

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

IN RE: PROCESSED EGG : **MDL No. 2002**
PRODUCTS ANTITRUST : **08-md-02002**
LITIGATION :
:
THIS DOCUMENT APPLIES TO: :
All Direct Purchaser Actions :

**SETTLEMENT AGREEMENT BETWEEN DIRECT PURCHASER PLAINTIFFS
AND DEFENDANT MIDWEST POULTRY SERVICES, LP**

This Settlement Agreement (“Agreement”) is made and entered into this 31st day of March 2014 (the “Execution Date”) by and between Midwest Poultry Services LP (“Midwest Poultry”) and Direct Purchaser Plaintiffs’ Class representatives (“Plaintiffs”) (as defined herein at Paragraph 15), both individually and on behalf of a Class (as defined herein at Paragraph 4) of direct purchasers of Shell Eggs and Egg Products (as defined herein at Paragraphs 7 and 21).

WHEREAS, Plaintiffs are prosecuting the above-captioned Direct Purchaser Plaintiff actions currently pending and consolidated in the Eastern District of Pennsylvania, and including all actions transferred for coordination, and all direct purchaser actions currently pending such transfer (including, but not limited to, “tag-along” actions) (the “Action”) on their own behalf and on behalf of the Class against Midwest Poultry and other Defendants;

WHEREAS, Plaintiffs allege that Midwest Poultry participated in an unlawful conspiracy to raise, fix, maintain, and/or stabilize the price of Shell Eggs and Egg Products in the United States at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, having conducted an investigation into the facts and the law regarding the Action and engaged in extensive discovery, Plaintiffs have concluded that a settlement with Midwest Poultry according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Class;

WHEREAS, Midwest Poultry denies all allegations of wrongdoing in the Action. However, despite its belief that it is not liable for, and has good defenses to, the claims alleged in the Action, Midwest Poultry desires to settle the Action, and thus avoid the expense, risk, exposure, inconvenience, and distraction of continued litigation of the Action, or any action or proceeding relating to the matters being fully settled and finally put to rest in this Agreement;

WHEREAS, Class Counsel and Midwest Poultry's Counsel have engaged in arm's-length settlement negotiations, and this Agreement has been reached as a result of these negotiations;

NOW, THERFORE, in consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to Midwest Poultry only, without costs as to Plaintiffs, the Class, Midwest Poultry, and subject to the approval of the Court, on the following terms and conditions:

A. Definitions

The following terms, as used in this Agreement, have the following meanings:

1. “Class Counsel” shall refer to the law firms of Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065-8404. “Plaintiffs’ Counsel” shall refer to the law firms identified on pages 147-151 of the Third Consolidated Amended Class Action Complaint filed in the Action on January 4, 2013.

2. “Midwest Poultry’s Counsel” shall refer to the law firm of Faegre Baker Daniels LLP, 300 Meridian St., Suite 2700, Indianapolis, Indiana, 46204.

3. “Claims Administrator” shall mean the Garden City Group, Inc.

4. “Class Member” or “Class” shall mean each member of the Settlement Class, as defined in Paragraph 23 of this Agreement, who does not timely elect to be excluded from the Class, and includes, but is not limited to, Plaintiffs.

5. “Class Period” shall mean the period from and including January 1, 2000 up to and including the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

6. “Defendant(s)” shall refer to the parties listed as defendants in the Third Consolidated Amended Complaint filed on January 4, 2013 and each of their corporate parents, subsidiaries, and affiliated companies.

7. “Egg Products” shall mean the whole or any part of Shell Eggs that have been removed from their shells and then processed, with or without additives, into dried, frozen or liquid forms.

8. “Escrow Account” means the account with the Escrow Agent that holds the Settlement Fund.

9. “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Paragraph 38 of this Agreement.

10. “Fairness Hearing” means a hearing on the settlement proposed in this Settlement Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

11. “Final Approval” shall mean an Order entered by the Court finally approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure.

12. “Non-Settling Defendants” shall refer to Defendants other than Midwest Poultry.

13. “Other Settling Defendants” shall refer to Moark LLC, Norco Ranch, Inc., Land O’Lakes, Inc. Sparboe Farms, Inc., and Cal-Maine Foods, Inc.

14. “Parties” shall mean or means Midwest Poultry and Plaintiffs.

15. “Plaintiffs” shall mean each of the following proposed named Class representatives: T.K. Ribbing’s Family Restaurant, LLC; Eby-Brown Company LLC; Goldberg and Solovy Foods, Inc.; Karetas Foods, Inc.; Nussbaum-SF, Inc.; Somerset Industries, Inc.; Wixon, Inc.; John A. Lisciandro d/b/a/ Lisciandro’s Restaurant, and SensoryEffects Flavor Co. d/b/a SensoryEffects Flavor Systems.

