

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

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IN RE: PROCESSED EGG PRODUCTS )  
ANTITRUST LITIGATION )

MDL No. 2002

Case No. 08-md-02002

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THIS DOCUMENT APPLIES TO: )  
ALL DIRECT PURCHASER PLAINTIFF )  
ACTIONS )

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**DIRECT PURCHASER PLAINTIFFS' MEMORANDUM OF LAW  
IN SUPPORT OF THEIR MOTION FOR REIMBURSEMENT OF EXPENSES  
AND INCENTIVE AWARDS TO CLASS REPRESENTATIVES**

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## I. INTRODUCTION

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Direct Purchaser Plaintiff class representatives (“Plaintiffs”), through Bernstein Liebhard LLP, Hausfeld LLP, Susman Godfrey LLP, and Weinstein Kitchenoff & Asher LLC (“Interim Co-Lead Counsel”), respectfully move for reimbursement and repayment of litigation expenses and for incentive awards to Plaintiffs from the settlements (“Settlements”) with defendants National Food Corporation (“NFC”), Midwest Poultry Services, LP (“Midwest Poultry”), United Egg Producers (“UEP”) and United States Egg Marketers (“USEM”) (collectively, “Settling Defendants”).

Plaintiffs and members of the Class are direct purchasers of shell eggs and 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”).<sup>1</sup> Plaintiffs assert that Defendants, including Settling Defendants, 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 caused direct purchasers to suffer damages in the form of overcharges for their egg and egg product purchases.

The successes achieved to date in this litigation are the product of the initiative, investigation and hard work of skilled counsel over the course of over six years. The Settlements represent three of eight settlements achieved by Plaintiffs to date,<sup>2</sup> and confer a generous monetary benefit on Class members (in addition to the cooperation obtained as part of these settlements). The NFC settlement provides, *inter alia*, \$1 million to the Class; the Midwest

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<sup>1</sup> The Class is more fully defined in Plaintiffs’ Motion for Class Certification (ECF 978-79).

<sup>2</sup> The Court previously approved Plaintiffs’ settlements with defendants Sparboe Farms, Inc. (“Sparboe”), Moark, LLC, Norco Ranch, Inc., and Land O’ Lakes, Inc. (“Moark”), and Cal-Maine Foods, Inc. (ECF 698, 700, and 1081 respectively). The Court has preliminarily approved Plaintiffs’ settlements with defendants NuCal Foods, Inc. (ECF 1073) and Hillandale Farms of Pa., Inc. and Hillandale-Gettysburg, L.P. (ECF 1108).

Poultry settlement provides \$2.5 million to the Class; and the UEP/USEM settlement provides \$0.5 million to the Class. These settlement amounts have been deposited into escrow where they are earning interest. The Court granted preliminary approval of the Settlements on July 30, 2014, at which time the Court also granted Plaintiffs leave to file a motion for an award of attorneys' fees, for reimbursement of litigation expenses, and for incentive awards.<sup>3</sup> (ECF 1027.)

In light of the substantial benefits conferred on members of the proposed Class through the diligent work of counsel, Plaintiffs and Plaintiffs' Counsel respectfully reimbursement of (i) non-taxable litigation expenses paid from the Litigation Fund in the amount of \$387,425.37 for work undertaken between March 1, 2014 and July 31, 2014 ("Covered Period"); (ii) unpaid, non-taxable expenses chargeable to the Litigation Fund but as yet unpaid through the end of the Covered Period in the amount of \$785,492.96; and (iii) the non-taxable costs associated with notice of the three Settlements in the amount of \$141,634.29, for a total of \$1,314,552.62 in non-taxable expenses. Plaintiffs and Plaintiffs' Counsel also respectfully request incentive awards of \$25,000 to each Plaintiff, for a total of incentive award payment of \$225,000.

