UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Indirect purchaser end-user Plaintiffs ("Plaintiffs"), on behalf of themselves and all others similarly situated, by their undersigned attorneys, bring this action for treble damages and injunctive relief, as well as attorneys' fees and costs, where available by law, under the state antitrust and consumer protection laws of Arizona, California, District of Columbia, Florida, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Puerto Rico, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin ("Class Jurisdictions") as set forth below against Defendants and upon information and belief, and in connection therewith allege as follows:

NATURE OF THIS ACTION

- 1. This antitrust action arises out of a long-running conspiracy extending from at least January 1, 2000 through the present (the "Class Period"), among Defendants and their co-conspirators, with the purpose and effect of fixing, raising, and maintaining prices, allocating market share, and restricting output of both shell eggs and egg products sold indirectly to Plaintiff's and other indirect purchasers in the United States, including the Class Jurisdictions.
 - 2. Shell eggs are commonly designated for one of three purposes, consumption

(commonly referred to as table eggs), processing (commonly referred to as breaker eggs), or hatching. The eggs purchased by plaintiffs herein and that are the focus of this action are consumable table eggs (commonly identified as fresh, whole eggs sold in cartons found in grocery stores) and breaker eggs produced from caged birds in the United States ("shell eggs"), and egg products.

- 3. "Egg products" are, *inter alia*, whole eggs, whites, yolks and various blends with or without non-egg ingredients that are processed and pasteurized and may be available in liquid, frozen, and dried forms ("egg products"). Shell eggs and egg products will sometimes be referred to collectively as "eggs."
- 4. A substantial portion of eggs in the U.S. are sold (or otherwise traded) between parties in private transactions in long-term (1 and 3-year) contracts. The remainder of the eggs sold on the U.S. market are sold in spot transactions. A substantial portion of these spot transactions are facilitated by the Egg Clearinghouse, Inc., which serves as a spot market for eggs. (Peterson H.H., *Trading Behavior in a Marginal Organized Market*, Journal of Agricultural and Resource Economics 30(3):449-468, August 2005).
- 5. The Egg Clearinghouse exchange is used by market participants to make inventory adjustments and immediate trades for re-sale.
- 6. Participants in the Egg Clearinghouse exchange can use both the information as to transactions provided by the Egg Clearinghouse and the various market data tools provided by *Urner Barry Publications, Inc.* to help them set the prices for their transactions. Urner Barry price quotes serve as the primary benchmark for contract prices in the eggs markets. (*Id.*, at 450).
- 7. During an October 2001, trade association conference attended by Defendants' representatives Urner Barry Publications ("Urner Barry") was invited to discuss egg pricing

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and pricing systems. Richard Chilson, of AgriSoft|CMC (f/k/a, Chilson Management Controls), a consultancy and IT management firm for the chicken, egg, turkey and swine industries, also advised Defendants as well as other shell egg producers and egg processors about pricing and marketing.

- 8. During April 2002, the egg industry implemented an industry-wide program to reduce the supply of eggs. Also during April 2002, it has been reported that at an Urner Barry Industry Conference Rick Brown and Randy Pescoitta of Urner Barry urged the audience of shell egg and egg product processors (i.e., Moark LLC) to follow the published Urner Barry pricing lists and not to over produce their products. (*Back to Basics at Urner Barry*, Watt Poultry, May 2002). The efforts of the conspirators to monitor, continue and enforce these supply restrictions continued throughout the Class Period.
- 9. Many of the largest egg processors disclose in their regulatory filings with the Securities and Exchange Commission that (1) they have followed the Industry's leading association's recommendation to increase cage sizes (thereby reducing supply) and (2) they follow Urner Barry in pricing their products.
- 10. During the Class Period, Defendants engaged in a combination and conspiracy, the purpose and effect of which was to reduce domestic egg output and to artificially fix, raise, maintain or stabilize the price of eggs sold in the United States.
- 11. During the Class Period, Defendants conspired to, and did reduce and constrain the supply and artificially inflate the price of eggs in many ways including, *inter alia*:
 - Agreeing to reduce the total number of hens at laying farms by increasing individual cage space without adding cages, thus decreasing the total number of hens that could be caged at each farm;

- b. Agreeing to delay and/or reduce hatching;
- c. Agreeing to reduce inventory;
- d. Agreeing to restrain output; and
- e. Agreeing to arrange for exports of eggs as a means of reducing domestic supply solely for the purpose of maintaining supracompetitive profits in the U.S. market.
- 12. These coordinated efforts by Defendants were designed to and did reduce the supply of shell eggs, which increased the prices of shell eggs and egg products throughout the Class Period.
- 13. Plaintiffs and members of the class have been forced to pay supra-competitive prices for eggs and egg products and, as a result of Defendants' illegal actions, have suffered antitrust injury to their property or business.
- 14. Plaintiffs bring this action seeking federal injunctive relief under Section 16 of the Clayton Act, 15 U.S.C. § 26 for violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.
- eggs and egg products in each of the Class Jurisdictions under their respective antitrust and consumer protection laws to recover damages as well as to recover the costs of suit, including reasonable attorneys fees, for the injuries that Plaintiffs and class members sustained as a result of the Defendants' conspiracy to fix, raise, maintain and stabilize, allocate markets for, and limit, reduce and otherwise manipulate the price and supply of shell eggs and egg products.

JURISDICTION AND VENUE

16. Plaintiffs bring this action pursuant to Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26 for injunctive relief, including reasonable attorneys' fees and costs of

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this litigation, for Defendants' violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiffs also bring this action pursuant to the state antitrust and consumer protection laws for damages, where available by law, including reasonable attorneys' fees and costs of this litigation.

- 17. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337 and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.
- 18. This Court has supplemental subject matter jurisdiction over the pendent state antitrust and consumer protection law claims under 28 U.S.C. § 1367.
- 19. The requirements of the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d) are satisfied in that (1) the members of the Class exceed 100; (2) the citizenship of at least one proposed Class member is different from that of any defendant; and (3) the matter in controversy, after aggregating the claims of the proposed Class members, exceeds \$5,000,000, exclusive of interest and costs.
- 20. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15, 22 and 26 and 28 U.S.C. § 1391(b) and (c) because, during the Class Period, one or more of the Defendants resided, transacted business, was found, or had agents in this district. In addition, the litigation was transferred to this District for pretrial purposes pursuant to 28 U.S.C. § 1407.

PLAINTIFFS

- 21. Within the Class Period, each Plaintiff purchased shell eggs and/or egg products in the state in which they reside or where they conduct business and suffered an economic injury as a result of Defendants' illegal conduct described in this Consolidated Amended Complaint ("CAC" or "Complaint").
 - 22. Plaintiff Scott Friedson is a resident of Chandler, Arizona. Plaintiff indirectly

purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.

- 23. Plaintiff Adam Properties, Inc. (d/b/a, Primo Thunder Market) is a corporation and doing business under California law with its principal place of business in Oceanside, California. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 24. Plaintiff Scott Druschke is a resident of Los Angeles, California. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 25. Plaintiff Pilar M. De Castro & Co., Inc. is a corporation incorporated and doing business under California law with its principal place of business in Anaheim, California. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 26. Plaintiff Charles Zebrowski is a resident of the District of Columbia. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 27. Plaintiff Deborah Andrews is a resident of Tampa, Florida. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 28. Plaintiff Joan Gibbons is a resident of Sewall's Point, Florida. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 29. Plaintiff Donn Camlin is a resident of Shawnee, Kansas. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result

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of Defendants' illegal conduct.

- 30. Plaintiff Thomas Williams is a resident of Liberal, Kansas. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 31. Plaintiff Patricia Tarrance is a resident of Lynn, Massachusetts. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 32. Plaintiff Colette Merdzinski is a resident of Fremont, Michigan. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 33. Plaintiff Sharon Defren is a resident of Mendota Heights, Minnesota. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 34. Plaintiff Zelda Rogers is a resident of Franklin County, Nebraska. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 35. Plaintiff Lydia Neuman is a resident of Albuquerque, New Mexico. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 36. Plaintiff Tercsa M. Collins is a resident of Albany, New York. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 37. Plaintiff Thomas McManus is a resident of Manhasset, New York. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured

as a result of Defendants' illegal conduct.

- 38. Plaintiff Mark Moynahan is a resident of New York, New York. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 39. Plaintiff Lynsey Allen is a resident of Charlotte, North Carolina. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 40. Plaintiff Kate Barry is a resident of Raleigh-Durham, North Carolina. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 41. Plaintiff James Anderson is a resident of Nashville, Tennessee. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 42. Plaintiff Michael Dobson is a resident of Salt Lake City, Utah. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 43. Plaintiff Sandra Drown is a resident of Northfield, Vermont. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 44. Plaintiff Lester Skinner is a resident of New Cumberland, West Virginia. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.
- 45. Plaintiff Richard Bentley is a resident of Madison, Wisconsin. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured

as a result of Defendants' illegal conduct.

46. Plaintiff Zeqiri Corp. is a resident of Oak Creek, Wisconsin. Plaintiff indirectly purchased shell eggs and/or egg products during the Class Period and was injured as a result of Defendants' illegal conduct.

DEFENDANTS

47. Whenever in this Complaint reference is made to any act, deed or transaction of any corporation, the allegation means that the corporation engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

Industry Trade Associations

- 48. Defendant United Egg Producers, Inc. ("UEP") is a cooperative corporation organized, existing, and doing business under the laws of the State of Maine with its office and principal place of business in Alpharetta, Georgia. UEP is the largest egg trade organization in the U.S., with a membership open to non-egg producers as well as producers.
- 49. Defendant United Egg Association ("UEA") is a nonprofit corporation organized, existing, and doing business under the laws of the District of Columbia, with its offices and principal place of business located in Alpharetta, Georgia. UEP's annual meetings are held in conjunction with UEA's meetings and members of the organizations attend joint meetings.
- 50. Defendant United States Egg Marketers, Inc. ("USEM") is a nonprofit corporation doing business under Georgia law, with its principal place of business located in Alpharetta, Georgia.

Individual Companies

Cal-Maine Foods, Inc.

- 51. Defendant Cal-Maine Foods, Inc. ("Cal-Maine") is a corporation organized, existing, and doing business under the laws of the State of Delaware, with its offices and principal place of business located in Jackson, Mississippi. During the Class Period, Cal-Maine's eggs were sold to indirect purchasers in the United States, including members of the Classes.
- 52. Cal-Maine is the largest producer and marketer of shell eggs in the United States. It is also a leader in industry consolidation having completed 14 acquisitions since 1989. In fiscal year 2008, Cal-Maine sold approximately 678 million dozen shell eggs (accounting for approximately 15.8% of domestic shell egg consumption). Fred Adams, founder and CEO of Cal-Maine, was a founding member of UEP.
- 53. In fiscal year 2007, 20% of Cal-Maine eggs were not produced by Cal-Maine; 7% were grown under production contracts and the remainder were purchased on the spot market.
- 54. Some of Cal-Maine's brands include Egg-Land's Best (Cal-Maine owns 25.9% non-voting equity interest and has an exclusive license agreement to market and distribute Egg-Land's Best in major metropolitan areas, including New York City, and a number of states in the South); Rio Grande; and Sun Up. Cal-Maine's customers are 85% retail markets, 10% food-service markets, and 5% to other types of entities.
- 55. Cal-Maine is a member of UEP and its employees have served in key executive positions and/or on committees of the organization on behalf of Cal-Maine. During the time that the conspiracy was in effect, a Cal-Maine representative served as chairman of the UEP. In 2008, Cal-Maine employees served on various UEP committees, including UEP's: a) Executive Committee; b) Finance Committee; c) Shell Egg Price Discovery Committee; d) Shell Egg Marketing Committee; e) Quality Assurance/Food Safety Committee; f) Producer Committee for

Animal Welfare; g) Long Range Planning Committee; and h) the United States Egg Marketers Export Committee. Cal-Maine employees have attended UEP and Urner Barry conferences and/or meetings and promoted efforts to reduce supply with one of the goals of fixing prices. Cal-Maine has participated in and profited from UEP's and its co-conspirators' efforts to reduce supply and fix prices, as outlined herein. Cal-Maine has furthered the conspiracy by, among other things, selling UEP certified eggs and reducing its egg supply as a result. Cal-Maine has also furthered the conspiracy by exporting its proportionate share of eggs at below domestic prices in order to reduce domestic supplies.

Michael Foods, Inc.

- 56. Defendant Michael Foods, Inc. ("Michael Foods") is a Delaware corporation with its principal place of business at 301 Carlson Parkway, Suite 400, Minnetonka, Minnesota 55305. Defendant Michael Foods marketed and sold egg products in this district and the United States during the Class Period. Michael Foods is the largest North American producer of egg products; during 2007 it had a 45% share of the egg products market. Michael Foods is also the largest global supplier of egg products with sales of \$1.6 billion in 2007.
- In 2007, Michael Foods' Egg Products Division (Food Services, and Food Ingredients) derived approximately 98% of their net sales from various egg products, with the remaining 2% coming from shell eggs. Michael Foods' Processed Egg Products Division does business through several wholly-owned operating subsidiaries including: M.G. Waldbaum Company, Papetti's Hygrade Egg Products, Inc., Abbotsford Acquisition Corp., MFI Foods Canada, Ltd. and Trilogy Egg Products Inc. (Michael Foods, 2006 Form 10-K). Michael Foods follows third-party Urner Berry, Inc. for its pricing of egg products in North American markets. (Id.).

