IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

IN RE PEANUT FARMERS ANTITRUST LITIGATION	Case No. 2:19-cv-00463 **Honorable Raymond A. Jackson** **Honorable Lawrence R. Leonard**

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT WITH GOLDEN PEANUT AND PLAN OF DISTRIBUTION OF SETTLEMENT FUND

I. INTRODUCTION

Plaintiffs, on behalf of a Class comprised of farmers that sold raw, harvested runner peanuts ("Runner Peanuts") to the Defendants between January 1, 2014 and December 31, 2019, have reached a settlement with Defendant Golden Peanut Company LLC ("Golden Peanut"). Under the terms of the Settlement, Golden Peanut will pay $45,000,000 to resolve the Class's claims. On April 5, 2021, the Court approved settlements with Defendants Olam Peanut Shelling Company, Inc. ("Olam") and Birdsong Corporation ("Birdsong") totaling $57,750,000. (ECF No. 590). If the Court grants final approval for the Golden Peanut settlement, the total settlement amount will be $102,750,000 ("Settlement Fund"), and the litigation will be fully resolved.

For the reasons set forth herein, Plaintiffs respectfully submit that the settlement with Golden Peanut and the proposed plan of distribution of the Settlement Fund are fair, reasonable, and adequate, and should be approved by the Court. Submitted herewith is a proposed Order and Final Judgment agreed to by Plaintiffs and Golden Peanut.

II. BACKGROUND

Plaintiffs are Peanut farmers in the United States who sold Runner Peanuts to peanut shelling companies, including Golden Peanut, Birdsong, and Olam. In September 2019, Plaintiffs filed a class action lawsuit against Golden Peanut and Birdsong (ECF No. 1), alleging that Defendants entered into a conspiracy, the purpose and effect of which was to suppress competition and to pay depressed prices for Runner Peanuts to farmers, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Golden Peanut and Birdsong filed motions to dismiss (ECF Nos. 47-50), which the Court denied on May 14, 2020 (ECF No. 135). Plaintiffs filed a Second Amended Class Action Complaint on May 27, 2020 (ECF No. 148), naming Olam as a Defendant for the first time, and all Defendants filed answers to this Complaint on June 26, 2020. (ECF Nos. 178-180).

All Defendants have denied Plaintiffs' allegations and have asserted numerous defenses to Plaintiffs' claims. However, after conducting substantial fact and expert discovery, briefing class certification, and preparing for trial, Plaintiffs reached settlements totaling $57,750,000 with Olam and Birdsong in October and November 2020, respectively.

On December 2, 2020, the Court entered an Amended Memorandum Opinion and Order ("Certification Order") finding that this case should proceed as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure and certified the following Class:

> All persons or entities in the United States who sold raw, harvested runner peanuts to any of the Defendants, their subsidiaries or joint-ventures, from January 1, 2014 through December 31, 2019 (the "Class Period"). Specifically excluded from this Class are the Defendants; the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant.

Certification Order at 18. (ECF No. 496).[1]

On December 23, 2020, the Court preliminarily approved the Olam and Birdsong settlements and scheduled a Fairness Hearing on March 25, 2021 to determine whether to finally approve those settlements and Class Counsel's request for reimbursement of litigation costs and expenses. (ECF Nos. 514-515).

Notwithstanding the settlements with the Olam and Birdsong Defendants, Class Counsel continued to vigorously litigate the case against Golden Peanut, including briefing Golden

[1] On December 16, 2020, Golden Peanut petitioned the United States Court of Appeals for the Fourth Circuit for permission to appeal the Certification Order under Fed. R. Civ. P. 23(f), and Plaintiffs filed their opposition on December 28, 2020. On January 27, 2021, the Fourth Circuit deferred ruling on the petition, but ordered formal briefing of the appeal. *Golden Peanut Company, LLC v. D&M Farms, et al.*, No. 20-502 (4th Cir. Jan. 27, 2021) (Doc. 30). Pending approval of the Settlement Agreement, Golden Peanut filed a motion with the Fourth Circuit requesting that its appeal be stayed, which the Fourth Circuit granted on February 26, 2021. *Golden Peanut Company, LLC v. D&M Farms, et al.*, No. 20-502 (4th Cir. Feb. 26, 2021) (Doc. 40).

