

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

National Pasteurized Eggs, LLC,)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	
L. John Davidson,)	
)	
Defendant.)	
)	

I. COMPLAINT AND JURY DEMAND

Plaintiff National Pasteurized Eggs, Inc., (“NPE ”), for its Complaint against Defendant L. John Davidson (“Davidson ”), herein alleges as follows:

II. NATURE OF THE ACTION

1. This action is based on the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. By this action, NPE seeks a declaratory judgment of rightful ownership of three United States patents and two international patent applications and resulting foreign patents, as specified below.

III. THE PARTIES

2. Plaintiff NPE is a corporation organized and existing under the laws of the State of Delaware and having its principal place of business and corporate offices located in Lansing, Illinois. NPE is engaged in the business of pasteurizing poultry eggs for the purpose of making said eggs safe for human consumption. The U.S. Patent and Trademark Office has recognized NPE’s innovations and contributions to science and the

useful arts by awarding numerous United States patents covering NPE’s egg pasteurization methods.

3. Defendant Davidson is an individual residing in Laconia, New Hampshire.

IV. JURISDICTION AND VENUE

4. This is an action for declaratory judgment of rightful ownership of the United States, international, and foreign patents and patent applications referenced herein. This Court has jurisdiction over the subject matter of this action pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and under the laws of the United States concerning actions relating to patents, 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over the parties, and venue in this Judicial District is proper under 28 U.S.C. §§ 1391(a) and (b).

V. EXISTENCE OF ACTUAL CASE AND CONTROVERSY

6. This action involves the ownership of intellectual property represented by 20 patent applications and the resulting patents that are all derived from provisional, continuations or divisional patent applications of the first patent application filed on August 25, 1995. For simplicity, each application will be labeled below as APP 1 through APP 20.

7. L. John Davidson made the following applications on the following dates, all occurring prior to January 1, 2001 (the “Pre-2001 IP ”):

	Country	App No	App Date	Grant No	Grant Date
APP 1	USA	08/519184	25-Aug-95		
APP 2	PCT	PCT/US96/13006	9-Aug-96		
APP 3	USA	08/962766	3-Nov-97	5843505	01-Dec-98

APP 4	USA	09/197573	23-Nov-98	6165538	26-Dec-00
APP 5	USA	09/613832	11-Jul-00	6322833	27-Nov-01
APP 6	Canada	2229270	9-Aug-96		
APP 7	EPO	96928837.2	9-Aug-96	845954	21-May-03
APP 8	Germany	96928837.2	9-Aug-96	69628308	21-May-03
APP 9	Denmark	96928837.2	9-Aug-96	845954	21-May-03
APP 10	Spain	96928837.2	9-Aug-96	845954	21-May-03
APP 11	France	96928837.2	9-Aug-96	845954	21-May-03
APP 12	UK	96928837.2	9-Aug-96	845954	21-May-03
APP 13	Italy	96928837.2	9-Aug-96	845954	21-May-03
APP 14	The Netherlands	96928837.2	9-Aug-96	845954	21-May-03

8. By Agreement dated September 20, 2001 (the “**September Agreement**”), Davidson transferred ownership of all Pre-2001 IP to Pasteurized Eggs Corporation, which includes APPs 1-14. See Exhibit A. Specifically, Davidson agreed:

“1b. Patents and **all** other intellectual property issued or **applied for prior to January 1, 2001 shall be owned by PEC, (Pasteurized Eggs Corporation) and LJD (Davidson) shall take such steps as PEC shall reasonably require to cure the deficiencies contained in the December 2000 assignment [the “**December Assignment**”], if any, including but not limited to formally assigning them to PEC by filing the appropriate documents with the U.S. and foreign Patent Offices or other appropriate entities. (Emphasis and explanation added).**

“1c. New processes or intellectual property (“Inventiveness) developed prior to January 1, 2001 (“Old Inventiveness), including a method for extending the shelf life of pasteurized eggs by treatment with anti-bacterial agents, shall be the property of PEC and LJD shall take such actions as may be reasonably required by PEC to assist PEC to complete the development, improvement, documentation, protection and patenting of such Old Inventiveness. (Emphasis added

9. APP 2, which is PCT/US96/13006, is the international reciprocal application to APP 1 under the Patent Cooperation Treaty (the “PCT), and is substantively identical to APP 1 other than being filed in an international format required under the PCT. The foreign national phase applications identified above as APP 6, APP 7, APP 8, APP 9, APP 10, APP 11, APP 12, APP 13, and APP 14, were each derived directly from APP 2 and each was filed prior to January 1, 2001. All of these applications and the inventions described therein therefore constitute intellectual property that was transferred to NPE under the September Agreement as part of the Pre-2001 IP.

10. In addition to transferring the Pre-2001 IP to PEC, Davidson under Section 1c of the September Agreement also committed to transfer the intellectual property evidenced by several patent applications filed after January 1, 2001, which were based on the Pre-2001 IP and referred to in the September Agreement as “Old Inventiveness. Specifically, Davidson was obligated by the September Agreement to transfer the intellectual property evidenced by APPs 15-20 since it was based on Old Inventiveness (hereinafter the (“Extension IP).

11. On October 15, 2001, less than thirty (30) days after executing the September Agreement, Davidson filed APP 15 with the United States Patent & Trademark Office (“USPTO). APP 15 later issued as US Patent No. 6,632,464 B2 (the “**464 Patent**).

12. Davidson claimed August 25, 1995 as the statutory priority date for the inventions disclosed in APP 15 on the basis that the application was derived from divisions or continuations of APP 1, APP 3, APP 4 and APP 5. Under the terms of Section 1c of the September Agreement, APP 15 and the resulting '464 patent therefore constitute intellectual property based on Pre-2001 inventiveness, which Davidson agreed to transfer to PEC. Further, pursuant to 35 U.S.C. § 121, by filing APP 15 as a "divisional patent, Davidson as a matter of law conceded that the inventiveness described in App 15 is old inventiveness that he is obliged to transfer to NPE.

13. Davidson made the following applications on the following dates after the September Agreement:

	Country	App No	App Date	Grant No	Grant Date
APP 15	USA	09/976106	15-Oct-01	6632464	14-Oct-03
PROV APP	USA	60/335031	2-Nov-01		
PROV APP	USA	60/271746	28-Feb-01		
PROV APP	USA	60/271726	28-Feb-01		
PROV APP	USA	60/314631	27-Aug-01		
APP 16	USA	10/084444	28-Feb-02	6692784	17-Feb-04
APP 17	PCT	PCT/US2002/05771	28-Feb-02		
APP 18	Canada	20022439610	28-Feb-02		
APP 19	EPO	20020709692	28-Feb-02		
APP 20	Japan	2003-0518303	28-Feb-02		

14. Davidson filed Application No. 10/084,444 (“**APP 16**”) with the USPTO on February 28, 2002, less than six (6) months after executing the September Agreement. APP 16 later issued in the United States as U.S. Patent No. 6,692,784 B2 (the “**784 Patent**”).

15. On February 28, 2002, Davidson also filed a reciprocal application to APP 16 under the Patent Cooperation Treaty, No. PCT/US02/05771 (the “**APP 17**”). APP 17 is substantively identical to APP 16, other than being filed in the international format required under the Patent Cooperation Treaty, and various national applications remain pending in Canada, the EPA and Japan and are identified as “**APP 18,**” “**APP 19,**” and “**APP 20,**” above. APPs 15-20 are collectively referred to herein as the “Extension IP.”

16. Davidson again claimed August 25, 1995 as the statutory priority date for the inventions disclosed in APP 17 on the basis that the application was derived from divisions or continuations of APP 1, APP 3, and APP 5. Pursuant to 35 U.S.C. ¶ 121, APP 17 therefore constitutes Extension IP based upon “Old Inventiveness” that was transferred to NPE under the September Agreement.

17. After filing APP 16 in the United States, Davidson amended the patent priority claims in the United States application to delete the priority references it originally made to APP 1, APP 3, and APP 5. On information and belief, it is alleged that Davidson made that amendment in an attempt to cover up that the inventions disclosed in APP 16 constituted Extension IP that was transferred to NPE under the September Agreement.

18. All of the patents and patent applications identified as APPs 1-14 are Pre-2001 IP and APPs 15-20 are Extension IP based on “Old Inventiveness.” Both the Pre-

2001 and the Extension IP were transferred to NPE under the September Agreement.

