

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

FIRST IMPRESSIONS SALON, INC.,
individually and on behalf of all others
similarly situated, *et al.*,

Plaintiffs

v.

NATIONAL MILK PRODUCERS
FEDERATION, *et al.*,

Defendants.

Case No. 3:13-CV-00454-NJR-GCS

**PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT
AND INCORPORATED MEMORANDUM OF LAW**

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I. INTRODUCTION

After approximately eight years of vigorous litigation at the trial and appellate levels by the parties, Plaintiffs and Defendants reached a proposed settlement of this class action. The road getting to this point has been long and hard-fought. Indeed, this case has involved, among other things:

- The production and review of approximately one million pages of party documents, plus multiple third-party productions;
- Numerous depositions;
- Many discovery hearings before both Magistrate Judges Williams and Sison;
- Class Certification proceedings, followed by Defendants' unsuccessful appeal; and
- Extensive motion practice, including summary judgment motions by both sides, *Daubert* motions, a motion to decertify the Class, and motions in limine.

As explained more fully below, the proposed settlement requires Defendant National Milk Producers Federation ("National Milk") to pay the Class \$220 million to settle Plaintiffs' claims. All of these monies will go to the Plaintiff Class Members, less attorneys' fees and costs, Court-ordered service awards to the Class Representatives, and costs of notice and settlement administration.

This settlement represents a substantial achievement for Class Members, all of whom are eligible for monetary payments. Plaintiffs were prepared to try this case to verdict, but this proposed settlement provides significant relief to Class Members now, and avoids the risks of a trial, any further delay associated with the inevitable appeals of any successful verdict, or the loss of a successful verdict on appeal.

As for Defendants, they have denied and continue to deny liability and that Plaintiffs' allegations have any factual or legal merit. From their perspective, Defendants are settling this case to avoid protracted litigation and appeals that could continue for several more years.

Plaintiffs submit the proposed settlement is fair, reasonable, and adequate. Accordingly, pursuant to Federal Rule of Civil Procedure 23, Plaintiffs respectfully seek Final Approval of the proposed Settlement, the Plan of Distribution, and Completion of the Notice Plan disseminated to Class Members, in accordance with this Court's January 10, 2020 Memorandum and Order (Dkt. 525).

II. BACKGROUND

A. Procedural History

Plaintiffs filed their complaint on May 10, 2013, alleging that Defendants led a classic, per se unlawful supply restraint and therefore violated the Sherman Antitrust Act. More specifically, Plaintiffs alleged that, between July 11, 2003 and July 7, 2010, Defendants and their co-conspirators – agricultural cooperatives representing more than two-thirds of the dairy production in the United States – conspired to remove entire herds of otherwise productive dairy animals for the express purpose of artificially driving up the prices of butter, cheese, and raw milk. This program, named the “Herd Retirement Program,” allegedly removed hundreds of thousands of cows from production, eliminated thousands of dairy farms from the market, reduced the national supply of raw milk by billions of pounds, and thereby allegedly artificially inflated the prices for butter, cheese, and raw milk.

Plaintiffs sought damages based on their claims that Defendants' actions caused direct purchasers of butter and cheese to pay overcharges for those dairy products in violation of antitrust laws. Defendants have steadfastly denied liability and mounted a tenacious defense during all phases of the case.

B. Motion Practice

The extensive and exhaustive motion practice in this case reflects the hard-fought battle between the parties for eight years. Some of the motions filed by the parties (not including those related to discovery disputes) include the following:

- On May 28, 2013, Plaintiffs first filed a Motion for Partial Summary Judgment (Dkt. 10), just weeks after the case was filed. Defendants responded. This motion was later mooted.
- On September 11, 2015, Plaintiffs filed a Third Amended Complaint. Dkt. 182.
- Defendants then sought to dismiss this case under Rule 12(b). Dkt. 188. The Court denied that motion on October 5, 2016. Dkt. 250.
- Plaintiffs moved for class certification. Briefing was completed and a class certification hearing was held on August 25, 2017. The Court certified the Class on September 29, 2017.
- Defendants appealed the class certification ruling, and the Seventh Circuit Court of Appeals denied Defendants' request for review on January 11, 2018.¹ Dkt. 307.
- On April 10, 2019, Plaintiffs renewed their Motion for Partial Summary Judgment arguing (1) that the HRP was per se illegal under the Sherman Act and (2) the Capper-Volstead Act did not provide a defense. Dkt. 416.
- On May 20, 2019, Defendants filed their own Motion for Summary Judgment. Dkt. 430.
- On May 31, 2019, Defendants filed a *Daubert* motion to exclude Plaintiffs' expert from testifying at trial. Dkt. 436.
- As trial approached, the parties filed numerous motions in limine. Dkt. 453, 512, 513.