58. Defendant Papetti's Hygrade Egg Products, Inc. ("Papetti's"), a wholly-owned subsidiary of Michael Foods, is a New Jersey corporation with its principal place of business at 1 Papetti Plaza, Elizabeth, New Jersey. Papetti's marketed and/or sold egg products in this district and the United States during the Class Period.

Land O'Lakes Inc., Moark LLP, and Norco Ranch

- 59. Defendant Land O'Lakes Inc. ("Land O'Lakes) is a Minnesota corporation organized, existing, and doing business under the laws of the State of Minnesota, with its offices and principal place of business located in Arden Hills, Minnesota. During the Class Period, Land O'Lakes sold shell eggs and egg products to purchasers in the United States directly or through its subsidiaries and affiliates, including members of the Class.
- 60. Land O'Lakes is the parent company of Moark LLP ("Moark"). Land O'Lakes has been an active participant in and profited from its subsidiary's, as well as UEP's and its coconspirators' efforts to reduce supply and fix prices, as outlined herein. Moark Productions, the predecessor to Moark LLC, began in 1957. Moark Productions joined with Land O'Lakes in 2000 to form Moark, -- a national, consolidated egg company. Moark developed a national LAND O'LAKESTM brand egg to complement other brands it marketed. In 2006, Land O'Lakes acquired 100% of the ownership of Moark. Moark and its subsidiaries are referred to as the "Layer" or "Egg" division of Land O'Lakes.
- 61. Defendant Moark is a limited liability company organized, existing, and doing business under the laws of the State of Missouri, with its offices and principal place of business located in Norco, California. During the Class Period, Moark sold shell eggs and egg products to purchasers in the United States, including members of the Class.

- 62. While as a Land O'Lakes' subsidiary, Moark marketed and processed 523 million dozen eggs from approximately 24 million layers (hens) per year. Moark produces and markets shell eggs that are sold under corporate brands and national brand names such as LAND O'LAKES All-Natural Farm Fresh Eggs and Eggland's Best, as well as non-branded shell eggs.
- 63. Moark/Land O'Lakes is the nation's third-largest producer and marketer of shell eggs. Moark/Land O'Lake's annual egg sales are approximately \$500,000,000.
- 64. Moark is a member of UEP and UEA and its employees have served in key executive positions and/or on committees of these organizations on behalf of Moark. In 2008, Moark employees served on various UEP committees, including: a) the UEP Executive Committee (secretary); b) Area #1; c) Area #4; d) Finance Committee; e) Government Relations Committee; f) Shell Egg Price Discovery Committee; g) Shell Egg Marketing Committee; h) Quality Assurance/Food Safety Committee; i) Producer Committee for Animal Welfare; j) Public Relations Committee; k) Long Range Planning Committee; l) and the United States Egg Marketers Export Committee. Throughout the Class Period, Moark employees have attended UEP meetings and promoted efforts to reduce supply and fix prices. Moark has participated in and profited from UEP's and its co-conspirators' efforts to reduce supply and fix prices, as outlined herein. Moark has furthered the conspiracy by selling UEP certified eggs and egg products and has reduced its egg supply as a result. Moark has also furthered the conspiracy by exporting shell eggs in order to reduce domestic supplies. Moark is the parent company of Norco Ranch, Inc.
- 65. Norco Ranch, Inc. ("Norco Ranch") is a corporation organized, existing, and doing business under the laws of the State of California, with its offices and principal place of business located in Norco, California. It is a subsidiary of Moark. During the Class Period,

Norco Ranch sold shell eggs to purchasers in the United States, including members of the Classes.

66. Norco is a member of UEP and its employees have served in key executive positions and/or on committees of the organization on behalf of Norco. In 2008, Norco employees served on UEP's Government Relations Committee. Norco employees have attended UEP meetings and promoted efforts to reduce supply and fix prices. Norco has participated in and profited from UEP's and its co-conspirators' efforts to reduce supply and fix prices, as outlined herein. Norco has furthered the conspiracy by selling UEP certified eggs and has reduced its egg supply as a result.

Rose Acre Farms

- 67. Defendant Rose Acre Farms, Inc. ("Rose Acre") is a corporation incorporated and doing business under Indiana law, with its principal place of business in Seymour, Indiana.

 During the Class Period, Rose Acre marketed, sold, and/or distributed shell eggs to customers in the United States.
 - 68. Rose Acre sells shell eggs and egg products for the foodservice industry.
- 69. Rose Acre is a vertically integrated operation handling all of its own breeding chicks, milling feed, harvesting, cleaning, sorting, packing, and shipping eggs directly to retailers.
- 70. Rose Acre's brands include: White Shell Eggs, GreatEgg's Vita-D, GOLDEN-PREMIUM, Brown Shell Eggs (Large & Jumbo), Christopher Eggs, Eggland's Best, and GreatEggs. Rose Acre's annual sales are estimated to be approximately \$192,300,000.
- 71. Rose Acre is a member of UEP and UEA and its employees have served in key executive positions and/or on committees of these organizations on behalf of Rose Acre. In

2008, Rose Acre employees served on UEP's Area #3, Government Relations Committee, Shell Egg Price Discovery Committee, Shell Egg Marketing Committee, Environmental Committee, Producer Committee for Animal Welfare, Public Relations Committee, Long Range Planning Committee, Environmental Scientific Panel, and the United States Egg Marketers Export Committee. Rose Λcre employees have attended UEP meetings and promoted efforts to reduce supply and artificially raise prices.

National Food Corporation

- 72. Defendant National Food Corporation ("National Food") is a corporation organized, existing, and doing business under the laws of the state of Washington with its offices and principal place of business located in Everett, Washington. During the Class Period, National Food sold eggs to purchasers in the United States.
- 73. National Food is a fully integrated produce and processor of eggs and egg products. National Food operates its own feed mills, pullet farms, layer farms, processing plants, and distributions centers in Washington, Oregon, Montana, and South Dakota and serves markets throughout the Pacific Northwest, Alaska, Hawaii, and the Midwest.
- 74. National Food sells shell eggs and egg products including: whole eggs; egg whites; yolks; peptex; and fortified product.
- 75. National Food is a member of UEP and its employees have served in key executive positions and/or on committees of the organization on behalf of National Food.

 During the time that the conspiracy was in effect, a National Food representative served as chairman of the UEP and promoted the conspiracy as alleged herein. In 2008, National Food employees served on UEP's Area #2, Shell Egg Price Discovery Committee, Shell Egg

 Marketing Committee (chair), Public Relations Committee, Long Range Planning Committee,

and the United States Egg Marketers Export Committee (secretary). National Food has been an active participant in and profited from UEP's and its co-conspirators' efforts to reduce supply and fix prices, as outlined herein.

Hillandale Farms and Ohio Fresh Eggs

- 76. Hillandale Farms comprises various companies including Defendants Hillandale Farms of Pa., Inc.; Hillandale-Gettysburg, L.P., Hillandale Farms East, Inc.; and Hillandale Farms, Inc. that function as an integrated enterprise producing and selling shell eggs. In addition, Hillandale Farms sells all of the shell eggs produced by its affiliate and supplier, Defendant Ohio Fresh Eggs, LLC.
- 77. According to its website, Hillandale Farms was founded by Orland Bethel; has production facilities in the Northeast, Midwest, and Southeast; and is "a vertically integrated supplier ... directly involved in every aspect of egg production and distribution." Each of the Hillandale Farms constituent companies is owned and/or controlled by Orland Bethel, Gary Bethel, and/or Don Hershey.
- 78. Hillandale Farms is a producer, processor, and distributor of shell eggs.

 Specializing in corporate brands, Hillandale Farms packs for many leading retailers and distributors. Hillandale Farms also packs its own brands of eggs under the following labels: Hillandale Farms, Nearby Eggs, and Hartford Farms.
- 79. A UEP newsletter identified Hillandale Farms as the 19th largest egg production company in the United States in 2003. UEP newsletters also reported that Hillandale Farms completed animal care certified audits, was a certified company and licensed marketer, and displayed the animal care certified logo on its packages.

- 80. Gary Bethel, an officer of several Hillandale Farms entities, was quoted in a December 13, 2003 article discussing increased egg prices, in which he explained how Hillandale Farms had reduced supply:
 - "We've been taking a proactive approach towards allowing caged chickens more space; 'said Gary Bethel, a spokesman for Hillandale Farms of Pennsylvania and a North Versailles egg producer. "If we had a house that held 100,000 chickens five years ago, it would house 80,000 now, and that means quite a reduction in total egg numbers."
- 81. Defendant Hillandale Farms of Pa., Inc. ("Hillandale P A") is a corporation organized, existing, and doing business under the laws of the Commonwealth of Pennsylvania with its principal place of business located in North Versailles, Pennsylvania. Hillandale PA is part of the Hillandale Farms integrated enterprise. It is owned by Orland Bethel, the company's president, and Gary Bethel, the company's vice president.
- 82. Defendant Hillandale-Gettysburg, L.P. ("Hillandale-Gettysburg") is a limited partnership organized, existing, and doing business under the laws of the Commonwealth of Pennsylvania with its principal place of business located in Gettysburg, Pennsylvania. Hillandale-Gettysburg is part of the Hillandale Farms integrated enterprise. Hillandale-Gettysburg is owned by Orland Bethel and Don Hershey, who is also the president of HGLP LLC, the general partner of Hillandale Gettysburg.
- 83. Defendant Hillandale Farms East, Inc. ("Hillandale East") is a corporation organized, existing, and doing business under the laws of the Commonwealth of Pennsylvania with its principal place of business located in Spring Grove, Pennsylvania. Hillandale East is part

¹ Mackenzic Carpenter. "Shoppers Shelling Out More for Egg Price Tied to Diet, Reduced Supply." Pittsburgh-Post Gazette, (Dec. 13, 2003).

of the Hillandale Farms integrated enterprise. It is owned by Gary Bethel, the company's president, and Orland Bethel, the company's secretary and treasurer.

- 84. Defendant Hillandale Farms, Inc. is a corporation organized, existing, and doing business under the laws of the State of Ohio with its principal place of business located in Corry, Pennsylvania. Hillandale Farms, Inc. is part of the Hillandale Farms integrated enterprise. It is owned by Orland Bethel and Gary Bethel, the company's president.
- 85. Defendant Ohio Fresh Eggs, LLC ("Ohio Fresh") is a limited liability company organized, existing, and doing business under the laws of the State of Ohio with its principal place of business located in Croton, Ohio. It owns egg production facilities in Ohio and is a member of the UEP.
- 86. During the relevant period, seventy percent of the interest in Ohio Fresh was held by Hillandale Farms LLC, the sole member of which is Orland Bethel. Thirty percent of the interest in Ohio Fresh was held by Eggs Manager LLC ("Eggs Manager"), the sole member of which is Don Hershey. Pursuant to agreements executed December 26, 2003, Hillandale PA purchases all eggs produced by Ohio Fresh and Eggs Manager manages and supervises the operations of Ohio Fresh.
- 87. In June 2004. Ohio Fresh confirmed its intention to follow UEP's Marketing Committee recommendation to dispose of spent hens by 108 weeks and reported that it would dispose of spent hens between 80 to 84 weeks.
- 88. In July 2005, an Ohio Fresh spokeperson, Harry Palmer. "said he was told there were too many birds 12 million to 15 million too many producing eggs nationally" resulting in higher supply and lower prices.

89. Hillandale Farms, as an integrated enterprise, and its affiliate and supplier Ohio Fresh have been active participants in and profited from UEP's and its co-conspirators' efforts to reduce supply and fix prices as outlined herein.

Daybreak Foods

- 90. Defendant Daybreak Foods, Inc, ("Daybreak Foods") is a corporation organized, existing, and doing business under the laws of the State of Wisconsin with its offices and in the United States.
- 91. Daybreak is a member of UEP and its employees have served in key executive positions and/or on committees of the organization on behalf of Daybreak. Daybreak has been an active participant in and profited from UEP's and its co-conspirators' efforts to reduce supply and fix prices, as outlined herein.

Midwest Poultry Services

- 92. Defendant Midwest Poultry Services, L.P. ("Midwest") is a limited partnership organized, existing, and doing business under the laws of the State of Indiana, with its offices and principal place of business located in Mentone, Indiana. During the Class Period, Midwest sold eggs to purchasers in the United States.
- 93. Midwest is a member of UEP and its employees have served in key executive positions and/or on committees of the organization on behalf of Midwest. Midwest employees have attended UEP meetings and promoted efforts to reduce supply and fix prices.

NuCal Foods

94. Defendant NuCal Foods, Inc. ("'NuCal Foods") is a corporation organized, existing, and doing business under the laws of the State of California, with its offices and

principal place of business located in Ripon, California. During the Class Period, NuCal Foods sold eggs to purchasers in the United States.