Peanut's individual summary judgment motion and motion to exclude Plaintiffs' expert economist, briefing Golden Peanut's Rule 23(f) appeal of the Court's Certification Order, and preparing for trial. While the parties were engaged in hard-fought litigation, they continued to explore settlement possibilities. After vigorous arm's-length negotiations, and with the assistance of nationally renowned mediator Eric D. Green, Plaintiffs and Golden Peanut agreed to settle the litigation for $45,000,000.

Recent amendments to Rule 23 (effective December 1, 2018) require that "[t]he parties [] provide the court with information sufficient to enable it to determine whether to give notice of [a proposed settlement] to the class." Fed. R. Civ. P. 23(e)(1)(A). Notice "is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). On April 23, 2021, the Court preliminarily approved the settlement with Golden Peanut, authorized the issuance of notice to the Class, and scheduled a Fairness Hearing on July 26, 2021, to determine whether to (1) finally approve the Golden Peanut settlement, and (2) grant Class Counsel's request for attorneys' fees, litigation costs and expenses, and service awards to the Class Representatives ("Preliminary Approval and Notice Order"). (ECF No. 595).[2]

Pursuant to the Preliminary Approval and Notice Order, on May 14, 2021, the Notice was mailed, postage prepaid, to all potential members of the Class identified from Defendants' transactional data. Further, on May 21, 2021, the process of publishing the Summary Notice and emailing the Summary Notice to Class members began; at or about that same time, Plaintiffs used

[2] Class Counsel did not seek attorneys' fees or service awards for the class representatives in conjunction with the final approval of the Olam and Birdsong settlements, but have contemporaneously filed a motion seeking fees, expenses, and service awards with the filing of the instant Motion for Final Approval.

banner ads and social media advertising to enhance the outreach of the Notice. Finally, a copy of the Notice was (and remains) posted on-line at www.PeanutFarmersAntitrustLitigation.com.[3]

III. TERMS OF THE SETTLEMENT AGREEMENT

On behalf of the Class, Plaintiffs entered into a settlement with Golden Peanut for $45,000,000 ("Settlement Agreement"). In exchange for the settlement payment, the settlement provides, *inter alia*, for the release by Plaintiffs, and the other Class members, of "Released Claims" against Golden Peanut. The Released Claims are antitrust and similar claims arising from the conduct alleged in the Complaint. The release specifically excludes "any ordinary course of business commercial claims unrelated to the Action that are based solely on breach of contract."

The Settlement Agreement was reached after (a) good faith and vigorous, arm's-length negotiations between experienced counsel, and with the assistance of a nationally renowned mediator, and (b) extensive factual and expert discovery and legal analysis, such that the experienced counsel had a full understanding of the strengths and weaknesses of their respective positions. Plaintiffs believe the settlement is fair, reasonable, and adequate for the Class, and respectfully submit that it merits final approval.

[3] At least ten (10) days before the Fairness Hearing, Class Counsel will file with the Court a declaration of the person(s) responsible for directing the Notice Program approved by the Court, showing that Notice was provided to the Class in accordance with the Notice Order. Class Counsel will also provide the Court with information on any objections to the settlement and Class Counsel's request for fees, expenses, and service awards.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED BY THE COURT.

A. The Governing Standards.

A court has broad discretion in deciding whether to approve a class action settlement. *In re: Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., Sales Practices and Prods. Liab. Litig.*, 952 F.3d 471, 484 (4th Cir. 2020) ("considerable deference" given to trial court in determining whether "to approve a class-action settlement as fair, reasonable, and adequate"), *citing*, *Joel A. v. Giuliani*, 218 F.3d 132, 139 (2d Cir. 2000). In exercising this discretion, courts give considerable weight and deference to the views of experienced counsel as to the merits of an arm's-length settlement. *In re Montgomery Cnty. Real Estate Antitrust Litig.*, 83 F.R.D. 305, 315 (D. Md. 1979); *see also In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009).