16. “Producer” shall mean any person or entity that owns, contracts for the use of, leases, or otherwise controls hens for the purpose of producing eggs for sale, and the parents, subsidiaries, and affiliated companies of such Producer.

17. “Releasees” shall refer, jointly and severally, and individually and collectively, to Midwest Poultry, its owners, parents, subsidiaries, and affiliated companies, and its past and present officers, directors, employees, agents, insurers, attorneys, shareholders, joint venturers that are neither Non-Settling Defendants nor Other Settling Defendants, partners and representatives, as well as the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

18. “Releasors” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Class Members, and each of their respective past and present officers, directors, parents, subsidiaries, affiliates, partners, and insurers, and to the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

19. “Settlement Amount” shall refer to \$2,500,000 (\$2.5 million) U.S. dollars.

20. “Settlement Fund” shall refer to the funds accrued in the escrow account established in accordance with Paragraph 38 below.

21. “Shell Eggs” shall mean eggs produced from caged birds that are sold in the shell for consumption or for breaking and further processing, excluding “specialty” Shell Eggs (certified organic, nutritionally enhanced, cage free, free range, and vegetarian fed types) and “hatching” Shell Eggs (used by poultry breeders to produce breeder stock or growing stock for laying hens or meat).

22. “Midwest Poultry’s Total Sales” shall mean the sum of the annual U.S. sales by Midwest Poultry of Shell Eggs and Egg Products, excluding sales to Producers, for the years during the Class Period, to be mutually agreed upon by Counsel.

B. Settlement Class Certification

23. The Parties to this Agreement hereby stipulate for purposes of settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the following Class shall be certified for settlement purposes only as to Midwest Poultry:

All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, 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.

C. Approval of this Agreement and Dismissal of Claims

24. The Parties shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking Court approval of this Agreement and securing both the Court's certification of the Class and the Court's approval of procedures, including the giving of Class notice under Federal Rules of Civil Procedure 23(c) and (e), to secure the prompt, complete, and final dismissal with prejudice of the Action as to Midwest Poultry.

25. Within two (2) business days after the execution of this Agreement by Midwest Poultry, the Parties shall jointly file with the Court a stipulation for suspension of all proceedings against Midwest Poultry in the Action pending approval of this Agreement. Within twenty (20) business days after execution of the Agreement by Midwest Poultry, Plaintiffs shall submit to the Court a motion (the "Motion") for an Order granting preliminary approval of the Agreement, appointing Settlement Class Counsel as lead counsel for purposes of this Settlement Agreement, and certifying a Class for settlement purposes ("Preliminary Approval"). Plaintiffs shall submit the Motion requesting entry of a Preliminary Approval Order, substantially in the form of Exhibit A, attached hereto, which shall provide that, *inter alia*:

- a. the settlement proposed in the Settlement Agreement has been negotiated at arm's length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Settlement Class;
- b. the Settlement Class defined herein be certified, designating Class Representatives and Settlement Class Counsel as defined herein, on the condition that the certification and designations shall be automatically vacated in the event that the Settlement Agreement is not approved by the Court or any appellate court;
- c. a hearing on the settlement proposed in this Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair,

reasonable, and adequate, and whether it should be finally approved by the Court.

26. After Preliminary Approval, Class Counsel shall move the Court for approval of a proposed form of, and means for, dissemination of notice of the Agreement, subject to agreement by Midwest Poultry on the proposed form and means of notice, which agreement shall not be unreasonably withheld. Subject to approval by the Court of the form of and means for dissemination of notice, individual notice of the Agreement (“Class Notice”) shall be mailed to persons and entities who are located in the United States and who purchased Shell Eggs or Egg Products directly from Midwest Poultry, any Non-Settling Defendant(s) in the Action, or Other Settling Defendants during the Class Period that: are identified by Midwest Poultry; were previously identified by Midwest Poultry and Other Settling Defendants; and are identified by Plaintiffs and Plaintiffs’ Counsel or Non-Settling Defendants in the Action. In addition, after Preliminary Approval, and subject to Court approval of the form of and means for dissemination of notice, Class Notice shall also be published once in the *Wall Street Journal* and in such other trade journals targeted towards direct purchasers of Shell Eggs and Egg Products, if any, proposed by Class Counsel. Within twenty (20) calendar days after the Execution Date, Midwest Poultry shall supply to Class Counsel at Midwest Poultry’s expense and in such form as kept in the regular course of business (electronic format if available) such names and addresses of potential Class Members as it has. If reasonably practicable and approved by the Court, Plaintiffs may combine dissemination of notice of the certification of the Class for settlement purposes and of the Agreement with the dissemination of notice of other settlement agreements that may be reached with other Defendants in the Action.