- 95. NuCal is incorporated as an agricultural cooperative in California. Egg producers that are part of NuCal include: (I) Gemperle Enterprises of Turlock; (2) Sunrise Farms of Petaluma; (3) J. S. West Milling of Modesto (whose president is the current Chairman of UEP); and (4) Valley Fresh Foods of Turlock.
- 96. NuCal is the largest distributor of shell eggs in the Western United States. NuCal is a totally integrated egg producer from production through distribution and processes approximately 7.5 million eggs per day.
- 97. NuCal products include: Becky, Cal Egg, California Finest, Chefs Best, Clover Stornetta Farms, Crack A Smile Omega 3 & Lutein, Egg-Land's Best, Lucerne (Safeway), Nulaid (white), Supermarket private label eggs, and Santa Rosa.
- 98. NuCal is a member of UEP and its employees have served in key executive positions and/or on committees of the organization on behalf of NuCal. NuCal employees have attended UEP meetings and promoted efforts to reduce supply and fix prices. NuCal has participated in and profited from UEP's and its co-conspirators' efforts to reduce supply and fix prices, as outlined herein.

R.W. Sauder

99. Defendant R. W. Sauder, Inc. ("Sauder") is a corporation organized, existing, and doing business under the laws of the State of Pennsylvania, with its offices and principal place of business located in Lititz, Pennsylvania. During the Class Period, Sauder sold shell eggs and/or egg products to purchasers in the United States.

- 100. Sauder sells the following products: Sauder's Gold Eggs, Sauder's Organic Eggs, Sauder's Deviled Egg Kit, Sauder's Hard Cooked Flavored Eggs (Red Beet, Mustard, & Southwestern), Sauder's Hard Cooked Eggs, Sauder's Hard Cooked Eggs 10 Egg Pouch, Sauder's 8 pack Hard Cooked, Sauder's Twin 18 pack (3 doz.) and wholesale eggs and egg products in various sizes and packages.
- 101. Sauder is a member of UEP and its employees have served in key executive positions and/or on committees of the organization on behalf of Sauder. Sauder employees have attended UEP meetings and promoted efforts to reduce supply and fix prices. Sauder has participated in and profited from UEP's and its co-conspirators' efforts to reduce supply and fix prices, as outlined herein.
- 102. The true names and capacities, whether individual, corporate, associate, representative are unknown to Plaintiffs and their identities will require discovery. Plaintiffs will amend this complaint to allege the true names and capacities of additional co-conspirators when their identities become known.

NON-DEFENDANT CO-CONSPIRATORS

Urner Barry Publications, Inc.

- 103. Urner Barry Publications, Inc., a New Jersey corporation, is a publisher of daily and monthly newsletters and is a price reporting service for the egg industry, among others. Urner Barry's newsletters publish egg price quotations that are widely relied on in the setting of wholesale egg prices under spot purchases and long-term contacts.
- 104. The Urner Barry newsletters and price reports set forth quotations representing Urner Barry's determination of the market value of shell eggs and egg products.

- 105. The precise method utilized by Urner Barry in arriving at the quotations is proprietary, but, in general, involves an analysis of market data.
- 106. One aspect of Urner Barry's market data includes price discovery from industry participants. Urner Barry representatives communicate with shell egg producers and egg product processors on a daily basis about their inventory levels, new and expiring contracts, spot transactions on the Egg Clearinghouse, etc.
- Department of Justice Antitrust Division. (Letter from Helmut F. Furth, Acting Assistant Attorney General Antitrust Division, to John M. Carter, President, Urner Barry Publications, September 9, 1983). The Department of Justice issued such a review which can be viewed on the department's website. See http://www.usdoj.gov/atr/public/busreview/229889.htm (see entry National Egg Price System Study Committee / Urner Barry Publications, Inc., letter 83-17).

Unidentified Co-Conspirators

- 108. Various other persons, firms and corporations, not named as Defendants in this complaint, have participated as co-conspirators with Defendants in the violations alleged herein, and aided, abetted and performed acts and made statements in furtherance of the conspiracy.
- 109. The true names and capacities, whether individual, corporate, associate, representative are unknown to Plaintiffs and their identities will require discovery. Plaintiffs will amend this complaint to allege the true names and capacities of additional co-conspirators when their identities become known.

CLASS ACTION ALLEGATIONS

110. Plaintiffs bring this action on their own behalf and as a class action on behalf of indirect purchasers nationwide pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following class:

Indirect Purchaser National Class

All individuals and entities in the United States who indirectly purchased eggs, including shell eggs and/or egg products, produced from caged birds in the United States by Defendants' or their co-conspirators' during the Class Period from January 1, 2000 through the present.

111. Plaintiffs also bring this action on their own behalf and as a class action on behalf of indirect purchasers in the Class Jurisdictions pursuant to Rule 23 of the Federal Rules of Civil Procedure and/or respective Class Jurisdiction's statute(s) on behalf of the following classes (collectively the "Indirect Purchaser State Classes"):

Arizona Indirect Purchaser Class

All individuals and entities residing in Arizona that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

California Indirect Purchaser Class

All individuals and entities residing in California that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

District of Columbia Indirect Purchaser Class

All individuals and entities residing in the District of Columbia that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Florida Indirect Purchaser Class

All individuals and entities residing in Florida that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Iowa Indirect Purchaser Class

All individuals and entities residing in Iowa that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Kansas Indirect Purchaser Class

All individuals and entities residing in Kansas that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Maine Indirect Purchaser Class

All individuals and entities residing in Maine that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Massachusetts Indirect Purchaser Class

All individuals and entities residing in Massachusetts that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Michigan Indirect Purchaser Class

All individuals and entities residing in Michigan that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Minnesota Indirect Purchaser Class

All individuals and entities residing in Minnesota that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Mississippi Indirect Purchaser Class

All individuals and entities residing in Mississippi that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Nebraska Indirect Purchaser Class

All individuals and entities residing in Nebraska that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell

eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Nevada Indirect Purchaser Class

All individuals and entities residing in Nevada that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

New Mexico Indirect Purchaser Class

All individuals and entities residing in New Mexico that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

New York Indirect Purchaser Class

All individuals and entities residing in New York that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

North Carolina Indirect Purchaser Class

All individuals and entities residing in North Carolina that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

North Dakota Indirect Purchaser Class

All individuals and entities residing in North Dakota that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Puerto Rico Indirect Purchaser Class

All individuals and entities residing in Puerto Rico that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

South Dakota Indirect Purchaser Class

All individuals and entities residing in South Dakota that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Tennessee Indirect Purchaser Class

All individuals and entities residing in Tennessee that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Utah Indirect Purchaser Class

All individuals and entities residing in Utah that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Vermont Indirect Purchaser Class

All individuals and entities residing in Vermont that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

West Virginia Indirect Purchaser Class

All individuals and entities residing in West Virginia that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

Wisconsin Indirect Purchaser Class

All individuals and entities residing in Wisconsin that indirectly purchased for their own use, and not for resale, shell eggs and/or egg products produced from shell eggs produced from Defendants' or their co-conspirators' caged birds during the Class Period from January 1, 2000 through the present.

- 112. The Indirect Purchaser National Class and the Indirect Purchaser State Classes are collectively referred to as the "Class" or "Classes" throughout this Complaint.
- Defendants' subsidiaries and affiliates; all persons who purchased eggs directly from any

 Defendant or any other producer of eggs. Also excluded from the Classes are purchases of

 "specialty" shell eggs or egg products (such as "organic," "free-range," or "cage-free") and

 purchases of hatching eggs (used by poultry breeders to produce breeder stock or growing stock

 for laying hens or meat).

- 114. Plaintiffs reserve the right to amend the definitions of the Classes when Plaintiffs move for class certification.
- 115. Plaintiffs do not know the exact size of the Classes at the present time. However, due to the nature of the trade and commerce involved, there are thousands of class members, geographically dispersed throughout the United States such that joinder is impractical.
- 116. Plaintiffs' claims are typical of the claims of the Classes, and Plaintiffs will fairly and adequately protect the interests of those Classes. Plaintiffs' interests are coincident with, and not antagonistic to, those of the members of the Classes. Plaintiffs have retained competent counsel experienced in class action and complex antitrust and consumer protection litigation.
- 117. Class action treatment is a superior method for the fair and efficient adjudication of this controversy because:
 - a. It will avoid a multiplicity of suits and consequent burden on the parties and the courts;
 - b. It would be impracticable for all members of the Classes to intervene as parties-plaintiff in this action;
 - c. It will allow numerous individuals with claims too small to adjudicate on an individual basis to obtain redress for their economic injuries; and
 - d. It will allow numerous individuals to adjudicate their claims in a single forum simultaneously, efficiently, and without duplication of effort and expense that numerous individual actions would engender.
- 118. There are questions of law and fact common to the Classes, including, but not limited to:
 - a. Whether Defendants and their co-conspirators engaged in a contract, combination or conspiracy to raise, stabilize, fix and/or maintain prices of eggs sold in the United States, including the Class Jurisdictions;
 - b. The duration and extent of the contract, combination or conspiracy alleged herein;

- Whether Defendants and their co-conspirators were participants in the contract, combination or conspiracy alleged herein;
- Whether Defendants took steps to actively conceal the combination or conspiracy from Plaintiff and other class members;
- e. The effect of the contract, combination or conspiracy upon the prices of eggs sold by Defendants in the United States, including the Class Jurisdictions, during the Class Period; and
- f. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Plaintiffs and other members of the Classes.
- 119. Additional questions of law and fact common to the Indirect Purchaser National Class, include, but are not limited to:
 - a. Whether the alleged contract, combination or conspiracy violated Section 1 of the Sherman Act;
- 120. Additional questions of law and fact common to the Indirect Purchaser State Classes, include, but are not limited to:
 - a. Whether the alleged contract, combination or conspiracy violated the antitrust, consumer protection and/or unfair trade statutes of the Class Jurisdictions; and
 - b. The appropriate measure of damages sustained by the Plaintiffs and other members of the Indirect Purchaser State Classes.

INTERSTATE TRADE AND COMMERCE

121. During the Class Period, Defendants produced, manufactured, distributed and sold eggs through the means of interstate commerce in a continuous and uninterrupted flow to customers located in states other than the states in which Defendants market and sell such products.

- 122. Defendants, and each of them, have used instrumentalities of interstate commerce to market and/or sell eggs.
- 123. Golden Oval Eggs, LLC, a U.S. egg producer, reported in its Securities and Exchange Commission filings that during 2007, there were a total of 211.1 million cases of shell eggs produced in United States. Of these cases, 31% were further processed into egg products, 59% were sold into retail markets, 9% were used for foodservices, and 0.7% were exported.

THE EGG INDUSTRY

- 124. The U.S. egg industry comprises several sectors. The primary sectors are shell eggs and egg products. The shell egg sector produces hatching eggs, consumable table eggs, and breaking eggs (e.g., eggs for use in creating egg products).
- 125. Table eggs are generally purchased by grocery stores in cartons for resale to the consuming public. Table eggs are also purchased by entities such as restaurants and hotels for use in meal preparation.
- 126. Egg products, such as egg whites, can be purchased by grocery stores in quarts for resale to the consuming public. Egg products are also purchased by entities such as restaurants and hotels for use in meal preparation.
- 127. As noted above, the term "egg products" refers to eggs that are removed from their shells for processing. The processing of egg products includes, but not limited to, breaking eggs, filtering, mixing, stabilizing, blending, pasteurizing, cooling, freezing or drying, and packaging. This is done at United States Department of Agriculture (USDA) inspected plants.
- 128. Egg products include, but are not limited to, whole eggs, whites, yolks and various blends with or without non-egg ingredients that are processed and pasteurized and may be available in liquid, frozen, and dried forms.

(http://www.fsis.usda.gov/Fact Sheets/Egg Products and Food Safety/index.asp).

- 129. Shell eggs and egg products supplied by one producer may be readily substituted for product supplied by any other supplier. Therefore, shell egg and egg product buyers make purchase decisions based largely, if not entirely, on price.
- 130. The egg industry has undergone substantial consolidation within the last few years. For example, in 1997, Defendant Michael Foods acquired Defendant Papetti's. In 2001, Moark acquired Cutler Egg Products, which gave Moark access to, among other things, a patented process that extended the shelf life of refrigerated liquid egg product. In 2006, Land O'Lakes acquired 100% of the ownership of Moark and sold it and it's subsidiaries to Golden Oval.
- 131. The largest shell egg processors also have numerous cross-marketing agreements, private labeling agreements, and joint partnerships in various egg farms and processing plants. As a result of these arrangements, Defendants exchange pricing information between themselves.
- 132. Partly as a result of this consolidation and cross-marketing agreements, the supply side of the egg is highly concentrated. A small number of producers control a major share of the egg market.
- 133. To the extent that increases in input costs (e.g., corn and soymeal for chickens) have occurred during the Class Period, the increases do not justify the level of price increases for eggs during the Class Period. Further, according to public sources, the largest shell egg and egg product processors hedged the cost of input costs, such as corn and soymeal:
 - a) Michael Foods has reported in its Securities and Exchange Commission filings that it hedges commodity costs as well as sources contracts for generally 6 12 month periods. ("This activity protects against unexpected increases in grain prices and provides predictability with respect to a portion of future raw materials costs," citing, Q3 2007 Michael Foods Earnings Conf. Call (November 14, 2007)).