19. The December Assignment, which is referred to in the September Agreement (see ¶ 8 above), was notarized on December 29, 2000 and executed as of January 1, 2001. See Exhibit B. Under the December Assignment, Davidson specifically transferred all of ownership interests in the following:

<u>Patent</u>	<u>Dated</u>	<u>Underlying Application</u>	<u>Application Date</u>
No. 5,843,505	12/1/1988	08/962,766 (APP 3)	11/3/1997
No. 6,165,538	12/26/2000	09/197,573 (APP 4)	11/23/1998

20. Under the December Assignment, Davidson as “**Assignor**” conveyed to Pasteurized Eggs Corporation (“**Assignee**”) the patents and applications described in Paragraph 19 by the following language:

“Assignor does hereby sell, assign, transfer, and convey to Assignee all right, title and interest in and to said patents and patent applications free and clear of any encumbrance, together with all reissues and extensions thereof and the inventions described and claimed therein, the same to be held and enjoyed by Assignee for its own use and benefit, and for the use and benefit of its successors, assigns or other legal representatives. (Emphasis added).

21. By virtue of a Sale Order issued by the U.S. Bankruptcy Court for the District of New Hampshire on July 25, 2003 (the “**Sale Order**”) in the Pasteurized Eggs Corporation (“**PEC**”) bankruptcy (Case No. 02-13086-JMD), National Pasteurized Eggs, LLC (“**NPE**”) acquired all of PEC’s intellectual property rights. See Exhibit C. Therefore, NPE succeeds to all of PEC’s rights to Pre-2001 IP and Extension IP under the September Agreement and all inventions and extensions described in APPs 3 and 4, later issued as the so-called ’505 and ’508 patents.

22. In recent weeks, Davidson has blocked NPE’s rights and usage of its

patent rights arising under APP 2 and APPs 5-20 and has asserted that he owns and controls those patent rights in contravention of his obligations under the September Agreement, the December Assignment and the Sale Order.

23. As a direct result of the Davidson's conduct and his refusal to cooperate, all of which conduct is in direct breach of his contractual duties, APP 13 was rejected in Italy and NPE has irrevocably lost valuable property rights in the nation of Italy.

24. Other national phase patent applications also derived from APP 2 are expected to enter the national prosecution phase in the coming weeks and similarly could be irrevocably lost unless Davidson complies with his duties and agreed obligations under the assignments and sale order set out herein and summarized in paragraphs 8, 20 and 21. NPE needs this Court to take prompt action to avoid further forfeitures of its property rights.

25. Davidson's actions are unjustified, his tactics extortionate and his motivation is that of a spoiler. Davidson first transferred to PEC APPs 3 and 4 under the December Assignment and simultaneously transferred all "extensions and all "inventions described therein. Next, Davidson transferred to PEC all Pre-2001 IP and all Extension IP under the September Agreement, which include APPs 1-20, as set out above. Lastly, Davidson actively participated in the Bankruptcy Court sale proceeding that transferred all of PEC's rights to NPE.

26. NPE is the owner of APPs 1-20 and is being harmed by Davidson's interference with NPE's efforts to secure United States and foreign patent rights in such intellectual property.

27. NPE files with this Petition a Motion for Preliminary Injunction.

Injunctive relief is appropriate as NPE can and will satisfy the standard: (1) a likelihood of success on the merits; (2) it will suffer irreparable harm should the injunction not issue; (3) there is no harm to Davidson if an injunction issues; and (4) granting an injunction is consistent with any public interest. Matrix Group Ltd. v. Rawlings Sporting Goods Co., 378 F.3d 29 (1st Cir. 2004). See also Declaration of R.W. Duffy Cox, dated March 28, 2007 at Exhibit D.

28. NPE is the rightful owner of the patent rights and is likely to succeed on the merits. Davidson conveyed his rights in the September 2001 Agreement, the December 2000 Assignment, and NPE acquired those rights in the Bankruptcy Court in the July 2003 Sale Order.

29. Davidson's refusal to cooperate and execute the necessary documents to obtain patent approval in the foreign jurisdictions has caused, and will continue to cause, substantial irreparable harm to NPE. Specifically, once the patents are irrevocably lost they cannot be revived; this will permit competitors to gain a foothold where NPE should have enjoyed patent protection. The financial loss will be staggering.

30. There is no adequate remedy at law that would make NPE whole, should the patents be lost. Financial losses will likely be difficult to measure, but conservative estimates demonstrate the financial losses would be far in excess of anything Davidson would be able to pay.

31. Conversely, granting the temporary relief and requiring Davidson to execute all necessary documents to permit NPE to obtain approval of the patents will merely preserve the status quo and will not cause any prejudice to Davidson. If the

patents are approved and this Court later determines that Davidson is the rightful owner, it is a straight-forward matter to transfer the patents to him. Granting the temporary relief would actually serve to benefit both Davidson and NPE without causing harm to either of them.

COUNT - I

DECLARATORY JUDGMENT OF RIGHTFUL OWNERSHIP THROUGH THE BANKRUPTCY COURT ORDER

32. Plaintiff reasserts and incorporates by reference the allegations set out in paragraphs 1 to 31 as though fully set forth herein.

33. A real and present controversy exists as to Plaintiff's ownership rights and authority to prosecute and maintain the patents and patent applications derived from the PCT/US96/13006 and International Patent Publication number WO97/07691, and specifically the national applications in the validation phase presently pending in the PCT contracting states of Australia, Canada, Europe, Denmark, Germany, Spain, France and Italy.

34. A real and present controversy exists as to Plaintiff's ownership rights and authority to prosecute the patents under the PCT/US02/05771 application, assigned International Patent Publication number WO 03/013278.

35. A real and present controversy exists as to Plaintiff's ownership rights and authority to maintain and enforce the '833, 464, and 784 patents that issued after the date of the Bankruptcy Court Sale Order.

36. Plaintiff should be declared the rightful owner of each of the following patents and patent applications ("Patent Rights ") pursuant to the terms of the July 25,

2003 Bankruptcy Court order that have not been contested by Defendant:

1. the '833, 464, and 784 United States patents;
2. the PCT/US96/13006 and International Patent Publication number WO97/07691 and all PCT contracting states applications derived there from, including specifically the applications pending in the PCT contracting states of Australia, Canada, Europe, Denmark, Germany, Spain, France and Italy; and
3. the PCT/US02/05771 and International Patent Publication number WO 03/013278 and all PCT contracting states applications derived there from.

37. Defendant should be sanctioned by this Court for Defendant's disregard and interference in the terms of the Bankruptcy Court Sale order in an amount not less than Plaintiff's actual attorney's fees and costs incurred in seeking enforcement of that order.

38. In the event that Defendant raises claims that require resolution by trial, Plaintiff should be declared the rightful owner of the Patent Rights conveyed by the Bankruptcy Court Order subject to Defendant's previously unasserted claims so that Plaintiff may, at a minimum, preserve and maintain the Patent Rights during the interim while the litigation is pending so that those patent rights are not permitted to expire, as threatened by Defendant.

COUNT II

DECLARATORY JUDGMENT OF LACHES

39. Plaintiff reasserts and incorporates by reference the allegations set out in paragraphs 1 to 38 as though fully set forth herein.

40. Defendant is barred by the doctrine of LACHES from now asserting ownership of the Patent Rights.

COUNT III

DECLARATORY JUDGMENT OF ESTOPPEL

41. Plaintiff reasserts and incorporates by reference the allegations set out in paragraphs 1 to 40 as though fully set forth herein.

42. Defendant is equitably estopped from now asserting ownership of the Patent Rights.

COUNT IV

DECLARATORY JUDGMENT OF ABANDONMENT

43. Plaintiff reasserts and incorporates by reference the allegations set out in paragraphs 1 to 42 as though fully set forth herein.

44. Defendant has abandoned any ownership interest in the Patent Rights by not pursuing resolution of those rights during the Bankruptcy Court proceedings and by subsequently dismissing the complaint he filed before this Court as Cause No. 03-CV-377 in August 2003.

PRAYER FOR RELIEF

WHEREFORE, NPE, respectfully prays for entry of judgment and a declaration as follows:

A. That Plaintiff owns all right, title and interest in the following patents and patent applications, together with the inventions described and claimed therein, and all reissues and extensions thereof:

Country	App No	App Date	Grant No
USA	08/519184	25-Aug-95	

PCT	PCT/US96/13006 WO97/07691	9-Aug-96	
USA	08/962766	3-Nov-97	5843505
USA	09/197573	23-Nov-98	6165538
USA	09/613832	11-Jul-00	6322833
USA	09/976106	15-Oct-01	6632464
Canada	2229270	9-Aug-96	
EPO	96928837.2	9-Aug-96	845954
Germany	96928837.2	9-Aug-96	69628308
Denmark	96928837.2	9-Aug-96	845954
Spain	96928837.2	9-Aug-96	845954
France	96928837.2	9-Aug-96	845954

UK	96928837.2	9-Aug-96	845954
Italy	96928837.2	9-Aug-96	845954
The Netherlands	96928837.2	9-Aug-96	845954
USA	60/335031	2-Nov-01	
USA	60/271746	28-Feb-01	
USA	60/271726	28-Feb-01	
USA	60/314631	27-Aug-01	
USA	10/084444	28-Feb-02	6692784
PCT	PCT/US2002/05771 WO 03/013278 A1	28-Feb-02	
Canada	20022439610	28-Feb-02	
EPO	20020709692	28-Feb-02	
Japan	2003-0518303	28-Feb-02	
USA	10/355901	30-Jan-03	
USA	10/618397	10-Jul-03	
USA	10/779078	13-Feb-04	

- i. United States patents No. 6,322,833 B1; No. 6,632,464 B2; and

No. 6,692,784 B2;

ii. PCT application number PCT/US96/13006 and International Patent Publication number WO97/07691 applications, and all applications in all PCT contracting states and countries that are derived there from, including, but not limited to the applications presently pending in the PCT contracting states of Australia, Canada, Europe, Denmark, Germany, Spain, France and Italy; and

iii. PCT application number PCT/US02/05771 and International Patent Publication number WO 03/013278 applications, and all applications in all PCT contracting states and countries that are derived there from.