27. Within twenty (20) days of the date on which the Court preliminarily approves the Agreement and certifies a Class for settlement purposes, Midwest Poultry shall provide to Plaintiffs (to the extent that such data have not already been produced by Midwest Poultry in discovery in the Action) in a text delimited format, Midwest Poultry's sales data over the Class Period sufficient to show the dollar volume of annual sales of Shell Eggs and Egg Products to each of Midwest Poultry's customers during the Class Period. Within twenty (20) business days after the end of the opt-out period established by the Court and set forth in the notice, Plaintiffs shall provide Midwest Poultry, through Midwest Poultry's Counsel, a written list of all potential Class Members who have exercised their right to request exclusion from the Class, the dollar volume of purchases of Shell Eggs and Egg Products from Midwest Poultry during the Class Period for each such potential Class Member and the percentage that such potential Class Member's purchases represents of the Midwest Poultry's Total Sales as reflected in the data Midwest Poultry shall have produced pursuant to this paragraph.

28. Plaintiffs shall, following Preliminary Approval, as soon as reasonably possible and without delay, seek entry of an order and final judgment, the text of which shall be proposed by Plaintiffs, which shall:

- a. approve finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- b. determine that the Class Notice constituted, under the circumstances, the most effective and best practicable notice of this Settlement Agreement and of the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;

- c. reconfirm the appointment of Class Representatives and Settlement Class Counsel as defined herein;
- d. direct that, as to Midwest Poultry, the Action be dismissed with prejudice and, except as explicitly provided for in this Agreement, without costs;
- e. reserve to the United States District Court for the Eastern District of Pennsylvania exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of this Agreement; and
- f. determine under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay, and directing that the final judgment of dismissal as to Midwest Poultry shall be entered.

29. This Agreement shall become final only when (a) the Court has entered an order granting Final Approval to this Settlement Agreement; (b) the Court has entered final judgment dismissing the Action against Midwest Poultry on the merits with prejudice as to all Class Members and without costs; and (c) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as described in clause (b) above has expired or, if appealed, approval of this Agreement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times. On the Execution Date, Plaintiffs and Midwest Poultry shall be bound by the terms of this Agreement, and the Agreement shall not be rescinded except in accordance with Paragraphs 34 through 37 of this Agreement.

D. Release and Discharge

30. In addition to the effect of any final judgment entered in accordance with this Agreement, upon Final Approval of this Agreement, and for other valuable consideration as described herein, Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits and causes of action, whether Class, individual or otherwise in nature, that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of or arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries or damages, and the consequences thereof, arising out of or resulting from: (i) any agreement or understanding between or among two or more Producers of eggs, including any Defendants, including any entities or individuals that may later be added as a defendant to the Action, (ii) the reduction or restraint of supply, the reduction of or restrictions on production capacity, or (iii) the pricing, selling, discounting, marketing, or distributing of Shell Eggs or Egg Products in the United States or elsewhere, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, whether or not concealed or hidden, in the Complaints filed in the Action (the "Complaints"), which in whole or in part arise from or are related to the facts and/or actions described in the Complaints, including under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, consumer protection, fraud, RICO, civil conspiracy law, or similar laws, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq., from the beginning of time to the date on which the Court enters an order preliminarily approving the Settlement and certifying a Class for settlement purposes (the "Released Claims").

Releasors shall not, after the date of this Agreement, seek to recover against any of the Releasees for any of the Released Claims. Notwithstanding anything in this Paragraph, Released Claims shall not include, and this Agreement shall not and does not release, acquit or discharge, claims based solely on purchases of Shell Eggs and Egg Products outside of the United States on behalf of persons or entities located outside of the United States at the time of such purchases. This Release is made without regard to the possibility of subsequent discovery or existence of different or additional facts.

31. Each Releasor waives California Civil Code Section 1542 and similar or comparable present or future law or principle of law of any jurisdiction. Each Releasor hereby certifies that he, she, or it is aware of and has read and reviewed the following provision of California Civil Code Section 1542 (“Section 1542”): “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” The provisions of the release set forth above shall apply according to their terms, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims that are the subject matter of this Settlement Agreement, but each Releasor hereby expressly and fully, finally and forever waives and relinquishes, and forever settles and releases any known or unknown, suspected or unsuspected, contingent or non-contingent, claim whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits

existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts.

32. In addition to the provisions of Paragraphs 30 and 31, each Releasor hereby expressly and irrevocably waives and releases, upon this Agreement becoming finally approved by the Court, any and all defenses, rights, and benefits that each Releasor may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in Paragraphs 30 and 31. Each Releasor also expressly and irrevocably waives any and all defenses, rights, and benefits that the Releasor may have under any similar statute in effect in any other jurisdiction that, absent such waiver, might limit the extent or effect of the release.

33. The release and discharge set forth in Paragraphs 30 through 32 herein do not include claims relating to payment disputes, physical harm, defective product, or bodily injury (the "Excepted Claims") and do not include any Non-Settling Defendant or Other Settling Defendant.