- b) Land O'Lakes (MoArk LLC) has reported in its Securities and Exchange Commission filings that during 2007, it engaged in hedge strategies to off-set corn and soybean meal costs.
- c) Cal-Maine Foods reports in its regulatory filings that it has tended to have higher profit margins when feed costs are higher.
- producers have been able to raise their prices without losing sales revenues. Because eggs are considered a staple food item, consumption of these eggs by end users is not very responsive to changes in price. Demand inelasticity is a market condition, which facilitates the existence of an anti-competitive conspiracy and facilitated the existence of the conspiracy alleged herein.
- 135. There are substantial barriers to entry into the egg market. In order to serve major customers, a new entrant into the business would have to incur multi-million dollar costs, including manufacturing plant and equipment (sophisticated production and processing machinery that must meet strict USDA sanitation standards), energy, transportation, available farming space, distribution infrastructure, skilled labor and long-standing customer relationships.

DEFENDANTS ADOPT A STANDARDIZED WHOLESALE PRICING GUIDE

- 136. Urner Barry publishes daily, weekly, and monthly pricing for eggs, including: Frozen Eggs, Liquid Eggs, Institutional (Frozen Whole), Liquid in Portable Containers (Whole, Yolk Sugar, and Yolk Salt), and Egg Solids (Whole Plain, Yolk, Albu-spray, and Blends).
- 137. "Over 90% of all eggs sold in the U.S to retail and food service customers are sold at prices related to the Urner Barry Company wholesale quotation for shell eggs. The price quotes are determined by Urner Barry by canvassing sellers and buyers of various commodities. Urner Barry also provides quotations for the chicken, turkey, fish and beef industries." (Form 10-K/A, Cal Maine Foods, May 31, 2003).

- 138. Upon information and belief, Urner Barry engages in "price discovery" by calling the major shell egg and egg products processors to discuss recent buy and sale orders, inventory levels, spot trading on the Egg Clearinghouse, as well as other issues concerning shell egg and egg product markets.
- 139. Michael Foods has reported that "Urner Barry, for those that may not know that phrase, Urner Berry is a national cash commodity price quoting service that is closely followed in the egg industry..." (2003 Results Debtholders' Call Final FD, Michael Foods, March 25, 2004).
- 140. Urner Barry usually reserves Fridays for most of the adjustments to the egg product price quotes. It appears, based upon reviewing the SEC filings of many egg processors, the more commonly tracked Urner Barry price quotes are for shell eggs and liquid unpasteurized whole eggs (an egg product):

Average	Shell Eggs (Spot Egg Mid-	Liquid Unpasteurized
Market Prices	West Large)	Eggs
2000	\$0.7115/dz.	\$0.3035/lb.
2001	\$0.6929/dz.	\$0.3009/Ib.
2002	\$0.7096/dz.	\$0.3069/lb.
2003	\$0.9216/dz.	\$0.4853/lb.
2004	\$0.8674/dz.	\$0.4511/lb.
2005	\$0.72/dz.	\$0.2807/lb.
2006	\$0.76/dz.	\$0.2666/lb.
2007	\$1.01/dz.	\$0.5869/lb.

2008 Q1	\$1.62/dz.	\$0.7824/lb. (GO) ²
	<u> </u>	

- 141. Urner Barry attempts to discover verifiable spot trades of eggs to support movement of its price quotes. However, Urner Barry's pricing mechanism is susceptible to manipulation:
 - a) Egg processors have been known to attempt to provide disinformation, misinformation, or otherwise, inaccurate spot trades to Urner Barry.
 - b) Egg processors have been known to attempt to engage in unusual spot trades (e.g., wash trades or trades at artificially high prices with undisclosed rebates (a/k/a, "bill backs")) on the Egg Clearinghouse in order to confuse Urner Barry's attempts to engage in meaningful price discovery.
 - c) The Department of Justice Antitrust Division previously had "significant antitrust concerns" about Urner Barry collaborating with egg product producers and processors to create or obtain a pricing quota index. The Antitrust Division found it particularly troublesome that "the published price quotations for cartonned eggs would be based on a formula apparently designed more for the purpose of covering producers' and processors' cost than to reflect actual market transactions; the [] method for arriving at quotations would be vulnerable to manipulation; and that discovery committee members might be subject to undue influence from egg producers and processors." (Press Release, Department of Justice, September 12, 1983).³
- 142. Many of the largest egg processors disclose in their regulatory filings with the Securities and Exchange Commission that they use Urner Barry Publications in pricing their products:
 - (a) Form 10-K 2002, Michael Foods, March 21, 2003;

² "The average reported price for fiscal year 2008 was \$0.7824, ranging from a high of \$1.075 per pound at the beginning of the third fiscal quarter to a low of \$0.63 per pound at the end of the third fiscal quarter." (Form 10-K, Golden Oval Eggs, August 31, 2008).

³ Upon information and belief, Defendants know that Urner Barry looks for 'verifiable' spot trades to support movements of their quotes Also upon information and belief, Defendants monitor trade volumes and quotes and will trade their surplus through public exchanges in order to create 'verifiable' spot trades, in an effort to influence Urner Barry's price quotations

- (b) Form 10-K/A, Cal Maine Foods, May 31, 2003;
- (c) Form S-4, Papettis Hygrade Egg Products, February 11, 2004;
- (d) Form S-4, MG Waldbaum Co., February 11, 2004; and
- (e) Form 10-K, Land O Lakes (Moark), December 31, 2004.
- 143. Golden Oval Eggs, LLC reported in its Securities and Exchange Commission filings that during 2007, its operating results were significantly affected by wholesale liquid egg market prices.
- 144. Cal-Maine Foods reports in its most recent annual report filed with the Securities and Exchange Commission that, "Over 90% of all shell eggs sold in the United States in the retail and foodservice channels are sold at prices related to the Urner Barry wholesale quotation for shell eggs."
- 145. Michael Foods has also reported that the Urner Barry graded shell egg market, which tends to be kind of the umbrella under which a lot of other egg products are priced. (Q2 2007 Michael Foods Earnings Conference Call Final FD, Michael Foods, August 14, 2007). "Now thankfully the food ingredient side of egg products saw pricing as quoted mainly in the Urner Berry daily weekly markets that rose and this pushed our pricing for dried, frozen and short shelf life liquid up along with it." (Q3 2007 Michael Foods Earnings Conference Call Final FD, Michael Foods, November 14, 2007).

THE CONSPIRACY TO REDUCE OUTPUT AND FIX PRICES

- 146. Beginning at least as early as 2000 and continuing until at least 2008, the exact dates being currently unknown to Plaintiffs, certain egg processors and producers entered into a cartel to engage in a combination or conspiracy in unreasonable restraint of trade and commerce in violation of the antitrust and unfair competition laws.
- 147. Plaintiffs allege, on information and belief, that certain shell egg and egg products processors engaged in cartel between themselves and non-cooperatives (e.g., Urner Barry and

Chilson Management Controls (n/k/a, AgriSoft|CMC)), entailing the (A) agreement to increase layer cage sizes under the pretext of animal husbandry standards and engage in mass exporting in order to reduce gross flock and shell egg harvest sizes and, therefore, resulting in artificially high domestic prices; (B) an effort to manipulate the egg markets by distorting Urner Barry and Egg Clearinghouse price quotes; (C) the exchange of pricing information; and (D) an agreement not to compete.

A. An Agreement to Reduce the Domestic Supply of Eggs.

148. In the mid to late 1990s, egg farmers attempted to influence future pricing by slowing the rate of increase of the hatching egg flock, thus reducing production. The flock grew by only a fraction of a percent in 1995 and only 1 percent in 1996, compared with a 6 percent growth rate in 1991. Therefore, prices rose in late 1995 and remained strong throughout 1996.⁴

149. The single greatest influence on the price of eggs is supply.¹⁷ Small reductions in supply can cause the price of eggs, and thus, derivatively egg products, to rise sharply. For example, in early 2007, USEM initiated an export order for 300 container loads (approximately 246,000 cases) of eggs (less than one-third of eggs produced daily in the U.S.) in order to drive up the domestic price for eggs by \$0.31/dozen. This order "changed the complexion of the market in a matter of days. When producers started to fill the order ... shell egg producers realized a \$44,000,000 pay hike."⁵

⁴ "Chicken Eggs – Industry and Marketing Report," Goliath (updated Mar. 27, 2008). Dr. David Roland, "Supply Management: The Key to Profits," Egg Industry (June 2007).

⁵ John Todd, "What 2007 Has in Store: No Shortage of Challenges and Opportunities," Egg Industry, (Jan. 2007) at 1. *See also* "Happy & Profitable New Year: USEM Export, United Voices" (United Egg Producers, Alpharetta, GA), Jan. 4, 2007, at 1

- 150. UEP and its co-conspirators are able to artificially raise, stabilize, maintain and/or fix prices for eggs through even small reductions in egg supply. Furthermore, UEP and its co-conspirators have used this price sensitivity to export eggs in order to supra-competitively increase the price of domestic eggs in the future.
- egg prices to drop. As reported by *Egg Industry* magazine in an article titled "Supply Management: the Key to Profits, Dr. David Roland stated, it is estimated that hundreds of millions of dollars have been lost and will continue to be lost unless better methods of supply management become available."
- 152. In 1999, after becoming an individual producer membership group, UEP decided to take immediate action regarding egg supply and act as the conduit for an industry-wide supply control agreement. According to the UEP's "United Voices' newsletter, the meeting occurred as follows:

The Marketing Committee chaired by Dolph Baker, Cal-Maine Foods discussed and approved two extremely important issues. The current situation in the egg industry regarding price, as described by Chairman Baker, is in a crisis condition and the industry is hemorrhaging because of the low price.

It was pointed out by both Chairman Baker and Ken Looper, who provided statistics for the meeting, that the industry is in a defensive mode regarding the price situation. It was suggested that action be taken immediately to go on the offense regarding this particular situation. Ken Looper provided numerous statistics showing the trends over the years regarding price vs. bird population.

At the present time there are in excess of 7 million hens over what the economic limit should be.

⁶ Dr. David Roland, "Supply Management: the Key to Profits," Egg Industry (June 2007).

It was decided that a bold move should be made to immediately reduce the number of hens that are currently producing eggs. After considerable discussion, a motion was made and passed addressing the challenge in three phases:

- Immediate molt of 5% of the flock.
- Cut back 5% on flock inventory over the next 6-12 months.
- Develop a hatch reduction program

There was an ensuing discussion regarding the publicity to the industry that this needs to be done.

There were 113 million birds represented at the meeting, leaving a majority that were not represented and through various means, including media, this word will be brought to the total egg industry.

Additionally UEP was encouraged to become more active in pushing the industry to accept responsibility of expansion and its educating the industry as to the ramifications of over-production. This relates to the increased production and building of new facilities that is now taking place.⁷

representatives Urner Barry Publications was invited to discuss egg pricing and pricing systems. Richard Chilson, of AgriSoft|CMC (f/k/a, Chilson Management Controls), a consultancy and IT management firm for the chicken, egg, turkey and swine industries, also advised Defendants as well as other shell egg producers and egg processors about pricing and marketing. As reported by an UEP September 3, 2001 Report, "With price discovery being such a critical component of the industry's profitability, a great deal of time will be devoted to this subject at UEP's Annual Meeting and Executive Conference being held October 17 - 19, 2001 at the Hyatt Regency Lake Las Vegas Resort... Bob Krouse and Dick Chilson will offer ideas and models for a cost plus program that has a proven record and potential for a percentage of your shell egg marketing."

⁷ "Overproduction is the Focus of UEP Meeting," Egg Industry (Nov. 1999), at 1-3.

- program. The UEP will certify an egg producer if it can: (i) Meet cage space allowance on schedule as identified as "All day-old-chicks hatched after April 1, 2002 will be palced in the layer house based upon a house average of 56 square inches per hen,...; (ii) Beginning on July 1, 2002, the company commits to meeting the guideline for beak trimming as each flock reaches the age at which time the trimming will be conducted; (iii) Beginning on July 1, 2002, the company commits to meeting the guidelines for molting as each flock reaches the age at which the most will be induced; (iv) Beginning on July 1, 2002, the company commits to meeting the guidelines for handling and transportation for both pullets and spent hens as each flock reaches the age at which time this must occur; (v) The company agreed to be audited annually by a 3rd party independent auditor to confirm that the company is meeting guidelines; (vi) The company agrees to provide UEP with a copy of the audit results upon the completion of each audit; and (vii) the company must recognize that passing the audit is necessary in order to maintain the certification status.
- 155. On April 21 23, 2002, Urner Barry hosted the *Back to Basics Conference* at Caesar's Palace in Las Vegas, Nevada. The participants included all the major shell egg and egg product processors, egg industry trade associations, as well as other entities providing services to the egg industry participants. During the conference, Panel discussions included:

"Feeding the World through Poultry and Egg Exports," by Jim Summer, President of USA Poultry and Egg Export Council, Gil Eckhoff, President and CEO of Henningson Foods, and Eric Joiner, President and CEO of AJC International, Inc.

Eckhoff said that exports were down 20% compared to 1997 levels. Joiner said that exports are 20% of the total US output; but Sumner said that 3% of US output shell eggs are being exported.

"Egg Clearinghouse ("ECI") connection to Urner Berry", which was discussed by Hikura Hanaru Peterson, University of Kansas Agricultural Economics Department.

"Cage Enhanced Costs and Consumption," moderator Al Pope, President of the UEP, whom encouraged all to join to increase cage sizes. Speakers include Amy Barr, Marr Barr Communications (consulting firm), Bob Krause, CEO Midwest Poultry Services, Barrie Wilcox, co-President of Wilcox Family Farms, Joe Fortin, Kofkoff Egg Farm and VP of Shell Eggs for Moark LLC ("He also discussed the fact that market quotes will be necessary to cover the costs for certified eggs, and enthusiastically endorsed the certification program along with other members of the Panel.").