B. For entry of a preliminary and/or permanent injunction enjoining Defendant, its agents, servants, employees, attorneys, and those in active concert or participation with him, from claiming any ownership in the patents and patent applications set out in paragraph A of this Prayer For Relief and to execute all necessary documents to assist NPE in its patent approval efforts.

C. That Plaintiff is entitled to recover its costs, pre-judgment interest, and attorneys' fees incurred herein.

D. Plaintiff should be declared the rightful owner of the Patent Rights conveyed by the Bankruptcy Court Order subject to Defendant's previously unasserted claims so that Plaintiff may, at a minimum, preserve and maintain the Patent Rights during the interim while the litigation is pending so that those patent rights are not permitted to expire, as threatened by Defendant.

E. For such further relief as this Court may deem equitable and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues so triable.

Respectfully submitted,

NATIONAL PASTEURIZED EGGS, LLC
By Its Attorneys,
PRETI FLAHERTY BELIVEAU
& PACHIOS, PLLC

Dated: April 5, 2007

By: /s/ Peter G. Callaghan

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EXHIBIT A

**Pasteurized Eggs Corporation/225 Lawsuit
"Global Settlement Memorandum"**

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The Parties: Armand Norehad, individually
William Gorman, individually
Dan Best, individually
L. John Davidson, individually
Arthur Blasberg, individually
John Beinecke, individually
James Rand, individually
Antaeus through John Beinecke
Atlantic through James Rand

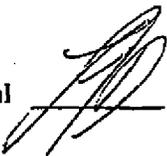
PEC through the following Directors: Norehad, Gorman, Best, Beinecke, Rand

1. LJD Contractual Claims, non-monetary.

a. The pending "notice of termination" with regard to the existing Employment Agreement between PEC and LJD will be withdrawn and the Employment Agreement will be cancelled by mutual consent. A new agreement will be substituted therefore that will provide for the following:

- i. The appointment of LJD to the position of Founder which position shall be considered that of an "officer" of PEC for the purposes of PEC's Directors and Officers or equivalent insurance.
- ii. LJD will be engaged as a consultant to PEC as from the date of settlement through and including December 31, 2002, subject to further extension once or more times by mutual consent with notice given 90 days before expiry.
- iii. LJD shall receive a consulting fee of \$17,500 per month without deduction for taxes; LJD shall be responsible for his own taxes with regard to this consulting fee.
- iv. Any remuneration due LJD with respect to calendar year 2001 not paid up to the date of settlement shall be paid, in cash, upon settlement.
- v. During the period of LJD's engagement as consultant he shall be provided with health/medical coverage on terms the same as or equivalent to that provided PEC's employee officers.
- vi. In connection with his engagement as a consultant to PEC as set forth in 1 (a) (ii) above, LJD will agree to invest such time and energies as are necessary to develop and advance PEC's intellectual property and technology and to such additional

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LJD-PEC Head of Agreement 09-20-01 (execution copy5) InL.doc

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duties, if any, as may reasonably be requested by PEC and to which LJD shall reasonably consent.

- b. Patents and all other intellectual property issued or applied for prior to January 1, 2001 shall be owned by PEC, and LJD shall take such steps as PEC shall reasonably require to cure the deficiencies contained in the December 2000 assignment, if any, including but not limited to formally assigning them to PEC by filing the appropriate documents with the U.S. and foreign Patent Offices or other appropriate entities.
- c. New processes or intellectual property ("Inventiveness") developed prior to January 1, 2001 ("Old Inventiveness"), including a method for extending the shelf life of pasteurized eggs by treatment with anti-bacterial agents, shall be the property of PEC and LJD shall take such actions as may be reasonably required by PEC to assist PEC to complete the development, improvement, documentation, protection and patenting of such Old Inventiveness.
- d. Inventiveness developed by LJD, whether in combination with "Old Inventiveness" or prior inventiveness, which results in protection from new patents or patent applications providing broader or improved protection, on or subsequent to January 1, 2001 ("New Inventiveness") shall be considered the property of LJD and shall be dealt with as follows:
 - i. LJD shall be obliged to offer PEC the New Inventiveness for exclusive license subject to the performance by PEC of the obligations set forth in 1 (d) (ii) and (iii) below; the offer, which shall be in writing and shall include a sufficient descriptive and documentary and/or evidentiary information as to enable PEC to make an informed judgment with regard to the licensing of such New Inventiveness, shall require a response by PEC within 60 days of receipt of such offer or, in the event additional evaluation material is reasonably requested by PEC, within 60 days of receipt of such additional information.
 - ii. LJD shall be remunerated by PEC, with respect to New Inventiveness with regard to which PEC has accepted an exclusive license ("Accepted New Inventiveness"), through the payment, commencing with acceptance, by PEC of a royalty of \$0.0025 per dozen pasteurized eggs sold on all Accepted New Inventiveness irrespective of how many instances of New Inventiveness are offered and accepted provided, however, that no royalty shall be paid or payable so long as LJD is being compensated as an employee or consultant.

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- iii. Accepted New Inventiveness shall be diligently prosecuted by PEC who shall bear the cost of such prosecution including but not limited to third party research and patent preparation, filing and defense.
 - iv. New Inventiveness other than Accepted New Inventiveness which can be implemented without use of any patent, invention or intellectual property owned by or licensed exclusively to PEC shall be the property of LJD who shall bear the cost of the continued prosecution thereof, including but not limited to third party research and patent preparation, filing and defense.
 - e. LJD shall have access to the intellectual property records, premises and research facilities of PEC to develop New Inventiveness, and may use company employees, subject to reasonably coordinated scheduling, with the prior approval of PEC such approval not to be unreasonably withheld. PEC's patent counsel, with the review and/or involvement of Fred Whizenhunt as appropriate, shall cooperate with LJD.
 - f. LJD shall provide such periodic monthly progress and activity reports as PEC may reasonably require.
2. LJD Contractual Claims, monetary. Subject to a review of the books and records of PEC and confirmation regarding the correctness of the figures contained herein, LJD shall receive a note (the "LJD Settlement Note") in settlement of his monetary claims as follows:
- a. The LJD Settlement Note shall, before adjustment, have a principal amount of \$530,387.23, as more specifically set forth in Schedule A hereto.
 - b. The LJD Settlement Note shall mature on the earlier of June 30, 2002 or upon the completion, closing and funding of the Phase 2 Funding as defined below provided, however, that PEC shall if not then in breach of the provisions of the LJD Settlement Loan have the right to extend the maturity of the LJD Settlement Note as summarized below.
 - c. The LJD Settlement Note shall bear interest at the rate of 8% per annum, payable as follows:
 - i. In the event the LJD Settlement Note matures on June 30, 2002 interest shall be paid at maturity.