## **II. BACKGROUND**

### **A. Facts and Procedural History**

This multi-district litigation concerns an alleged output-reduction conspiracy among the nation's largest egg producers. Plaintiffs allege that Defendants and other named and unnamed co-conspirators violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by engaging in an unlawful conspiracy to reduce output and thereby artificially fix, raise, maintain and/or stabilize the prices of shell eggs and egg products in the United States. As a result of Defendants' alleged

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<sup>3</sup> Plaintiffs' Counsel are not seeking an award of attorneys' fees from the Settlements at this time.

conduct, Plaintiffs and members of the Class paid prices for shell eggs and egg products that were higher than they otherwise would have been absent the conspiracy. The lawsuit seeks treble damages, injunctive relief, attorneys' fees and costs from Defendants.

On January 30, 2009, Plaintiffs filed their first consolidated amended complaint ("CAC") detailing these allegations. (ECF 41). Plaintiffs then entered into a settlement agreement with defendant Sparboe Farms, pursuant to which Plaintiffs uncovered additional detail about the egg industry, the alleged conspiracy, and the specific actions taken by the remaining Defendants in furtherance of this conspiracy. Plaintiffs included these details in a second consolidated amended complaint ("2CAC"), filed on December 14, 2009. (ECF 221).

In February 2010, nine Defendants filed individual motions to dismiss the 2CAC, challenging the sufficiency of the allegations in the 2CAC as to their individual participation in the conspiracy. (*See, e.g.*, ECF 232-34, 236, 238-40). All remaining Defendants filed motions to dismiss the 2CAC to the extent its allegations were directed to egg products as opposed to shell eggs (ECF 235), and a motion to dismiss claims for damages incurred prior to September 22, 2004. (ECF 241). In March 2010, Plaintiffs filed their opposition to the motions to dismiss the 2CAC. (ECF 263-265).

In June 2010, Plaintiffs entered into a settlement agreement with the Moark Defendants, and moved the Court for preliminary approval of the Moark settlement in June 2010. (ECF 347, 349). The Court granted final approval of the Moark settlement in July 2012. (ECF 700).

In September 2011, the Court denied the motions to dismiss filed by most of the Defendants, but granted motions by the (then-named) Hillandale Defendants and United Egg Association ("UEA") without prejudice. (ECF 563). Plaintiffs subsequently obtained leave to file a Third Amended Complaint ("TAC") over the opposition of Defendants Hillandale-



Gettysburg and Hillandale of Pa., who remain Defendants in this litigation. (ECF 772). The TAC is the operative pleading in the litigation. (ECF 779).

Discovery began in earnest following the rulings on the motions to dismiss the 2CAC. Fact discovery commenced in April 2012, and, as detailed below and in prior submissions, was an enormous undertaking. Depositions commenced in April 2013. In the midst of heated discovery, Plaintiffs concluded the Settlements with NFC (March 28, 2014), Midwest Poultry (March 31, 2014) and UEP/USEM (May 21, 2014).

Plaintiffs' Counsel's depositions of non-Settling Defendants continued until May 2014. Following the conclusion of fact discovery, Plaintiffs filed their Motion for Class Certification on May 30, 2014. (ECF 978).

**B. Plaintiffs' Counsel Have Vigorously Prosecuted This Case**

Plaintiffs' Counsel obtained the NFC, Midwest Poultry and UEP/USEM Settlements through diligent and thorough work. Examples of just some of their efforts during the Covered Period are highlighted below and discussed in the accompanying Declaration of Mindee J. Reuben ("Reuben Decl.").<sup>4</sup>

**1. Discovery**

Plaintiffs' Counsel devoted substantial resources during the Covered Period to various facets of discovery.

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<sup>4</sup> Plaintiffs' Counsel have skillfully and aggressively litigated this matter from the outset, and will continue doing so through trial. The examples set forth in this Motion generally reflect work undertaken during the Covered Period from March 1, 2014 and July 31, 2014. Examples of Plaintiffs' Counsel's prior efforts on behalf of the Class during the course of this litigation are set forth in the September 5, 2014 Amended Declaration of Mindee J. Reuben (ECF 1046) and the April 14, 2011 Declaration of Steven A. Asher (ECF 493-2).