"Egg Yolk and White Demand Trends, and Price Relationships," moderator Bob Kellert, Sr. VP Bender Goodman Co., panelist include Terry Ames VP Marketing of Sanovo-Seymour USA, Dennis Casey President HyLine International, Harold Cutler, Industrial Sales Manager, Moark LLC, Santiago Gomez, Egg Breaker Product Manager, Diamond Systems, and Bill Rehm President and CEO of Daybreak Foods. Bill Rehm discussed whole egg solids, liquid and dried egg numbers and comparison of price v. inventories. Gomez emphasized the dollar value realized when egg breaker yields increase.

"Price Discovery Now and in the Future: Alternative Pricing Models and Current Market Analysis," was the final seminar and was moderated by Rick Brown and Randy Pesciotta from Urner Barry, which focused on the shell egg market. They advised the audience that "Too many eggs drive the price down and that is where we are currently." In price discovery, certain goals such as maximum return and accuracy are always in mind. Randy explained advantages and disadvantages that can be found in the present and alternative models of price discovery. Rick Brown commented on the enhanced shell egg market that is coming with certified eggs and their extra cost. Urner Berry will report that evolving market... Brown emphasized that the industry needs to pay more attention to selling the Easter market.

156. In July 2003, UEP warned producers not to make up for lost hens in an article titled "Word of Caution":

As producers continue to reduce their layer house capacity to meet the UEP Animal Husbandry Guidelines, please don't make the mistake of building new facilities to replace the lost number of birds.

- 157. In September 2003 UEP urged producers -Don't Screw Up A Good Thing-:
 "One sure way of having poorer egg prices is by increasing egg supplies through holding hens longer and keeping hens that should be disposed. Don't screw up a good thing!!"
- 158. In a December 11, 2003 article, a UEP member admitted that the UEP's certification program was increasing egg prices:

Numerous industry experts have pointed to the popularity of low-carbohydrate, high-protein diets, but Scott Kreher, a partner in Kreher's Farm Fresh Eggs in Clarence, believes the spike is due more to diminished supply than diet-fueled demand.

"Eggs are primarily a non-elastic demand item. People always need eggs," said Kreher, whose egg farm supplies many local grocers. "What's really affecting egg prices are the houses chickens are being placed in."

Specifically, new guidelines adopted by United Egg Producers, a national cooperative of egg producers to which Kreher's belongs, have gradually raised the amount of space it recommends each egg-laying chicken be given inside its housing — from the current industry average of 53 square-inches per bird to 61 square-inches in April of 2005.

159. An April 8, 2004 newsletter asked "Can We Maintain Prices Above \$1.00 Per Dozen?":

Is it now time to rethink our position? Should we be disposing of those old hens and molting an increasing number of hens? Your association (UEP) can only do so much. Egg producers must ultimately decide whether they want to produce to meet the egg demand or produce a surplus and sell at a loss.

160. In a May 2004 newsletter, UEP noted:

Egg production companies owning 177 million laying hens (63% of the industry) were in attendance at UEP's Spring Legislative Meeting in Washington, D.C. These companies along with attendees from UEA Allied and UEA Further Processor members

⁸ Kevin Purdy, "Egg Prices Crack 20 Year Highs - Low Supply More to Blame Than Demand From Dieters," Buffalo News (December 1 I, 2003).

participated in committee meetings, [and] board meeting.... The Government Relation, Environment, Marketing, Food Safety, Animal Welfare, and Egg PAC Committees met prior to the Board meeting and each brought forward motions for the Board to act upon...The Marketing Committee recommended that the industry molt all flocks at 62 weeks and dispose of spent hens by 108 weeks and that this plan of action take place immediately and carry through until August 1, 2004.

- 161. Many UEA members and executive are also members of the UEP and attend the joint annual UEP/UEA meetings. As a result, members of both entities were involved in discussions regarding restrictions of supply at these meetings, including during the Spring of 2004. For example, in 2004, Toby Catherman of Michael Foods was elected chairman of UEA and Dan Meagher of Moark was elected vice chairman. Michael Foods and Moark were also members of UEP and their employees held positions in the UEP, as well.
- 162. In October 2005, Dan Meagher of Moark was elected chairman of UEA, and Greg Hinton of Rose Acre Farms was elected vice-chairman. Rose Acre Farms was a member of UEP and its employees held positions in the UEP.
- 163. An August 2006 UEP newsletter noted a licensing agreement that would allow non-certified companies to license eggs purchased from certified companies. The newsletter also acknowledged that not all UEP members own layers and produce eggs (a requirement for Capper-Volstead cooperatives):

The Animal Welfare Committee approved the use of a Non-Certified License Agreement for UEP and UEA member companies that do not own layers as well as for UEP/UEA egg production companies having made a commitment to meet the 100% rule while in the process of implementing the cage space requirements of UEP's hatch schedule. The use of the "License Agreement" will allow Non-Certified companies to purchase eggs from "UEP Certified" companies for the marketing of "Certified" eggs. The Animal Welfare Committee also approved an additional option for companies to become recognized as a "UEP Certified" company. The new policy will allow any new company now making an "Application for Certification" to come on to the program by meeting UEP's currently

required hatch schedule for cage space rather than depopulating existing flocks.

- 164. In implementing the output restriction scheme discussed herein, UEP has conspired with non-members. For example, UEP has conspired with UEA and its non-producer members to implement its unlawful supply control campaign at numerous industry meetings. The UEP also used representatives from Urner Barry and AgriSoft|CMC (f/k/a, Chilson Management Controls), a consultancy and IT management firm for the chicken, egg, turkey and swine industries, also advised Defendants as well as other shell egg producers and egg processors about pricing and marketing.
- 165. UEP has also conspired with non-member cage manufacturers and other entities involved in egg production that are not agricultural producers. Cage manufacturer representatives and other non-member co-conspirators were often invited to UEP meetings where supply management issues were discussed to provide input and support for the UEP certified supply restriction scheme. Moreover, cage manufacturers held numerous leadership positions in the UEA. Not all of UEP's members are engaged in the production of eggs and UEP membership is open to non-egg producers. Some UEP members process other members' eggs or raise breeder flocks or started pullets.
- 166. A number of UEP members market eggs produced under production contracts with growers who possess their own egg-production facilities. Thus, some of these members do not produce a majority of the eggs they market, but act mostly as conduits for other producers' eggs. UEP members are competitors rather than farmers banding together to cut out corporate middlemen. They do not associate to collectively process, handle or market their products and

UEP does not provide those services. UEP does not market eggs or own eggs, even when it helps coordinate export sales by its members.

- 167. Throughout the period, UEP communications continued to emphasis supply restrictions among suppliers in order to increase egg prices, efforts which UEP communications and industry publications credited for keeping the prices of eggs elevated.
- 168. Further, UEP and its co-conspirators monitored compliance with supply restraints, and ensured compliance by selectively enforcing certification requirements that reduce supply, and convincing purchasers to purchase only eggs that are "certified" and subject to the supply restriction conspiracy, even though such certification programs were pretexts for restrictions based on economic analyses rather than animal husbandry.
- 169. In February of 2007, UEP newsletter discussed the fact that the organization considered forming a "supply-managed cooperative" that might have some protection under the Capper-Volstead Act (an implicit, if not explicit acknowledgement, that the present incarnation of UEP did not have such protections). The newsletter stated:

Despite recent extremely good egg prices, the egg industry has a history of being unable to control supply and thereby suffering though difficult periods of severe financial losses. With this in mind the idea of a supply-managed cooperative was referred to UEP's Long Range Planning Committee for consideration.

170. On February 1, 2008, an industry trade magazine likened the economic prosperity currently enjoyed by egg producers to Greece's Golden Age: It seems that the egg industry may find itself in a position of economic prosperity previously unmatched in its long, tumultuous

history. Egg prices have soared at historic highs through months in which producers usually hold on for dear life.⁹

- 171. UEP's senior vice president, Chad Gregory, acknowledged that prices were high as a result of the egg industry's conspiracy to reduce output: "Producers are being really responsible, keeping supply in check[.] So this could last a while. (Sam Krouse and Bob Krouse, "Infrastructure's Role in Keeping Egg Prices High," Egg Industry (Feb. 2008)).
- 172. On May 1, 2008, U.S. Department of Agriculture Chief Economist Joseph Glauber testified before Congress and indicated that high feed prices were not to blame for reduced egg production, "In 2007, table-egg producers cut production. The decision to reduce production likely took place prior to the recent run-up in feed costs." (Statement of Joseph Glauber, Chief Economist, Before the Joint Economic Committee, U.S. Congress (May 1, 2008)).
- 173. While many egg producers have pretextually blamed high egg prices on rising fuel or feed costs, Fred Adams, founder and chairman of defendant Cal-Maine Foods, candidly acknowledged this was not the case and that reduced supplies were the reason for high prices:

While it makes it easier to communicate that when feed costs are up egg prices should be up — that's really not the case. Eggs are up because the supply and demand is in good balance and it's reflecting higher prices on its own. If the supply of eggs remains in check, or favorable to the demand side, I think we will have minimum problems in raising prices. We have had no reaction from

⁹ Sam Krouse and Bob Krouse, "Infrastructure's Role in Keeping Egg Prices High," Egg Industry (Fcb. 2008) (Bob Krouse is the current UEP first vice chairman and a member of the UEP board of directors and president of Defendant Midwest Poultry Services). In October 2007, the publication reported that 2007 egg prices were "one for the record books." Edward Clark, 2007 Egg Prices: One for the Record Books - Has the Industry Finally Learned How Not to Overproduce?," Egg Industry, (Oct. 2007).

the consumer or the chain store operators as to price. (Audio Recording: Presentation by Fred Adams for Cal-Maine Foods, Inc. Stephens Spring Investment Conference (June 4, 2008))(emphasis supplied).

- 174. During the relevant time period, it is known that the largest shell egg and egg products processors entered into an agreement to increase cage sizes under the pretext of adopting animal husbandry standards in order to reduce total flock sizes with one of the intended goals being to reduce supply and increase prices. (Infrastructure's role in keeping egg prices high, Midwest Poultry Services, L.P., February 1, 2008. found online at www.Wattspoultry.com). Examples of this cartel-like agreement are as follows:
 - a) During April 2002, at an Urner Barry industry conference Rick Brown and Randy Pesciotta of Urner Barry Publications, hosted a presentation entitled "How did we get there?," which stressed that too many eggs drives the price down and that is where the industry is currently facing. Messrs. Brown and Pesciotta also stressed that the egg industry should continue to use Urner Barry pricing models (opposed to alternative price models) as it can incorporate less supply on the market. (*Back to Basics, Urner Barry Executive Conference*, Egg Industry, May 2002 Vol. 107, No. 5).
 - b) During several industry conferences between October 2001 and mid 2002, United Egg Producers ("UEP") announced that its members (shell egg producers) should commit to satisfying chicken health and welfare guidelines (7 in total) on 100% of their egg production facilities. The focus was primarily related to increasing cage sizes while agreeing not to increase flock sizes. The UEP also disclosed that it wants facilities designed for breaking and egg products to follow the same guidelines. These efforts continued throughout the Class Period.
 - c) Upon information and belief, Defendants' senior executives exchanged information about the future of the egg industry and the economic impact of the UEP certified program (e.g., increase cage sizes while reducing supply).
 - d) Mark Oldenkamp, vice president, northwest operations for Valley Fresh Foods, Woodburn, Ore., said, "The industry is learning not to overproduce." (2007 Egg industry prices: one for the record books, Watt Poultry, October 1, 2007).

- 175. In addition, upon information and belief, starting in 2006, the UEP and its coconspirators conspired to keep egg prices high in the U.S. by causing eggs to be exported abroad
 at a loss, to reduce supply enough to more than recoup any losses and to maintain the artificially
 inflated price of eggs on the domestic U.S. market. These eggs were exports to markets where
 prices for eggs and egg products were lower than in the U.S. and to markets where shipping costs
 would be substantial.
- 176. From the fall of 2006 through at least spring of 2008, sufficient eggs were taken off the U.S. market to support the supply conspiracy and drive up egg prices. By removing eggs that would have been bound for U.S. sales and arranging instead for their export, Defendants helped tighten domestic supply and drive up the price of eggs throughout the country.

B. The Egg Market Manipulation.

- 177. During the relevant time period, several of the largest shell egg and egg products processors, attempted to and did unduly influence Urner Barry Publication, Inc. shell egg and processed egg product prices:
 - a) Upon information and belief, Defendants regularly communicated between each other and directly with Urner Barry to complain about the Urner Barry price quotations for egg and/or processed egg products price quotations in hopes of influencing future price quotes.
 - b) Upon information and belief, Defendants agreed with competitors to buy and sell eggs and/or egg products from each other at higher prices, in order to preserve higher market prices, with the understanding that the seller would give the buyer an "under the table" discount.
 - c) Upon information and belief, representatives of Urner Barry expressed its concern to a Defendant as to how egg industry participants, including certain Defendants, attempt and do in some cases succeed in manipulating the Egg Clearinghouse and United Egg Producers.
 - d) Upon information and belief, Defendants communicated between each other as to how they learned that Urner Barry believed certain egg industry participants' trades on the Egg Clearinghouse were being viewed as manipulative.

e) Upon information and belief, Defendants communicated between each other about how they should collectively agree upon where the Urner Barry price quotes should trade and then agreed to independently call Urner Barry to express their alleged independent views about market prices.

