this conspiracy. *See id.* ¶ 11. These details were included in a second consolidated amended complaint (“2CAC”) that Plaintiffs filed on December 11, 2009. *See id.*

In response to the 2CAC, nine Defendants that had previously moved to dismiss Plaintiffs’ first consolidated complaint chose instead to answer, *see id.*, while nine other Defendants filed individual motions to dismiss the 2CAC, purportedly challenging the sufficiency of the allegations in the 2CAC as to their individual participation in the conspiracy. *See id.* ¶ 12. Defendants also filed motions to dismiss the 2CAC to the extent its allegations are directed to egg products, as opposed to shell eggs, and a statute of limitations motion to dismiss claims for damages incurred prior to September 22, 2004. *See id.*

⁴ The term “eggs” refers to both shell eggs and egg products, which are eggs removed from their shells for further processing into a dried, frozen, or liquid form.

⁵ This lawsuit alleges injuries to *direct* egg purchasers only, that is, entities or individuals who bought eggs directly from defendant egg producers. Indirect purchasers of eggs (*i.e.*, entities buying eggs from direct purchasers) have filed a separate antitrust case.

While researching and briefing responses to these motions to dismiss, Designated Counsel also engaged in months of settlement discussions with Moark. *See id.* ¶¶ 13-14. After extensive arm's-length negotiations, Plaintiffs and Moark reached a settlement on May 21, 2010 based, at least in part, on the material that Plaintiffs were able to obtain from Sparboe. *See id.* ¶ 15.

B. Designated Counsel's Vigorous Prosecution of the Case

The Moark Settlement is the result of the significant effort and hard work of Plaintiffs' counsel over the course of years.

1. Investigations and Initial Complaints

As discussed in more detail in the Asher Declaration, this case has been prosecuted through the diligence, skill, and hard work of Designated Counsel, which has achieved substantial benefits for members of the proposed Class. Asher Decl. ¶ 6. Unlike some other antitrust class actions, Plaintiffs' counsel in this matter are not following the lead of governmental investigations or indictments. *Id.*

The investigations undertaken in this case by Designated Counsel included extensive research into the egg industry, egg trade associations such as the United Egg Producers ("UEP"), the UEP's animal welfare programs, the economics that underpin the alleged conspiracy, and the legal issues that pertain thereto. *Id.* Based on these investigations, in September 2008 counsel for the Class filed detailed original complaints outlining Defendants' unlawful conduct. *See, e.g., T.K. Ribbing's Family Restaurant v. United Egg Producers, Inc. et al.*, C.A. No. 2:08-4653 (E.D. Pa.) (Dkt. No. 1); *Somerset Industries, Inc. v. Cal-Maine Foods, Inc., et al.*, C.A. No. 5:08-4676 (E.D. Pa.) (Dkt. No. 1).⁶ These initial complaints contained information and analysis that

⁶ Complaints were also filed in sixteen tag-along actions. *See* Dkt. No. 1 (MDL Transfer Order) at 1 n.1.

would not have come to light, at least not at that time, absent Designated Counsel's investigations. Asher Decl. ¶ 6.

Plaintiffs' investigation of this matter has been ongoing. After the original actions were transferred and consolidated in this Court pursuant to the MDL Transfer Order of Dec. 2, 2008 (Dkt. No. 1), Designated Counsel conducted further analysis and, on January 30, 2009, filed a Consolidated Amended Complaint ("CAC") (Dkt. No. 41). *See* Asher Decl. ¶ 7. The CAC contained 411 paragraphs and 132 pages of detailed information about the egg industry and Defendants' conspiracy. *Id.*

During this period, Designated Counsel also engaged in months of motion practice and negotiation with Defendants concerning the action's scope. *Id.* For example, on February 27, 2009, certain Defendants filed a Motion to Dismiss the complaints of any Plaintiffs that did not join the CAC and to confirm that the CAC superseded the allegations in any remaining complaints. *See* Dkt. Nos. 67-68; Asher Decl. ¶ 7. Plaintiffs filed their Opposition to that motion on March 16, 2009. *See* Dkt. No. 75; Asher Decl. ¶ 7. On April 1, 2009, the parties reached resolution on this issue, and a joint stipulation and order was filed. *See* Dkt. No. 86; Asher Decl. ¶ 7. The joint stipulation also signaled that Plaintiffs had voluntarily dismissed without prejudice seven Defendants from the action following negotiations. A separate stipulation was also filed concerning "Michael Foods Egg Products Company," after discussions with Defendant Michael Foods, Inc. revealed that this entity was not a stand-alone company. *See* Dkt. No. 87; Asher Decl. ¶ 7.

On April 30, 2009, Defendants, in fourteen separate motions, *see* Dkt. Nos. 106-119, moved to dismiss the CAC on various grounds. *See* Asher Decl. ¶ 8. Designated Counsel began preparing their responses to those motions, conducting extensive legal research, and drafting, re-

drafting, and revising briefing. *Id.* Designated Counsel had reached an advanced stage in this process when, on June 11, 2009, the litigation was stayed temporarily as a result of Plaintiffs' settlement with Sparboe Farms, Inc. *See* Dkt. No. 141; *see* Asher Decl. ¶ 8.

2. The Sparboe Settlement

Designated Counsel's negotiation efforts with Sparboe were protracted and intense. Several months of these complex negotiations eventually yielded the Sparboe Settlement. *See* Asher Decl. ¶ 9. Over that time – from March through June, 2009 – Designated Counsel engaged in numerous teleconferences and four separate in-person meetings with Sparboe's counsel. *Id.* In addition, and in furtherance of settlement with Sparboe, Designated Counsel also reviewed Sparboe documents and interviewed Sparboe employees to assess the value of the cooperation that Sparboe was offering to provide as consideration for the settlement. *Id.*

Designated Counsel also expended time and resources on motion practice and in hearings before this Court to demonstrate how the Sparboe Settlement was in the best interest of the proposed Class. *See* Asher Decl. ¶ 10. Designated Counsel submitted briefing and declarations to the Court in advance of a July 14, 2009 hearing on preliminary approval of the Sparboe Settlement. *See* Dkt. No. 172; Asher Decl. ¶ 10. Designated Counsel also prepared for and argued their motion for preliminary approval of the Sparboe Settlement at that July 14, 2009 hearing. *See* Transcript of Hearing (July 14, 2009) (Dkt. No. 198); Asher Decl. ¶ 10.

Pursuant to a subsequent Court Order (Dkt. No. 197), Designated Counsel then researched, drafted, and submitted supplementary briefing to the Court, providing the Court with, among other things, a “specific, detailed discussion of the application of *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305 (3d Cir. 2008) to the proposed settlement,” *id.* at 1, as well as a “substantive discussion of the nature, type or character of the information expected to

be secured as a result of the settlement,” *id.* at 2. *See* Dkt. No. 203; Asher Decl. ¶ 10. The Court granted preliminary approval of the Sparboe Settlement on October 23, 2009 (Dkt. No. 214). Designated Counsel prepared and submitted additional briefing asking the Court to grant final approval to the Sparboe Settlement, *see* Dkt. No. 443-1, and then prepared for and argued this motion on January 13, 2011. *See* Transcript of Hearing (January 13, 2011) (Dkt. No. 463); Asher Decl. ¶ 10.

As a result of the Sparboe Settlement, Plaintiffs were provided with a large number of critical documents and significant information, which Designated Counsel reviewed and analyzed. *See* Asher Decl. ¶ 11. Designated Counsel then conducted in-depth, on-site interviews of certain Sparboe employees. *Id.* Through this review, Designated Counsel obtained important information about the industry and the specific conduct of numerous remaining Defendants as it related to the alleged conspiracy. *Id.* The 2CAC (Dkt. No. 291), filed by Plaintiffs on April 7, 2010, embodied that detailed information obtained from Sparboe as a result of that Settlement. Asher Decl. ¶ 11. In response to the 2CAC, and reflecting the rewards of this hard work, nine Defendants that had previously moved to dismiss Plaintiffs’ first consolidated complaint chose instead to answer. *Id.*

3. Individual Defendants’ Motions to Dismiss

Although nine Defendants answered the 2CAC, there were also nine⁷ that chose to file individual motions to dismiss the 2CAC, purportedly challenging the sufficiency of the allegations in the 2CAC as to their individual participation in the conspiracy. *See* Dkt. Nos. 232, 233, 234, 236, 238, 239 & 240; Asher Decl. ¶ 12. All Defendants also filed motions to dismiss

⁷ The following Defendants moved to dismiss the 2CAC: Daybreak Foods, Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms, Inc.; Hillandale Farms East, Inc.; Land O’Lakes, Inc.; Michael Foods, Inc.; Ohio Fresh Eggs, LLC; Rose Acre Farms Inc. and United Egg Association.

the 2CAC to the extent its allegations are directed to egg products, as opposed to shell eggs, *see* Dkt. Nos. 235 & 237, and also filed a motion to dismiss claims for damages prior to September 22, 2004, *see* Dkt. No. 241. *See* Asher Decl. ¶ 12.

In response to the new motions to dismiss the 2CAC, Designated Counsel prepared comprehensive briefing, served on March 12, 2010, responding to each of the Defendants' arguments. *See* Dkt. No. 316-3; Asher Decl. ¶ 13. Designated Counsel also prepared additional briefing responding to Defendants' separate statutes of limitations on damages motion. *See* Dkt. No. 317; Asher Decl. ¶ 13. The following months entailed extensive preparation in anticipation of oral argument, which was ultimately heard by the Court over a period of two days, on October 13 and 14, 2010. *See* Transcript of Proceedings (Oct. 13-14, 2010) (Dkt. Nos. 423, 424); Asher Decl. ¶ 13. At the hearing, Designated Counsel provided the Court with detailed responses to each of the motions to dismiss. *See* Asher Decl. ¶ 13.