"Litigants should be encouraged to determine their respective rights between themselves and there is an overriding public interest in favor of settlement, particularly in class action suits." *Lomascolo v. Parsons Brinckerhoff, Inc.*, No. 1:08-cv-1310 (AJT/JFA), 2009 WL 3094955, at *10 (E.D. Va. Sept. 28, 2009) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). "[A] court should be hesitant to substitute its own judgment for that of counsel." *Lomascolo*, 2009 WL 3094955, at *10 (citing *Cotton*, 559 F.2d at 1330). Due to the uncertainties and risks inherent in any litigation, courts take a common-sense approach and approve class action settlements if they fall within a "range of reasonableness." *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-cv-00361, 2018 WL 2382091, at *3 (E.D. Va. Apr. 18, 2018) ("The Settlement amount is well within the range of reasonableness in light of the best possible recovery and the risks the parties faced if the case continued to verdicts as to both liability and damages"); "[T]here is a strong initial

presumption that the compromise is fair and reasonable…" *Mills*, 265 F.R.D. at 258 (quoting *In re MicroStrategy, Inc. Secs. Litig.*, 148 F. Supp. 2d 654, 663 (E.D. Va. 2001)) (quotations omitted).

Moreover, a district court should guard against demanding too large a settlement, because a settlement "represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution." *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Ford Motor Co.*, No. 05-74730, 2006 WL 1984363, at *23 (E.D. Mich. July 13, 2006) (citation omitted); *accord Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 324 (3d Cir. 2011). *See, also, In re GMC Pick–Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995) ("T]he Court recognizes that 'after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution'").

B. The Proposed Settlement is Fair, Reasonable, and Adequate.

Fed. R. Civ. P. 23(e)(2) provides that a court may approve a settlement that would bind class members only after a hearing and on finding that the settlement is "fair, reasonable, and adequate." *Lumber Liquidators*, 952 F.3d at 484. The 2018 amendments to Rule 23(e) set forth a list of factors for a court to consider before approving a proposed settlement. The factors are whether:

> (A) the class representatives and class counsel have adequately represented the class;
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> (B) the proposal was negotiated at arm's length;
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> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Prior to the 2018 amendments to Rule 23(e), the Fourth Circuit had developed its own factors to assess the "fairness" of a settlement: "(1) the posture of the case at the time settlement was proposed; (2) the extent of discovery that had been conducted; (3) the circumstances surrounding the negotiations; and (4) the experience of counsel in the area of [the] class action litigation." *Lumber Liquidators*, 952 F.3d at 484, *citing Jiffy Lube*, 927 F.2d at 159. Similarly, the Fourth Circuit had specified several factors to assess the "adequacy" of a settlement: (1) the relative strength of the plaintiffs' case on the merits; (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (3) the anticipated duration and expense of additional litigation; (4) the solvency of the defendant[] and the likelihood of recovery on a litigated judgment; and (5) the degree of opposition to the settlement." *Id*. These Fourth Circuit factors "almost completely overlap with the new Rule 23(e)(2) factors…" *Id*. Further, the Advisory Committee Notes to Rule 23 acknowledge these judicially created standards, explaining that the newly enumerated Rule 23(e) factors are "core concerns" in every settlement and were not intended to displace a court's consideration of other relevant factors in a particular case. Fed. R. Civ. P. 23 Advisory Committee Note (2018 Amendment).

As discussed more fully below, the settlement with Golden Peanut is fair, reasonable, and adequate under the relevant criteria, and should be approved under Rule 23(e)(2).

1. The Class Representatives and Class Counsel Have Adequately Represented the Class, and the Settlement Was Reached at Arm's Length with the Assistance of a Nationally Renowned Mediator.