¹ Notice of Class certification to Class members was subsequently implemented under Class Counsel's supervision.

Both sides were preparing for trial in earnest. Through the discovery taken, motion practice, trial court rulings, and appellate proceedings, Plaintiffs gained a thorough understanding of the strengths and weaknesses of their case, and, based on that understanding, hereby submit that the proposed settlement is fair, reasonable, and adequate.

C. Discovery

Extensive discovery took place during the many years of this litigation. Plaintiffs propounded numerous document requests, interrogatories, and requests for admissions. Plaintiffs also reviewed hundreds of thousands of pages of documents produced in discovery. Plaintiffs then took depositions of the leaders of the CWT/HRP including all of Defendants' corporate representatives. More recently, Plaintiffs deposed a group of several farmers who Defendants intended to bring to trial.

In addition, Defendants deposed all of the Class Representatives. The Class Representatives (especially KPH Healthcare) also engaged in excruciatingly lengthy document production and management exercises.

Throughout the discovery process, Magistrate Judges Williams and then Sison were actively involved in assisting the parties and conducting many hearings over the years. Not only were the Magistrate Judges called upon to resolve discovery disputes between and among the parties, but Plaintiffs had sought discovery from numerous third parties, including the alleged unnamed CWT co-conspirators.

With a fully developed factual record and extensive motion practice, the parties had fully prepared this case for trial. Plaintiffs had engaged a trial consultant and had conducted multiple focus group sessions with multiple mock juries. Both sides fully discovered, analyzed, and

understood the strengths and weaknesses of their positions, and the proposed resolution of this case comes at a fully mature stage.

D. Mediation and Settlement

The parties selected, and this Court appointed, former Federal District Judge Daniel Weinstein, Ret. to mediate the dispute. The first round of mediation was unsuccessful.

On May 22, 2019, the parties began a second round of mediation. That process ran its course for several months, during which time the parties actively continued preparing for the October 1, 2019 trial date.

The mediation process ultimately proved successful. Shortly before trial, in mid-September 2019, the parties reached a tentative settlement, pending Court approval. Since that time, the parties have actively negotiated the specific terms of the settlement. The parties signed the Settlement Agreement on November 22, 2019. The Proposed Settlement was submitted for this Court's consideration via Plaintiffs' Motion for Preliminary Approval of Settlement, filed on December 4, 2019. *See* Settlement Agreement (Exhibit 1 to Preliminary Approval Motion) (Dkt. 521). The Court preliminarily approved this proposed Settlement by Order dated January 10, 2020 (Dkt. 525).

E. Class Notice

Plaintiffs' Notice Plan consists of multiple modalities. After entry by this Court of the January 10, 2020 Order granting preliminary settlement approval, Epiq and Hilsoft began implementation of the approved Notice Plan.

Class Members for whom Epiq identified addresses received direct mail notice informing them about the settlement and their rights to object.² Epiq and Hilsoft also published notice of

² Class Members who already had opted out of the Class were excluded from any recovery.

the settlement in the same publications used in the prior Court-approved notice plan and on social media. *See* Azari Declaration Confirming Execution of Notice Plan (Exhibit 1). In addition, the Court-appointed Settlement Administrator has continued to maintain and monitor the Court-approved litigation website (www.butterandcheeseaction.com), and that website includes all of the materials relating to the settlement, including the Settlement Agreement itself, the claim form and all information relating to the final fairness hearing.

Thus, each element of the Notice Plan has been timely executed. *See* Azari Declaration at 16. *See also Mangone v. First USA Bank*, 206 F.R.D. 222, 232 (S.D. Ill. 2001) (finding that the class notice sent by direct mail, published in publications as well as on the internet fully complied with the specific notice requirements imposed by F.R.C.P. 23(c)(2)(A), (B), and (C)).