4. Moark Settlement

As with the Sparboe Settlement, Designated Counsel also expended considerable time and effort in achieving the Moark Settlement for the benefit of the Class, holding numerous settlement calls and in-person meetings beginning in October 2009. *See* Asher Decl. ¶ 14. Negotiations commenced in earnest in April 2010, after Plaintiffs filed their 2CAC. *Id.* As with Sparboe, Designated Counsel obtained Moark's agreement to cooperate in providing documents and witness interviews. *Id.* Additionally, Designated Counsel were able to obtain from Moark the significant monetary settlement of \$25 million on behalf of the proposed Class. *Id.*

In addition to negotiations with Moark, Designated Counsel also prepared and submitted briefing, declarations, and exhibits in support of Plaintiffs' motion for preliminary approval of the Moark Settlement, *see* Dkt. No. 349, addressing in detail (as they had with the Sparboe

Settlement) the bases for preliminary certification of the class for settlement purposes, as well as the fairness, reasonableness, and adequacy of the proposed settlement. *See* Asher Decl. ¶ 15. The Court granted the motion preliminarily approving the Moark Settlement on July 15, 2010. *See* Dkt. No. 387. Subsequently, Designated Counsel prepared and submitted further briefing in support of its motion for final approval of the Moark Settlement. *See* Dkt. No. 465; Asher Decl. ¶ 15. Designated Counsel also prepared for and argued these motions on February 28, 2011. *See* Asher Decl. ¶ 15.

5. Case Organization and Management

Designated Counsel undertook considerable efforts from the outset of this litigation concerning the consolidation and administration of this action. *See* Asher Decl. ¶ 17. In addition to participating in proceedings before the Judicial Panel on Multidistrict Litigation, Designated Counsel engaged in negotiations with the Defendants and motion practice before this Court concerning a number of proposed case management orders, including orders (and amendments thereto) regarding the protection of confidential and highly confidential information and the preservation and discovery of documents and electronically-stored information. *Id.*

These proceedings were not without dispute, and the negotiations and motion practice were extensive. *Id.* In particular, after the parties had reached an impasse in their negotiations for a preservation order – specifically concerning the identification of particular metadata elements to be preserved and the process by which the parties will undertake their preservation obligations – the matter was referred to a Special Master, whose report and recommendation was later approved and adopted by this Court. *Id.* Designated Counsel also prepared and submitted Direct Purchaser Plaintiffs’ Motion to Permit Service of Document Preservation Subpoenas (Dkt.

No. 100) (later rendered moot after the parties arrived at a resolution on the issue). *See* Asher Decl. ¶ 17.

Throughout, Interim Co-Lead Counsel have sought to manage the administration and work division in the case, including by other Plaintiffs' counsel, in a systematic and efficient manner, coordinating work assignments through weekly conference calls and working to avoid duplication of efforts or unnecessary work undertaken by any of the counsel for the Class, including Designated Counsel, in this case. *See* Asher Decl. ¶ 18.

Similarly, Interim Co-Lead Counsel have prudently managed expense outlays, including restricting in-person attendance by Designated Counsel at hearings to minimize the accrual of travel expenses (often considerable in nationwide price-fixing class actions); cost-effectively utilizing the assistance of expert consultants (also typically a considerable expense); and ensuring that the resources of Designated Counsel have been put to use in an efficient and effective manner, that maximizes what each firm can contribute in a non-redundant way. *See* Asher Decl. ¶ 19.

6. UEP Privilege Issues

From April 2010, and continuing to date, Plaintiffs have engaged in extensive negotiation, motion practice, and discovery concerning Defendant UEP's assertions of privilege over certain documents referenced in the 2CAC and other documents received from Sparboe pursuant to the Sparboe Settlement. *See* Asher Decl. ¶ 20. On May 10, 2010 this Court granted in part UEP's motion to compel and ordered that Direct Purchaser Plaintiffs run search terms on the documents received from Sparboe and provide pertinent documents to the UEP, so that UEP could then produce a privilege log. *See* Dkt. No. 333; Asher Decl. ¶ 20. The issue was then referred to Magistrate Judge Rice on June 10, 2010. *See* Dkt. No. 352; Asher Decl. ¶ 20.

The parties continued to negotiate and litigate, culminating in Plaintiffs' Motion to Modify the Discovery Stay to Permit Limited Privilege Discovery from UEP. *See* Dkt. No. 400. That motion was referred to Magistrate Rice on November 10, 2010, *see* Dkt. No. 431, and on November 30, 2010 a schedule was agreed upon, permitting Plaintiffs to take limited discovery from UEP in order to examine the basis for its privilege claims. *See* Asher Decl. ¶ 20.

After a Rule 30(b)(6) deposition of UEP taken by Designated Counsel, UEP began to withdraw its claims of privilege as to many of the Sparboe documents, which led to the reinstatement of several paragraphs in the 2CAC. *Id.* Designated Counsel also propounded a series of interrogatories and document requests to UEP, as a result of which UEP has further relinquished claims of privilege over the Sparboe documents. *Id.* Designated Counsel have also met and conferred with UEP on these issues and addressed the unresolved issues before Magistrate Rice. *Id.* Designated Counsel have conducted considerable legal research into UEP's novel "trade association" privilege claims and, given that negotiations have not resolved the matter, are preparing a motion to compel the production of any Sparboe documents as to which UEP ultimately continues to assert privilege claims. *Id.*

7. Meet and Confer Concerning Discovery

Plaintiffs' Counsel have also expended considerable effort in addressing discovery issues with the numerous Defendants in this case. *See* Asher Decl. ¶ 21. On April 20, 2010, this Court ordered (Dkt. No. 320) the parties to exchange formal document requests by May 21, 2010, and to begin meeting and conferring on numerous discovery-related topics.

Designated Counsel have engaged in a series of extensive negotiations with Defendants – both individually and as a group – on these various matters. *See* Asher Decl. ¶ 22. Designated Counsel coordinated with other counsel for the Class and directly participated in multiple meet

and confers with individual Defendants, as well as conducting meet and confers on “global issues” applicable to all Defendants. Each of these meet and confers entailed a number of teleconferences. *Id.* As part of the meet and confer process, Designated Counsel have drafted follow-up memoranda and letters to individual Defendants, in an effort to ensure that, to the extent possible, a streamlined discovery process is in place once the pending motions to dismiss are decided. *Id.* At the very least, such efforts are intended to limit, to the extent possible, the issues that must be presented to the Court for resolution. *Id.* Designated Counsel have managed the negotiations with Defendants and have also coordinated with counsel for Direct Action Plaintiffs and for Indirect Purchaser Plaintiffs. *Id.*

C. Notice of Proposed Settlements, Plan of Allocation, and Petition for Attorneys’ Fees, Reimbursement of Expenses and Incentive Awards

Consistent with the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*, counsel for Moark sent notice of the proposed settlement to the appropriate State and Federal Officials on January 7, 2011. Asher Decl. ¶ 16. Those entities have lodged no objection to the settlement. *Id.*

By Order of the Court, the Garden City Group, which serves as the settlement claims administrator retained by Interim Co-Lead Counsel, directly mailed the Notice to approximately ten thousand unique addresses on September 2, 2010. *Id.* ¶ 4. This Notice advised potential Class Members of the material terms of the proposed Moark Settlement, including the intent of Designated Counsel to apply to the Court for an award on attorneys’ fees and expenses. The notice further stated that Designated Counsel’s application for attorneys’ fees would not exceed 30% of the settlement fund, as well as expenses. *See id.*

The potential Class is composed of thousands of entities nationwide, many of which are sophisticated companies with their own in-house legal counsel. As of the date of this brief, no

potential Class member has made any objection to the proposed settlement or to the notice of the anticipated fee and expense request. *See id.*

III. DESIGNATED COUNSEL SHOULD BE AWARDED THE REQUESTED FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

During this period over which Designated Counsel have vigorously prosecuted this action, as outlined above, Designated Counsel have not received any fees for their work, while they have at the same time incurred significant out-of-pocket expenses.

As a result of these efforts, the \$25 million Moark Settlement has been achieved on behalf of the proposed Class. The settlement was obtained after arm's length negotiations with Moark, which has significant resources at its disposal and is represented by highly capable and experienced counsel. On May 21, 2010, Moark paid the settlement proceeds into an escrow account, where it has been earning interest for the benefit of the Class.

Designated Counsel therefore request that the Court award fees equal to 30% of the total Moark Settlement amount. Thirty percent is a reasonable and typical portion of a settlement to be awarded as fees in comparable actions, and falls well within the range of approval in the Third Circuit. *See In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at *3-7 (E.D. Pa. Jan. 3, 2008) (in antitrust class action, Judge Surrick granted plaintiffs' counsel's request for fees equaling one-third of the settlement fund); *In re Ravisent Techs., Inc. Sec. Litig.*, No. 00-1014, 2005 WL 906361, at *11 (E.D. Pa. Apr. 18, 2005) ("courts within this Circuit have typically awarded attorneys' fees of 30% of 35% of the recovery, plus expenses.").⁸

⁸ *See also Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 342 (E.D. Pa. 2007) (approving a percentage of recovery of 35%, plus reimbursement of expenses); *In re FAO Inc. Sec. Litig.*, Nos. 03-942 & 03-6596, 2005 U.S. Dist. LEXIS 16577, at **5-6 (E.D. Pa. May 20, 2005) (finding a fee of 33%, plus expenses, to be reasonable); *In re Corel Corp.*, 293 F. Supp. 2d 484, 497-98 (E.D. Pa. 2003) (awarding counsel one-third of the settlement fund in addition to reimbursement of litigation expenses); *In re Gen Instrument Sec. Litig.*, 209 F.

Plaintiffs respectfully submit that the requested fees and expenses are appropriate, given the nature and extent of Designated Counsel's efforts in creating settlements beneficial to the Class in this hard-fought litigation and the risks assumed by Designated Counsel in prosecuting this complex matter with no guarantee of recovery. Notably, no Class member has objected to the potential for this fee award or expense reimbursement.