**a. Deposition Discovery**

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

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

The testimony obtained through these depositions enhanced Plaintiffs' knowledge of the alleged conspiracy and strengthened Plaintiffs' position in negotiating the Settlements, as well as in preparing Plaintiffs' Motion for Class Certification. *See* Reuben Decl. at ¶ 6. Without question, the discovery taken by Plaintiffs' Counsel has already paid dividends to the Class and likely will continue to do so as the litigation progresses through class certification, summary judgment and trial.

**b. Written Discovery**

During the Covered Period, Plaintiffs' Counsel responded to Defendants' Second Set of Interrogatories which consisted of this single, extremely detailed contention interrogatory:

Separately and for each Defendant state each agreement which you contend the Defendant entered into in violation of the Sherman Act; the identity of each party to such agreement, whether named as a Defendant or not; whether the agreement was written or oral, if written, identify the document containing the agreement and the specific language which constitutes the agreement and if oral, the individuals entering into the agreement or the conduct manifesting assent to the agreement; the date on which the Defendant entered

into the agreement and the date on which the agreement terminated with respect to that Defendant; and actions or omissions taken pursuant to each agreement, which actions or omissions you contend caused You harm.

Plaintiffs' 18-plus page detailed response (excluding objections), which was a Herculean effort taking several weeks and multiple attorneys, identified documents and deposition testimony that had been compiled by Plaintiffs over the entire course of discovery. Reuben Decl. at ¶ 7. Following submission of their response, the parties engaged in meet and confer negotiations, resulted in two rounds of supplementation by Plaintiffs. Reuben Decl. at ¶ 7.

Plaintiffs also responded to three sets of requests for admissions. Reuben Decl. at ¶ 8. The first set, served by jointly by Defendants, contained 68 requests directed to each individual Plaintiff. The second set, served by Daybreak Foods, Inc., consisted of 98 requests. The third set, served by Rose Acre Farms, Inc., was directed to Plaintiff Wixon, Inc. and contained 15 requests. Reuben Decl. at ¶ 8. The compilation of Plaintiffs' responses required an enormous effort by Plaintiffs' Counsel as well as by Plaintiffs. Reuben Decl. at ¶ 8.

## **2. Settlement Negotiations**

During the Covered Period, Plaintiffs' Counsel engaged in multiple efforts to obtain settlement agreements on behalf of the Class.

### **a. NFC Settlement Negotiations**

Plaintiffs' Counsel and NFC's counsel engaged in extensive arms' length negotiations intermittently from late 2012/early 2013 until March 2014, when an agreement was finally executed. The initial negotiations, which began in late 2012/early 2013, did not progress very far. Additional discussions about a potential resolution occurred in mid-2013 and were conducted via telephone conferences and email. These discussions were put on hold pending the attempt to globally resolve the litigation including all Defendants. In November 2013, Plaintiffs and NFC

re-engaged in substantive negotiations. Following extensive telephone conferences and emails, the parties reached an agreement in principal on February 28, 2014; the settlement agreement was fully executed on March 28, 2014. *See generally* April 25, 2015 Pizzirusso Decl. (ECF 952-2), filed in support of motion for preliminary approval of NFC and Midwest Poultry settlements (ECF 952). Reuben Decl. at ¶ 9.

**b. Midwest Poultry Settlement Negotiations**

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

**c. UEP/USEM Settlement Negotiations**

In January 2014, Plaintiffs' Counsel approached counsel for UEP/USEM regarding settlement of the litigation. After several rounds of telephone calls and email exchanges, the parties reached a settlement in principal and signed a term sheet laying out the terms of their settlement in March 2014, which involved both a monetary component and the production of documents previously withheld on the basis of attorney-client privilege. Because UEP/USEM was unwilling to permit Plaintiffs' Counsel to preview the privileged documents, the parties requested that Magistrate Judge Rice facilitate the discussions by reviewing the documents in camera to ensure that they did indeed provide value to the class. A settlement agreement was finally executed on May 21, 2014. *See generally* June 19, 2014 Pizzirusso Decl. (ECF 997-2)

filed in support of motion for preliminary approval of UEP/USEM settlement (ECF 997). Reuben Decl. at ¶ 11.