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- ii. In the event that the maturity date of the LJD Settlement Note is extended as a consequence of the completion, closing and funding of the Phase 2 Funding:
 - 1. Interest to accrue from the Settlement Date through date of completion of the Phase 1 Funding.
 - 2. Interest on the accrued principal amount, to be paid monthly in arrears commencing upon the completion of the Phase 1 Funding.
 - 3. Commencing on the date on which the Phase 2 Funding has been closed the Note or the outstanding balance thereof 24 equal monthly payment of interest and principal so as to repay the Note in full.
- iii. The LJD Settlement Note shall be secured by a second lien on PEC's property, plant and equipment (most specifically John Jr. #1, located at Newberry, South Carolina) and by a second lien on or assignment of the patent(s) owned or licensed by PEC.
- iv. At any time up to the date on which the Phase 2 Funding has been closed, the LJD Settlement Note or the outstanding balance thereof may be converted in whole or in part into either Series A Convertible Stock or the security issued in connection with the Phase 2 Funding in the option of the Note holder or lender as the case may be.
- v. The amounts due certain of PEC's shareholders, Directors and former Directors, (including but not limited to Messrs Best, Blasberg, D'Ambola, Gorman and Norehad), as reflected in the books and records of PEC and subject to review and confirmation as to the correctness of the amounts reflected therein:
 - 1. Shall be secured in the same manner and to the same extent as the LJD Settlement Note as outlined in §2(c)(iii) above, and
 - 2. Shall be convertible in the same manner and to the same extent as the LJD Settlement Note as outlined in §2(c)(iv) above, and

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d. Antaeus and Atlantic (the "A/A Lenders") will lend to PEC (the "A/A Loan"), on or immediately following the settlement date, the sum of \$600,000 on the following terms:

- i. Interest at the rate of 8% payable semi-annually.
- ii. Maturity: The earlier of June 30, 2002 or the date on which the Phase 2 Funding has been concluded.
- iii. Subject to not being in default of its obligations under the A/A Loan or the settlement agreement(s) envisioned herein, PEC shall have the right to require the conversion of the A/A Loan into either Series A Preferred Stock or the security issued in connection with the Phase 2 Funding, in the A/A Lenders' option. The A/A Lenders shall have the further right to require that the A/A Loan and the Defendants Loan be treated similarly vis-à-vis conversion.

iv. Security:

- 1. a first lien on PEC's property, plant and equipment (most specifically John Jr. #1, located at Newberry, South Carolina).
- 2. a first lien on or assignment of the patent(s) owned or licensed by PEC.

v. Use of proceeds:

- 1. First to the discharge of PEC's minimum royalty obligations to Cox/Bon Dente and, subject to there remaining a balance:
- 2. Second to the payment of the sums payable by PEC under § 1 (a) (iv) and 3 (d) hereof and, subject to there remaining a balance:
- 3. Third to general corporate purposes.

e. The Individual Defendants will lend or procure loans to PEC (the "Defendants Loan"), on or immediately following the settlement date, in the aggregate amount of \$600,000 on the following terms:

- i. Interest at the rate of 8% to accrue and become payable at maturity.

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- ii. **Maturity:** The earlier of June 30, 2002 or the date on which the Phase 2 Funding has been concluded.
- iii. Subject to not being in default of its obligations under the Defendants Loan or the settlement agreement(s) envisioned herein, PEC shall have the right to require the conversion of the Defendants Loan into either Series A Preferred Stock or the security issued in connection with the Phase 2 Funding, at the Individual Defendant's option. The Individual Defendants shall have the further right to require that the A/A Loan and the Defendants Loan be treated similarly vis-à-vis conversion.
- iv. **Security:**
 - 1. a first lien on PEC's property, plant and equipment (most specifically John Jr. #1, located at Newberry, South Carolina).
 - 2. a first lien on or assignment of the patent(s) owned or licensed by PEC.
- v. **Use of proceeds:** general corporate purposes.
- f. The Individual Defendants, for themselves and as Directors of PEC shall consent to the settlement of the 225 action along the lines summarized herein and shall instruct their attorneys to effect as necessary this settlement.
- g. The Individual Defendants, for themselves and their affiliates and families, shall give PEC, Antaeus and Atlantic such reasonable written assurances as PEC, Antaeus and Atlantic's attorneys shall require that they will not solicit among the shareholders of PEC prior to December 31, 2002 and that they will vote in favor of PEC's nominees for Directors through that date.
- h. The 225 Plaintiffs will agree to withdraw the 225 action "with prejudice" or on such other grounds as will forestall them from bringing this action in the future.
- i. LJD, Arthur Blasberg, John Beinecke and James Rand, individually, agree not to bring any legal action against PEC, its present or former Officers, Directors and shareholders arising over or related to the solicitations, the Employment Contract or the Agreement and Plan of Merger dated as of December 28, 2000 subject only to the prompt and full performance by PEC of the undertakings contained herein.

Initial



**Pasteurized Eggs Corporation/225 Lawsuit
"Global Settlement Memorandum"**

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5. Definitions

- a. Phase 1 Funding shall mean the completion and receipt of proceeds of the sale of Series A Convertible Preferred Stock in the amount, as from and after the date hereof, of \$700,000.
- b. Phase 2 Funding shall mean the completion and receipt of proceeds of the sale of equity securities or securities convertible into equity in an amount not less than \$5,000,000 excepting the issuance or conversion of the other securities contemplated herein.

6. The agreement shall be given effect as of September 20, 2001. Appropriate documents (the "Settlement Documents") to effectuate the foregoing will be prepared and signed as soon as practicable by all Parties. The Parties agree that this "Heads of Agreement" memorandum summarizes the provisions to be included in such documents. The Parties further agree that this memorandum will be binding until such time as the Settlement Documents are prepared and accepted and that where this memorandum lacks specificity as to any matter, the Settlement Documents will contain provisions that are usual and customary, modified to reflect the intent of the Parties as embodied in the memorandum, where necessary."

Initial

9/21/2001

Pasteurized Eggs Corporation/225 Lawsuit
 "Global Settlement Memorandum"

Schedule A

	Balance at 9/15/01
Deferred Compensation	
1997	\$ 121,870.87
1998	\$ 129,230.78
1999	\$ 105,000.00
2000	<u>\$ 48,125.00</u>
Total	\$ 404,226.65
Accrued but unpaid Interest	
For salary year 1997	\$ 11,412.22
For salary year 1998	\$ 12,161.39
For salary year 1999	\$ 9,694.82
For Salary year 2000	\$ 1,378.00
Other, 2001	<u>\$ 1,609.37</u>
Total	\$ 36,255.60
Loans/Expenses	
2000 East Coast	\$ 27,300.00
2000 Rent/CAM	\$ 16,068.09
2000 Office Expenses	\$ 4,736.69
2000 Visa	\$ -
2001 Whisenhunt/Silliker	\$ 24,800.00
2001 Expenses (estimated)	<u>\$ 15,000.00</u>
Total	\$ 89,904.78
Total Deferred Compensation	\$ 404,226.65
Total all other	<u>\$ 126,160.58</u>
Total Obligation	\$ 530,387.23

Memo - 2001 Unpaid Compensation	
Through 5/29/01	\$ (5,384.58)
5/29-9/15/01 (estimated)	\$ 61,250.00
Due at closing (estimated)	\$ 55,865.42

Initial





Pasteurized Eggs Corporation/225 Lawsuit
"Global Settlement Memorandum"

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Signature Page

Armand Norehad, individually

William Gorman, individually

Dan Best, individually

L. John Davidson, individually

L. John Davidson

Arthur Blasberg, individually

John Beinecke, individually

James Rand, individually

Antaeus Enterprises, by John Beinecke

Atlantic Capital, by James Rand

Pasteurized Eggs Corporation, by the following members of its Board of Directors:

Armand Norehad

William Gorman

Dan Best

John Beinecke

James Rand

Initial

JR

EXHIBIT B

ASSIGNMENT OF U.S. PATENTS

WHEREAS, L. John Davidson, with a legal address and place of business at 1921 Parade Road, Laconia, NH 03246 ("Assignor"), is the sole and exclusive owner of the United States patents and patent applications set forth on the attached Annex A.

WHEREAS, Pasteurized Eggs Corporation, a Delaware corporation, with a place of business at c/o The Davidson Group Shell Egg Corporation, 1921 Parade Road, Laconia, NH 03246 ("Assignee"), is desirous of acquiring from Assignor all right, title and interest in, to and under said applications and patents and the inventions covered therein;

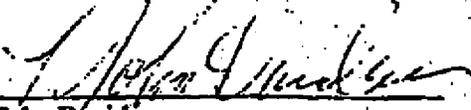
NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of and sufficiency of which are hereby acknowledged, Assignor does hereby sell, assign, transfer, and convey to Assignee all right, title and interest in and to said patents and patent applications free and clear of any encumbrance, together with all reissues and extensions thereof and the inventions described and claimed therein, the same to be held and enjoyed by Assignee for its own use and benefit, and for the use and benefit of its successors, assigns or other legal representatives, for the full terms for which the said patents and patent applications are granted or reissued or may be extended, as fully and entirely as the same would have been held and enjoyed by Assignor if this assignment and sale had not been made, together with all claims for profits and damages by reason of past infringements of said patents, including the right to sue for and collect the same for its own use and benefit, and for the use and benefit of its successors, assigns or other legal representatives.

Assignor hereby covenants that he has full right to convey the entire interest herein assigned, and that he has not executed, and will not execute, any agreement in conflict herewith or the rights conveyed herein. Assignor hereby authorizes the Commissioner of Patents and Trademarks of the United States to transfer all said patents and patent applications to Assignee as assignee of the entire right, title and interest therein or otherwise as Assignee may direct, in accordance with this instrument of assignment. Assignor further covenants and agrees that he, or his legal representatives and assigns, as the case may be, will at any time upon request communicate to Assignee, its successors, assigns or other legal representatives, any facts relating to said inventions, applications and patents or the history thereof, known to him or his legal

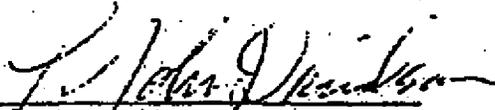
representatives and assigns, and will testify as to the same in any interference or other litigation or proceeding when requested so to do.

