

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

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

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*:

- a. 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 supra-competitive 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.

15. Further, Plaintiffs bring this action on behalf of indirect purchasers of shell 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

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

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 Teresa 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.

57. 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 co-conspirators' 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, Egglan'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 Acre 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."¹

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 Mackenzie 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 spokesperson, 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: (1) 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 contracts.

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.

107. Twenty years ago, Urner Barry requested an antitrust business review by the 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.

113. Excluded from the Classes are all federal, state, or local governmental entities; 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;

- c. Whether Defendants and their co-conspirators were participants in the contract, combination or conspiracy alleged herein;
- d. 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 its 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.

134. End user demand for shell eggs and egg products is highly inelastic. Thus, egg 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 Barry 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 Market Prices	Shell Eggs (Spot Egg Mid-West Large)	Liquid Unpasteurized Eggs
2000	\$0.7115/dz.	\$0.3035/lb.
2001	\$0.6929/dz.	\$0.3009/lb.
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
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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.

151. An excess of supply in the face of a relatively inelastic demand for eggs causes 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."⁶

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

153. During an October 2001, trade association conference attended by Defendants' 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.

154. During January 2002, the UEP adopted the animal husbandry “certified company” 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, Uner 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 Barry 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.