#### **d. NuCal Settlement Negotiations**

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

### **3. Motion Practice**

During the Covered Period, Plaintiffs' Counsel prepared, filed and, in certain instances, presented oral argument on several matters in this litigation during the Covered Period.

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

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

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

### **III. PLAINTIFFS' COUNSEL'S APPLICATION FOR REIMBURSEMENT AND RECOVERY OF EXPENSES AND FOR INCENTIVE AWARDS TO CLASS REPRESENTATIVES WARRANTS APPROVAL**

Plaintiffs' Counsel seek Court approval of \$1,314,552.62 in reimbursement and recovery of expenses incurred in connection with their work on behalf of the Class Members in this litigation. Plaintiffs' Counsel have provided Class Members with reasonable notice of their intention to make this request, and Class Members will have an adequate opportunity to object to this Motion after its filing.

#### **A. Reasonable Notice of the Requested Litigation Expenses and Incentive Awards and Opportunity to Object Has Been Given to the Class**

Federal Rule of Civil Procedure 23(h) provides that “[n]otice of the motion [for an award of attorneys’ fees and costs] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.” Fed. R. Civ. P. 23(h)(1). Plaintiffs’ Counsel has provided reasonable notice of this motion, and has afforded Class Members an opportunity to object to such motion.

## 1. Summary of the Notice Provided

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

The Notice Packets expressly notified potential Class Members that Settlement Counsel would be seeking Court approval of, *inter alia*, (i) reimbursement of litigation expenses and (ii) incentive awards not to exceed \$25,000 per representative, or up to \$225,000 total.<sup>5</sup> See Long Form Notice at ¶ 11 (ECF 1105-1). In the section entitled “How will the lawyers be paid?” the notice provides:

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

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

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<sup>5</sup> The Notice Packets also provided that Plaintiffs’ Counsel intend to apply to the Court for an award of attorneys’ fees in an amount not to exceed 30% of \$4 million. However, Plaintiffs’ Counsel are not seeking attorneys’ fees at this time. See Long Form Notice at ¶ 11 (ECF 1105-1).

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

*Id.* The notice also explains the process of, and sets deadlines for, opting out of the settlement as well as objecting to the settlement. *See generally* Long Form Notice (ECF 1105-1); Reuben Decl. at ¶ 17.

## **2. Timing of Motion for Reimbursement of Expenses, for Incentive Awards and Opportunity to Object**

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

Seven weeks is a sufficient amount of time for Class Members to object to a motion for fees and expenses. Indeed, courts have found far less time to be adequate. *See, e.g., In re: Imprelis Herbicide Marketing, Sales Practices and Prods. Liability Litig.*, 296 F.R.D. 351 (E.D. Pa. 2013) (granting fee award where class members had two weeks to review motion); *Batmanghelich v. Sirius XM Radio, Inc.*, No. CV 09-9190, 2011 U.S. Dist. LEXIS 155710, at \*5 (C.D. Cal. Sept. 13, 2011) ("Plaintiff's application for attorneys' fees and costs and a Class Representative service payment was filed with the Court and made available for Class Members to review on the settlement website two weeks prior to the deadline for Class Members to file



objections to the Settlement, giving Class Members adequate time to review the application and object to the attorneys' fees, costs and/or service payment.”). Accordingly, Class members have received reasonable notice of Plaintiffs' motion for reimbursement of expenses and for incentive awards and will have a sufficient opportunity to object.

**B. The Request for Reimbursement and Recovery of Non-Taxable Litigation Expenses Incurred Is Reasonable**

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, Inc. v. 3M*, No. 04-5871, 2006 WL 2382718, at \*18 (E.D. Pa. Aug. 14, 2006) (granting plaintiffs' motion for approval of expenses “incurred in connection with the prosecution and settlement of the litigation”; *In re Corel Corp., Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 498 (E.D. Pa. 2003) (“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). Here, to date, a common fund of \$53 million has been created, with an additional \$8.925 million preliminarily approved.