A. Plaintiffs' Request for Attorneys' Fees Falls Within The Range of Approval

Where, as here, funds have been recovered for the benefit of a class, counsel is entitled, upon motion and notice to the class, to an award of attorneys' fees and reimbursement of litigation expenses to be paid from the fund. *See generally Boeing Co. v. Van Gamert*, 444 U.S. 472, 478 (1980); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 590 (E.D. Pa. 2005); *In re ATI Techs., Inc. Sec. Litig.*, No. 01-2541, 2003 WL 1962400, at *2 (E.D. Pa. 2004); *In re U.S. Bioscience Sec. Litig.*, 155 F.R.D. 116, 118-20 (E.D. Pa. 1994).⁹

Supp. 2d 423, 433-34 (E.D. Pa. 2001) (approving a fee request of one-third of the settlement fund plus nearly \$1,800,000 in expenses).

⁹ Interim Co-Lead Counsel also request the Court's authorization to distribute the fees in a manner which, in the judgment of Interim Co-Lead Counsel, fairly compensates each firm for its contribution to the prosecution of Plaintiffs' claims. This is consistent with the Interim Co-Lead Counsel's duties under CMO No. 1 to "perform any task necessary and proper for the Direct Purchasers Co-Lead Counsel" to accomplish their respective responsibilities as defined or authorized by the Court's orders" and seek "[r]eimbursement for costs and/or fees for services," *see* Dkt. No. 3, CMO No. 1 at 7-8. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 533 n.15 (3d Cir. 2004) (affirming the District Court's decision to permit attorneys' fees to be divided according to the discretion of the co-chairs of the Executive Committee and declining to "deviate from the accepted practice of allowing counsel to apportion fees amongst themselves"); *In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 329 n.96 (3d Cir. 1998) ("The court need not undertake the difficult task of assessing counsels' relative contributions"); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004), *order amended* by 2004 WL 1240775 (E.D. Pa. June 4, 2004) (granting liaison counsel authority to apportion attorneys' fees because liaison counsel was in the best position to "describe the weight and merit of each [counsel's] contribution") (internal quotations omitted); *In re Auto. Refinishing Paint Antitrust Litig.*, 2004 U.S. Dist. LEXIS 29162, at **36-37 (E.D. Pa. Oct. 13, 2004).

In determining what percentage fee is appropriate, courts in this Circuit typically consider seven factors:

- (1) the size of the fund created and the number of persons benefited;
- (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel;
- (3) the skill and efficiency of the attorneys involved;
- (4) the complexity and duration of the litigation;
- (5) the risk of nonpayment;
- (6) the amount of time devoted to the case by plaintiffs' counsel; and
- (7) the awards in similar cases.

Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000). These factors “need not be applied in a formulaic way. Each case is different, and in certain cases, one factor may outweigh the rest.” *Id.* As discussed below, Designated Counsel respectfully submit that the application of the *Gunter* factors to this case supports the fee request.

1. Size of the Fund Created and Number of Persons Benefited

Here, through the efforts of Designated Counsel, \$25 million (plus interest) has been obtained for members of the proposed Class, which includes thousands of direct purchasers nationwide. Without the efforts of Designated Counsel, these entities may well have seen no recovery at all. As set forth in this brief and other memoranda filed in support of approval of the Moark Settlement, that settlement provides an excellent recovery for direct purchasers, particularly in light of the complexity, duration, and expense of ongoing litigation and the risk of establishing liability and damages.

2. Absence of Substantial Objections

The approval of the entities benefiting from the Moark Settlement is reflected in the absence of a single objection. The Notice to the Class here specifically described Designated Counsel's intention to seek an award of attorneys' fees not to exceed 30% of the settlement fund, as well as reimbursement of expenses.

No direct purchaser has objected to the Moark Settlement, whether on the basis of Designated Counsel's intent to apply for fees or otherwise. This factor firmly counsels in favor of the fee and expense award sought by Designated Counsel here. See *In re Diet Drugs (Phentermine / Fenfluramine / Dexfenfluramine) Prod. Liab. Litig.*, 582 F.3d 524, 541-42 (3d Cir. 2009) (affirming district court's conclusion that "few objections to the settlement terms and to the fees requested by counsel" counseled in favor of approval of fees sought by plaintiffs' counsel); *In re AT&T Corp. Secs. Litig.*, 455 F.3d 160, 170 (3d Cir. 2006) (affirming district court's conclusion that "the absence of substantial objections by class members to the fees requested by counsel strongly supports approval," where eight potential class members objected); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (holding that "[t]he class's reaction to the fee request supports approval of the requested fees," where two class members objected); *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 420 (E.D. Pa. 2010) (the fact that there had "been no objections to the settlement or to the attorneys' fees request" supported approval of 35% fee and expense award (citing *Barel v. Bank of America*, 255 F.R.D. 393, 404 (E.D. Pa. 2009))).

3. Skill and Efficiency of Attorneys Involved

The benefit conferred on Class members here is the result of the skill and efficiency of Designated Counsel. Without these efforts, the entities that will benefit from this settlement may never have seen any recovery for what Plaintiffs allege was a nationwide price-fixing conspiracy causing significant overcharge damages to egg purchasers.

The skill and efficiency of the attorneys involved is "measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the

case and the performance and quality of opposing counsel.” *Nichols v. SmithKline Beecham Corp.* No. 00-6222, 2005 WL 950616, at *22 (E.D. Pa. Apr. 22, 2005) (quoting *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000)). Here the recovery is substantial. *See Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000) (“The single clearest factor reflecting the quality of class counsel’s services to the class are the results obtained.”); *see also Linerboard*, 2004 WL 1221350, at *5.

Notably, Designated Counsel achieved the settlements before resolution of Defendants’ motions to dismiss, which by their number alone evince the obstacles faced by Plaintiffs in this matter. The detailed description of this litigation, and Designated Counsel’s efforts in pursuit of the same, delineated above as well as in the accompanying Asher Declaration, illustrates the abundant skill and efficiency of Designated Counsel. *See supra*, Section II(B). Furthermore – and as attested to by their résumés, submitted to the Court on March 11, 2011, *see* Dkt. No. 483 – Interim Co-Lead Counsel are extremely experienced in complex class action litigation and antitrust cases in particular. For their part, the Defendants, including Moark, have been well represented by preeminent defense counsel from large, national law firms and with decades of experience litigating antitrust actions.

4. Complexity and Duration of the Litigation

As is evident from the summary of Designated Counsel’s efforts provided in Section I(B), *supra*, this case has involved a large expenditure of time and effort. As set forth above, Designated Counsel’s work has included, among other things, the investigation and filing of claims; briefing and arguing in opposition to extensive motions to dismiss; litigating claims of privilege; negotiating preliminary discovery; and negotiating the settlements, together with the briefing and argument related to requests for settlement approval. As to the complexity of the

case, “[a]n antitrust class action is arguably the most complex action to prosecute. . . . The legal and factual issues involved are always numerous and uncertain in outcome.” *Linerboard*, 2004 WL 1221350, at *10 (quoting *In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1337 (N.D. Ga. 2000)).

This case presents no exception. Indeed, this litigation, involving output restrictions by companies in the agriculture industry, could be viewed as even more complex than a typical price-fixing class action.

5. Risk of Nonpayment

Designated Counsel’s investment of years of time and significant out-of-pocket expense was made with counsel facing a risk of receiving nothing in recompense for their efforts. The risk of nonpayment is to be measured at the time the litigation was commenced. *See In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 583 (3d Cir. 1984). Designated Counsel undertook this action on a wholly contingent basis, assuming significant risk with the possibility of no recovery whatsoever and without the benefit of the results of a corresponding governmental investigation, *see* Asher Decl. ¶ 6, or the cooperation of amnesty applicants under the Antitrust Criminal Penalty Enhancement and Reform Act of 2004. *See, e.g., In re Auto. Paint*, 2004 U.S. Dist. LEXIS 29162, at **25-26.

In addition, Designated Counsel have advanced expenses over the past 2½ years, which expenses would not have been reimbursed absent a successful result. *See In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 516 (W.D. Pa. 2003) (“Aside from investing their time, counsel had to front copious sums of money . . . Thus, the risks that counsel incurred in prosecuting this case were substantial and further support the requested fee award.”). As set forth below, Designated Counsel have \$566,530.37 in unreimbursed expenses. *See* Asher Decl. ¶¶ 23-24.

6. Amount of Time Devoted to the Case by Plaintiffs' Counsel

At the inception of this litigation, Designated Counsel set forth criteria for the billing of time and expenses by all counsel for the Class. *See* Asher Decl. ¶ 23. In order to facilitate the accurate review and efficient management of this billing, attorney and paralegal time has been billed to one of seven categories: (1) Investigations/Factual Research; (2) Discovery; (3) Pleadings, Briefs, Pretrial Motions (including legal research); (4) Court Appearances; (5) Settlement; (6) Litigation Strategy, Analysis & Case Management; and (7) Class Certification. *Id.* In accordance with these criteria, each of the Designated Counsel law firms has been regularly submitting from the outset of this litigation reports of time and expenses to WKA, and WKA has prepared a summary report of each firm's cumulative time and expenses through February 28, 2011. *Id.*

Summarized in Exhibit B of the Asher Declaration are the time and expenses reported to WKA by Interim Co-Lead Counsel and their firms, and by Quinn Emanuel, which has been particularly active as one of the Designated Counsel in the prosecution of this litigation. *See* Asher Decl. ¶ 23 & Ex. B. Exhibit B shows that the aggregate fees of these firms incurred on an hourly basis (without any fee enhancement) is **\$7,784,216.45**, and that these firms alone have incurred expenses in the amount of **\$333,926.78**.¹⁰ *Id.* Other firms have also reported substantial amounts in attorneys' fees (in excess of \$2 million) and an additional **\$232,603.59** in expenses.¹¹ *Id.* ¶ 24. With regard to the common expense litigation fund, summarized in Exhibit C to the Asher Declaration are the contributions made to, and litigation expenses paid out

¹⁰ Those expenses include, among other things, costs for experts, document management, travel, photocopying, overnight mail, process service fees, long distance telephone, electronic research, and contributions to the common expense litigation fund. *Id.*

¹¹ As noted above, *see* note 9, *supra*, Interim Co-Lead Counsel requests authorization to distribute awarded fees in a manner that fairly compensates other firms serving as Designated Counsel for their contribution to the case's prosecution.

of, that fund. Specifically, Exhibit C reflects contributions by Designated Counsel in the amount of \$225,000, out of which expenses of \$163,935.49 have been disbursed. *Id.*

The fact that Designated Counsel could have spent those attorney hours, and those out-of-pocket expenditures, litigating other matters further supports the fee request. *See Lazy Oil Co. v. Witco Corp.*, 95 F. Supp.2d 290, 323 (W.D. Pa. 1997) (“In addition to noting the vast amount of work which was required in prosecuting this case, we also note Class Counsels’ representation that their involvement in this litigation required them to abstain from working on other matters.”).