The first two factors of Rule 23(e)(2) – adequate representation by class representatives and class counsel and whether the settlement was reached pursuant to arm's length negotiations – are procedural and focus on the history and conduct of the litigation and settlement negotiations. Fed. R. Civ. P. 23 Advisory Committee Note. Relevant considerations may include the experience and expertise of plaintiffs' counsel, the quantum of information available to counsel negotiating the settlement, the stage of the litigation and amount of discovery taken, the pendency of other litigation concerning the subject matter, the length of the negotiations, whether a mediator or other neutral facilitator was used, the manner of negotiation, whether attorneys' fees were negotiated with the defendant and if so how they were negotiated and their amount, and other factors that may demonstrate the fairness of the negotiations. *Id.*

The Plaintiffs and Class Counsel have more than adequately represented the Class throughout this litigation, including in connection with the settlements. The Plaintiffs' interests are the same as those of the Class members, and Class Counsel have extensive experience in handling class action antitrust and other complex litigation. They negotiated the settlement at arm's length with well-respected and experienced counsel for Golden Peanut and with the assistance of Eric D. Green, a nationally renowned mediator. *See* April 23, 2021 Transcript of Preliminary Approval Hearing (at p. 5:20-22: "Court concludes that apparently it was all arm's length because you were fighting it right down to the end, nearly, here."). Thus, there is a presumption that the settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion. *Lumber Liquidators*, 952 F.3d at 484-85, *citing*, *Berry v. Schulman*, 807 F.3d 600, 614 (4th Cir. 2015) (fairness analysis primarily intended to ensure settlement is not collusive and

results from arm's-length negotiations). A settlement reached by experienced counsel that results from arm's length negotiations is entitled to deference from the court. *Lumber Liquidators*, 952 F.3d at 485 (experience of lawyers involved in negotiations is a supporting factor in determining settlement was fair). *See, also, Dick v. Sprint Commc'ns*, 297 F.R.D. 283, 296 (W.D. Ky. 2014) ("Giving substantial weight to the recommendations of experienced attorneys, who have engaged in arms-length settlement negotiations, is appropriate....") (internal citation omitted); *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 341 (E.D. Pa. 2007). Based on the foregoing, the Golden Peanut settlement is entitled to a presumption of fairness.

Moreover, at the time of the negotiations (and mediation), the parties had completed fact and expert discovery and, thus, were aware of the strengths and weaknesses of their respective cases. *Lumber Liquidators*, 952 F.3d at 484, *citing*, *Berry*, 807 F.3d at 614 (settlement was fair where substantial discovery had been conducted). *See, also, Mills*, 265 F.R.D. at 254 ("[I]n cases in which discovery has been substantial and several briefs have been filed and argued, courts should be inclined to favor the legitimacy of a settlement."). Because the proposed settlement was negotiated at arm's length by experienced counsel knowledgeable about the facts and the law, with no negotiation of attorneys' fees, and with the assistance of a mediator, consideration of these factors fully supports final approval of the settlement.

2. The Relief Provided to the Class is Adequate.

Courts "have recognized that the law favors the settlement of class action lawsuits." *See, e.g.*, *Lomascolo*, 2009 WL 3094955, at *10; *International Union, United Auto., Aerospace, and Agr. Implement Workers of America v. General Motors Corp.*, 497 F.3d 615, 632 (6th Cir. 2007), *citing*, *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) (noting general federal policy favoring the settlement of class actions). Generally, in evaluating a proposed class

settlement, the court does "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n. 14 (1981). There are two reasons for this. First, the object of settlement is to avoid the determination of contested issues, so the approval process should not be converted into an abbreviated trial on the merits. *Montgomery Cnty.*, 83 F.R.D. at 315-16 (internal citations omitted) (court must weigh likelihood of plaintiffs' recovery on merits against amount offered in settlement; it is not necessary or desirable to try case to determine whether settlement is adequate because "very purpose of settlement is to avoid the trial of sharply disputed issues and to dispense with wasteful litigation."). Second, "[b]eing a preferred means of dispute resolution, there is a strong presumption by courts in favor of settlement." *In re Telectronics Pacing Sys. Inc.*, 137 F. Supp. 2d 985, 1008-09 (S.D. Ohio 2001) (citing *Manual for Complex Litigation (3d ed.)* § 30.42).