III. LEGAL STANDARD

Rule 23(e) requires court approval for a class action settlement to ensure that it is procedurally and substantively fair, reasonable and adequate. Fed. R. Civ. P. 23(e). A “presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” *Am. Int’l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 CV 2898, 2012 WL 651727, at *10 (N.D. Ill. Feb. 28, 2012) (citation and internal quotation marks omitted). Courts favor the resolution of a class action by way of settlement and will approve such a settlement if it is fair, reasonable, and adequate when viewed in its entirety. *In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1014 (N.D. Ill. 2000), *aff’d sub nom. In re Mexico Money Transfer Litig.*, 267 F.3d 743 (7th Cir. 2001); *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884 (7th Cir. 1985); *Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982). Courts “do not focus on individual components of the settlement but rather

view them in their entirety in evaluating their fairness.” *Isby*, 75 F.3d at 1199 (quoting *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 315 (7th Cir. 1980)).

The Seventh Circuit has identified several factors that a Court may consider in evaluating the fairness of a class action settlement: “(1) the strength of the plaintiff’s case on the merits measured against the terms of the settlement; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the settlement among affected parties; (4) the presence of collusion in gaining a settlement; (5) the stage of the proceedings; and (6) the amount of discovery completed.” *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997); *see also Isby*, 75 F.3d at 1199.³ It remains the court’s task to evaluate “the general principles governing approval of class action settlements” and not the “substantive law governing the claims asserted in the litigation.” *Isby*, 75 F.3d at 1197 (citation and internal quotation marks omitted).

Because the Seventh Circuit has endorsed an overriding public interest in favor of the settling of litigation, particularly class actions, *see Isby*, 75 F.3d at 1196 (“[f]ederal courts naturally favor the settlement of class action litigation”), the proceedings to approve a settlement should not be transformed into an abbreviated trial on the merits. *See, e.g., Mars Steel Corp. v. Cont’l Ill. Nat’l Bank & Trust Co.*, 834 F.2d 677, 684 (7th Cir. 1987). In addition, “[a] strong presumption of fairness attaches to a settlement agreement when it is the result of this type of

³ The amendments to Fed. R. Civ. P. 23(e), which became effective on December 1, 2018, require courts to analyze a functionally equivalent set of factors, including whether: (A) the class representatives and adequately represented the class; (B) the proposal was negotiated at arms’-length; (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 the proposed method of distributing relief to class members, and (iii) the terms of a proposed award of attorneys’ fees, and (D) the proposal treats class members equitably relative to each other. As this brief demonstrates, all these factors weigh in favor of final approval.

[arm’s length] negotiation.” *Great Neck Capital Appreciation Inv. P’ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002) (citing *Anderson v. Torrington Co.*, 755 F. Supp. 834, 838 (N.D. Ind. 1991)). In evaluating a proposed settlement, the court must recognize that the “essence of settlement is compromise” and will not represent a total win for either side. *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d at 1014 (citing *Isby*, 75 F.3d at 1200).

IV. **ARGUMENT**

A. **All Relevant Factors Support Approval of the Settlement.**

Consideration and analysis of each of the six relevant Seventh Circuit fairness factors weigh strongly in favor of final approval of the proposed Settlement. Plaintiffs and their Counsel have examined the facts, the applicable law, and the arguments Defendants have raised in defense of Plaintiffs’ antitrust claims; they have weighed the benefits secured by the proposed Settlement against the risks and costs of further litigation; they have conducted all of their settlement negotiations at arm’s length; they have extensively and aggressively prosecuted the action and were able to discover substantial evidence from Defendants and third parties; they have entered this Settlement at a very late and mature stage of the litigation, close to when the trial had been scheduled to commence; and they have determined that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class.

1. **The Strength of Plaintiffs’ Case Compared to the Terms of the Settlement Supports Approval of the Settlement.**

Plaintiffs argue that their damages derive from overcharges that Plaintiffs paid for butter and cheese as a result of Defendants’ wrongful conduct in violation of the antitrust laws. On the other hand, Defendants have steadfastly maintained throughout this case—and would have continued to argue on appeal from any verdict in favor of Plaintiffs—not only that there was no

causal connection between their acts and the prices Plaintiffs paid for the dairy products at issue, but that they have affirmative defenses, as detailed below, which had the potential to derail Plaintiffs' entire case.

a. Plaintiffs' Claims Are Uncertain.