Counterpart Signature Page to Assignment of U.S. Patents

IN WITNESS WHEREOF, Assignor has executed this assignment, effective as of the 1st day of January, 2001.


L. John Davidson

Accepted by:
Pasteurized Eggs Corporation

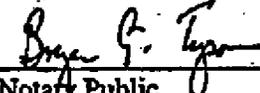
By: 
L. John Davidson
Title: Chairman and CEO

STATE OF: ~~NEW HAMPSHIRE~~ MASSACHUSETTS ss.
COUNTY OF: ~~BELKNAP~~ SUFFOLK

Commonwealth of Massachusetts

The undersigned, being a Notary Public for the State of ~~New Hampshire~~, does hereby certify that L. John Davidson personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and seal of office this 29th day of ~~January~~ December, 2000, 2001.


Notary Public
My Commission Expires: 5/11/2001

BRYAN G. TYSON
NOTARY PUBLIC
MY COMMISSION EXPIRES
MAY 11, 2001

Annex A to Assignment of U.S. Patents

IV	Number	Date	Title
	5,843,505	Dec. 1, 1988	Method of Production of Pasteurized In-Shell Chicken Eggs
	6,165,538	Dec. 26, 2000	Method For Production of Pasteurized In-Shell Chicken Eggs

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EXHIBIT C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW HAMPSHIRE

In re:)	
)	Chapter 11
)	Case No. 02-13086-JMD
Pasteurized Eggs Corporation)	
)	Hearing Date: July 22, 2003
Debtor.)	Hearing Time: 1:00 p.m.
)	

ORDER APPROVING DEBTOR'S MOTION FOR ORDER (a) AUTHORIZING AND APPROVING SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, AND (b) FOR APPROVAL OF THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS

On June 11, 2003, Pasteurized Eggs Corporation (the "Debtor") moved this Court for an Order (a) Authorizing and Approving Sale of Substantially all of Debtor's Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests, and (b) for Approval of the Assumption and Assignment of Certain Executory Contracts (the "Sale Motion"). Among other things, the Sale Motion seeks approval of that certain Asset Purchase Agreement, (the "APA") by and among the Debtor and National Pasteurized Eggs, LLC ("NPE"), pursuant to which the Debtor has agreed to sell to NPE substantially all of its assets (the "Assets"). The Sale Motion also seeks approval for the assumption and assignment of certain executory contracts pursuant to 11 U.S.C. § 365. Capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the APA.

NOW, THEREFORE, based upon all of the evidence provided to the Court at hearings held on July 11, 2003 and July 15, 2003, the memoranda and objections filed in connection with, and arguments of counsel made at, the hearing on the Motion; and upon the entire record of such hearing and this case; and after due deliberation thereon; and good cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:

1. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. The Motion is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (N). The statutory predicates for the relief requested herein are sections 105, 363, 365 and 1146 of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 2002, 6004 and 6006.

3. Proper, timely, adequate and sufficient notice of the Motion and the transactions contemplated therein has been provided in accordance with section 102(l) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006, and no other or further notice of the Motion is required.

4. All interested persons and entities, including: (i) the Office of the United States Trustee for the District of New Hampshire, (ii) counsel for NPE, (iii) all parties known to the Debtor to have or assert liens upon the Assets, (iv) all entities known to have expressed an interest in potentially acquiring the Assets, and (v) all entities required to be served under the Bid Procedures Order have been afforded a reasonable opportunity to object to or be heard regarding the relief requested in the Motion.

5. With respect to the Intellectual Property identified in Schedule 1.24A-1 of the APA, the Debtor has good, valid and marketable title to such Assets. With respect to United States Patent Application No. 09/954,462, the Debtor is a presumptive co-owner of the entire patent application, by virtue of a duly executed and recorded assignment from Myron Wagner, a co-inventor of such technology, subject to any claims by Davidson under any express agreements with Wagner which predate the assignment to the Debtor and to which the assignment would be subject to under applicable non-bankruptcy law. L. John Davidson ("Davidson") is the other presumptive co-owner of United States Patent Application No. 09/954,462, subject to the Debtor's rights under certain agreements with Davidson to also assert ownership over Davidson's interest therein. With respect to U.S. Patent Nos. 5,843,505 and 6,165,538, it is the

specific finding of the Court that Davidson previously assigned all of his rights under such patents to the Debtor, which rights shall pass to NPE as a result of the Closing.

6. With respect to the Intellectual Property identified in Schedule 1.24B of the APA, as amended by this Order, title in said assets is disputed and subject to the competing claims of the Debtor and Davidson. Accordingly, the Debtor is authorized to convey to NPE all legal and equitable rights the Debtor has to claim ownership in the assets listed on Schedule 1.24B-1, subject only to the competing ownership claims of Davidson.

7. The Debtor has marketed the Assets and conducted the sale process in compliance with applicable law.

8. The Debtor has full corporate power and authority to execute the APA and all other documents contemplated thereby. The Debtor has all the corporate power and authority necessary to consummate the transactions contemplated by the APA, and no consents or approvals, other than those expressly provided for in the APA, are required for the Debtor to consummate such transactions.

9. The APA and the transactions contemplated thereby reflect the exercise of the Debtor's sound business judgment and a proper exercise of the Debtor's fiduciary duties.

10. Approval at this time of the APA, and the transactions contemplated thereby, is in the best interests of the Debtor, its creditors, its estate, and other parties in interest.

11. The Debtor has demonstrated both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for consummating the proposed sale transaction pursuant to section 363(b) of the Bankruptcy Code. Among other things: (a) the Debtor has been and continues to incur substantial post-petition operating losses; (b) the Debtor has no further access to working capital; (c) a prompt sale of the Assets will maximize the value of the estate; (d) NPE has made a substantial offer to acquire the Assets; and (e) the bidding procedures proposed by the Debtor, approved by the Court and required by section 363 of the Bankruptcy Code, has permitted NPE's offer to be tested in the marketplace against qualifying higher and better offers.

12. The terms and conditions of the APA are fair and reasonable. The APA represents the highest and best offer made for the Assets, and the purchase price payable thereunder is fair and reasonable under the circumstances present in this case. The APA will provide a greater recovery for the Debtor's estate than would be provided by any other practical available alternative.

13. The APA was negotiated, proposed, and entered into by the parties without collusion, in good faith, and from arm's length bargaining positions. NPE is a buyer in good faith of the Assets under section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. Neither the Debtor nor NPE has engaged in any conduct that would cause or permit the APA and the transactions contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code.

14. The relief requested in the Motion, including approval of the APA and the sale, is in the best interests of the Debtor, its creditors, and the estate.

15. The transfer of the Assets free and clear of Liens, claims, encumbrances and interests, except as provided for elsewhere in this Order, is appropriate under the circumstances because: (a) such liens, claims, interests, and encumbrances are subject to a bona fide dispute; (b) the price at which the Assets are to be sold exceeds the aggregate value of such liens, claims, interests, and encumbrances; (c) the holders of such liens, claims, interests, and encumbrances have consented to such transfer; and/or (d) such holders could be compelled in a legal or equitable proceeding to accept a money satisfaction of such liens, claims, interests, or encumbrances.

16. The sale of the Assets to NPE is a prerequisite to the Debtor's ability to confirm and consummate a plan of liquidation.

17. The claim of S.D.-Barn Real Estate, LLC shall be allowed as of July 15, 2003 in the amount of \$ 764,025.00 together with such additional interest and reasonable attorney's fees as are accrued prior to the Closing, such final sum to be documented and paid in accordance with the terms set forth in the APA. Subject to the execution and delivery of closing

documents acceptable to Egg Solutions, LLC and S.D.-Barn Real Estate, LLC, including an appropriate intercreditor agreement and new promissory notes, Egg Solutions, LLC and S.D.-Barn Real Estate, LLC have consented to the proposed sale to NPE and to NPE's assumption of the Debtor's financial liabilities and other obligations under the terms of the Assumed Loan Documents, which shall continue to be secured by the Preserved Liens, as such term is defined herein, and to modify such Loan Documents so that they conform to the APA and this Order. As used herein, the terms "Assumed Loan Documents" means and includes each and every document executed and delivered by the Debtor and any other person to Egg Solutions, LLC and S.D.-Barn Real Estate, LLC in connection with the Footbridge Note and the Note due to S.D.-Barn Real Estate, LLC.