The relief provided to the Class consists of a $45,000,000 cash payment by Golden Peanut, which constitutes more than adequate relief for the Class from this Defendant.

a. The Costs, Risks, and Delay of Trial and Appeal.

When considering the adequacy of the relief to the class in determining the fairness of a class action settlement, the court should consider whether it falls within the range of reasonableness, factoring in the uncertainties and risks of litigating the case to completion. *See Mills*, 265 F.R.D. at 256 (Analyzing the adequacy of a settlement requires the Court "to examine how much the class sacrifices in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case"). These risks must be weighed against the significant settlement consideration: the certainty of a $45,000,000 cash payment by Golden Peanut. *Id*. ("When viewed against the substantial and certain benefits that a settlement would provide, these considerations support approval of the proposed partial settlement") (citing

In re Glob. Crossing Secs. & ERISA Litig., 225 F.R.D. 436, 459 (S.D.N.Y. 2004)) (quotation removed).

In short, Class Counsel believe that the settlement is an excellent result. Weighing the settlement's substantial benefits against the risks and costs of continued litigation strongly supports approval. "The high risk faced by taking the case to a jury verdict demonstrates the adequacy of this . . . settlement." *In re Genworth Fin. Secs. Litig.*, 210 F. Supp. 3d 837, 842 (E.D. Va. 2016). Plaintiffs are confident in the merits of their case, but success is not certain. Golden Peanut, represented by highly experienced and competent counsel, denies Plaintiffs' allegations and asserts numerous defenses. Plaintiffs believe Golden Peanut is prepared to defend this case through trial and appeal. Risk, inherent in any litigation, is particularly true with respect to complex class actions such as this. So, in reaching the settlement, Plaintiffs accounted for the risk that Golden Peanut could prevail with respect to certain legal or factual issues, which could reduce or eliminate any potential recovery.

The settlement represents a compromise between the parties after full consideration of the risks, expense, and delay of further litigation, including the possibility that Plaintiffs might recover nothing. *Mills*, 265 F.R.D. at 256 (Determining adequacy "asks the Court to weigh the settlement in consideration of the substantial time and expense litigation of this sort would entail if a settlement was not reached"); *Brunson v. Louisiana-Pacific Corp.*, 818 F. Supp. 2d 922, 927 (D.S.C. 2011) ("The Settlement affords a substantial and immediate remedy for the Class Members while obviating the need for further expensive and time-consuming discovery and motion practice; a lengthy, uncertain and expensive trial; and appeals on numerous complex legal and factual issues"). *See also Telectronics*, 137 F. Supp. 2d at 1013 (settlement avoids the costs, delays, and multitude of other problems associated with complex class actions).

As the settlement has not yet been finally approved, it is not appropriate to discuss with any specificity Class Counsel's analysis of the risks of litigation. Class Counsel believe that at this point it is sufficient to state that the settlement avoids the inherent risks associated with this complex antitrust litigation.

In deciding whether a proposed settlement warrants approval, courts should consider the judgment of counsel and whether the settlement was the result of good-faith negotiations. *In re Montgomery Cnty. Real Est. Antitrust Litig.*, 83 F.R.D. at 315; *U.S. Fid. & Guar. Co. v. Patriot's Point Dev. Auth.*, 772 F. Supp. 1565, 1577 (D.S.C. 1991) ("The court will, in approving the settlement, ascertain whether the settlement was entered in good faith"). Class Counsel's judgment that the Settlement is in the best interests of the Class is entitled to significant weight. *Brunson*, 818 F. Supp. 2d at 927; *DeWitt v. Darlington Cnty. S.C.*, No. 4:11-cv-00740, 2013 WL 6408371, at *4 (D.S.C. Dec. 6, 2013) (citing *Lomascolo*, 2009 WL 3094955, at *10 ("A settlement fairness hearing is not a trial, and the court should defer to the evaluation and judgment of experienced trial counsel in weighing the relative strengths and weaknesses of the parties' respective positions and their underlying interests in reaching a compromise")).