E. Rescission

34. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in Paragraph 29 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not

affirmed, then Midwest Poultry and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety within ten (10) business days of the action giving rise to such option. If this Agreement is rescinded, within ten (10) business days of both the written notice of rescission to Class Counsel and the Escrow Agent and Midwest Poultry's written instructions to the Escrow Agent, all amounts in the escrow account created pursuant to Paragraph 38 hereof, less any expenses authorized pursuant to this Agreement, shall be wire transferred to Midwest Poultry pursuant to its instructions, provided, however, that simultaneous with its written instructions to the Escrow Agent, Midwest Poultry shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five (5) business days of receipt of such notice, notify the Escrow Agent of any objections to Midwest Poultry's instructions and funds shall not be wired until expiration of that objection deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

35. If Final Approval of this Agreement is not obtained, or if the Court does not enter the final judgment provided for in Paragraph 29 of this Agreement, Class Counsel and Midwest Poultry agree that this Agreement, including its exhibits, and any and all negotiations, documents, information, and discussions associated with it shall be without prejudice to the rights of Midwest Poultry or Plaintiffs, shall not be deemed or construed to be an admission or denial, or evidence or lack of evidence of any violation of any statute or law or of any liability or wrongdoing, or of the truth or falsity of any of the claims or allegations made in this Action in any pleading, and shall not be used directly or indirectly, in any way, whether in this Action or in any other proceeding,

unless such documents and/or information is otherwise obtainable by separate and independent discovery permissible under the Federal Rules of Civil Procedure.

36. Class Counsel further agree that in the event of rescission the originals and all copies of documents provided by or on behalf of Midwest Poultry pursuant to this Agreement, together with all documents and electronically stored information containing information provided by Midwest Poultry, including, but not limited to, notes, memos, records, and interviews, related to the Cooperation obligations pursuant to paragraph 44 shall be returned to Midwest Poultry at Midwest Poultry's expense or destroyed by Class Counsel at their own expense, provided however that such attorney notes, memoranda or records may be destroyed rather than produced if an affidavit of such destruction is promptly provided by Class Counsel to Midwest Poultry's Counsel.

37. If Class Counsel notify Midwest Poultry, pursuant to Paragraph 27, that Class Members whose combined annual purchases of Shell Eggs and/or Egg Products from Midwest Poultry over the Class Period equal or exceed a percentage of Midwest Poultry's Total Sales set forth in a Supplemental Agreement signed by the parties ("Opt-Out Threshold") have requested exclusion from this Agreement ("Excluded Class Members"), Midwest Poultry shall have the right and option, within fifteen (15) business days after receipt of such notice from Class Counsel, to rescind the Agreement. The parties intend that the Supplemental Agreement shall be specifically disclosed to the Court and offered for *in camera* inspection by the Court at or prior to entry of the Preliminary Approval Order, but, subject to the Court's approval, it shall not be filed with the Court before the expiration of the Opt-Out Deadline unless ordered otherwise by the Court. The parties shall seek to keep the Opt-Out Threshold confidential prior to the Opt-

Out Deadline. In the event that the Court directs that the Supplemental Agreement be filed prior to the Opt-Out Deadline, no party shall have any right to any relief by reason of such disclosure. Midwest Poultry shall, within fifteen (15) business days of receipt of notice from Class Counsel as provided for under this paragraph, give written notice to Class Counsel to invoke rights under this Paragraph to rescind the Agreement. If this Agreement is rescinded, subject to the terms of the Supplemental Agreement, all amounts in the Escrow Account created pursuant to Paragraph 38 hereof, less any expenses, fees, or taxes authorized pursuant to this Agreement, shall be wire transferred to Midwest Poultry, pursuant to its instructions to the Escrow Agent; provided, however, that simultaneous with its written instructions to the Escrow Agent, Midwest Poultry shall provide to Class Counsel notice of such instructions, and Class Counsel shall, within five (5) days of receipt of such notice, notify the Escrow Agent of any objections to Midwest Poultry's instructions and funds shall not be wired until expiration of that objection deadline. If Class Counsel object, the provisions of Article First, subsection h of the Escrow Agreement shall govern.

F. Payment

38. Midwest Poultry shall pay or cause to be paid the Settlement Amount in settlement of the Action. The Settlement Amount shall be wire transferred by Midwest Poultry or its designee within twenty (20) calendar days of the Execution Date into the Settlement Fund, which shall be established as an Escrow Account at a bank selected by Class Counsel and administered in accordance with the Escrow Agreement entered into by the Parties.

39. Each Class Member shall look solely to the Settlement Amount for settlement and satisfaction, as provided herein, of all claims released by the Releasors pursuant to this Agreement.