18. The Debtor may assume and assign, pursuant to section 365 of the Bankruptcy Code, all contracts identified in Schedule 1.17 of the APA (the "Assigned Contracts"). The assumption and assignment of the Assigned Contracts is in the best interests of the Debtor and its estate, and reflects the exercise of sound and prudent business judgment by the Debtor. The Debtor may submit requests to the Court for authority to assume and assign such additional contracts or rights (the "Additional Contracts") as may be designated by NPE within thirty (30) days after the Closing Date.

19. With respect to the License Agreement dated July 22, 1995 by and between Pasteurized Eggs, L.P and Louis S. Polster (the "Polster Agreement"), the amount necessary under section 365(b)(1)(A) and (B) to cure all monetary defaults is \$3,653.85, plus such amounts as have accrued under the Polster Agreement after the Petition Date.

20. NPE has provided adequate assurance that it can perform each of the Assigned Contracts.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

A. The Debtor is hereby authorized to sell its assets pursuant to the terms of the APA, to be modified in accordance with this Order. To the extent the APA conflicts with terms of this Order, the terms of this Order shall govern.

B. The findings of fact set forth above and conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

C. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, mooted, or settled, and all reservations of rights included therein to the extent they are inconsistent with terms of this Order, are hereby overruled on the merits.

D. The terms, agreements, conditions and transactions contemplated by the APA, except as amended herein, hereby are hereby approved, and the sale is hereby approved and authorized and directed under section 363(b) of the Bankruptcy Code.

E. Pursuant to sections 363 and 365 of the Bankruptcy Code, the Debtor is hereby authorized, directed, and empowered on the Closing Date, to fully assume, perform under, consummate, and implement the APA, as amended herein, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the transactions contemplated thereby, and to take all further actions as may reasonably be requested by NPE for the purpose of assigning, transferring, granting, conveying, and conferring to NPE, or reducing to possession, any or all of the Assets, or as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the APA (the "Closing").

F. The conveyance of the Assets under the APA shall be approved subject to the following modifications and legal requirements:

i. Schedules 1.24A and 1.24B included in the APA shall be replaced with new Schedules 1.24A-1 and B-1 attached hereto, respectively;

ii. Pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code, upon the Closing under the APA, and except as set forth in subsections iii through v below, the Assets described on Schedules 1.24A-1 and B-1 hereto shall be transferred to NPE free and clear of all interests including,

but not limited to, all mortgages, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, easements, restrictions or charges of any kind or nature (the foregoing collectively referred to as “Liens” herein) and all other debts, liabilities, objections, commitments, responsibilities, claims (as that term is defined in the Bankruptcy Code), counterclaims, defenses, and offsets of any kind and nature, arising prior to Closing or relating in any way to acts of the Debtor occurring prior to Closing, however arising (the foregoing collectively referred to as “Claims” herein), with all such Liens and Claims to attach to the net cash and cash equivalent proceeds of the sale received at closing by the Debtor (the “Net Proceeds”), including the Closing Cash and the Performance Note (as these two terms are defined in the APA and amended by this Order), in the order of their priority, with the same validity, force and effect that they now have as against the Assets, subject to this Order and the rights, claims, defenses, offsets, demands, and objections, if any, of the Debtor and all interested parties with respect to such Liens and Claims. Pending further order of this Court, the Net Proceeds shall not be used for any purpose.

iii. In approving the sale of the Assets described on Schedules 1.24A-1 and B-1 hereto,

- this Order approves the transfer to NPE of any and all rights, claims (including the recently discovered potential malpractice/malfeseance claims against Fred S. Whisenhunt and/or the firm of Birch, Stewart, Kolasch & Birch, LLP) counterclaims and defenses held by the Debtor with respect to the Assets arising under the Bankruptcy Code, State Law, Patent Law or Trademark Law, including, but not limited to, the right to contest hereafter the validity of any lien, claim or interest against the Assets as void or voidable under 11 U.S.C. §§ 362, 363 and/or 549 of the Bankruptcy Code; the right under Patent and Trademark law to contest competing patents, patent applications and trademarks as infringing or being derivative of the rights acquired from the Debtor; the right under Patent and Trademark law to claim ownership of or an interest in a competing patent, patentable invention or trademark under a “work-for-hire” theory and/or “shop right” theory; and the right under the Bankruptcy Code or other applicable law to claim ownership of any competing patent, patentable invention or trademark under theories of theft of corporate opportunity, breach of fiduciary duty, ultra vires acts, employment law or contract law.
- this Order will not confer upon NPE the rights to Intellectual Property existing as of the Petition Date of any acknowledged joint owners with the Debtor or acknowledged licensor to the Debtor;

- this Order will specifically confer upon NPE all rights of the Debtor existing as of the Petition Date by virtue of the Patent Assignment dated January 1, 2001 recorded at the USPTO with respect to Patent Nos. 5,843,505 and 6,165,538. See USPTO Recording Number 101591760; and
- this Order will act as release of any and all direct and/or derivative claims, demands, causes of action and all equitable and statutory rights of the Debtor, the Unsecured Creditors Committee, and any future Chapter 7 or 11 trustees against Egg Solutions, LLC and S.D.-Barn Real Estate, LLC, except for the enforcement of the terms of this Order, the APA, and any obligations of Egg Solutions, LLC and S.D.-Barn Real Estate, LLC arising under documents executed and delivered at Closing.

iv. In approving the sale of the Assets described on Schedule 1.24A-1, the entry of this Order shall not impair the following:

- the licensor's rights arising under the Polster Agreement (the "Polster Licensor Rights");
- the rights of NPE (as assignee of the Debtor) and Davidson set forth in paragraph 5 of this Order with respect to U.S. Patent Application No. 09/954,462; and
- the right of Davidson to raise any claim which could have been raised against the Debtor in the USPTO or in a Court of appropriate jurisdiction on the Petition Date with respect to Trademark registration nos. 2,596,242 and 2,606,118.

v. In approving the sale of the Assets described on Schedule 1.24B-1, the entry of this Order shall not, with respect to such Assets including but not limited to U.S. Published Patent Application No. 10/084,444 (the "444 Application") impair any rights and claims held by Davidson or NPE (by assignment from the Debtor and Myron A. Wagner) against any party relating to the prosecution and/or ownership of such Assets as submitted to the USPTO and any patents that may issue hereafter with respect thereto.

G. Except as expressly provided in this Order and in the APA with respect to the Assumed Loan Documents, NPE is not assuming nor shall it in any way whatsoever be liable, as a successor or otherwise, for any debts, liabilities, obligations, commitments, fines, penalties, recoupments, audits, repayments, charge backs or other assessments of any form or

nature incurred by PEC, which arose prior to the date of the entry of this Order or any debts, liabilities, obligations, or commitments, in any way whatsoever relating to or arising from the Assets, or the Debtor's operations or use or ownership of the Assets prior to consummation of the transactions contemplated by the APA, which arose prior to the date of the entry of this Order.

H. The Debtor, acting by and through any of its officers, acting singly, and NPE are authorized and directed to execute and deliver such documents as may be necessary to consummate the transactions contemplated by the APA.

I. The Assumed Loan Documents shall, upon execution by NPE, be deemed to be valid and binding and in full force and effect and enforceable in accordance with their terms notwithstanding any provision in any agreements that prohibits, restricts or conditions such assignment or transfer. The execution and delivery, at the Closing, of the Assumed Loan Documents to Egg Solutions, LLC and S.D.-Barn Real Estate, LLC, and the Performance Note to the Debtor shall constitute full and final satisfaction of all claims of Egg Solutions, LLC and S.D.-Barn Real Estate, LLC against the Debtor and its estate. The Debtor shall, upon such execution and delivery of the Assumed Loan Documents and Performance Note, be relieved from any debt or liability to Egg Solutions, LLC and S.D.-Barn Real Estate occurring after such assumption.

J. On and after Closing, consistent with the terms of this Order each of the Debtor's creditors, other than Egg Solutions, LLC, S.D.-Barn Real Estate, LLC is directed to execute such documents and take all other actions as may be necessary to release its Liens on or Claims, if any, against the Assets, as such Liens or Claims may have been recorded or may otherwise exist.

K. This Order (a) is and shall be effective as a determination that, on Closing, all Liens and other property interests which affected the Assets prior to Closing have been unconditionally released, discharged, and terminated, other than the Preserved Liens, the Polster Licensor Rights and the Davidson Claims, and (b) is and shall be binding upon and govern the

acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets.

L. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

M. If any person or entity other than Egg Solutions, LLC and S.D.-Barn Real Estate, LLC that has filed financing statements or other documents or agreements evidencing Liens on or interests in the Assets shall not have delivered to the Debtor prior to Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens or other interests that the person or entity has with respect to the Assets or otherwise, then (a) the Debtor is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets, and (b) NPE is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Liens or other interests not expressly preserved under the terms of this Order.