Class Counsel have extensive experience in handling antitrust class actions and other complex litigation. They have negotiated the settlements at arm's length with well-respected and experienced counsel for Golden Peanut and with the assistance of a mediator. Class Counsel believe that the proposed settlement eliminates the risks, expense, and delay with respect to continued litigation against Golden Peanut and ensures a substantial payment to the Class. This factor also supports final approval of the proposed settlement.

b. The Effectiveness of Any Proposed Method of Distributing Relief to the Class, Including the Method of Processing Class Member Claims, if Required.

This case presents no difficulties in identifying claimants or distributing settlement proceeds. Class Counsel propose that the net settlement funds be distributed *pro rata* to approved claimants. Angeion, the settlement claims administrator appointed by the Court, will review claim forms, assist Class Counsel in making recommendations to the Court concerning the disposition of those claims, and mail checks to approved claimants for their *pro rata* shares of the net settlement funds.

A plan of allocation that awards class members a *pro rata* share of a settlement is "fair, reasonable, and adequate." *Genworth*, 210 F. Supp. 3d at 843; *In re Neustar, Inc. Secs. Litig.*, No. 1:14cv885 (JCC/TRJ), 2015 WL 8484438, at *6 (E.D. Va. Dec. 8, 2015) (ruling that *pro rata* plan of allocation met the standards of "fairness, adequacy, and reasonableness"); *MicroStrategy*, 148 F. Supp. 2d at 669. *See also In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000); *Smith v. MCI Telecoms Corp.*, No. Civ. A. 87-2110-EEO, 1993 WL 142006, at *2 (D. Kan. April 28, 1993); 4 Alba Conte & Herbert Newberg, *Newberg on Class Actions*, § 12.35, at 350 (4th ed. 2002) ("*Newberg*") (noting that *pro rata* allocation of a settlement fund "is the most common type of apportionment of lump sum settlement proceeds for a class of purchasers" and "has been accepted and used in allocating and distributing settlement proceeds in many antitrust class actions"). This factor supports final approval.

c. The Terms of Any Proposed Award of Attorneys' Fees, Including Timing of Payment.

The Settlement Agreement provides that attorneys' fees shall be paid solely out of the settlement funds subject to court approval, and that final approval of the settlement is not

contingent on the outcome of any petition for attorneys' fees.[4] Accordingly, this factor supports final approval.

d. There Are No Separate Agreements Relating to the Proposed Settlements.

There are no separate agreements that would affect the settlement amount, the eligibility of Class members to participate in the settlement, or the treatment of Class member claims. This factor is therefore neutral.

3. The Settlement Treats Class Members Equitably Relative to Each Other.

Class members will be treated equitably relative to each other in terms of their eligibility for a *pro rata* portion of the Settlement Fund. Likewise, each Class member gives the same release. The Settlement Agreement contemplates that Class Counsel may seek service awards for Class Representatives, as has been done in other cases. Such awards are justified as a reward for the Class Representatives' efforts on behalf of the Class. *See In re: Interior Molded Doors Antitrust Litigation*, No. 3:18-cv-00718-JAG (E.D. Va. June 3, 2021) (awarding $75,000 service award to each named plaintiff); *Brown v. Transurban USA, Inc.*, 318 F.R.D. 560, 578 (E.D. Va. 2016) ("Courts recognize the purpose and appropriateness of service awards to Class Representatives"). "Service awards are 'intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and sometimes, to recognize their willingness to act as a private attorney general." *Galloway v. Williams*, No. 3:19-cv-470, 2020 WL 7482191, at *6 (E.D. Va. Dec. 18, 2020) (quoting *Berry*, 807 F.3d at 613).