7. Awards in Similar Cases

The fee requested by Plaintiffs’ Counsel – 30% of the Moark Settlement fund – is a reasonable amount that falls well within the range of amounts approved by this Court in similar cases. Indeed, “courts within this Circuit have typically awarded attorneys’ fees of 30% to 35% of the recovery, plus expenses.” *Ravisent*, 2005 WL 906361, at *11, *Auto. Paint*, 2008 WL 63269, at **5-6 (awarding requested fees of one third of the multi-million dollar settlement fund); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 WL 3008808, at *13 n.1 (D.N.J. Nov. 9, 2005) (awarding fees of 33 1/3% from \$75 million settlement fund); *Godshall v. Franklin Mint. Co.*, No. 01-CV-6539, 2004 WL 2745890, at*5 (E.D. Pa. Dec. 1, 2004) (awarding a 33 1/3% fee and noting that “[t]he requested percentage is in line with percentages awarded in other cases”); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d at 433-34 (awarding 1/3 of a \$48 million settlement fund); *Cullen*, 197 F.R.D. at 150 (an “award of one-third of the settlement fund” for attorneys’ fees is consistent with fee awards by district courts in the Third Circuit); *In re Greenwich Pharm. Sec. Lit.*, No. 92-3071, 1995 WL 251293, at *6 (E.D. Pa. Apr. 26, 1995) (holding that “a fee award of 33.3 percent is in line with the fee awards

approved by other courts.”); *In re FAO, Inc. Sec. Litig.*, Nos. 03-942 & 03-6596, 2005 U.S. Dist. LEXIS 16577, at *5 (E.D. Pa. May 20, 2005) (awarding fees of 30% and 33%).

B. A Lodestar Cross-Check Demonstrates That The Fee Is Reasonable

The reasonableness of the fees requested is further confirmed by a lodestar cross-check. *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 n.17 (3d Cir. 2005) (“Consideration of multipliers used in comparable cases may be appropriate” to gauge the reasonableness of a percentage fee award.).

Given the risks of contingent litigation, multipliers of up to four are frequently awarded in common fund cases. *See, e.g., Meijer v. 3M*, 2006 WL 2382718, at *24 (E.D. Pa. Aug. 14, 2006) (4.77 multiplier); *Nichols*, 2005 WL 950616, at *24 (3.15 multiplier); *Ravisent*, 2005 WL 906361, at *12 (3.1 multiplier); *Caracallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 256 (D.N.J. 2005) (2.83 multiplier); *Auto. Paint*, 2004 U.S. Dist. LEXIS 29162, at *35 (2.3 multiplier is “within an acceptable range”), *Linerboard*, 2004 WL 1221350, at *16 (2.66 multiplier); *Rent-Way*, 305 F. Supp. 2d at 517 (2.36 multiplier).

Here, Designated Counsel will not receive a multiplier from the requested fee award. The cumulative lodestar value of the time of Interim Co-Lead Counsel and Quinn Emanuel alone is more than \$7.7 million (through the end of February 2011). *See Asher Decl.* ¶¶ 23, 24 & Ex. B. Thus, the requested attorneys’ fee award of 30% of the settlement fund represents an amount which is less than the total reported lodestar. Accordingly, the lodestar cross-check confirms the reasonableness of the requested fee.

C. The Request For An Award Of Expenses Incurred Is Reasonable

Plaintiffs' Counsel have incurred expenses of \$582,851.57 that have not been reimbursed. These expenses were reasonable and necessary to the litigation of this case, and included, among other things, costs for experts, document management, travel, photocopying, overnight mail, process service fees, long distance telephone, electronic research, and contributions to the common expense litigation fund. *See* Asher Decl. ¶ 23 & Ex. B. Members of the Class were informed in the recently published and mailed notice that Plaintiffs would be making such a request.

Attorneys “who create a common fund for the benefit of a class are entitled to reimbursement of reasonable litigation expenses from the fund.” *Nichols*, 2005 WL 950616, at *24 (quoting *In re Aetna Inc.*, MDL No. 1219, 2001 WL 20928, at *13 (E.D. Pa. Jan. 4, 2001)); *see also Meijer*, 2006 WL 2382718, at *18 (granting plaintiffs' motion for approval of expenses “incurred in connection with the prosecution and settlement of the litigation, and include costs related to the following: travel; computerized legal research; copying; postage; telephone and fax; transcripts; retention of a mediator; the document database; expert services; and claims administration.”); *Corel*, 293 F. Supp.2d at 498 (“There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of . . . reasonable litigation expenses from the fund.”) (quoting *Ikon*, 194 F.R.D. at 192); *In re Unisys Corp. Sec. Litig.*, No. 99-5333, 2001 U.S. Dist. LEXIS 20160, at *12 (E.D. Pa. Dec. 6, 2001).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and Designated Counsel respectfully request that the Court grant Designated Counsel's request for an award of the attorneys' fees and reimbursement of litigation expenses.

Dated: April 14, 2011

Respectfully submitted,

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*Interim Co-Lead Counsel for Direct Purchaser
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EXHIBIT 1

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

IN RE: PROCESSED EGG PRODUCTS
ANTITRUST LITIGATION

MDL Docket No. 2002
08-md-02002

This document relates to:

ALL DIRECT PURCHASER ACTIONS

**DECLARATION OF STEVEN A. ASHER, ESQUIRE
IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES AND EXPENSES**

I, Steven A. Asher, 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 York, am a member of the Bar of this Court, and am a member in the law firm of Weinstein Kitchenoff & Asher LLC (“WKA”). I am 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 Attorneys’ Fees and Costs (“Fee Petition”).

2. The Fee Petition seeks compensation for Interim Co-Lead Counsel, Liaison Counsel and other counsel authorized to work on the Direct Purchaser Plaintiffs’ behalf in coordination with and supervised by Interim Co-Lead Counsel (collectively “Designated Counsel”) from a Settlement Fund of twenty-five million dollars¹ (\$25,000,000.00) (the “Settlement Amount”), which Designated Counsel have created as a result of the settlement between Plaintiffs and the Moark Defendants² (“Moark Settlement”). Designated Counsel seek compensation for time and expenses advanced over nearly three years of investigating and working on this case.

3. The Settlement Agreement Between Direct Purchaser Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O’Lakes, Inc. (May 21, 2010) (“Settlement Agreement”) called for the creation of such a “Settlement Fund,” Settlement Agreement ¶ 33, and provided that “each Class Member shall look solely to the Settlement Amount for settlement and satisfaction, as provided herein, of all claims released by Releasers pursuant to the Agreement,” *id.* ¶ 34. The Settlement Agreement further provided that “Class counsel may seek an award of attorneys’ fees and reasonable litigation expenses approved by the Court, to be paid

¹ Not including any interest that has since accrued for the benefit of the Class.

² The “Moark Defendants” consist of Moark LLC, Norco Ranch, Inc., and Land O’Lakes, Inc (collectively, “Moark”).

out of the Settlement Amount after the Final Approval of the Agreement,” and that the “Moark Defendants shall have no obligation to pay any fees or expenses for Class Counsel.” *Id.* ¶ 35.

4. By order of the Court, the Garden City Group, which serves as the settlement claims administrator retained by Interim Co-Lead Counsel, directly mailed Notice Packets to potential Class members on September 2, 2010 (“Notice”). It also arranged for Summary Notices to be published on September 13, 2010 in the National Edition of The Wall Street Journal. The Notice advised potential Class Members of the material terms of the proposed Moark Settlement, including the intent of Class Counsel to apply to the Court for an award of attorneys’ fees and expenses. The notice further stated that Class Counsel’s application for attorneys’ fees would not exceed 30% of the \$25 million settlement fund, as well as expenses. A true and correct copy of the Notice and Summary Notice is attached hereto as Exhibit A. No objections were lodged by any class member to the Moark Settlement, with regard to either its material terms or the amount of attorneys’ fees.

5. Consistent with the above-referenced provision in the Notice, Designated Counsel now seek an award of 30% of the Settlement Fund, that is, seven million five hundred thousand dollars (\$7,500,000), as reasonable attorneys’ fees, as well as accrued expenses. The Fee Petition describes the extensive work by Designated Counsel in the years both leading up to and since the commencement of this complex litigation; work that culminated in, among other things, the settlement with Moark. As set forth in greater detail below, Designated Counsel’s efforts to date in this case have included, *inter alia*:

- *de novo* investigations into antitrust violations in the egg industry;
- protracted negotiations with Defendant Sparboe Farms, Inc. (“Sparboe”) to obtain a settlement (“Sparboe Settlement”) requiring substantial cooperation and evidence from Sparboe to ensure a “*Twombly*-proof” amended complaint;

- extensive briefing addressing individual Defendants’ motions to dismiss, culminating in two days of oral argument before the Court;
- lengthy negotiations with Moark to obtain a settlement which requires both cooperation and a significant monetary settlement even in advance of any ruling by this Court concerning pending motions to dismiss;
- briefing and oral argument before the Court concerning the preliminary, and then final, approval of both the Sparboe Settlement and the Moark Settlement;
- motion practice, oral argument, and discovery meet-and-confers with numerous Defendants, to establish preservation requirements, contours of document production, custodian selection, and search terms for forthcoming discovery in this case; and
- litigation over privilege claims asserted by Defendant trade association United Egg Producers (“UEP”), which required research and briefing of complex legal issues arising out of UEP’s novel “trade association” privilege claims, as well as discovery to illuminate the invalidity of UEP’s privilege claims.