N. In accordance with section 365 of the Bankruptcy Code, all Contract Rights specifically listed on the Schedule 1.17 to the APA shall be deemed assumed and assigned as of the date of the Closing.

O. All entities who are presently, or on Closing may be, in possession of some or all of the Assets are hereby directed to surrender possession and control (including the

right to designate the parties entitled to use test equipment heretofore owned by the Debtor) of said Assets to NPE on Closing.

P. No order entered hereafter in this case shall conflict with or derogate from the terms of this Order.

Q. The APA and any related agreements, documents, or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is not material. Matters set forth in the APA involving the rights of Davidson, Polster, Egg Solutions, LLC and S.D.-Barn Real Estate, LLC shall be deemed to be material. The transfer of the Assets pursuant to the sale is not subject to taxation under any federal, state, local, municipal, or other law imposing or purporting to impose a stamp, transfer, recording, sale, or any other similar tax on any of the Debtor's transfers or sales of real estate, personal property, or other assets owned by it in accordance with sections 1146(c) and 105(a) of the Bankruptcy Code. As provided by Bankruptcy Rule 7062, this Order shall be effective and enforceable immediately upon entry.

R. Except as expressly provided in this Order, NPE is not acquiring or assuming, and the consummation of the sale shall not subject NPE to any Claims of any kind or nature whatsoever, whether known or unknown, contingent or otherwise, existing as of the date hereof or hereafter arising, of or against the Debtor, any affiliate of the Debtor, or any other person under the laws of the United States, any state, territory or possession thereof, or the District of Columbia applicable to such transactions.

S. In the absence of a stay pending appeal, if NPE elects to close under the APA at any time after entry of this Order, then, with respect to the sale approved and authorized herein, NPE shall be entitled to the protections of section 363(m) of the Bankruptcy Code if this Order or any authorization contained herein is reversed or modified on appeal.

T. Subject to the provisions of, and except as provided in the APA, this Court retains jurisdiction (i) to enforce and implement the terms and provisions of the APA, all

amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith, (ii) to compel delivery of the Assets to NPE, (iii) to compel delivery of the Purchase Price (as defined in the APA) and all adjustments to the Purchase Price under the APA, (iv) to resolve any disputes, controversies or claims arising out of or relating to the APA, and (v) to interpret, implement and enforce the provisions of this Order.

U. The terms and provisions of this Order shall be binding in all respects upon the Debtor, its estate and creditors, NPE, and its respective affiliates, successors and assigns, and any affected third parties, and all persons asserting a Claim against or interest in the Debtor's estate or any of the Assets to be sold to NPE pursuant to the APA. The APA and the transactions contemplated thereby shall be specifically performable and enforceable against and binding upon, and not subject to rejection or avoidance by the Debtor or any Chapter 7 or Chapter 11 trustee of the Debtor and its estate.

V. The failure specifically to include any particular provisions of the APA in this Sale Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the APA be approved in its entirety.

W. The ten day stay imposed by Bankruptcy Rules 6004(g) and 6006(d) is hereby waived.

X. This order shall be binding upon any subsequently appointed trustee under any provision of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

Dated at Manchester, New Hampshire.

July 25, 2003

/s/ J. Michael Deasy

J. Michael Deasy
UNITED STATES BANKRUPTCY JUDGE

SCHEDULE 1.24A-1**Non-Exhaustive Listing of Intellectual Property Included
with Assets Being Sold to Buyer Free and Clear of All
Liens and Other Property Interests**

The following assets all copyrights, URL's, licenses, software (including documentation and object and source code listings), web sites, web page designs, and web addresses, equipment designs and know-how, trade secrets, phone numbers, facsimile numbers, customer lists and the following patents, patent applications, patent assignments, and patent agreements are not subject to L. John Davidson's objections filed herein:

A. DEBTOR'S UNDISPUTED PATENT RIGHTS**1. PATENTS**

<u>Patent No.</u>	<u>Title</u>	<u>Publication No.</u>	<u>App. No.</u>	<u>Filing Date</u>	<u>Status</u>
U.S. Patents 5,589,211 (Cox, et al)	Methods for Processing Poultry Shell Eggs	n/a	156,273	11/22/1993	Issued 12/31/1996
5,939,118 (Cox, et al)	Method for Processing Poultry Shell Eggs	n/a	08/691,744	8/2/1996	Issued 8/17/1999
5,843,505 (Davidson)	Method for Production of Pasteurized In-Shell Chicken Eggs	n/a	962,766	11/3/1997	Issued 12/1/1998
6,165,538 (Davidson)	Pasteurized In-Shell Chicken Eggs	n/a	09/197,573	11/23/1998	Issued 12/23/1998
U.S. Published Applications N/a (Wagner et al)	Methods of Improving Shelf Life of Eggs ¹	2002/0041921-A1	09/954,462	9/14/2001	Published 4/11/2002
U.S. Applications N/a (Davidson)	unknown	never published	08/519,184	8/25/1995	Abandoned

¹ Subject to the findings and rulings set forth in Paragraphs 5 and F.iv of the Order approving the sale, dated July 25, 2003.

2. PATENT PURCHASE/LICENSE AGREEMENTS

a. COX: All rights in and to the above listed patents pursuant to that certain Patent Purchase and Option Agreement dated January 2, 1997 with Debtor and James P. Cox et al.:

b. POLSTER: Exclusive license to use and sub-license all Polster patents pursuant to a License Agreement dated August 7, 1995 between Debtor and Louis Polster, including but not limited to the following issued patents:

6,035,647 (Polster)	Method and Apparatus for Chilling In-Shell Eggs	n/a	09/001,673	12/31/1997	Issued 3/14/2000
6,103,284 (Polster)	Method of Preparing Waxed In-Shell Eggs	n/a	09/001,674	12/31/1997	Issued 8/15/2000
6,113,961 (Polster)	Apparatus and Methods for Pasteurizing In-Shell Eggs	n/a	09/002,244	12/31/1997	Issued 9/5/2000
5,916,617 (Polster)	Process for Heat Treating Food Product	n/a	08/640,746	11/7/1994	Issued 6/29/1999

3. USPTO PATENT ASSIGNMENTS:

a. All right title and interest to the patents and inventions arising under the Patent Assignment dated January 1, 2001 and recorded at the United States Patent and Trademark Office on or about January 24, 2001 (USPTO Recording Number 101591760) from L. John Davidson, inventor and conveying party, to Pasteurized Eggs Corporation as the receiving party, Debtor, of all right title and interest in US Patent No. 5,843,505 and US Patent No. 6,165,538, together with reissues and extensions thereof.

b. All right title and interest to the patents and inventions arising under the assignment dated September 14, 2001 and recorded with the United States Patent and Trademark Office on or about May 30, 2002 (USPTO Recording Number 102106826) and executed on or about April 10, 2002 from Myron A. Wagner, co-inventor and conveying party, to Pasteurized Eggs Corporation, receiving party and Debtor, of Wagner's right, title and interest in United States Patent Application No. 09/954,462, together with reissues and extensions thereof.

B. DEBTOR'S TRADEMARK RIGHTS

1. U.S. FEDERAL TRADEMARK APPLICATIONS

<u>TRADEMARK</u>	<u>OWNER</u>	<u>SER. NO.</u>	<u>FILE DATE</u>	<u>GOODS/SERVICES (CLASS)</u>	<u>REG. NO.</u>
Davidson's Pasteurized	Pasteurized Eggs	76,032934	4/24/00	29	2,596,242

Eggs ²	Corporation				
Pasteurized for your safety ²	Pasteurized Eggs Corp.	76/033,2 14	4/24/00	29	2,606,118

Rights to and in the following trademark pursuant to that certain Option Agreement dated January 2, 1997 with James P. Cox et al:

THERMALPURE Bon Dente JV	76/297109	8/7/01	29 & 40	Pending
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2. DEBTOR'S UNREGISTERED TRADEMARKS

<u>TRADEMARK</u>	<u>SER. NO.</u>	<u>FILE DATE</u>	<u>GOODS SERVICES (CLASS)</u>	<u>STATUS</u>
Nature made them good. We make them safer.				Sales Mark

3. INTERNET DOMAIN NAMES

Safereggs.com

Safeeggs.com

Pasteurizedshelleggs.com

Pasteurizedeggs.com

Pasteurized.com

Eggspasteurized.com

Eggsafety.com

Davidsonseggs.com

C. DEBTOR'S EQUIPMENT DESIGN RIGHTS, COPYRIGHT & SOFTWARE

Shell-egg pasteurization equipment and equipment design developed in conjunction with Heat & Control.

² Subject to the rulings set forth in Paragraph F.iv of the Order approving the sale, dated July 25, 2003.