[4] As stated above, there was no negotiation of attorneys' fees.

Plaintiffs submit that this factor supports final approval.

4. The Settlement is Consistent with the Public Interest.

There is a public interest favoring class action settlements, which minimize the litigation expenses of the parties and reduce the strains such litigation imposes upon already scarce judicial resources. *South Carolina Nat'l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990); *Lomascolo*, 2009 WL 3094955, at *10; *U.S. Fid. & Guar. Co. v. Patriot's Point Dev. Auth.*, 788 F. Supp. 880, 882 (D.S.C. 1992) (discussing "strong federal interest of settlement of complex class action securities cases"). "The Fourth Circuit adheres to a strong policy of fostering settlement to 'advantage the parties and to conserve scarce judicial resources.'" *Free Bridge Auto Sales, Inc. v. Focus, Inc.*, No. 3:08-CV-00002, 2014 WL 521661, *2 (W.D. Va. Feb. 4, 2014) (quoting *United States ex rel. McDermitt, Inc. v. Centex-Simpson Constr. Co.*, 34 F. Supp. 2d 397, 399 (N.D. W. Va. 1999)).

Consideration of the above factors clearly supports final approval of the proposed settlement. Class Counsel respectfully submit that the settlement is in the best interests of the Class and should be finally approved.

V. NOTICE WAS PROPER UNDER RULE 23 AND SATISFIED DUE PROCESS.

"[U]pon ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes of settlement under Rule 23(b)(3) [ ] the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Rule 23(e)(1) provides that a court must direct notice in a "reasonable manner" to all class members who would be bound by a proposed settlement. Rule 23(e) notice must contain a summary of the litigation sufficient "to apprise interested parties of the pendency of the action and to afford them an opportunity to present

their objections." *UAW*, 497 F.3d at 629 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). *Accord In re Insurance Brokerage Antitrust Litig.*, 297 F.R.D. 136, 151 (E.D. Pa. 2013). In addition, the "notice must clearly and concisely state in plain, easily understood language:" (1) the nature of the action; (2) the class definition; (3) the class claims, issues, or defenses; (4) that a class member may enter an appearance through counsel; (5) that the court will exclude from the class any member who requests exclusion; (6) the time and manner for requesting exclusion; and (7) the binding effect of a class judgment on class members under Rule 23(c)(3). Fed. R. Civ. P. 23(c)(2)(B).

For all the reasons set forth in the Court's Preliminary Approval and Notice Order, the Notice Program and forms of notice utilized by Plaintiffs satisfy these requirements. The Notice sets forth all information required by Rule 23(c)(2)(B) and 23(e)(1) and informs the Class about (1) the settlement terms, (2) the right to object and methodology for objecting to the settlement and Class Counsel's request for fees, expenses, and service awards, (3) the proposed plan of distribution, and (4) the requirements regarding the filing of a claim to share in the proceeds of the Settlement Fund. Moreover, the Notice sent to Class members included a pre-populated (already containing the sales amount) Claim Form designed to make it easier for Class members to submit claims. Class members were also advised that they could obtain a Claim Form by contacting the claims administrator or from the website dedicated to this litigation.

Pursuant to the Preliminary Approval and Notice Order, the Notice was mailed to Class members on May 14, 2021; the process of publication and emailing of Summary Notice began on May 21, 2021; a press release, online banner advertisements and social media advertising commenced on or about that same date or shortly thereafter; and the Notice was (and remains)

posted online at www.PeanutFarmersAntitrustLitigation.com, the website dedicated to this litigation.