As detailed below, Plaintiffs' Counsel seek reimbursement and recovery of (i) non-taxable litigation expenses paid from the Litigation Fund in the amount of \$387,425.37 for work undertaken during the Covered Period, *see* Reuben Decl. ¶ 19; Exhibit A (Analysis of Litigation Fund); (ii) unpaid, non-taxable expenses chargeable to the Litigation Fund but as yet unpaid through the end of the Covered Period in the amount of \$785,492.96, *see* Reuben Decl. ¶ 19; and (iii) the non-taxable costs associated with notice of the Settlements in the amount of \$141,634.29, for a total of \$1,314,552.62 in non-taxable expenses, Reuben Dec. ¶ 19. These

expenses were reasonable and necessary to the litigation of this case, and include, among other things, costs for experts, electronic discovery costs, and notice. *See* Reuben Decl. ¶ 19.

Plaintiffs' Litigation Fund pays expenses which are incurred collectively by Plaintiffs' Counsel, rather than by individual firms.<sup>6</sup> Thus, for example, the Litigation Fund will pay the costs of expert fees, electronic discovery costs (such as maintenance of the joint document depository) and deposition transcripts. *See* Reuben Decl. at ¶ 20. Plaintiffs' Counsel are seeking (i) reimbursement of certain non-taxable expenses paid from the Litigation Fund through the Covered Period, and (ii) recovery of non-taxable expenses chargeable to the Litigation Fund that were incurred through the end of the Covered Period but which are awaiting payment. *See* Reuben Decl. at ¶ 20.

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

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

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<sup>6</sup> Plaintiffs are not seeking reimbursement of individual firm expenses incurred during the Covered Period at this time.

Finally, the Claims Administrator, Garden City Group, has expended \$141,634.29 in connection with the dissemination of notice of the NFC, Midwest Poultry and UEP/USEM Settlements.<sup>7</sup> Reuben Decl. at ¶ 23. Interim Co-Lead Counsel reviewed the bills to ensure they were appropriate and accurate. Reuben Decl. at ¶ 23.

**C. The Request for Incentive Awards Is Reasonable**

Incentive awards may be provided to Class representatives as a reward for efforts that benefit the class. *See Chakejian v. Equifax Info. Servs., LLC*, 275 F.R.D. 201, 220 (E.D. Pa. 2011). In evaluating the appropriateness of an award, courts consider (i) the financial, reputational, and personal risks to the plaintiff; (ii) the degree of plaintiffs' litigation responsibilities; (iii) the length of litigation; and (iv) the degree to which the plaintiffs benefitted as class members. *Id.* Plaintiffs' Counsel requests that each of the nine class representatives receive an incentive award of \$25,000; in total, \$225,000. Although substantial, these awards are well-deserved.

This litigation was commenced in October 2008. Over the course of the past six plus years, the Class representatives have actively participated in many significant aspects of the litigation. Reuben Decl. at ¶ 24. Broadly stated, the Class representatives made themselves available to Plaintiffs' Counsel on an as-needed basis. Reuben Decl. at ¶ 25. The Class representatives participated in the discovery process, including, *inter alia*, the production of documents, responding to interrogatories and requests for admissions, and depositions. Reuben Decl. at ¶ 25. The Class representatives also monitored the litigation on behalf of the Class, including reviewing pleadings, motions and settlements throughout the course of the litigation.

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<sup>7</sup> Plaintiffs have also incurred notice and administrative costs associated with the Cal-Maine settlement. Plaintiffs will separately move for authorization to pay Garden City Group out of the Cal-Maine settlement fund for these charges when Plaintiffs file their motion for authorization to distribute settlement funds to the Class.

Reuben Decl. at ¶ 25. Some of the Class representatives also placed themselves at risk of retaliation simply by participating in this litigation, as they continued to purchase eggs and egg products from Defendants after its inception. Reuben Decl. at ¶ 25. By agreeing to act as Class representatives in this litigation, these individuals have assisted the Class in achieving \$53 million in settlements to date.