40. Class Counsel may, at a time approved by the Court, seek an award of attorneys' fees and reasonable litigation expenses and incentive awards for class representatives approved by the Court, to be paid out of the Settlement Amount after the Final Approval of the Agreement. Midwest Poultry agrees not to object to Class Counsel's petition to the Court for payment of attorneys' fees, costs, expenses, and incentive awards for class representatives from the Settlement Amount. Except to the extent that the Court may award attorneys' fees and litigation expenses to be paid out of the Settlement Amount, Midwest Poultry shall have no obligation to pay any fees or expenses for Class Counsel.

41. Upon entry of an order by the Court approving the request for an award of attorneys' fees and expenses and incentive awards for class representatives ("Attorneys' Fees Order") made pursuant to Paragraph 40 above, attorneys' fees may be distributed from the Settlement Fund pursuant to the terms of the fee order, provided however that any Class Counsel seeking to draw down their share of the attorneys' fees prior to Final Approval and the Attorneys' Fees Order becoming final shall secure the repayment of the amount drawn down by a letter of credit or letters of credit on terms, amounts, and by banks acceptable to Midwest Poultry, which acceptance shall not be unreasonably withheld. The Attorneys' Fees Order becomes final when the time for appeal or to seek permission to appeal from the Attorneys' Fees Order has expired or, if appealed, has been

affirmed by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

42. In order to receive distribution of funds pursuant to Paragraph 40 prior to Final Approval and the Attorneys' Fees Order becoming final above, each Class Counsel shall be required to provide the Claims Administrator the approved letter(s) of credit in the amount of Class Counsel's draw-down, and shall be required to reimburse the Settlement Fund within thirty (30) business days all or the pertinent portion of the draw-down with interest, calculated as the rate of interest published in the *Wall Street Journal* for 3-month U.S. Treasury Bills as of the close on the date that the draw-down was distributed, if Final Approval is not granted or if the award of attorneys' fees is reduced or overturned on appeal. The Claims Administrator may present the letter(s) of credit in the event the Class Counsel fails to honor the obligation to repay the amount withdrawn.

43. Disbursements for any payments and expenses incurred in connection with taxation matters relating to this Settlement Agreement shall be made from the Settlement Amount pursuant to section H of this Agreement upon written notice to the Escrow Agent by Class Counsel of such payments and expenses, and such amounts shall not be refundable to Midwest Poultry in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

44. **Cooperation:** Midwest Poultry shall provide cooperation in accordance with the terms and provisions of this Agreement to support the prosecution of Plaintiffs' claims. Midwest Poultry's obligations shall apply only to Releasers who act with, by or through Class Counsel pursuant to this Agreement in this Action. Midwest Poultry shall provide the following:

a. **Proffers:** Midwest Poultry agrees that, as soon as practicable after the Execution Date, Midwest Poultry's Counsel shall make themselves available, at dates, times and locations to be agreed upon by Midwest Poultry's Counsel and Class Counsel, to meet with Class Counsel for no more than eight (8) hours total to provide information concerning Midwest Poultry's knowledge, and that of its directors, officers, employees and agents, of the facts relating to documents, witnesses, meetings, communications, conduct and events at issue in the Action (the "Proffer").

Plaintiffs and Class Counsel agree that they shall maintain all statements made by Midwest Poultry's Counsel under this paragraph as strictly confidential and that they shall not use directly or indirectly the information so received for any purpose other than prosecution of the Action and that such information may not be used to prosecute any claim or action against Releasees. Class Counsel may use information contained in the Proffer in the prosecution of the Action without attributing the source of the information.

Class Counsel agree, unless ordered by a court and consistent with due process, that under no circumstances shall information or documents obtained from the Proffer be shared with any person, counsel, Class Counsel or Plaintiffs' Counsel who is also (i) counsel for any plaintiff in any state or federal action against one or more of the Releasees, (ii) counsel for any plaintiff or Class Member that elects to opt out of the proposed class for settlement purposes under this Agreement or from a litigation class that may be certified, (iii) any counsel representing or advising indirect purchasers of Shell Eggs or Processed Eggs, or (iv) any third party not associated with Class Counsel in this Action except in connection with prosecution of this Action. At the conclusion of the Action, Class Counsel shall destroy all notes, memoranda, or records related to the Proffer, and any copies thereof, and shall certify in writing to Midwest Poultry Plaintiffs' compliance with this requirement.

b. **Interviews:** At an agreed upon time, date and location, and at Midwest Poultry's expense, Midwest Poultry shall make available for one interview of no more than seven (7) hours with Class Counsel each of the then-current directors, officers, and employees of Midwest Poultry who possess information that, based on Class Counsel's good faith belief, would assist Plaintiffs in prosecuting this action. Midwest Poultry shall use best efforts to assist Class Counsel in arranging interviews with any former directors, officers, and employees of Midwest Poultry. The failure of any former officer, director or employee to make himself or herself available for the interview shall not affect in any way the release of Midwest Poultry, provided it has acted reasonably.