C) The Exchange of Pricing Information and Refusal to Compete.

- 178. During the Class Period, the largest egg products processors, which identify each other as competitors, regularly exchanged communications about their marketing and pricing structures as well as brought and sold product from one another.
 - a) Upon information and belief, Defendants communicated between each other about how they should collectively agree upon where the Urner Barry price quotes should be based upon their cost structures and then agreed to independently call Urner Barry to express their alleged independent views about market prices.
 - b) Upon information and belief, Defendants communicated between each other about how they should collectively agree to purchase eggs and egg products off the spot market when the prices decline and flip the purchased product into the export markets.
 - c) Upon information and belief, Defendants communicated between each other about their inventory levels and marketing opportunities.
 - d) Upon information and belief, Defendants communicated between each other about how they should collectively agree upon co-packaging agreements in what appears to avoid competition between each other.
 - e) Upon information and belief, Defendants communicated between each other about how the UEP certification program of reducing supplies will impact egg products volumes and prices.
- 179. During the Class Period, upon information and belief, certain Defendants, which identify each other as competitors within the egg products market, had agreements whereby they would not compete for each others' customers.
- 180. During the Class Period, upon information and belief, certain Defendants, which identify each other as competitors within the egg products market, had agreements to close egg

product plants in exchange for co-packaging and/or private labeling from a competitor in order to maintain market shares.

EFFECT OF DEFENDANTS' CONDUCT

181. The effect of the Defendants' conduct as described herein was to artificially inflate the prices of eggs and egg products in the United States. By manipulating the supply and the indexes of pricing, price competition was suppressed and price supported at artificially inflated, non-competitive levels throughout the U.S. egg market.

FRAUDULENT CONCEALMENT

- 182. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.
- 183. Throughout the Class Period, Defendants and their co-conspirators engaged in a successful, illegal price-fixing and supply control conspiracy that was by its nature self-concealing. Defendants effectively, affirmatively, and fraudulently concealed their unlawful combination, conspiracy, and acts in furtherance thereof from Plaintiffs and the members of the Classes.
- 184. Although Plaintiffs exercised due diligence throughout the Class Period, they could not have discovered Defendants' unlawful scheme and conspiracy at an earlier date because of Defendants' effective, affirmative, and fraudulent concealment of their activities. Defendants' wrongful conduct was carried out in part through means and methods that were designed and intended to avoid detection, and which in fact, successfully precluded detection.
- 185. Defendants' planned and implemented the conspiracy during non-public meetings and communications, monitored and enforced the conspiracy through non-public means, agreed not to discuss or disclose the details of their conspiracy, and falsely represented to Plaintiffs and members of the Class that the prices they paid for shell eggs were fair and competitive.

- 186. Defendants' false representations and public statements attributed price increases to normal market conditions and factors other than their illegal conspiracy. Plaintiffs and the members of the Class had no reason to disbelieve Defendants' explanations for the pricing behavior of these products. Indeed, in some instances Defendants' explanations involved proprietary or otherwise non-public information within Defendants' exclusive control, leaving Plaintiffs and the members of the Class without means to verify their accuracy.
- 187. Such explanations made by the Defendants' included assertions that they could not effectively respond to supply reductions as a result of limitations imposed by animal husbandry guidelines that had the effect of reducing cumulative cage space, as well as their attributing price increases to other external factors including supply-side wear-and-tear, the increased price of fuel and feed, and the upward adjustment of other costs of production.
- 188. Plaintiffs did not know nor could they have known that the prices for shell eggs and egg products were artificially inflated and maintained by virtue of Defendant's illegal price-fixing and supply control conspiracy and that Plaintiffs and members of the Classes were paying higher prices
- 189. Plaintiffs have exercised due diligence by promptly investigating the facts giving rise to the claims asserted herein upon having reasonable suspicion of the existence of Defendants' conspiracy.

COUNTI

Violation of Sherman Act § 1, 15 U.S.C. § 1

190. Plaintiffs incorporate by reference, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

- 191. Beginning at least as early as January 1, 2000, the exact date being unknown to Plaintiff and at present exclusively within the knowledge of Defendants, Defendants and their co-conspirators entered into a continuing combination or conspiracy to unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) by artificially reducing or eliminating competition in the United States for shell eggs and egg products.
- 192. As a result of defendants' unlawful conduct, prices for shell eggs and egg products were raised, fixed, maintained and stabilized in the United States at a level higher than they would have been in the absence of the anti-competitive conduct alleged in this complaint.
- 193. For purposes of formulating and effectuating their combination or conspiracy, defendants and their co-conspirators did those things they combined or conspired to do, including: (A) an agreement to increase layer cage sizes in order to reduce gross flock sizes and, therefore, resulting in fixed prices; (B) an effort to manipulate the egg markets by distorting Urner Barry and Egg Clearinghouse price quotes; (C) the exchange of pricing information; (D) tood additional actions, such as reducing the supply through exports; and (E) agreed not to undermine the conspiracy or compete with one another.
- 194. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of the Indirect Purchaser National Class have been injured in their businesses and property in that they have paid more for shell eggs and processed egg products than they otherwise would have paid in the absence of defendants' unlawful conduct.
- 195. As a direct and proximate result of Defendants' scheme, Plaintiffs and the members of the Indirect Purchaser National Class have been injured and financially damaged in their respective businesses and property, in amounts, which are presently undetermined.

Plaintiffs' injuries consist of paying higher prices to purchase shell eggs and processed egg products than it would have paid absent Defendants' conduct.

- 196. Pursuant to Section 16 of the Clayton Act, 15, U.S.C. § 26, Plaintiffs and the other members of the Indirect Purchaser National Class seek the issuance of an injunction against Defendants, preventing and restraining the violations alleged herein.
- 197. Pursuant to Section 16 of the Clayton Act, 15, U.S.C. § 26, Plaintiffs and the other members of the Indirect Purchaser National Class seek the issuance of an injunction against Defendants from soliciting Urner Barry and the Egg Clearinghouse, and any of their representatives, on any issue concerning their future marketing, pricing, and supply strategies.

COUNT II

Violations of Arizona Law

Violations of Ariz. Rev. Stat. §§ 44-1401, et seq.

- 198. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 199. By reason of the foregoing, Defendants and their co-conspirators have acted in violation of Ariz. Rev. Stat. §§ 44-1401, et seq.
- 200. During the Class Period, each of the Defendants, directly or indirectly and through affiliates they dominated and controlled, manufactured, sold and/or distributed shell eggs and egg products in Arizona.
- 201. The combination and conspiracy alleged herein has substantially affected trade and commerce throughout Arizona and has had, inter alia, the following effects:

- a. Shell egg and egg products price competition was restrained, suppressed, and/or eliminated throughout Arizona;
 - b. The supply of shell eggs and egg products was improperly reduced;
- c. Shell egg and egg prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout the Arizona; and
- d. Plaintiffs and members of the Arizona Indirect Purchaser State Class were deprived of free and open competition.
- 202. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Arizona Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT III

Violations of California Law

A. Violations of California Business and Professions Code Section 16720, et seq.

- 203. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 204. By reason of the foregoing, Defendants and their co-conspirators have acted in violation of Section 16720, California Business and Professions Code.
- 205. The combination and conspiracy alleged herein has had, inter alia, the following effects:

- a. Price competition in the sale of shell eggs and egg products has been restrained, suppressed, and/or climinated in California;
 - b. The supply of shell eggs and egg products was improperly reduced;
- c. Prices for shell eggs and egg products sold by Defendants and their coconspirators have been fixed, raised, stabilized, and maintained at artificially high, noncompetitive levels in California and throughout the United States; and
- d. Those who purchased shell eggs and/or egg products directly or indirectly from Defendants and their co-conspirators have been deprived of the benefit of free and open competition.
- 206. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and the California Indirect Purchaser State Class have been injured in their business and property in that they paid more for shell eggs and egg products than they otherwise would have paid in the absence of Defendants' unlawful conduct.

B. Violations of Cal. Bus. & Prof. Code. §§ 17200, et seq.

- 207. Defendants, and each of them, have acted in violation of Cal. Bus. & Prof. Code. §§ 17200, by engaging in a continuing unlawful trust and concert of, the substantial terms of which were to fix, raise, stabilize, and maintain prices of, allocate markets for, and restrain and manipulate the supply of shell eggs and egg products at supra-competitive levels.
- 208. By reason of the foregoing, Defendants and their co-conspirators committed "unlawful, unfair or fraudulent business act[s] or practices[s]" in violation of California's Unfair Competition Law. Cal. Bus. & Prof. Code. §§ 17200, et seq.
- 209. Defendants' unlawful conduct has substantially affected California commerce and had, inter alia, the following effects:

- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout California;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout California;
- d. Plaintiffs and members of the California Indirect Purchaser State Class were deprived of free and open competition.
- 210. As a direct and proximate result of Defendants' unlawful practices, including combinations and contracts to restrain trade and allocate relevant markets, Plaintiff and members of the California Indirect Purchaser State Class have been injured in their business and property in that they paid more for shell eggs and egg products than they otherwise would have paid in the absence of Defendants' unlawful conduct.

COUNT IV

Violations of District of Columbia Law

A. Violations of D.C. Code §§ 28-4501, et seq.

- 211. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 212. By reason of the foregoing, Defendants and their co-conspirators have acted in violation of D.C. Code §§ 28-4501, et seq.

- 213. Defendants' unlawful conduct has substantially affected District of Columbia commerce and had, inter alia, the following effects:
- a. Shell egg and egg products price competition was restrained, suppressed, and/or eliminated throughout the District of Columbia;
 - b. The supply of shell eggs and egg products was improperly reduced;
- c. Shell egg and egg prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout the District of Columbia; and
- d. Plaintiffs and members of the District of Columbia Indirect Purchaser State Class were deprived of free and open competition.
- 214. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the District of Columbia Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

B. Violations of D.C. Code §§ 28-3901, et seq.

- 215. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 216. The foregoing conduct constitutes "unlawful trade practices" within the meaning of D.C. Code § 28-3904.
 - 217. Defendants' unlawful conduct had the following effects:

- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout the District of Columbia;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout the District of Columbia;
- d. Plaintiffs and members of the District of Columbia Indirect Purchaser State Class were deprived of free and open competition.
- 218. Defendants, acting in their position as the dominate domestic producers of shell eggs and egg products, place Plaintiff and members of the District of Columbia Indirect Purchaser State Class in a grossly unequal bargaining position by foreclosing their ability to purchase shell eggs and egg products at unrestrained, uninflated, fair and competitive prices.
- 219. As a direct and proximate result of Defendants' conduct, Plaintiff and members of the District of Columbia Indirect Purchaser State Class have been injured.

COUNT V

Violations of Florida Law

Violations of F.S. §§ 501.201, et seq.

220. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.

221. By reason of the foregoing, Defendants and their co-conspirators committed actions that constitute unfair and deceptive trade practices in violation of F.S. § 501.204, and

substantially affecting trade and commerce throughout Florida.

222. Defendants' unlawful conduct has substantially affected Iowa commerce and had, inter alia, the following effects:

223. Defendants' unlawful conduct had the following effects:

a. Shell eggs and egg products price competition was restrained, suppressed, and/or

eliminated throughout Florida;

b. The supply of shell egg and egg products was improperly limited, reduced and

otherwise manipulated;

c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized

at artificially high, non-competitive levels throughout Florida;

d. Plaintiffs and members of the Florida Indirect Purchaser State Class were

deprived of free and open competition.

224. As a direct and proximate result of Defendants' unlawful and anticompetitive

practices, including combinations and contracts to restrain trade and monopolize the relevant

markets, Plaintiff and members of the Florida Indirect Purchaser State Class have been injured in

their business and property in that they paid supra-competitive, artificially inflated prices for

shell eggs and egg products.

COUNT VI

Violations of Iowa Law

Violations of Iowa Competition Law §§ 553.1, et seq.

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- 225. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 226. By reason of the foregoing, Defendants and their co-conspirators committed actions that constitute unfair and deceptive trade practices in violation of Iowa Competition Law §§ 553.1, et seq.
- 227. Defendants' unlawful conduct has substantially affected Iowa commerce and had, inter alia, the following effects:
- a. Shell egg and egg price competition was restrained, suppressed, and/or eliminated throughout Iowa;
 - b. The supply of shell eggs and egg products was improperly reduced;
- c. Shell egg and egg product prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Iowa; and
- d. Plaintiffs and members of the Iowa Indirect Purchaser State Class were deprived of free and open competition.
- 228. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Iowa Indirect Purchaser State have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT VII

Violations of Kansas Law

A. Violations of K.S.A. §§ 50-101 et seq.

- 229. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 230. By reason of the foregoing, Defendants and their co-conspirators have engaged in a continuing contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the Kansas antitrust statutes, K.S.A. §§ 50-101 et seq., substantially affecting trade and commerce throughout Kansas.
- 231. Defendants' unlawful conduct has substantially affected Kansas commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Kansas;
 - b. The supply of shell eggs and egg products was improperly reduced;
- c. Shell eggs and egg product prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Kansas; and
- d. Plaintiffs and members of the Kansas Indirect Purchaser State Class were deprived of free and open competition.
- 232. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Kansas Indirect Purchaser State Class and have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products

B. Violations of K.S.A. § 50-623, et seq.

- 233. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 234. By reason of the foregoing, Defendants and their co-conspirators have engaged in conduct that constitutes deceptive and unconscionable acts and practices within the meaning of K.S.A. § 50-623, et seq.
- 235. Defendants' unlawful conduct has substantially affected Kansas commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Kansas;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Kansas;
- d. Plaintiffs and members of the Kansas Indirect Purchaser State Class were deprived of free and open competition.
- 236. Defendants, by the design, intent and nature of their conspiracy, unconscionably took advantage of Plaintiff's and members' of the Kansas Indirect Purchaser State Class inability to know of and thus protect themselves from Defendants' deceptive and unconscionable acts and practices.