Investigations into the Egg Products Conspiracy

6. Before the first suit was filed in this matter, counsel for the Class had conducted extensive investigations into antitrust violations in the egg industry. The investigations undertaken in this case included extensive research into the egg industry, egg trade associations such as the UEP, the UEP’s animal welfare programs, and the economics that underpin the alleged conspiracy. Based on these investigations, in September 2008 counsel for the Class drafted and filed robust and detailed original complaints. *See, e.g., T.K. Ribbing’s Family Restaurant v. United Egg Producers, Inc. et al.*, C.A. No. 2:08-4653 (E.D. Pa.) (Dkt. No. 1); *Somerset Industries, Inc. v. Cal-Maine Foods, Inc., et al.*, C.A. No. 5:08-4676 (E.D. Pa.) (Dkt. No. 1).³ These initial complaints contained substantial information and analysis that would not have come to light, at least not at that time, absent Designated Counsel’s investigations.

³ Complaints were also filed in sixteen tag-along actions. *See* Dkt. No. 1 (MDL Transfer Order) at 1 n.1.

7. After the original actions were transferred to and consolidated in this Court pursuant to the MDL Transfer Order of Dec. 2, 2008 (Dkt. No. 1), Designated Counsel conducted further research and filed a Consolidated Amended Complaint (“CAC”) on January 30, 2009 (Dkt. No. 41). The CAC contained 411 paragraphs and 132 pages of detailed information about the egg industry and Defendants’ conspiracy, including information garnered from Designated Counsel’s ongoing investigations and research after the initial complaints were filed. During this period, Designated Counsel also engaged in months of motion practice and negotiation with Defendants concerning the scope of this action. For example, on February 27, 2009, certain Defendants filed a motion to dismiss the complaints of those plaintiffs who were not named in the CAC as well as for a determination that the allegations in the CAC superceded the allegations in the original complaints of the nine named plaintiffs. *See* Dkt. Nos. 67-68. Direct Purchaser Plaintiffs filed their Opposition to that motion on March 16, 2009. *See* Dkt. No. 75. On April 1, 2009, the parties reached resolution on this issue and a joint stipulation and order was filed. *See* Dkt. No. 86. The joint stipulation also signaled that Direct Purchaser Plaintiffs voluntarily dismissed without prejudice seven Defendants from the action following negotiations. A separate stipulation was also filed concerning “Michael Foods Egg Products Company” after discussions with Defendant Michael Foods, Inc. revealed that no such company existed. *See* Dkt. No. 87.

8. On April 30, 2009, Defendants, in fourteen separate motions, *see* Dkt. Nos. 106-119, moved to dismiss the CAC on various grounds. Designated Counsel then began preparing their responses to those motions, conducting extensive legal research, and drafting, re-drafting, and revising briefing. Designated Counsel were at an advanced stage in this drafting process

when, on June 11, 2009, the litigation was stayed temporarily as a result of Direct Purchaser Plaintiffs' settlement with Defendant Sparboe. *See* Dkt. No. 141.

Sparboe Settlement

9. Designated Counsel's negotiation efforts with Sparboe were protracted and intense. Months of these difficult negotiations eventually yielded the Sparboe Settlement. Over that time – from March through June, 2009 – Designated Counsel engaged in numerous teleconferences and four separate in-person meetings with Sparboe's counsel. In addition, and in furtherance of settlement with Sparboe, Designated Counsel reviewed Sparboe documents and interviewed Sparboe employees to assess the value of the cooperation that Sparboe was offering to provide as consideration for the settlement. Plaintiffs and Sparboe finally reached a settlement on June 8, 2009.

10. Designated Counsel also expended time and resources on motion practice and in hearings before this Court to assure the Court that the Sparboe Settlement was in the best interest of the Class. Designated Counsel submitted briefing and declarations to the Court in advance of a July 14, 2009 hearing on preliminary approval of the Sparboe Settlement. *See* Dkt. No. 172. Designated Counsel also prepared for and argued their motion for preliminary approval of settlement at that July 14, 2009 hearing. *See* Transcript of Hearing (July 14, 2009) (Dkt. No. 198). Pursuant to a subsequent Court Order (Dkt. No. 197), Designated Counsel then researched, drafted and submitted supplementary briefing to the Court, providing the Court with, among other things, a "specific, detailed discussion of the application of *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305 (3d Cir. 2008) to the proposed settlement," *id.* at 1, as well as a "substantive discussion of the nature, type or character of the information expected to be secured as a result of the settlement," *id.* at 2; *see* Dkt. No. 203. Preliminary approval of the

Sparboe Settlement was granted by Court Order on October 23, 2009 (Dkt. No. 214).

Designated Counsel then prepared and submitted additional briefing moving the Court to grant final approval to the Sparboe Settlement, *see* Dkt. No. 443-1, and then prepared for and argued this motion for final approval in a hearing before this Court on January 13, 2011. *See* Transcript of Hearing (January 13, 2011) (Dkt. No. 463).

11. As a result of the Sparboe Settlement, Plaintiffs were provided with a large number of critical documents and significant information, which Designated Counsel carefully reviewed and analyzed. Designated Counsel then conducted in-depth, on-site interviews of key Sparboe employees. Through this review, Designated Counsel obtained detailed “inside information” about the industry and the specific conduct of numerous remaining Defendants as it related to the alleged conspiracy. The Second Consolidated Amended Complaint (“2CAC”) (Dkt. No. 291), filed by Plaintiffs on April 7, 2010, embodies the detailed information obtained from Sparboe as a result of that Settlement. In response to the 2CAC, nine Defendants that had previously moved to dismiss Plaintiffs’ first consolidated complaint chose instead to answer. Direct Purchaser Plaintiffs were also able thereafter to negotiate and reach the \$25 million settlement with the Moark Defendants, as discussed below.

Individual Defendants’ Motions to Dismiss

12. While nine Defendants answered the 2CAC, there were also nine⁴ that chose to file individual motions to dismiss the 2CAC, purportedly challenging the sufficiency of the allegations in the 2CAC as to their individual participation in the conspiracy. *See* Dkt. Nos. 232, 233, 234, 236, 238, 239 & 240. All Defendants also filed motions to dismiss the 2CAC to the

⁴ The following Defendants moved to dismiss the 2CAC: Daybreak Foods, Inc.; Hillandale-Gettysburg, L.P.; Hillandale Farms, Inc.; Hillandale Farms East, Inc.; Land O’Lakes, Inc.; Michael Foods, Inc.; Ohio Fresh Eggs, LLC; Rose Acre Farms Inc.; and United Egg Association.

extent its allegations are directed to egg products, as opposed to shell eggs, *see* Dkt. Nos. 235 & 237, as well as filed a motion to dismiss claims damages prior to September 22, 2004, *see* Dkt. No. 241.

13. In response to the new motions to dismiss the 2CAC, Designated Counsel prepared comprehensive briefing, served on March 12, 2010, responding to each of the Defendants' arguments. *See* Dkt. No. 316-3. Designated Counsel also prepared additional briefing responding to Defendants' separate statute of limitations motion. *See* Dkt. No. 317. The following months entailed extensive preparation in anticipation of oral argument, which was ultimately heard by the Court over a period of two days on October 13 and 14, 2010. *See* Transcript of Proceedings (Oct. 13-14, 2010) (Dkt. Nos. 423, 424). At the hearing, Designated Counsel provided the Court with detailed responses to each of the motions to dismiss.

Moark Settlement

14. As with the Sparboe Settlement, Designated Counsel also expended considerable time and effort in achieving the Moark Settlement for the benefit of the Class, holding seven separate settlement calls and in-person meetings beginning in October 2009, and commencing negotiations in earnest in April 2010 after Plaintiffs filed their 2CAC. As with Sparboe, Designated Counsel obtained Moark's agreement to cooperate in providing documents and witness interviews. Additionally, Designated Counsel were able to obtain from Moark the significant monetary settlement of \$25 million.

15. In addition to negotiations with Moark, Designated Counsel also prepared and submitted briefing, declarations, and exhibits in support of Plaintiffs' motion for preliminary approval of the Moark Settlement, *see* Dkt. No. 349, addressing in detail (as they had with the Sparboe Settlement) the bases for preliminary certification of the class for settlement purposes,

as well as the fairness, reasonableness, and adequacy of the proposed settlement. The Court granted the motion preliminarily approving the Moark Settlement on July 15, 2010. *See* Dkt. No. 387. Subsequently, Designated Counsel prepared and submitted further briefing in support of its motion for final approval of the Moark Settlement. *See* Dkt. No. 465. Designated Counsel also prepared for and argued these motions on February 28, 2011.

16. Consistent with the Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*, counsel for Moark sent notice of the proposed settlement to the appropriate State and Federal Officials on January 7, 2011. As of this date, those entities have lodged no objection to the settlement.

Case Organization and Management

17. Designated Counsel undertook considerable efforts from the outset of this litigation concerning the consolidation and administration of this action. In addition to participating in the proceedings before the Judicial Panel on Multidistrict Litigation, Designated Counsel engaged in negotiations with the Defendants and motion practice before this Court concerning a number of proposed case management orders, including orders (and amendments thereto) regarding the protection of confidential and highly confidential information and the preservation and discovery of documents and electronically-stored information. These proceedings were not without dispute, and the negotiations and motion practice were extensive. In particular, after the parties had reached an impasse in their negotiations for a preservation order – specifically concerning the identification of particular metadata elements to be preserved and the process by which the parties will undertake their preservation obligations – the matter was referred to a Special Master, whose report and recommendation was later approved and adopted by this Court. Designated Counsel also prepared and submitted Direct Purchaser

Plaintiffs' Motion to Permit Service of Document Preservation Subpoenas (Dkt. No. 100) (later rendered moot after the parties arrived at a resolution on the issue).

18. Throughout, Interim Co-Lead Counsel have sought to manage the administration and work-division in the case in a systematic and efficient manner, coordinating work assignments through weekly conference calls, and working to ensure, through constant review and careful division of labor, that there has been no duplication of effort or unnecessary work undertaken by any of the Designated Counsel in this case.

19. Similarly, Interim Co-Lead Counsel have prudently managed expense outlays, including restricting in-person attendance by Designated Counsel at hearings to minimize the accrual of travel expenses (often considerable in nationwide price-fixing class actions); cost-effectively utilizing the assistance of expert consultants; and ensuring that the resources of Designated Counsel have been put to use in an efficient and effective manner, that maximizes what each firm can contribute in a non-redundant way.