c. **Transactional Data:** Midwest Poultry shall, upon request by Class Counsel, clarify transactional and other data produced by Midwest Poultry in discovery in the Action, including providing, upon request by Plaintiffs, follow-

up information in response to questions Plaintiffs may have concerning such data. Class Counsel agrees to use reasonable efforts to minimize the burden of any such clarification or follow-up requests.

d. Authentication of Documents & Certifications as to Business Records:

Prior to trial in this Action, Midwest Poultry shall, at the request of Class Counsel and through reasonable means (including, but not limited to, affidavits and declarations by persons qualified to testify as to authenticity and/or as to business records (pursuant to Federal Rules of Evidence 902(11) and (12)) establish the authenticity of documents and/or admissibility as business records produced by Midwest Poultry, and, to the extent possible, any documents produced by Non-Settling Defendants or the alleged co-conspirators in this Action authored or created by Midwest Poultry or sent to or received by Midwest Poultry. Class Counsel agree to use reasonable efforts to minimize the burden to Midwest Poultry of any such authentication or business records testimony.

e. Trial Testimony: Upon the request of Class Counsel, Midwest Poultry shall make available from among its current or former directors, officers or employees a representative who Class Counsel believe in good faith to have knowledge regarding Plaintiffs' claims as alleged in the Action to testify at trial regarding facts or issues at issue in this Action. Midwest Poultry shall use its best efforts to assist Class Counsel in securing the testimony of any former employee of Midwest Poultry whom Midwest Poultry does not control but whom may be selected by Class Counsel for trial testimony. In the event that Midwest Poultry cannot secure the trial testimony of one or more such former employees selected by Class Counsel, Midwest Poultry shall make available a current director, officer or employees selected by Class Counsel to testify at trial.

G. Notice of Settlement to Class Members

45. Class Counsel shall take all necessary and appropriate steps to ensure that notice of this Settlement Agreement ("Notice") and the date of the hearing scheduled by the Court to consider the fairness, adequacy, and reasonableness of this Agreement is provided in accordance with the Federal Rules of Civil Procedure and any Court orders. Class Counsel will undertake all reasonable efforts to obtain from Non-Settling Defendants the names and addresses of those persons that purchased Shell Eggs or Egg Products directly from any Non-Settling Defendant during the Class Period. Class Notice

will be issued after Preliminary Approval by the Court and subject to any Court orders regarding the means of dissemination of notice.

46. Subject to court approval, disbursements for any payments and expenses incurred in connection with the costs of Notice and administration of the Settlement Agreement by the Claims Administrator shall be made from the Settlement Amount upon written notice to the Escrow Agent by Class Counsel of such payments and expenses. If Notice of the Agreement is combined with dissemination of notice of other settlement agreements as provided for under paragraph 26, the costs of the combined notice and administration shall be apportioned equally to the settlement amount of each such settlement agreement and the Agreement's apportioned cost of combined notice and administration shall, subject to court approval, be disbursed from the Settlement Amount upon written notice to the Escrow Agent by Class Counsel. Disbursements for any payments and expenses incurred in connection with the costs of Notice and administration of the Settlement Agreement by the Claims Administrator, up to a maximum of \$350,000, shall not be refundable to Midwest Poultry in the event that this Settlement Agreement is disapproved, rescinded, or otherwise fails to become effective.

H. Taxes

47. Class Counsel shall be solely responsible for directing the Claims Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Amount. Further, Class Counsel shall be solely responsible for directing the Escrow Agent to make any tax payments, including interest and penalties due, on income earned by the Escrow Funds ("Tax Expenses"). Class Counsel shall be entitled to direct the Escrow Agent in writing

to pay customary and reasonable Tax Expenses, including reasonable professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this Paragraph, from the applicable Escrow Fund by notifying the Escrow Agent in writing and as provided in paragraph 43 herein. Midwest Poultry shall have no responsibility to make any tax filings relating to this Settlement Agreement.

48. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “Administrator” of the Settlement Amount shall be the Claims Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Settlement Amount (including, without limitation, all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B 2(1)).

49. The parties to this Agreement and their Counsel shall treat, and shall cause the Claims Administrator to treat, the Settlement Amount as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1. In addition, the Claims Administrator and, as required, the parties, shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B 1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with

the Settlement Amount being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B 1.