Not surprisingly, Class Counsel believe that their claims against Defendants have merit and were well-prepared to prove as much at trial. Indeed, Class Counsel invested some 44,890.55 hours of their time and millions of dollars in out-of-pocket costs to advance Plaintiffs' case. *See* Declaration of Dianne M. Nast In Support Of Plaintiffs' Motions for Final Approval of Settlement and for Attorneys' Fees and Costs ("Nast Decl.") ¶ 23.⁴ Nevertheless, Plaintiffs would face a number of difficult challenges if the litigation were to continue. Specifically, Defendants advanced affirmative defenses in connection with their motions for summary judgment and for decertification. Defendants sought to terminate the case based on *Capper-Volstead* grounds as well as on the statute of limitations and the filed-rate doctrine. In addition, Defendants challenged whether members of the Class could commonly establish the requisites of their antitrust claim, particularly impact and damages, in arguing for decertification. Each and every one of Defendants' affirmative defenses would have been front and center in any appeal if Plaintiffs were fortunate enough to win at trial. As a result, Plaintiffs would have had to overcome each and every challenge again on appeal, as losing any one issue would result in vacating any favorable verdict and a likely dismissal of the entire case.

Additionally, complex antitrust cases are difficult to try to a jury. *See, e.g., Ohio Sealy Mattress Mfg. Co. v. Sealy, Inc.*, 585 F.2d 821, 841 (7th Cir. 1978) ("While the challenges and subtleties of antitrust law often hold a strong fascination for lawyers, a trial such as this one

⁴ The Nast Declaration is simultaneously being filed with the instant Motion for Final Approval of the Settlement and Plaintiffs' Motion for Attorneys' Fees and Costs.

could hardly be expected to keep the average lay juror on the edge of his or her seat....”). Class Counsel here had to navigate a complex series of legal concerns involved in pursuing alleged wrongdoing within the dairy industry and this case was far from a straightforward enforcement of harm. Although the Court has ruled in Plaintiffs’ favor on certain issues in the past, many controlling legal issues were pending prior to the parties entering into this proposed Settlement. Moreover, there is certainly no guarantee that Plaintiffs, if successful at trial, would again succeed in the Seventh Circuit or potentially a third time on appeal to the United States Supreme Court. Thus, the stakes associated with any appeal of a successful trial verdict were exceedingly high.⁵

b. The Proposed Settlement Offers Substantial Value to Class Members.

The parties have agreed to settle this case for a substantial sum of \$220,000,000 pursuant to the Settlement Agreement and addendums thereto. As explained in Plaintiffs’ preliminary approval papers, after payment of all costs of notice and claims administration, Court-awarded attorneys’ fees and costs, and class representative service awards, all remaining funds will be distributed to Class Members through a claims process administered by a Court-appointed settlement claims administrator. *See* Plaintiffs’ Proposed Plan of Distribution of Class Settlement, Exhibit F to Nast Decl.

This Settlement unquestionably represents a substantial achievement for Class Members. *See* Nast Decl. ¶ 22 and Exhibit F thereto. Further, because “[t]he essence of settlement is compromise,” *Hiram Walker*, 768 F.2d at 889, courts should not reject a settlement “solely

⁵ Defendants had similar concerns. *See* NMPF News Release, “Cooperatives Working Together Settlement Lifts Legal Cloud,” dated 12/04/2019 at <https://www.nmpf.org/cooperatives-working-together-settlement-lifts-legal-cloud/> (“NMPF’s decision to enter into this settlement recognized the uncertainties inherent in any jury trial, the very large damages sought by the plaintiffs and the fact that the successful Export Assistance Program is entirely unaffected by the settlement.”).

because it does not provide a complete victory to the plaintiffs.” *Isby*, 75 F.3d at 1200; *see also Armstrong*, 616 F.2d at 315 (noting that “the essence of a settlement is compromise[,] an abandonment of the usual total-win versus total-loss philosophy of litigation in favor of a solution somewhere between the two extremes”). Parties to a settlement benefit by resolving the litigation and receiving “some measure of vindication for [their] position[s] while foregoing the opportunity to achieve an unmitigated victory. Thus, the parties to a settlement will not be heard to complain that the relief afforded is substantially less than what they would have received from a successful resolution *after* trial.” *Hiram Walker*, 768 F.2d at 889 (citations omitted). So, while the Settlement amount is less than the amount sought at trial by Plaintiffs, the Settlement amount is certainly a substantial amount of money and represents an extraordinary recovery to Plaintiffs, who engaged in hard-fought litigation.

c. The Defendants Were Well-Funded and Well-Represented.