UEP Privilege Issues

20. From April 2010 and continuing to date, Plaintiffs have engaged in extensive motion practice, negotiation and discovery concerning Defendant UEP's assertions of privilege over certain documents referenced in the 2CAC and other documents received from Sparboe pursuant to the Sparboe Settlement. On May 10, 2010 this Court granted in part UEP's motion to compel and ordered that Direct Purchaser Plaintiffs run search terms on the documents received from Sparboe and provide pertinent documents to the UEP, so that UEP could then produce a privilege log. *See* Dkt. No. 333. The issue was then referred to Magistrate Judge Rice on June 10, 2010. *See* Dkt. No. 352. The parties continued to negotiate and litigate, culminating in Plaintiffs' Motion to Modify the Discovery Stay to Permit Limited Privilege Discovery from

UEP. *See* Dkt. No. 400. That motion was referred to Magistrate Rice on November 10, 2010, *see* Dkt. No. 431, and on November 30, 2010 a schedule was agreed upon, allowing Plaintiffs to take limited discovery from UEP in order to test its privilege claims. After Designated Counsel took a Rule 30(b)(6) deposition of UEP, UEP began to withdraw its claims of privilege over many of the Sparboe documents that had been originally subject to UEP privilege assertions, which led to the reinstatement of several paragraphs in the 2CAC. Designated Counsel have also propounded a series of interrogatories and document requests on UEP (as a result of which UEP has further relinquished claims of privilege over the Sparboe documents), and have engaged in meet and confers with UEP on the same, as well as addressing the unresolved issues before Magistrate Rice. Designated Counsel have conducted considerable legal research into UEP's purported "trade association" privilege claims, and are preparing a substantial motion to compel the production of any Sparboe documents over which UEP ultimately continues to assert privilege claims.

Meet and Confer Concerning Discovery

21. Finally, Designated Counsel have also expended considerable effort in resolving discovery issues. On April 20, 2010, this Court ordered (Dkt. No. 320) the parties to exchange formal document requests by May 21, 2010, and to begin meeting and conferring on the following topics:

- a. general objections to the scope of discovery, particularly any objections that affect the production of documents;
- b. the scope of electronic discovery, including search methodology to be used and custodians whose files will be searched;

- c. accessibility issues, including potential problems or issues associated with producing electronic documents and the form(s) in which such documents are to be produced;
- d. sufficiency of transactional and cost data;
- e. limitations on discovery, including the number of depositions permitted per side and per party, the length of depositions, and the number of interrogatories that may be propounded;
- f. the coordination, timing and scope of third-party discovery;
- g. whether the parties should enter into a joint contract with a single court reporting service;
- h. the resolution of any questions about ESI system architecture and protocols;
- i. production format issues, if any; and
- j. coordination of depositions and the subsequent use of deposition testimony and exhibits.

22. Accordingly, Designated Counsel have engaged in a series of extensive negotiations with Defendants – both individually and as a group – on these various matters. Designated Counsel directly participated in multiple meet and confers with individual Defendants, as well as conducting meet and confers on “global issues” applicable to all Defendants. Each of these meet and confers entailed a number of teleconferences. As part of the meet and confer process, Designated Counsel have drafted follow-up memoranda and letters to individual Defendants, in an effort to insure that, to the extent possible, a streamlined discovery process is in place once the pending motions to dismiss are decided. At the very least such efforts should limit, to the extent possible, the issues that must be presented to the Court for

resolution. Designated Counsel have managed the negotiations with Defendants, and have also coordinated with counsel for Direct Action Plaintiffs and for Indirect Purchaser Plaintiffs.

Designated Counsel's Time and Expenses

23. At the inception of this litigation, Interim Co-Lead Counsel set forth criteria for the billing of time and expenses by Designated Counsel. In order to facilitate the accurate review and efficient management of this billing, attorney and paralegal time has been billed to one of seven categories: (1) Investigations/Factual Research; (2) Discovery; (3) Pleadings, Briefs, Pretrial Motions (including legal research); (4) Court Appearances; (5) Settlement; (6) Litigation Strategy, Analysis & Case Management; and (7) Class Certification. In accordance with this criteria, each of the Designated Counsel law firms has from the outset of this litigation been submitting to WKA regular reports of time and expenses. Summarized in Exhibit B hereto are the time and expenses reported to WKA as of February 28, 2011 by Interim Co-Lead Counsel and their firms, and by Quinn Emanuel Urquhart & Sullivan, LLP, which has played a substantial role in the prosecution of this litigation. Exhibit B shows that the aggregate fees of these firms incurred on an hourly basis (without any fee enhancement) is \$7,784,216.45, and that these firms alone have incurred expenses in the amount of \$333,926.78. Those expenses include, among other things, costs for experts, document management, travel, photocopying, overnight mail, process service fees, long distance telephone, electronic research, and contributions to the common expense litigation fund. With regard to the common expense litigation fund, summarized in Exhibit C hereto are the contributions made to, and litigation expenses paid out of,

that fund. Specifically, Exhibit C reflects contributions by Designated Counsel in the amount of \$225,000.00, out of which expenses of \$163,935.49 have been disbursed.⁵

24. In addition to the fees and expenses set forth in Exhibit B, other Designated Counsel have provided assistance (in both professional time and expense contributions), and the time and expenses of these other firms, as reported to WKA, exceed \$2 million, of which \$232,603.59 represents expenses incurred.

25. The amounts disbursed by Designated Counsel are substantial, and many of the expenses were incurred more than two years ago. The disbursements were made for the benefit of the Class. The Notice specifically advised Class members that the Settlement Fund would be used to pay attorneys' fees and litigation costs and expenses to the extent approved by the Court.

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

Dated: April 14, 2011.

/s/ Steven A. Asher
Steven A. Asher

⁵ Should the Court desire it, Interim Co-Lead Counsel are prepared to provide the Court with detailed time records for in camera review.

EXHIBIT A

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

If you purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer from January 1, 2000 through July 15, 2010, you could be a Class member in a proposed class action settlement.

**YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.
PLEASE READ THIS NOTICE CAREFULLY.**

The purpose of this notice is to inform you that Plaintiffs in this class action reached a settlement with Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc. ("Moark Defendants"). If you fall within the definition of the "Settlement Class" as defined herein, you will be bound by the settlement unless you expressly exclude yourself in writing pursuant to the instructions below. This notice is also to inform you of the nature of the action and of your rights in connection with it.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

This notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this case. This notice is intended merely to advise you of the settlement with the Moark Defendants (the "Moark Settlement") and of your rights with respect to it, including, but not limited to, the right to remain a member of the Settlement Class or to exclude yourself from the Settlement Class.

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

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
TAKE NO ACTION	You will receive the non-monetary benefits of the Moark Settlement and give up the right to sue the Moark Defendants with respect to the claims asserted in this case. You may be eligible to receive a payment from the Moark Settlement <i>if</i> you submit a timely Claim Form (by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, January 7, 2011). You will give up the right to sue Moark.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010	This is the only option that allows you to ever be a part of any other lawsuit against the Moark Defendants with respect to the claims asserted in this case. You will not become a member of the Class. If you exclude yourself, you will be able to bring a separate lawsuit against Moark with respect to the claims asserted in this case.
OBJECT TO THE SETTLEMENT BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, NOVEMBER 16, 2010	You will remain a member of the Class, but you also have the right to comment on the terms of the Moark Settlement.
GO TO THE HEARING ON FEBRUARY 28, 2011 AFTER FILING A TIMELY OBJECTION	If you file a timely objection, you may speak in Court about the fairness of the Moark Settlement.
SUBMIT A CLAIM FORM BY FIRST-CLASS MAIL POSTMARKED BY, OR PRE-PAID DELIVERY SERVICE TO BE HAND-DELIVERED BY, JANUARY 7, 2011	This is the only way to receive a payment from the Moark Settlement.

1. Why did I receive this notice?

This legal notice is to inform you of the Moark Settlement that has been reached in the class action lawsuit, *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md-02002, pending in the United States District Court for the Eastern District of Pennsylvania. You are being sent this notice because you have been identified as a potential customer of one of the Defendants in the lawsuit.

2. What is this lawsuit about?

In this lawsuit, Plaintiffs allege that Defendants, certain producers of shell eggs and egg products, conspired to decrease the supply of eggs. Plaintiffs allege that this supply conspiracy limited, fixed, raised, stabilized, or maintained the price of eggs, which caused direct purchasers to pay more for eggs than they would have otherwise paid. The term “eggs” refers to both shell eggs and egg products, which are eggs removed from their shells for further processing into a dried, frozen, or liquid form.

In the fall and winter of 2008, lawsuits were filed in several federal courts generally alleging this conspiracy to depress egg supply. On December 2, 2008, the Judicial Panel on Multidistrict Litigation transferred those cases for coordinated proceedings before the Honorable Gene E. K. Pratter, United States District Judge in the United States District Court for the Eastern District of Pennsylvania. On January 30, 2009, Plaintiffs filed their first consolidated amended complaint alleging a wide-ranging conspiracy to fix egg prices that injured direct egg purchasers.¹ Soon thereafter, Plaintiffs and Defendant Sparboe Farms, Inc. (“Sparboe”) commenced settlement discussions. On June 8, 2009, Plaintiffs and Sparboe reached a settlement. By settling with Sparboe, Plaintiffs learned many more details about the alleged conspiracy. These details were included in a second consolidated amended complaint that Plaintiffs filed on April 7, 2010.

After an exchange of relevant sales data, Plaintiffs and the Moark Defendants entered into settlement discussions in March of 2010. After extensive and arm’s-length negotiations, on May 21, 2010, Plaintiffs and the Moark Defendants reached a settlement.