I. Miscellaneous

50. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Action against any Non-Settling Defendant or any potential defendant other than the Releasees. All rights of any Class Member against Non-Settling Defendants or any other person or entity other than the Releasees are specifically reserved by Plaintiffs and the Class Members. The sales of Shell Eggs and Egg Products by Midwest Poultry to Class Members shall remain in the case against the Non-Settling Defendants in the Action as a basis for damage claims and shall be part of any joint and several liability claims against Non-Settling Defendants in the Action or other persons or entities other than the Releasees. This Agreement further does not settle, compromise or prejudice any defenses or affirmative defenses Midwest Poultry has asserted or may assert in indirect purchaser or tag along actions currently pending and consolidated in the Eastern District of Pennsylvania, including all such actions transferred for coordination. All rights of Midwest Poultry against such indirect purchaser and tag along plaintiffs are specifically reserved by Midwest Poultry.

51. Subject to Court approval, the United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and Midwest Poultry. This Agreement shall be governed by and interpreted

according to the substantive laws of the Commonwealth of Pennsylvania without regard to its choice of law or conflict of laws principles. Midwest Poultry submits to the jurisdiction in the Eastern District of Pennsylvania only for the purposes of this Agreement and the implementation, enforcement, and performance thereof. Midwest Poultry otherwise retain all defenses to the Court's exercise of personal jurisdiction over Midwest Poultry.

52. This Agreement, together with the Supplemental Agreement provided under paragraph 37 and incorporated by reference herein, constitutes the entire agreement among Plaintiffs (and the other Releasors) and Midwest Poultry (and the other Releasees) pertaining to the settlement of the Action against Midwest Poultry only, and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Midwest Poultry in connection therewith. In entering into this Agreement, Plaintiffs and Midwest Poultry have not relied upon any representation or promise made by Plaintiffs or Midwest Poultry not contained in this Agreement. This Agreement may be modified or amended only by a writing executed by Plaintiffs and Midwest Poultry and approved by the Court.

53. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Releasees. Without limiting the generality of the foregoing: (a) each and every covenant and agreement made herein by Plaintiffs, Class Counsel, or Plaintiffs' Counsel shall be binding upon all Class Members and Releasors; and (b) each and every covenant and agreement made herein by Releasees shall be binding upon all Releasees.

54. This Agreement may be executed in counterparts by Class Counsel and Midwest Poultry's Counsel, and an electronically-scanned (in either .pdf or .tiff format)

signature will be considered an original signature for purposes of execution of this Agreement.

55. The headings in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

56. In the event this Agreement is not approved, or in the event that the order and final judgment approving the settlement is entered but is substantially reversed, modified, or vacated, the pre-settlement status of the litigation shall be restored, and the Agreement shall have no effect on the rights of Midwest Poultry or Plaintiffs to prosecute or defend the pending Action in any respect, including the right to litigate fully the issues related to Class certification, raise personal jurisdictional defenses, or any other defenses, which rights are specifically and expressly retained by Midwest Poultry.

57. Neither Midwest Poultry nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

58. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasers, Midwest Poultry, and Releasees any right or remedy under or by reason of this Agreement.

59. Any putative Class Member that does not opt out of the Class created pursuant to the Agreement may remain in the Class without prejudice to the right of such putative Class Member to opt out of any other past, present, or future settlement class or certified litigation class in the Action.

60. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

For the Class:

Steven A. Asher
WEINSTEIN KITCHENOFF & ASHER LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103
asher@wka-law.com

For Midwest Poultry:

Kathy L. Osborn
FAEGRE BAKER DANIELS LLP
300 N. Meridian St., Ste. 2700
Indianapolis, IN 46204
kathy.osborn@faegrebd.com

61. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: March 31, 2014

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(Interim Co-Lead Counsel for the Class)



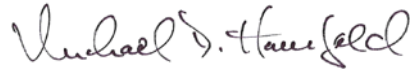
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(On Behalf of Midwest Poultry Services LP)

Dated: March 31, 2014



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(On Behalf of Midwest Poultry Services LP)

Exhibit A

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

IN RE: PROCESSED EGG PRODUCTS	:	MDL No. 2002
ANTITRUST LITIGATION	:	Case No: 08-md-02002
	:	
	:	
THIS DOCUMENT APPLIES TO	:	
ALL DIRECT PURCHASER ACTIONS	:	
	:	

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT WITH MIDWEST POULTRY SERVICES LP, CERTIFYING THE
CLASS FOR PURPOSES OF SETTLEMENT, AND GRANTING LEAVE TO FILE
MOTION FOR FEES AND EXPENSES**

It is hereby ORDERED AND DECREED as follows:

1. The motion of Direct Purchaser Plaintiffs for preliminary approval of the proposed settlement between Direct Purchaser Plaintiffs and Defendant Midwest Poultry Services LP (“Midwest Poultry”), which Midwest Poultry does not oppose, is hereby GRANTED.