- 237. Defendants, acting in their position as the dominate domestic producers of shell eggs and egg products, by and through their conspiracy, place Plaintiff and members of the Kansas Indirect Purchaser State Class in a grossly unequal bargaining position by foreclosing their ability to purchase shell eggs and egg products at unrestrained, uninflated, fair and competitive prices.
- 238. As a direct and proximate result of Defendants' unconscionable trade practice, Plaintiffs and members of the Kansas Indirect Purchaser State Class have been injured.

COUNT VIII

Violations of Maine Law

A. Violation of 10 M.R.S. §§ 1101, et seq.

- 239. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 240. By reason of the foregoing, Defendants and their co-conspirators have engaged in a contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the Maine antitrust statutes, 10 M.R.S. §§ 1101, et seq.
- 241. Defendants' unlawful conduct has substantially affected Maine commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and eliminated throughout Maine;
 - b. The supply of shell eggs and egg products was improperly reduced:

- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Maine; and
- d. Plaintiffs and members of the Maine Indirect Purchaser State Class were deprived of free and open competition.
 - 242. Plaintiffs and members of the Maine Indirect Purchaser State Class
- 243. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and members of the Maine Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

B. Violations of 5 M.R.S. § 205-A, et seq.

- 244. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 245. By reason of the foregoing, Defendants and their co-conspirators have engaged in conduct that constitutes unfair and/or deceptive methods of competition, acts and/or practices within the meaning of 5 M.R.S. § 205-A, et seq.
- 246. Defendants' unlawful conduct has substantially affected Maine commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Maine;

- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Maine;
- d. Plaintiffs and members of the Maine Indirect Purchaser State Class were deprived of free and open competition.
- 247. Defendants, acting in their position as the dominate domestic manufacturers of shell eggs and egg products, through their conspiracy, placed and continue to place Plaintiff and members of the Maine Indirect Purchaser State Class in a position of being unable to reasonably avoid the effects of that conspiracy.
- 248. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including their unlawful and/or deceptive methods, acts, practices, and/or courses of conduct, Plaintiff and the Maine Indirect Purchaser State Class have been injured in their businesses and property in that they paid more for shell eggs and egg products than they otherwise would have paid in the absence of Defendants' unlawful and/or deceptive conduct.

COUNT IX

Violations of Massachusetts Law

Violations of M.G.L.A. c. 93A, §§ 2, et seq.

249. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.

- 250. By reason of the foregoing, Defendants and their co-conspirators engaged in "unfair methods of competition and unfair or deceptive acts or practices" in knowing and willful violation of M.G.L.A c. 93A, et seq.
- 251. Defendants' unlawful conduct has substantially affected Massachusetts trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Massachusetts;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Massachusetts;
- d. Plaintiffs and members of the Massachusetts Indirect Purchaser State Class were deprived of free and open competition.
- 252. As a direct and proximate result of Defendants' unlawful practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and members of the Massachusetts Indirect Purchaser State Class have been injured in their business and property in that they paid more for shell eggs and egg products than they otherwise would have paid in the absence of Defendants' unlawful conduct.

COUNT X

Violations of Michigan Law

A. Violations of M.C.L. §§ 445.771, et seq.

253. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets

for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.

- 254. By reason of the foregoing, Defendants and their co-conspirators have engaged in a continuing contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the Michigan antitrust statutes, M.C.L. §§ 445.771, et seq.
- 255. Defendants' unlawful conduct has substantially affected Michigan trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Michigan;
 - b. The supply of shell eggs and egg products was improperly reduced;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Michigan; and
- d. Plaintiffs and members of the Michigan Indirect Purchaser State Class were deprived of free and open competition.
- 256. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Michigan Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products

B. Violations of Mich. Comp. Laws Ann. §§ 445.901, et seq.

257. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supra-

competitive levels. Defendants' agreements were concealed from Plaintiff. Further, Defendants' conduct had the effect of creating and fostering confusion and/or misunderstanding in the relevant markets for shell eggs and egg products, including within Michigan.

- 258. By reason of the foregoing, Defendants and their co-conspirators have engaged in conduct that constitutes deceptive and unconscionable acts and practices within the meaning of Mich. Comp. Laws Ann. §§ 445.901, et seq.
- 259. Defendants' unlawful conduct has substantially affected Michigan trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Michigan;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Michigan;
- d. Plaintiffs and members of the Michigan Indirect Purchaser State Class were deprived of free and open competition in and markets for shell eggs and egg products.
- 260. Defendants, by the design, intent and nature of their conspiracy failed to reveal material facts regarding the price and supply of shell eggs and egg products, the omission of which mislead and deceived Plaintiff and members of the Michigan Indirect Purchaser State Class into believing the markets for shell eggs and egg products were free of deceptive and unconscionable acts and practices and that prices for shell eggs and egg products were based on factors other than Defendants' illegal conduct.

- 261. Defendants, acting in their position as the dominate domestic producers of shell eggs and egg products, by and through their conspiracy, took advantage of Plaintiff's and members' of the Michigan Indirect Purchaser State Class inability to reasonably know of and thus protect themselves from Defendants' deceptive and unconscionable acts and practices.
- 262. As a direct and proximate result of Defendants' unconscionable trade practice, Plaintiffs and members of the Michigan Indirect Purchaser State Class have been injured.

COUNT XI

Violations of Minnesota Law

Violations of Minn. Stat. §§ 325D.49 et seq.

- 263. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 264. By reason of the foregoing, Defendants and their co-conspirators formed contracts, combinations or conspiracies in restraint of trade or commerce, in violation of Minnesota's Antitrust Law, Minn. Stat. §§ 325D.49 et seq.
- 265. Defendants' unlawful conduct has substantially affected Minnesota trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and eliminated throughout Minnesota;
 - b. The supply of shell eggs and egg products was improperly reduced;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Minnesota; and

- d. Plaintiffs and members of the Minnesota Indirect Purchaser State Class were deprived of free and open competition.
- 266. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Minnesota Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT XII

Violations of Mississippi Law

Violations of Miss. Code Ann. §75-21-1, et seq.

- 267. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 268. By reason of the foregoing, Defendants and their co-conspirators have engaged in a continuing contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the Mississippi antitrust statutes, Miss. Code Ann. §75-21-1, et seq.
- 269. Defendants' unlawful conduct has substantially affected Mississippi trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Mississippi;
 - b. The supply of shell eggs and egg products was improperly reduced:

- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Mississippi; and
- d. Plaintiffs and members of the Mississippi Indirect Purchaser State Class were deprived of free and open competition.
- 270. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Mississippi Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT XIII

Violations of Nebraska Law

Violations of Neb. Rev. Stat. § 59-1601, et seq.

- 271. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 272. By reason of the foregoing, Defendants and their co-conspirators have committed actions that constitute continuing unfair and deceptive trade practices in violation of Neb. Rev. Stat. § 59-1601, et seq.,
- 273. Defendants' unlawful conduct has substantially affected Nebraska trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Nebraska;

- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Nebraska;
- d. Plaintiffs and members of the Nebraska Indirect Purchaser State Class were deprived of free and open competition.
- 274. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and members of the Nebraska Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT XIV

Violations of Nevada Law

Violations of Nev. Rev. Stat. Ann. §§ 598A.010, et seq.

- 275. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 276. By reason of the foregoing, Defendants and their co-conspirators have engaged in a continuing contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the Nevada antitrust statutes, Nev. Rev. Stat. Ann. §§ 598A.010, et seq.
- 277. Defendants' unlawful conduct has substantially affected Nevada trade and commerce and had, inter alia, the following effects:

- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Nevada;
- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Nevada;
 - c. The supply of shell eggs and egg products was improperly reduced; and
- d. Plaintiffs and members of the Nevada Indirect Purchaser State Class were deprived of free and open competition.
- 278. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Nevada Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT XV

Violations of New Mexico Law

A. Violations of N.M.S.A. 1978, §§ 57-1-1, et seq.

- 279. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 280. By reason of the foregoing, Defendants and their co-conspirators formed contracts, combinations or conspiracies in restraint of trade or commerce, in violation of the New Mexico Antitrust Act, N.M.S.A. 1978, §§ 57-1-1, et seq.

- 281. Defendants' unlawful conduct has substantially affected New Mexico trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout New Mexico;
- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout New Mexico;
 - c. The supply of shell eggs and egg products was improperly reduced; and
- d. Plaintiffs and members of the New Mexico Indirect Purchaser State Class were deprived of free and open competition.
- 282. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets. Plaintiff and the New Mexico Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

B. Violations of N.M.S.A. § 57-12-1, et seq.

- 283. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 284. The foregoing conduct constitutes "unconscionable trade practices" within the meaning of N.M.S.A. § 57-12-1, et seq.
 - 285. Defendants' unlawful conduct had the following effects:

- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout New Mexico;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout New Mexico; and
- d. Plaintiffs and members of the New Mexico Indirect Purchaser State Class were deprived of free and open competition.
- 286. Defendants, by the design and intent of their conspiracy, intentionally took advantage, to a grossly unfair degree, Plaintiff's and members' of the New Mexico Indirect Purchaser State Class lack of knowledge, ability to know, experience and/or capacity to learn of Defendants' unconscionable trade practice.
- 287. Defendants, acting in their position as the dominate domestic producers of shell eggs and egg products, through their conspiracy, place Plaintiff and the New Mexico Indirect Purchaser State Class in a grossly unequal bargaining position by foreclosing their ability to purchase shell eggs and egg products at unrestrained, uninflated, fair and competitive prices.
- 288. As a direct and proximate result of Defendants' unconscionable trade practices, Plaintiffs and the New Mexico Indirect Purchaser State Class have been injured.

COUNT XVI

Violations of New York Law

Violations of New York General Business Law § 349

289. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets

for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.

- 290. The knowing and willful conduct of the Defendants described herein constitutes materially misleading consumer-oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349. Defendants' actions materially misled New York consumers and resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted in a competitive manner.
- 291. Defendants' unlawful conduct has substantially affected New York trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout New York;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout New York;
- d. Plaintiffs and members of the New York Indirect Purchaser State Class were deprived of free and open competition.
- 292. As a result of Defendants' illegal conduct Plaintiff and members of the New York

 Indirect Purchaser State Class paid supra-competitive, artificially inflated prices for shell eggs

 and egg products.

293. Without prejudice to their contention that Defendants' unlawful conduct was willful and knowing, Plaintiffs and the New York Indirect Purchaser State Class are seeking actual damages only for their injuries.

COUNT XVII

Violations of North Carolina Law

A. Violations of N.C. Gen. Stat. §§ 75-1, et seq.

- 294. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 295. By reason of the foregoing, Defendants and their co-conspirators have engaged in a contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the North Carolina antitrust statutes, N.C. Gen. Stat. §§ 75-1, et seq.
- 296. Defendants' unlawful conduct has substantially affected North Carolina trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout North Carolina;
- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout North Carolina;
 - c. The supply of shell eggs and egg products was improperly reduced; and
- d. Plaintiffs and members of the North Carolina Indirect Purchaser State Class were deprived of free and open competition.
 - 297. Plaintiff and members of the North Carolina Indirect Purchaser State Class

298. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the North Carolina Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

B. Violations of N.C.G.S. §§ 75-1.1, et seq.

- 299. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 300. By reason of the foregoing, Defendants and their co-conspirators engaged in unfair methods of competition and unfair or deceptive acts or practices which affected North Carolina commerce in violation of N.C.G.S. § 75-1.1.
 - 301. Defendants' unlawful conduct had the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout North Carolina;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout North Carolina;
- d. Plaintiffs and members of the North Carolina Indirect Purchaser State Class were deprived of free and open competition.

302. As a direct and proximate result of Defendants' unlawful practices, including combinations and contracts to restrain trade and allocate the relevant markets, Plaintiff and members of the North Carolina Indirect Purchaser State Class have been injured in their business and property in that they paid more for shell eggs and egg products than they otherwise would have paid in the absence of Defendants' unlawful conduct.

COUNT XVIII

Violations of North Dakota Law

Violations of N.D. Cent. Code §§ 51-08.1-01, et seq.

- 303. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 304. By reason of the foregoing, Defendants and their co-conspirators have engaged in a contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the North Dakota antitrust statutes, N.D. Cent. Code §§ 51-08.1-01, et seq. substantially affecting trade and commerce throughout North Dakota.
- 305. Defendants' unlawful conduct has substantially affected North Dakota trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout North Dakota;
- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout North Dakota;
 - c. The supply of shell eggs and egg products was improperly reduced; and

- d. Plaintiffs and members of the North Dakota Indirect Purchaser State Class were deprived of free and open competition.
- 306. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the North Dakota Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT XIX

Violations of South Dakota Law

Violations of S.D. Codified Laws Ann. §37-24, et seq.