Plaintiffs represent both themselves (the named plaintiffs) and the entire Class of direct egg purchasers across the United States. Plaintiffs brought this lawsuit as a class action because they believe, among other things, that a class action is superior to filing individual cases and that the claims of each member of the class present and share common questions of law and fact. Plaintiffs claim that Defendants’ actions violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. The alleged agreement was to reduce the overall supply of eggs in the United States from the year 2000 to the present. Plaintiffs allege that Defendants and unnamed co-conspirators controlled the egg supply through various methods that were all part of a wide-ranging conspiracy. These methods include, but are not limited to, agreements to limit or dispose of hen flocks, a pre-textual animal husbandry program that was a cover to further reduce egg supply, agreements to export eggs in order to remove eggs from the domestic supply, and the unlawful coercion of producers and customers to ensure compliance with the conspiracy. Plaintiffs allege that by collectively agreeing to lower the supply of eggs, Defendants caused prices to be higher than they otherwise would have been. The Moark Defendants and the other Defendants deny all of Plaintiffs’ allegations.

3. Who is included in the Settlement?

Plaintiffs and the Moark Defendants have agreed that, for purposes of the Moark Settlement, the Settlement Class is defined as follows:

All persons and entities in the United States that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010.

¹ This lawsuit alleges injuries to *direct* egg purchasers only, that is, entities or individuals who bought eggs directly from egg producers. A separate case is pending wherein the plaintiffs allege a wide-ranging conspiracy to fix egg prices that injured *indirect* egg purchasers. An indirect egg purchaser buys eggs from a direct purchaser of eggs or another indirect purchaser.

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

4. What does the Moark Settlement provide?

After several months of extensive settlement discussions, Plaintiffs and the Moark Defendants reached a Settlement on May 21, 2010. The Moark Settlement is between Plaintiffs and the Moark Defendants only; it does not affect any of the remaining non-settling Defendants, against whom this case continues. Pursuant to the terms of the Moark Settlement, Plaintiffs will release the Moark Defendants from all pending claims. In exchange, the Moark Defendants have agreed to pay \$25,000,000 to a fund to compensate Class members and to provide substantial and immediate cooperation with Plaintiffs, including producing documents and making witnesses available for interviews, which will provide important information in support of Plaintiffs' claims against the non-settling Defendants and possibly others who participated in the alleged conspiracy. (If Class members whose combined purchases account for 7.5% or more of total sales for egg producers in the U.S. choose to exclude themselves from the Settlement Agreement, the Moark Defendants have the right to terminate the Settlement.) It is the opinion of Plaintiffs' attorneys that the Moark Defendants' cooperation will provide significant benefits to members of the Settlement Class and will materially assist Plaintiffs in the prosecution of claims against the non-settling Defendants.

On July 15, 2010, the Court granted preliminary approval of the Moark Settlement, finding it sufficiently fair, reasonable, and adequate to warrant notifying the Settlement Class.

The Moark Settlement should not be taken as an admission by the Moark Defendants of any allegation by Plaintiffs or of wrongdoing of any kind. Finally, the Court ordered that Plaintiffs shall provide notice of the Moark Settlement to all members of the Settlement Class who can be identified through reasonable effort.

5. How will the Settlement Fund be distributed?

The \$25 million paid by the Moark Defendants may be reduced by court-ordered attorneys' fees and reimbursement of litigation expenses, including administration of the Settlement, as approved by the Court. The Settlement Fund will also be reduced by the expense of providing notice to the Class. If Class members whose sales equal 7.5% or more of the total U.S. egg sales choose to exclude themselves from the Class, the Settlement Fund also may be reduced by an amount equal to the total purchases of excluded Class members divided by total U.S. egg sales times the settlement amount. The remainder of the Moark Settlement will be distributed on a *pro rata* basis among the members of the Class who timely and properly submit a valid Claim Form. Your *pro rata* share will be based on the dollar amount of your direct purchases of eggs and egg products in the United States. The Court retains the power to approve or reject, in part or in full, any individual claim of a Class member based on equitable grounds. Because the alleged overcharge is only a portion of the price paid for eggs and egg products, your recovery will be less than the total amount you paid.

6. How do I file a Claim Form?

The Claim Form and instructions for filing a proof of claim are included with the Claim Form provided with this Notice. Claim Forms must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, January 7, 2011, to be considered for distribution.

You should carefully read the descriptions of the respective classes set forth earlier in this Notice to verify that you are a Class member. Next, you should review your records and confirm that you purchased the

² The Settlement Class consists of two subclasses. The first subclass, called the "Shell Egg Subclass," is made up of "[a]ll individuals and entities in the United States that purchased shell eggs produced from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." The second subclass, called the "Egg Products Subclass," is comprised of "[a]ll individuals and entities in the United States that purchased egg products produced from shell eggs that came from caged birds in the United States directly from any producer during the Class Period from January 1, 2000 through July 15, 2010." Excluded from the subclasses are the Defendants, their co-conspirators, and their respective parents, subsidiaries and affiliates, all government entities, as well as the Court and staff to whom this case is assigned, and any member of the Court's or staff's immediate family. Also excluded from the subclasses are purchases of "specialty" Shell Eggs or Egg Products (certified organic, nutritionally enhanced, cage-free, free-range, and vegetarian-fed types) and purchases of "hatching" Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

relevant product(s) during the relevant time period. Then, included with this Notice, you will find a Claim Form which must be completed by the Class member and returned to the address indicated on the Claim Form. Claim Forms must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, January 7, 2011. **Any Class member who does not complete and timely return the Claim Form will not be entitled to share in the Moark Settlement.**

Where records are available to calculate and document the dollar amount of your relevant purchases, you must use those records to complete the Claim Form.

Where adequate records are not available to calculate your purchases to be listed on the Claim Form, you may submit purchase information based on verifiable estimates as directed in the Claim Form.

7. How will the lawyers be paid?

These attorneys and their respective firms are referred to as Class Counsel. Class Counsel will apply to the Court for an award from the Settlement Fund of attorneys' fees and for reimbursement of litigation costs and expenses incurred, including fees and costs expended while providing Notice to the Class and while administering the Settlement Fund (including the plan of allocation).

Class Counsel, in compensation for their time and risk in prosecuting the litigation on a wholly contingent fee basis, intend to apply to the Court for an award of attorneys' fees in an amount not to exceed thirty percent of \$25 million as well as the costs and expenses incurred. To date, Class Counsel have not been paid any attorneys' fees. Any attorneys' fees and reimbursement of costs will be awarded only as approved by the Court in amounts determined to be fair and reasonable.

8. What is the effect of the Court's final approval of the Moark Settlement?

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

9. Who represents the Settlement Class?

The Settlement Class is represented by the following attorneys:

Steven A. Asher WEINSTEIN KITCHENOFF & ASHER LLC 1845 Walnut Street, Suite 1100 Philadelphia, PA 19103	Michael D. Hausfeld HAUSFELD LLP 1700 K Street NW, Suite 650 Washington, DC 20006
Stanley D. Bernstein BERNSTEIN LIEBHARD LLP 10 East 40th Street, 22nd Floor New York, NY 10016	Stephen D. Susman SUSMAN GODFREY LLP 654 Madison Avenue, 5th Floor New York, NY 10065

10. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court has scheduled a "Fairness Hearing" at 1:30 p.m. on February 28, 2011 at the following address:

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

The purpose of the Fairness Hearing is to determine whether the Moark Settlement is fair, reasonable, and adequate, and whether the Court should enter judgment granting final approval of it. You do not need to

attend this hearing. You or your own lawyer may attend the hearing if you wish, at your own expense. Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind. Settlement Class members are advised to check www.eggproductsettlerment.com for any updates.

11. How do I object?

If you are a Settlement Class member and you wish to participate in the Moark Settlement, but you object to or otherwise want to comment on any term of the Moark Settlement (including the request for attorneys' fees), you may file with the Court an objection in writing. In order for the Court to consider your objection, your objection must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by, November 16, 2010 to each of the following:

The Court:
United States District Court
James A. Byrne Federal Courthouse
601 Market Street
Office of the Clerk of the Court, Room 2609
Philadelphia, PA 19106-1797

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

Counsel for the Moark Defendants:
Nathan P. Eimer
EIMER STAHL KLEVORN & SOLBERG LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604

Your objection must be in writing and must provide evidence of your membership in the Settlement Class. The written objection should state the precise reason or reasons for the objection, including any legal support you wish to bring to the Court's attention and any evidence you wish to introduce in support of the objection. You may file the objection through an attorney. You are responsible for any costs incurred in objecting through an attorney.

If you are a Settlement Class member, you have the right to voice your objection to the Moark Settlement at the Fairness Hearing. In order to do so, you must follow all instructions for objecting in writing (as stated above). You may object in person and/or through an attorney. You are responsible for any costs incurred in objecting through an attorney. You need not attend the Fairness Hearing in order for the Court to consider your objection.

12. How do I exclude myself from the Settlement?

If you are a Settlement Class member and you do not wish to participate in the Moark Settlement, the Court will exclude you from the Moark Settlement if you request exclusion. Your request for exclusion must be sent by first-class mail postmarked by, or pre-paid delivery service to be hand-delivered by,³ November 16, 2010 to the following address:

In re Processed Egg Products Antitrust Litigation– EXCLUSIONS
c/o The Garden City Group, Inc., Claims Administrator
P.O. Box 9476
Dublin, OH 43017-4576

Your written request should specify that you wish to be excluded from the Moark Settlement. Do not request exclusion if you wish to participate in the Moark Settlement as a member of the Settlement Class. If you intend to bring your own lawsuit against the Moark Defendants, you should exclude yourself from the Settlement Class.

³ To the extent you wish to mail your submission by pre-paid delivery service to be hand-delivered, you may send your mail to the following address: *In re Processed Egg Products Antitrust Litigation (EGS)*, c/o The Garden City Group, Inc., 815 Western Avenue, Suite 200, Seattle, WA 98104.

If you remain in the Class, it does not prejudice your right to exclude yourself from any other past, present or future settlement class or certified litigation class in this case.

13. What happens if I do nothing?

If you do nothing, you will remain a member of the Class. As a member of the Settlement Class, you will be represented by the law firms listed above in Question No. 9, and you will not be charged a fee for the services of such counsel and any other class counsel. Rather, counsel will be paid, if at all, as allowed by the Court from some portion of whatever money they may ultimately recover for you and other members of the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

However, you must submit a timely Claim Form (see Question No. 6) in order to be considered for any monetary benefit from the Settlement Fund.