Plaintiffs faced well-funded and well-represented Defendants who had the means and personnel to defend this case for the duration. The firms that worked in this case on behalf of Defendants include Steptoe & Johnson LLP⁶ for National Milk Producers Federation and Cooperatives Working Together, Eimer Stahl LLP⁷ and Fox Smith, LLC⁸ (formerly Fox Galvin

⁶ “Steptoe has more than 500 lawyers and other professional staff across offices in Beijing, Brussels, Chicago, Hong Kong, London, Los Angeles, New York, San Francisco, and Washington.” *See* <https://www.step toe.com/en/about/about/index.html>.

⁷ “Eimer Stahl LLP is a Chicago-based litigation boutique with a national practice in federal and state courts and state agencies, representing sophisticated corporate and individual clients in trial and appellate courts across the country, from small towns to urban environments.” *See* <https://www.eimerstahl.com/cases.html>.

⁸ Fox Smith is a law firm based in St. Louis, Missouri, made up exclusively of trial lawyers. *See* <https://foxsmithlaw.com/>.

LLC) for Land O'Lakes, Inc., Baker & Miller PLLC⁹ and Byron Carlson Petri & Kalb LLC¹⁰ for Dairy Farmers of America, Inc., and Shipman & Goodwin LLP¹¹ for Agri-Mark, Inc.. The well-funded defendants contested nearly every aspect of this lawsuit, often repeatedly. Nast Decl. ¶ 5. Moreover, Defendants include some of the largest dairy coops in the United States, with millions of dollars in income each year. For example, officials of Defendant Dairy Farmers of America (DFA) reported net income of \$108.5 million for 2018. *See* DFA Press Release, dated March 20, 2019, "DFA Reports 2018 Financial Results; Strategic Investment Growth Continues to Strengthen the Cooperative" at <https://www.dairyherd.com/sites/default/files/inline-files/DFA-2018%20Financial%20Release-FINAL.pdf>. Thus, Defendants were well-able to finance a continuing litigation fight for years to come.

In response, Plaintiffs were able to field a team of their own, willing and able to defend each and every motion and to pursue each and every lead. Yet, despite Plaintiffs' resources, "an integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation," *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985), and here there would be significant risks and costs if the case were not settled. There is no question that Defendants had the resources and wherewithal to challenge each and every issue and not just at trial, but on appeal to the Seventh Circuit and to the United

⁹ Baker & Miller, which has offices in Washington, D.C., San Francisco, and California, provides comprehensive legal services to clients with antitrust, transportation regulatory, and international legal issues, as well as related litigation needs. *See* <http://bakerandmiller.com/>.

¹⁰ For people in Madison County, Illinois, across the border in Missouri and throughout the surrounding area, the attorneys at Byron Carlson Petri & Kalb have experience handling, among other practice areas, class action and appellate litigation. *See* <https://www.bcpklaw.com/General-Litigation/>.

¹¹ With more than 175 attorneys in offices throughout Connecticut, New York, and in Washington, D.C., Shipman & Goodwin serve the needs of local, regional, national and international clients, including public and private companies, institutions, government entities, non-profit organizations, and individuals. *See* <https://www.shipmangoodwin.com/53>.

States Supreme Court. As a result, the very same risks Plaintiffs faced at the very outset of the litigation—*e.g.*, the *Capper-Volstead* and Filed-Rate doctrines, lack of standing, and the statute of limitations—remained over seven years into the litigation, with the possibility of Defendants prevailing on any one of their affirmative defenses in the court of appeals. To succeed absent some resolution, Plaintiffs would have had to win each and every issue a second time on appeal, or, potentially, even a third time before the United States Supreme Court to succeed.

In light of these considerable risks, and in light of the fact that \$220 million is a substantial monetary recovery, Plaintiffs and Class Counsel endorse the Settlement. When considering the strengths of the case against the size of the proposed Settlement, this first factor strongly favors approval of the proposed Settlement.

2. The Complexity, Cost, and Expense of Continued Litigation Supports Approval of the Settlement.

The second factor to be considered focuses on the complexity, length, and expense of litigation that will be avoided by the proposed settlement. *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d at 1014. As noted, Defendants were highly motivated to defend this case vigorously. Even though this case has been litigated for seven years, continued litigation would certainly last several more years. This is because any favorable trial verdict would be appealed to the court of appeals, and, if Plaintiffs were successful in the court of appeals, to the United States Supreme Court.