The content and method for dissemination of notice fulfill the requirements of Federal Rule of Civil Procedure 23 and due process.[5]

VI. THE PROPOSED PLAN FOR DISTRIBUTION OF THE SETTLEMENT FUND IS FAIR, REASONABLE, AND ADEQUATE, AND MERITS APPROVAL.

Approval of a settlement fund distribution in a class action is governed by the same standards applicable to approval of the settlement as a whole: the plan of distribution must be fair, reasonable, and adequate. "The court also must consider whether the distribution plan of the settlement fund meets the standards of fairness, reasonableness, and adequacy." *Speaks v. U.S. Tobacco Coop., Inc.* 324 F.R.D. 112, 155 (E.D.N.C. 2018); *see also Ikon Office Solutions*, 194 F.R.D. at 184; *MCI Telecoms Corp.*, 1993 WL 142006, at *2; 4 *Newberg*, § 12.35, at 350 (noting that *pro rata* allocation of a settlement fund "is the most common type of apportionment of lump sum settlement proceeds for a class of purchasers" and "has been accepted and used in allocating and distributing settlement proceeds in many antitrust class actions"). An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel. As with other aspects of a settlement, the opinion of experienced and informed counsel is entitled to considerable weight. *In re American Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001); *Strang v. JHM Mortg. Secs. Ltd. P'ship*, 890 F. Supp. 499, 501–02 (E.D. Va. 1995) ("[T]he Court is persuaded that Plaintiff's counsel, with their wealth of experience and knowledge . . . engaged in sufficiently extended and detailed negotiations to secure

[5] Aside from the fact that a Claim Form was included with the Notice here, the Notice Program for the Golden Peanut settlement is the same as the Notice Program that the Court previously approved in connection with the Olam and Birdsong settlements.

a favorable settlement for the Class"); *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975) ("While the opinion and recommendation of experience counsel is not to be blindly followed by the trial court, such opinion should be given weight in evaluating the proposed settlement").

The Notice sent to Class members on May 14, 2021, which included a pre-populated Claim Form, explains that the proceeds of the Settlement Fund will be distributed pursuant to a plan of distribution approved by the Court. More specifically, the Notice explains that settlement funds will be distributed to Class members who file timely and proper claim forms; and that the Settlement Fund, plus accrued interest, will be allocated among approved claimants according to the amount of their recognized sales of Runner Peanuts to Defendants during the Class Period, after payment of attorneys' fees, litigation and administration costs and expenses, and service awards for Class Representatives.

Courts in the Fourth Circuit have approved similar *pro rata* distribution plans in other class action cases. *See, e.g.*, *MicroStrategy*, 148 F. Supp. 2d at 669 (noting that plan of allocation treated class members fairly by awarding *pro rata* share claimants); *Genworth*, 210 F. Supp. 3d at 843 (finding *pro rata* plan for distribution was "fair, adequate, and reasonable."); *Neustar*, 2015 WL 8484438, at *6 (ruling that *pro rata* plan of allocation met the standards of "fairness, adequacy, and reasonableness"); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014) (approving *pro rata* allocation plan as "fair and reasonable"). *See also* 4 *Newberg*, § 12.35, at 353-54 (noting propriety of *pro rata* distribution of settlement funds). "Settlement distributions, such as this one, that apportion funds according to the relative amount of damages suffered by class members have repeatedly been deemed fair and reasonable." *In re Vitamins Antitrust Litig.*, No. 99-197, 2000 WL 1737867, at *6 (D.D.C. Mar. 31, 2000) (finding proposed plan for *pro rata* distribution of partial settlement funds was fair, adequate and reasonable); *accord In re Prandin*

Direct Purchaser Antitrust Litig., C.A. No. 2:10-cv-12141-AC-DAS, 2015 WL 1396473, at *3 (E.D. Mich. Jan. 20, 2015) (approving a plan as fair, reasonable, and adequate that utilized a *pro rata* method for calculating each class member's share of the settlement fund).

The proposed plan for allocation and distribution satisfies the above criteria and should receive final approval.

VIII. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court:

(1) Grant final approval of the Settlement; and

(2) Approve the proposed plan for distribution of the Settlement Fund.

Dated: June 7, 2021

Respectfully submitted,

By */s/ Kevin J. Funk*

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CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically e-mail notification of such filing to all counsel of record.

To the best of my knowledge, there are no other attorneys or parties who require service by U.S. Mail.

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