14. Where do I get additional information?

For more detailed information concerning matters relating to the Moark Settlement, you may wish to review the "Settlement Agreement Between Direct Purchaser Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc." (signed May 21, 2010) and the "Order on Preliminary Approval of Settlement with Moark, LLC, Norco Ranch, Inc., and Land O'Lakes, Inc." (entered July 15, 2010). These documents are available on the settlement website, www.eggproductssettlement.com, which also contains answers to "Frequently Asked Questions," as well as more information about the case. These documents and other more detailed information concerning the matters discussed in this notice may be obtained from the pleadings, orders, transcripts and other proceedings, and other documents filed in these actions, all of which may be inspected free of charge during regular business hours at the Office of the Clerk of the Court, located at the address set forth in Question No. 10. You may also obtain more information by calling the toll-free helpline at (866) 881-8306. If your present address is different from the address on the envelope in which you received this notice, or if you did not receive this notice directly but believe you should have, please call the toll-free helpline.

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

Dated: July 15, 2010

The Honorable Gene E. K. Pratter

Legal Notice

If you or your company purchased eggs, including shell eggs and egg products produced from caged birds in the U.S. from January 1, 2000 through July 15, 2010, your rights could be affected by a proposed class action settlement.

A proposed settlement in *In re Processed Egg Products Antitrust Litigation*, Case No. 08-md- 02002, pending in the United States District Court for the Eastern District of Pennsylvania, (the "Moark Settlement") has been reached between Plaintiffs and Defendants Moark, LLC, Norco Ranch, Inc., and Land O' Lakes, Inc. ("Moark") in a class action involving alleged price fixing.

Who is included in the Moark Settlement?

The "Class" includes all persons and entities in the United States that purchased eggs, including shell eggs and egg products, produced from caged birds in the United States directly from any producer from January 1, 2000 through July 15, 2010. For a copy of the *Full Notice of Settlement* contact the Claims Administrator at the address below.

What is this case about?

Plaintiffs claim that Defendants conspired from 2000 to the present to limit the supply of shell eggs and egg products (eggs processed into dried, frozen or liquid forms), which raised the prices of shell eggs and egg products and, therefore, violated the Sherman Antitrust Act, a federal statute that prohibits any agreement that unreasonably restrains competition. Moark denies all of Plaintiffs' allegations.

What does this Moark Settlement provide?

The Moark Settlement is between Plaintiffs and Moark only; the case is continuing against the remaining defendants. The Moark Settlement provides that Plaintiffs will release all claims against Moark. In exchange, Moark will provide the class with \$25,000,000 from which claims can be paid. Moark will also provide Plaintiffs with information that Plaintiffs' attorneys believe will aid Plaintiffs in the prosecution of their claims against the non-settling defendants.

What do I do now?

If you are a member of the Class your legal rights are affected, and you now have a choice to make. **Participate in the Moark Settlement:** No action is required to remain part of the Moark Settlement. If the Court grants final approval, the Moark Settlement will be binding upon you and all other members of the Class. By remaining part of the Moark Settlement, you will give up any claims you may have against Moark relating to the claims alleged in this lawsuit. You may be eligible to receive a payment from the Moark Settlement if you submit a completed claim form (postmarked no later than January 7, 2011).

Ask to be excluded: If you do not want to participate in the Moark Settlement and wish to retain your rights to pursue your own lawsuit against Moark relating to the claims alleged in this lawsuit, you must formally exclude yourself from the Class by sending a signed letter postmarked on or before November 16, 2010 to the following address: *In re Processed Egg Products Antitrust Litigation EXCLUSIONS*, c/o The Garden City Group, Inc., Claims Administrator, P.O. Box 9476, Dublin, OH 43017-4576. If you remain in the class, it does not prejudice your right to exclude yourself from any other past, present or future settlement class or certified litigation class in this case.

Object to the Moark Settlement or any of its terms: You may notify the Court that you object to the Moark Settlement by mailing a statement of your objection to the Court, Plaintiffs' Counsel, and Defense Counsel postmarked by November 16, 2010. You may object in person and/or through an attorney. You are responsible for any costs incurred in objecting through an attorney. **Detailed instructions on how to object are found on the settlement website, listed below.**

Who represents you?

The Court has appointed Steven A. Asher of Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Michael D. Hausfeld of Hausfeld LLP, 1700 K Street NW, Ste. 650, Washington, D.C. 20006; Stanley D. Bernstein of Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Stephen D. Susman of Susman Godfrey LLP, 654 Madison Avenue, 5th Floor, New York, NY 10065 as Interim Co- Lead Class Counsel. You do not have to pay them or anyone else to participate. You may hire your own lawyer at your own expense.

When will the Court decide whether to approve the Moark Settlement?

At 1:30 p.m. on February 28, 2011, at the United States District Court, James A. Byrne Federal Courthouse, 601 Market Street, Philadelphia, PA 19106-1797, the Court will hold a hearing to determine the fairness and adequacy of the Moark Settlement. You may appear at the hearing, but you are not required to do so. Please note that the Court may choose to change the date and/or time of the Fairness Hearing without further notice of any kind. Settlement Class members are advised to check www.eggproductsettlemnt.com for any updates.

How can I learn more?

This notice is only a summary. For more information, call (866) 881-8306, or visit the settlement website, www.eggproductsettlemnt.com. The website contains a more detailed settlement notice, as well as more information about the case, relevant court filings, obtaining and submitting a claim form, and procedures for excluding and objecting. Detailed information about the case can also be examined free of charge during regular business hours at the James A. Byrne Federal Courthouse.

1-866-881-8306 www.eggproductsettlemnt.com

EXHIBIT B

**AGGREGATE FEES AND EXPENSES OF
INTERIM CO-LEAD COUNSEL AND QUINN EMANUEL**

FIRM	TIME	EXPENSES
Interim Co-Lead Counsel		
Weinstein Kitchenoff & Asher LLC	2,253,357.45	50,195.31
Hausfeld LLP	2,181,240.00	65,086.09
Bernstein Liebhard LLP	1,591,976.25	81,012.12
Susman Godfrey LLP	1,128,100.75	56,910.40
Other Counsel		
Quinn Emanuel Urquhart Oliver & Hedges LLP	629,542.00	80,722.86
TOTAL	<u>7,784,216.45</u>	<u>333,926.78</u>

EXHIBIT C

COMMON EXPENSE LITIGATION FUND

	\$	\$
Assessments:		225,000
Expenses:		
Transcripts	(3,101.56)	
Experts	(153,073.16)	
Process & Filing Fees	(3,218.00)	
Administration Fees	(1,296.97)	
Copies	(203.93)	
Special Master Fee	(3,041.87)	
Total Expenses:	(163,935.49)	
Ending Balance:		<u>61,064.51</u>

**UNITED STATES DISTRICT COURT
IN 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 Class Actions	:	

**[PROPOSED] ORDER APPROVING DIRECT PURCHASER PLAINTIFFS’
REQUEST FOR AN AWARD OF ATTORNEYS’ FEES
AND FOR REIMBURSEMENT OF EXPENSES**

AND NOW, this ____ day of _____, 2011, upon consideration of Direct Purchaser Plaintiffs’ Motion, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for attorneys’ fees in the amount of \$7.5 million representing 30% of the \$25 million Moark settlement fund, and for expenses incurred in this litigation from its commencement in 2008 through February 28, 2011 in the total amount of \$566,530.37 the Court makes the following FINDINGS and CONCLUSIONS:

1. Direct Purchaser Plaintiffs’ request for attorneys’ fees totaling 30% of the Moark settlement fund is reasonable in light of: the size of the fund created for the Class and the number of persons benefited by the fund; the absence of objectors to the Moark settlement; the substantial effort expended by counsel in this litigation, as well as the skill and efficiency demonstrated by counsel in establishing the fund; the significant complexity and duration of this antitrust litigation; and the risk of nonpayment faced by counsel given the contingent nature of this representation and the absence of any related government prosecution.

2. Direct Purchaser Plaintiffs’ request for attorneys’ fees totaling 30% of the Moark settlement fund falls well within the range of attorneys’ fee awards approved by this Court in

similar cases, and is supported by a lodestar cross-check analysis of the time expended by counsel in this litigation.

3. Direct Purchaser Plaintiffs' request for reimbursement of expenses necessary for the prosecution of this litigation in the amount of \$566,530.37 is reasonable and reflects, *inter alia*, costs for experts, document management, travel, photocopying, overnight mail, process service fees, long distance telephone, electronic research, and contributions to the common expense litigation fund.

It is therefore **ORDERED**:

1. The Motion is GRANTED in all respects;
2. Counsel for Direct Purchaser Plaintiffs are hereby awarded attorneys' fees in the total amount of \$_____;
3. Interim Co-Lead Counsel are authorized to distribute among counsel for Direct Purchaser Plaintiffs the awarded attorneys' fees in a manner which fairly compensates each firm for their contribution to the prosecution of Direct Purchaser Plaintiffs' claims; and
4. Counsel for Direct Purchaser Plaintiffs are hereby awarded reimbursement of expenses in the total amount of \$_____.

BY THE COURT:

HONORABLE GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April, 2011, a copy of the foregoing Direct Purchaser Plaintiffs' Motion for an Award of Attorneys' Fees and for Reimbursement of Expenses and Memorandum of Law with supporting exhibits were filed with the Clerk of the Court, per the Local Rules, and will be available for viewing and downloading via the CM/ECF system and the CM/ECF system will send notification of such filing to all attorneys of record. On this date, the document was also served, via electronic mail, on (1) all counsel on the Panel Attorney Service List and (2) the below-listed Liaison Counsel for Defendants and Indirect Purchaser Plaintiffs:

Jan P. Levine, Esquire
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Defendants' Liaison Counsel

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Direct Action Plaintiffs' Liaison Counsel

Date: April 14, 2011

BY: /s/ Mindee J. Reuben

WEINSTEIN KITCHENOFF & ASHER LLC
Attorney for Direct Purchaser Plaintiffs
And Direct Purchaser Plaintiffs' Liaison
Counsel