- 307. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 308. Defendants' acts, omissions, misrepresentations, practices and non-disclosures, as alleged herein, constituted unfair and/or deceptive methods of competition, acts and/or practices within the meaning of the South Dakota Deceptive Trade Practices and Consumer Protection statutes, S.D. Codified Laws Ann. §§ 37-24, et seq.
- 309. During the Class Period, Defendants and their co-conspirators committed and continue to commit acts of unfair competition as alleged herein. This illegal conduct is continuing and there is no indication that Defendants will not continue such activity in the future.
- 310. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant

markets, Defendants have caused and continue to cause Plaintiff and members of the South Dakota Indirect Purchaser State Class to pay supra-competitive and artificially inflated prices for shell eggs and egg products.

311. As a direct and proximate result of Defendants' conduct, Plaintiff and the South Dakota Indirect Purchaser State Class have suffered an ascertainable loss of money and/or property and have been deprived the benefits of free and fair competition on the merits.

COUNT XX

Violations of Puerto Rico Law.

Violations of P.R. 10 LPRA § 258, et seq

- 312. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 313. By reason of the foregoing, Defendants and their co-conspirators have engaged in a contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the Puerto Rico antitrust statutes, P.R. 10 LPRA § 258, et seq. substantially affecting trade and commerce throughout Puerto Rico.
- 314. Defendants' unlawful conduct has substantially affected Puerto Rico trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Puerto Rico;
- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Puerto Rico;

- c. The supply of shell eggs and egg products was improperly reduced; and
- d. Plaintiffs and members of the Puerto Rico Indirect Purchaser State Class were deprived of free and open competition.
- 315. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Puerto Rico Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT XXI

Violations of South Dakota Law

Violations of S.D. Codified Laws Ann. §§ 37-1-3.1, et seq.

- 316. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 317. By reason of the foregoing, Defendants and their co-conspirators have engaged in a contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the South Dakota antitrust statutes, S.D. Codified Laws Ann. §§ 37-1-3.1, et seq.,
- 318. Defendants' unlawful conduct has substantially affected South Dakota trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout South Dakota;

- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout South Dakota;
 - c. The supply of shell eggs and egg products was improperly reduced; and
- d. Plaintiffs and members of the South Dakota Indirect Purchaser State Class were deprived of free and open competition.
- 319. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the South Dakota Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT XXII

Violations of Tennessee Law

Violations of Tenn. Code Ann. §§ 47-25-101, et seq.

- 320. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 321. By reason of the foregoing, Defendants and their co-conspirators engaged in a contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the Tennessee antitrust statutes, Tenn. Code Ann. §§ 47-25-101, et seq.
- 322. Defendants' unlawful conduct has substantially affected Tennessee trade and commerce and had, inter alia, the following effects:

- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Tennessee;
- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Tennessee;
 - c. The supply of shell eggs and egg products was improperly reduced; and
- d. Plaintiffs and members of the Tennessee Indirect Purchaser State Class were deprived of free and open competition.
- 323. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Tennessee Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT XXIII

Violations of Utah Law

Violations of U.C.A. 1953 §§ 76-10-911, et seq.

- 324. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 325. By reason of the foregoing, Defendants and their co-conspirators engaged in a contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the Utah antitrust statutes, U.C.A. 1953 §§ 76-10-911, et seq.

- 326. Defendants' unlawful conduct has substantially affected Utah trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Utah;
- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Utah;
 - c. The supply of shell eggs and egg products was improperly reduced; and
- d. Plaintiffs and members of the Utah Indirect Purchaser State Class were deprived of free and open competition.
- 327. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Utah Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

COUNT XXIV

Violation of Vermont Law

Violations of 9 V.S.A. §§ 2451, et seq.

328. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.

- 329. By reason of the foregoing, Defendants and their co-conspirators engaged in a continuing combination and conspiracy in restraint of trade and commerce in violation of the Vermont Consumer Fraud Act, 9 V.S.A. §§ 2451, et seq.
- 330. Defendants' unlawful conduct has substantially affected Vermont trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Vermont;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Vermont;
- d. Plaintiffs and members of the Vermont Indirect Purchaser State Class were deprived of free and open competition.
- 331. Plaintiff and members of the Vermont Indirect Purchaser State Class paid supracompetitive, artificially inflated prices or portions of the price for shell eggs and egg products.
- 332. As a direct, proximate and foreseeable cause of Defendants' conduct in violation of 9 V.S.A. §§ 2451, et seq., Plaintiff and the Vermont Indirect Purchaser State Class have been damaged in their property in that the price or a portion of the price which they have paid for or in respect of shell eggs and egg products has been inflated to a supra-competitive level.

COUNT XXV

Violations of West Virginia Law

A. Violations of W. Va. Code §§ 47-18-1, et seq.

- 333. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 334. By reason of the foregoing, Defendants and their co-conspirators engaged in a contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the West Virginia antitrust statutes, W. Va. Code §§ 47-18-1, et seq.
- 335. Defendants' unlawful conduct has substantially affected West Virginia trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout West Virginia;
- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout West Virginia;
 - c. The supply of shell eggs and egg products was improperly reduced; and
- d. Plaintiffs and members of the West Virginia Indirect Purchaser State Class were deprived of free and open competition.
- 336. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets. Plaintiff and the West Virginia Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

B. Violations of W. Va. Code §§ 46A-6-101, et seq.

- 337. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 338. The foregoing conduct constitutes "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce", and has directly or indirectly affected the people of West Virginia within the meaning of W. Va. Code §§ 46A-6-101, et seq.
 - 339. Defendants' unlawful conduct had the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout West Virginia;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;
- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout West Virginia;
- d. Plaintiffs and members of the West Virginia Indirect Purchaser State Class were deprived of free and open competition.
- e. Confusion and/or misunderstanding in the relevant markets for shell eggs and egg products.
- 340. Defendants, by the design and intent of their conspiracy, intentionally took advantage, to a grossly unfair degree, Plaintiff's and members' of the West Virginia Indirect Purchaser State Class lack of knowledge, ability to know, experience and/or capacity to learn of Defendants' unfair methods of competition and unfair or deceptive acts or practices.

- 341. Defendants, acting in their position as the dominate domestic manufacturers of shell eggs and egg products, through their conspiracy, intentionally fostered confusion and/or misunderstanding in the relevant markets for shell eggs and egg products thereby placing Plaintiff and members of the West Virginia Indirect Purchaser State Class in a grossly unequal bargaining position by foreclosing their ability to purchase shell eggs and egg products at unrestrained, fair and competitive prices.
- 342. As a direct and proximate result of Defendants' unfair methods of competition and unfair or deceptive acts or practices, Plaintiff and the West Virginia Indirect Purchaser State Class have been injured.

COUNT XXVI

Violations of Wisconsin Law

A. Violations of Wis. Stat. § 133.01, et seq.

- 343. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 344. By reason of the foregoing, Defendants and their co-conspirators engaged in a contract, combination, and conspiracy in an unreasonable restraint of trade and commerce in violation of the Wisconsin antitrust statutes, Wis. Stat. § 133.01, et seq.
- 345. Defendants' unlawful conduct has substantially affected Wisconsin trade and commerce and had, inter alia, the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Wisconsin;

- b. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Wisconsin;
 - c. The supply of shell eggs and egg products was improperly reduced; and
- d. Plaintiffs and members of the Wisconsin Indirect Purchaser State Class were deprived of free and open competition.
- 346. As a direct and proximate result of Defendants' unlawful and anticompetitive practices, including combinations and contracts to restrain trade and monopolize the relevant markets, Plaintiff and the Wisconsin Indirect Purchaser State Class have been injured in their business and property in that they paid supra-competitive, artificially inflated prices for shell eggs and egg products.

B. Violations of Wis. Stat. §§ 100.18, et seq.

- 347. Defendants agreed to, and did in fact, act in restraint of trade or commerce by unfairly and deceptively fixing, raising, stabilizing, and maintaining prices of, allocating markets for, and restraining and manipulating the supply of shell eggs and egg products at supracompetitive levels.
- 348. The foregoing conduct constitutes deceptive and unfair competition and trade practices within the meaning of Wis. Stat. §§ 100.18, et seq.
 - 349. Defendants' unlawful conduct had the following effects:
- a. Shell eggs and egg products price competition was restrained, suppressed, and/or eliminated throughout Wisconsin;
- b. The supply of shell egg and egg products was improperly limited, reduced and otherwise manipulated;

- c. Shell eggs and egg products prices were raised, fixed, maintained, and stabilized at artificially high, non-competitive levels throughout Wisconsin;
- d. Plaintiffs and members of the Wisconsin Indirect Purchaser State Class were deprived of free and open competition.
- 350. As a direct and proximate result of Defendants' conduct, Plaintiff and members of the Wisconsin Indirect Purchaser State Class have been injured.

COUNT XXVII

<u>UNJUST ENRICHMENT</u>

- 351. Plaintiffs hereby incorporate by reference each of the preceding paragraphs as if fully set forth herein.
- 352. As the result of Defendants' illegal agreement, contract, combination, and conspiracy, Plaintiffs and the class members conferred a benefit upon Defendants, and Defendants received and retained this benefit under such circumstances that it would be inequitable and unconscionable to permit Defendants to retain this benefit without paying its reasonable value to Plaintiffs and members of the Classes.
- 353. As a direct and proximate result of Defendants' unjust enrichment, Plaintiffs and class members suffered injury and seek an order directing Defendants to return to them the amount each of them improperly paid to Defendants, plus interest.

REQUEST FOR RELIEF

WHEREFORE, Indirect Purchaser Plaintiffs request the following:

A. That the Court determine that the claims alleged herein under the Sherman Act, the state antitrust laws, and the state consumer protection and/or unfair competition laws may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure;

- B. That the Court adjudge and decree that the unlawful conduct, contract, combination and conspiracy alleged herein constitutes:
 - a. A violation of the Sherman Act, 15 U.S.C. § 1, as alleged in Count I;
 - b. A violation of the state antitrust, consumer protection and unfair competition laws as alleged in Counts II – XXVI; and
 - c. Acts of unjust enrichment as set forth in Count XXVII.
- C. That Plaintiffs and the class members recover damages, as provided by the state antitrust laws and the state consumer protection and unfair competition laws, including actual damages, multiple damages where provided by law (except in New York, where Plaintiffs seek only actual damages for their injury) and/or statutory minimum damages where provided by law, and that a joint and several judgment in favor of Plaintiffs and the Classes be entered against the Defendants in an amount to be trebled in accordance with such laws;
- D. That Plaintiffs and the relevant Class members obtain any penalties, punitive or exemplary damages, and/or full consideration, where the laws of the respective states identified herein so permit;
- E. That Defendants, their co-conspirators, successors, transferees, assigns, parents, subsidiaries, affiliates, and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on behalf of Defendants, or in concert with them, be permanently enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the combinations, conspiracy, agreement, understanding or concert of action, or adopting or following

any practice, plan, program or design having a similar purpose or effect in restraining

competition;

F. That Plaintiffs and Class members be awarded restitution, including disgorgement of

profits obtained by Defendants as a result of their acts of unfair competition and acts

of unjust enrichment;

G. That Plaintiffs and Class members be awarded pre-judgment and post-judgment

interest as permitted by law;

That Plaintiffs and Class members recover their costs of suit, including reasonable H.

attorneys' fees as provided by law; and

That Plaintiffs and Class members be awarded such other and further relief as may be I.

necessary and appropriate.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demands a trial by jury of all of the claims

asserted in this complaint so triable.

DATED: February 27, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day 27th day of February 2009 the foregoing Consolidated Amended Class Action Complaint was filed with the Clerk of the Court, per the Local Rules and will be available for viewing and downloading vie the CM/ECF system and the CM/ECF system will send notification of such filing to all attorneys of record. On this date, the Consolidated Amended Class Action Complaint was also served, via electronic mail, on (1) all council on the attached Panel Attorney Service List and (2) the below-listed Liaison Council for Defendants and Indirect Purchaser Plaintiffs:

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PANEL ATTORNEY SERVICE LIST In re: Processed Egg Products Antitrust Litigation, MDL No. 2002, No. 08-MD-2002

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 		MN 55402	-		
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United Egg Producers,	Robin P. Sumner	Pepper Hamilton, LLP	sumnerr@pepperlaw.com	215-981-	215-921.
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		18th and Arch Streets		-	3
 		Philadelphia, PA 19103-2799			
Unites States Egg	Robin P. Sumner	Pepper Hamilton, LLP	sumnerr@pepperlaw.com	715-981.	715-021
Marketers, Inc.		3000 Two Logan Square		4657	4750
	- -	18th and Arch Streets		720	3
		Philadelphia, PA 19103-2799			
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*On December 1, 2008, P	ilgrim's Pride Corporat	ion and its debtor affiliates ("PPC") filed v	*On December 1, 2008, Pilgrim's Pride Corporation and its debtor affiliates ("PPC") filed voluntary netitions under Chanter 11 of Trib 11 of the Lines	11 06 11 0	
			and in the college of	11 OL 116 O	Lec