Below are some highlights of the Class representatives' efforts on behalf of the Class:

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

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

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

- Responses to Interrogatories. Defendants served Plaintiffs with two sets of interrogatories.<sup>8</sup> The first set of interrogatories requested, among other things, the following:

If during the period covered by Your Complaint You made Purchases of Products where You did not expressly agree that the prices would be determined, in whole or in part, on the basis of an Umer Barry Price Quotation, then state how You understood the Prices were determined (*e.g.*, “competitive procurement,” “vendor’s price quotation,” “negotiation,” “cost plus,” etc.), and fully Describe any applicable Agreement(s), Identifying the Purchase(s) to which each method was applicable.

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

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

- Depositions. Each of the nine Class representatives was served with a Rule 30(b)(6) notice for deposition. The notices typically identified approximately 30 different topics with additional sub-topics. Each of the nine Class representatives produced corporate designees in response to the notice, with one representative, Eby-Brown Company, LLC, producing three

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<sup>8</sup> Plaintiffs’ response to the second set of interrogatories is discussed *supra*.

witnesses in order to adequately respond to the notice. In addition to their appearance and testimony, each designee met with Plaintiffs' Counsel in advance of the deposition. Reuben Decl. at ¶ 31.

An award of \$25,000 to each of the Class representatives is well within the range of reasonableness and comparable to incentive awards in this and other District Court.<sup>9</sup> *See, e.g., In re Linerboard Antitrust Litig.*, Civ. A. Nos. 98-5055 and 99-1341, 2004 U.S. Dist. LEXIS 10532, \*57 (E.D. Pa. June 2, 2004) (approving \$25,000 incentive award to each of five class representatives and noting the award amount "is comparable to incentive awards granted by courts in this district and in other circuits" and citing *In re Graphite Electrodes Antitrust Litigation*, MDL No. 1244 (E.D. Pa. Order of September 8, 2003) (\$80,000); *Bogosian v. Gulf Oil Corp.*, 621 F. Supp. 27 (E.D. Pa. 1985) (\$20,000); *In re First Jersey Securities, Inc.*, MDL No. 681 (E.D. Pa. 1989) (\$24,000); *In re Revco Securities Litigation*, Nos. 851 & 89 CV 593, 1992 WL 118800 (N.D. Ohio May 6, 1992) (\$90,000); *In re Busiprone Antitrust Litigation*, MDL No. 1413 (S.D.N.Y. Order of April 7, 2003) (\$25,000); *Brotherton v. Cleveland*, 141 F. Supp. 2d 907 (S.D. Ohio 2001) (\$50,000); *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (S.D. Mich., Order of Nov. 26, 2002) (\$20,000)).

Finally, none of the Class representatives has been promised an incentive award by Plaintiffs' Counsel. Reuben Decl. at ¶ 32. None of the Class representatives has received a windfall in this litigation. Reuben Decl. at ¶ 32. The recovery of the Class representatives, like

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<sup>9</sup> The total requested award of \$225,000 represents only 0.004% of the \$53,000,000 in settlement funds finally approved to date. This is well below the mean (0.016%) and median (0.016%) of total incentive awards as a percentage of total class recovery calculated in a 2006 empirical study of cases from 1993-2002. Eisenberg, Theodore and Miller, Geoffrey P., "Incentive Awards to Class Action Plaintiffs: An Empirical Study," 53 UCLA LAW REVIEW 1303, at 1338-1339 (2006) (<http://scholarship.law.cornell.edu/facpub/355>).

all other Class members who have submitted a claim, has been calculated on a *pro rata* basis.  
Reuben Decl. at ¶ 32.

#### **IV. SUPPLEMENTAL INFORMATION FOR CONSIDERATION**

This Court issued an Order dated July 18, 2012 (ECF 704) seeking supplemental information regarding Plaintiffs' motion for an award of fees and for reimbursement of expenses in connection with the Moark settlement. Because this motion does not implicate a request for fees or for reimbursement of individual firm litigation expenses, Plaintiffs' Counsel believe that the necessary information has been provided, and do not believe that any additional information is required.

#### **V. CONCLUSION**

For the reasons set herein, Plaintiffs' Counsel respectfully request that the Court grant their request for an award of the attorneys' fees and reimbursement of litigation expenses.

Dated: January 15, 2015

Respectfully submitted,

/s/ Steven A. Asher

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