2. The Court finds that the proposed settlement with Midwest Poultry, as set forth in the Settlement Agreement, subject to final determination following an approved form of and plan for notice and a Fairness Hearing, falls within the range of reasonableness and is sufficiently fair, reasonable and adequate to the following settlement class (the “Settlement Class”), for settlement purposes only:

All persons and entities that purchased Shell Eggs or Egg Products in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

a.) Shell Egg SubClass

All individuals and entities that purchased Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

b.) Egg Products SubClass

All individuals and entities that purchased Egg Products produced from Shell Eggs in the United States directly from any Producer, including any Defendant, during the Class Period from January 1, 2000 through the date on which the Court enters an order preliminarily approving the Agreement and certifying a Class for Settlement purposes.

Excluded from the Class and SubClasses are Defendants, Other Settling Defendants, and Producers, and the parents, subsidiaries and affiliates of Defendants, Other Settling Defendants, and Producers, 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.

3. For purposes of settlement and on the basis of the entire record before the Court, the Court finds that the Settlement Class fully complies with the requirements of Federal Rule of Civil Procedure 23. Specifically, the Court finds: (1) the Settlement Class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the Settlement Classes; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the Settlement Classes; and (4) the representative parties will fairly and adequately protect the interests of the class. Additionally, for purposes of settlement, the Court finds that Federal Rule of Civil Procedure 23(b)(3) is also met and that there are questions of law or fact common to class members which predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. In accordance with the holding in *In re Community Bank*

of Northern Virginia, 418 F.3d 277, 306 (3d Cir. 2005), this Court makes no determination concerning the manageability of this action as a class action if it were to go to trial.

4. Plaintiffs T.K. Ribbing's Family Restaurant, LLC; Eby-Brown Company LLC; Goldberg and Solovy Foods, Inc.; Karetas Foods, Inc.; Nussbaum-SF, Inc.; Somerset Industries, Inc.; Wixon, Inc.; John A. Lisciandro d/b/a/ Lisciandro's Restaurant, and SensoryEffects Flavor Co. d/b/a Sensory Effects Flavor Systems (collectively, "Plaintiffs"), will serve as Class Representatives on behalf of the Settlement Class.

5. The Court confirms the appointment of Class Counsel for purposes of the Settlement Class as the law firms Weinstein Kitchenoff & Asher LLC, 1845 Walnut Street, Suite 1100, Philadelphia, PA 19103; Hausfeld LLP, 1700 K Street NW, Suite 650, Washington, DC 20006; Bernstein Liebhard LLP, 10 East 40th Street, 22nd Floor, New York, NY 10016; and Susman Godfrey, 654 Madison Avenue, 5th Floor, New York, NY 10065-8404.

6. Direct Purchaser Plaintiffs' request for leave to file a motion for attorneys' fees and litigation expenses is hereby approved and shall be filed in accord with the deadline to be proposed by Class Counsel as set forth in paragraph 7 herein which shall be at least 90 days prior to the date on which the final Fairness Hearing is held and at least 45 days prior to the date by which potential Class Members must exclude themselves from or object to the Agreement.

7. Class Counsel shall submit for the Court's approval (a) a Proposed Notice to the Class, including a proposed schedule for Class Members to opt out or object to the proposed Settlement, (b) a proposed Plan of Notice that includes the proposed manner of Notice, a proposed Administrator for Notice and Claims, (c) a proposed date for the Court's Fairness Hearing to determine whether the Settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court, (d) a proposed deadline by which Plaintiffs must file

their motion for an award of attorneys' fees and reimbursement of litigation expenses, (e) a proposed deadline by which Plaintiffs must file their Motion for Final Approval of the Settlement Agreement, and (f) proposed deadlines by which Class Members must object to or request exclusion from the Settlement Agreement.

8. Interim Co-Lead Counsel for Direct Purchaser Plaintiffs shall include in the text of their proposed Direct Mail Notice and Publication Notice of the Settlement Agreement the deadline by which Direct Purchaser Plaintiffs must file their motion for an award of attorneys' fees and litigation expenses and a statement that Class Members may review the motion at the www.eggproductsettlement.com website prior to the objection and opt-out deadlines set forth below.

9. Within 30 days of entry of this Order, each Defendant shall provide to Garden City Group ("GCG") a supplemental production that shall include the names and addresses of all customers in the United States (i) to whom that Defendant sold Shell Eggs or Egg Products in the United States between the date of that Defendant's most recent customer name and address production to GCG and the date of entry of this Order; and (ii) that were not included in that Defendant's most recent customer name and address production to GCG.

- a. The customer information shall be produced in a mutually agreeable electronic format or, if not available electronically, in the form in which such information is regularly maintained;
- b. The customer information transmitted by Defendants to GCG shall be treated as confidential, and shall only be used by GCG for purposes of creating and maintaining a customer database and for disseminating notice; and

- c. The customer information transmitted by Defendants to GCG shall not be shared with Direct Purchaser Plaintiffs, Indirect Purchaser Plaintiffs, their counsel, or their experts.

BY THE COURT:

Gene E.K. Pratter
United States District Judge

Date: _____

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