Shell-egg pasteurization equipment software and operating protocols developed in conjunction with Loman Control Systems, Inc. with offices located in Lititz, PA 17543

SCHEDULE 1.24B-1**Non-Exhaustive Listing of Intellectual Property Included
with Assets Being Sold to Buyer Subject Only to Liens
and Other Property Interests of L. John Davidson**

The following assets conveyed to Buyer by Seller are subject to the objection filed by L. John Davidson in these proceedings. Davidson and the Buyer hereby each separately reserve all rights to assert full ownership to the following intangible assets to which Debtor asserts title and purports to convey to Buyer and acknowledge that title may be subject to future litigation between Davidson and Buyer:

A. DEBTOR'S DISPUTED PATENT RIGHTS**1. PATENTS**

All patents and patent applications in which Debtor has any right, title, or interest, including without limitation, all divisions, continuations, continuations-in-part, reissues, reexaminations, extensions or equivalents thereof in all pending applications therefore, all foreign counterparts thereof and all pending applications therefore, and any period of market exclusivity relating thereto, in and to the patents and patent applications, and including damages and payments for past or future infringements thereof, and the right to bring suit and recover against any third party for acts of infringement occurring before the date of this sale and transfer. Such patents and patent applications shall include but are not limited to the following patents and applications:

<u>Patent No.</u>	<u>Title</u>	<u>Country</u>	<u>Publication No.</u>	<u>App. No.</u>	<u>Filing Date</u>	<u>Status</u>
U.S. Patents						
6,322,833 (Davidson)	Pasteurized In-Shell Chicken Eggs and Method for Production Thereof	U.S.	n/a	09/613,832	7/11/2000	Issued 11/27/2001
U.S. Published Applications						
N/a (Davidson)	Pasteurized In-Shell Chicken Eggs and Method for Production Thereof	U.S.	2002/0039618 A1	09/976,106	10/15/2001	Published 4/4/2002
N/a (Wagner et al)	Pasteurized Eggs	2002/00904 29 A1	10/084,444	2/28/2002	Published 7/11/2002	

U.S. Applications

N/a (Davidson)	Pasteurized In-Shell Chicken Eggs and Method for Production Thereof	U.S.	n/a	10/355,901	1/30/2003	Pending
N/a (Davidson)	Unknown	(provisional app.)	60/271,746	2/28/2001	Expired	
N/a (Davidson)	Unknown	(provisional app.)	60/271,726	2/28/2001	Expired	
N/a (Davidson)	Unknown	(provisional app.)	60/335,031	11/2/2001	Expired	

Foreign Applications

n/a (Davidson)	Pasteurized In-Shell Chicken Eggs and Method for Production Thereof ³	PCT	WO 97/07691	PCT/US96/13006	8/9/1996	Expired
n/a (Davidson)	Method for Production of Pasteurized In-Shell Chicken Eggs ³	Europe	EP 0845954 B1	96928837.2	8/9/1996	Pending
n/a (Davidson)	Pasteurized In-Shell Chicken Eggs and Method for Production Thereof ³	Australia	AU9668444A	unknown	8/9/1996	Pending
n/a (Davidson)	Pasteurized In-Shell Chicken Eggs and Method for Production Thereof ³	Canada	2,229,270	PCT/US96/13006	8/9/1996	Pending
n/a (Davidson)	³	PCT	WO2003/13278	PCT/US02/05771	2/28/2002?	Pending

Also included are any other foreign applications filed by Davidson with respect to any patent in which the Debtor claims an interest.

³ Subject to the findings set forth in Paragraph 5 of the Order approving the sale, dated July 25, 2003.

2. **PATENT PURCHASE/LICENSE AGREEMENTS / USPTO PATENT ASSIGNMENTS**

a. All rights in and to all patents, copyrights or other inventions conceived, reduced to practice and/or filed prior to January 1, 2001 in which L. John Davidson is named as an inventor or co-inventor pursuant to an employment agreement dated January 22, 2001 between L. John Davidson as an employee of Pasteurized Eggs Corporation and Debtor, other than the patents included in Schedule 1.24 A-1.

b. All rights in and to all patents, copyrights or other inventions pursuant to that certain Global Settlement Memorandum effective September 20, 2001, among L. John Davidson, the Debtor and the other parties named therein other than the patents included in Schedule 1.24 A-1.

c. All right title and interest to the patents and inventions arising under the assignment dated February 28, 2002 and recorded with the United States Patent and Trademark Office on or about June 3, 2002 (USPTO Recording Number 102109051) and executed on or about April 10, 2002 from Myron A. Wagner, co-inventor and conveying party, to Pasteurized Eggs Corporation, receiving party and Debtor, of Wagner's right, title and interest in United States Patent Application No. 10/084,444, together with reissues and extensions thereof.

B. DEBTOR'S TRADEMARK RIGHTS

1. **U.S. FEDERAL TRADEMARK APPLICATIONS**

<u>TRADEMARK</u>	<u>OWNER</u>	<u>SER. NO.</u>	<u>FILE DATE</u>	<u>GOODS/SERVICES (CLASS)</u>	<u>REG. NO.</u>
The Safer Egg	Pasteurized Eggs Corporation	2,473,362	4/24/00	29	2,473,362
Hens on Eggs	Pasteurized Eggs Corporation	2,446,452	4/24/00	29	2,446,452
Eat 'em any way you like	Pasteurized Eggs Corporation	2,467,616	4/24/00	29	2,467,616

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

National Pasteurized Eggs, LLC,)
)
Plaintiff,)
)
v.)
)
L. John Davidson,)
)
Defendant.)
)

Case No.

DECLARATION OF R.W. DUFFY COX

1. The undersigned is an individual residing in Lynden, Washington, has personal knowledge of the matters set out in this declaration and is available to testify to the truthfulness of the representations herein.

2. I am an inventor and have received numerous issued United States and international patents. I am presently employed as the technical advisor for National Pasteurized Eggs, LLC ("NPE").

3. Patents are routinely issued in the name of their inventor and then assigned to their actual owner, whether that is the inventor's employer or other transferee. It is therefore not uncommon in the patent process for an inventor to be called upon to execute certain routine confirmatory documents

4. One of the responsibilities I assumed at NPE is to monitor the activity of NPE's patent portfolio. This responsibility requires that I oversee all issues relating to the ongoing prosecution of all patent applications and the maintenance of existing patents. This may include paying fees, responding to queries from a given patent office, responding to office actions, signing documents authorizing certain actions and like.

5. Approximately two months ago it was brought to my attention that a European patent application now owned by NPE was to be allowed by the Italian patent office.

6. As a final step for the Italian patent to be issued, the Italian patent office requested that Mr. L. John Davidson, the named inventor, execute a document confirming that the patents had been transferred to NPE through a Bankruptcy Court sale proceeding conducted by the Bankruptcy Court for the District of New Hampshire. *In Re: Pasteurized Eggs Corporation* ("PEC"), No. 02-13086-JMD, United States Bankruptcy Court, District of New Hampshire. Upon receipt of such documentation, the Italian patent office would issue the patent in favor of NPE.

7. As is set forth in the Complaint, Mr. Davidson was previously employed by PEC and had transferred his inventions to PEC. Mr. Davidson is contractually obligated to cooperate in the ministerial acts that may be required by a U.S. or foreign patent office. Mr. Davidson knew that if he did not execute the requested Italian documents within a specific time period, the patent would not issue and NPE's right would lapse.

8. Mr. Davidson was contacted, provided a copy of the Italian documents and repeatedly asked to sign them, consistent with his contractual obligations. Ultimately, Mr. Davidson refused to sign the documents.

9. As a result of Mr. Davidson not signing the documents, these valuable Italian patent rights of NPE irrevocably lapsed and may not be revived.

10. Mr. Davidson has further stated that he hopes all of NPE's foreign patents will lapse due to his failure to execute these ministerial documents. Davidson claims to have created new technology that would benefit from the failure of NPE's patents.

11. Mr. Davidson has also indicated that he would be willing to execute documents, but only if NPE paid him some undisclosed amount of cash.

12. NPE faces an immediate risk of material harm, since other patent rights in Europe immediately requiring prosecution decisions will expire long before a full trial on Mr. Davidson's actions could be consummated.

13. Without Mr. Davidson's cooperation, NPE will lose international patent rights and will not be able to enjoy the economic benefit of the assets it purchased from PEC through the bankruptcy court.

14. I have reviewed the factual allegations made in the Complaint in this action and hereby verify that such statements are true to the best of my knowledge and belief.

Dated: March 28, 2007

/s/R.W. Duffy Cox
R.W. Duffy Cox

STATE OF WASHINGTON
COUNTY OF WHATCOM

Before me, the undersigned officer, did appear the said R.W. Duffy Cox, personally known to me or proven to be the person described herein, and took oath, under penalty of perjury, that the above statements are true to the best of his knowledge and belief.

Date: March 28, 2007

/s/ Florence Cox
Notary Public
My Commission Expires: 04/21/2011