“[A]n integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation.” *Fitzsimmons*, 778 F.2d at 309. This is because “the more complex, expensive, and time consuming the future litigation, the more beneficial settlement becomes as a matter of efficiency to the parties and to the Court.” *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 381-82 (S.D.N.Y. 2013) (citation and internal

quotation marks omitted); *Cardiology Assocs., P.C. v. Nat'l Intergroup, Inc.*, No. 85 Civ. 3048 (JMW), 1987 WL 7030, at *3 (S.D.N.Y. Feb. 13, 1987) (“There is a substantial risk that the plaintiff might not be able to establish liability at all and, even assuming a favorable jury verdict, if the matter is fully litigated and appealed, any recovery would be years away.”).

Plaintiffs were prepared and were ready and willing and able to try this case to verdict. But this proposed Settlement provides significant relief to Class Members now, and avoids the risk of (1) any further delay associated with the inevitable appeals of any successful verdict; (2) the loss of a successful verdict on appeal; (3) an unsuccessful trial verdict; and (4) continued litigation costs that are paid by Class Counsel and by extension the Class, as such litigations costs are typically deducted from any common fund recovery. When compared to the continued costs and delay associated with ongoing litigation, the certainty of the significant recovery achieved by the Settlement today is especially compelling. *See, e.g., Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) (“Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation.”). “To most people, a dollar today is worth a great deal more than a dollar ten years from now.” *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 284 (7th Cir. 2002); *see also Fitzsimmons*, 778 F.2d at 309 n.3; *Seiden v. Nicholson*, 72 F.R.D. 201, 208 (N.D. Ill. 1976) (“If this case had been litigated to conclusion, all that is certain is that plaintiffs would have spent a large amount of time, money and effort.”). This second factor, too, therefore weighs strongly in favor of final approval.

3. The Reaction of the Class to Date Supports Approval of the Settlement.

Notice to the Class is in progress, though almost complete. Class Members have been provided direct notice of the Settlement, and publication notice of the Settlement is ongoing. The deadline to object is not until March 17, 2020, about three weeks away, and so it is too early

to know the number and nature of any objections to the Settlement. To date, however, Class Counsel have received no objections to the proposed Settlement.¹² Plaintiffs will update the Court about this factor in its Notice to the Court of Completion of Class Notice Program, due March 6, 2020. *See generally Hispanics United of DuPage Cty. v. Vill. of Addison, Ill.*, 988 F. Supp. 1130, 1166, 1169 (N.D. Ill. 1997) (“[t]he Court may approve a fair settlement over objections by some or even many class members”); *Mangone*, 206 F.R.D. at 226-27 (same); *Isby*, 75 F.3d at 1200 (approving settlement where “thirteen per cent of the class submitted written objections in response to the notice of settlement”); *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 965 (N.D. Ill. 2011) (approving settlement where objectors amounted to 0.01% of the class). Given the facts known to date, this factor also supports final approval of the proposed Settlement.

4. The Settlement Was the Result of Arms’ Length Negotiations and Is Endorsed by Competent Counsel for All Parties.

The proposed Settlement is the product of lengthy and contentious arm’s length negotiations mediated by the Court-appointed mediator, and among skilled counsel, well-versed in the strengths and weaknesses of the case.

a. Class Counsel Unanimously Endorse the Settlement.

Courts are to place significant weight on the unanimously strong endorsement of a settlement class counsel. *See, e.g., Isby*, 75 F.3d at 1200; *Goldsmith v. Tech. Solutions Co.*, No. 92 C 4374, 1995 WL 17009594, at *3 n.2 (N.D. Ill. Oct. 10, 1995) (negotiations entitled to great deference). Further, courts are “entitled to rely heavily on the opinion of competent counsel,”

¹² To date, only one person has filed an objection to the attorneys’ fees. It is unknown whether this person is a member of the Class or if this person has standing to raise such an objection. Plaintiffs and Counsel for Plaintiffs submit this objection is without merit and lacks a legitimate basis.

Gautreaux, 690 F.2d at 634 (quoting *Armstrong*, 616 F.2d at 325); *Isby*, 75 F.3d at 1200, although they cannot rely solely on that opinion, see *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014). Nonetheless, “great weight is accorded to the recommendations of counsel, “who are most closely acquainted with the facts of the underlying litigation.” *In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997); see also *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008); *McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 812 (E.D. Wis. 2009) (factors including that “counsel endorses the settlement and it was achieved after arms-length negotiations facilitated by a mediator . . . suggest that the settlement is fair and merits final approval”).

Here, Class Counsel have unanimously endorsed this Settlement. See Nast Decl. ¶ 31. Class Counsel are among the foremost class action lawyers and trial lawyers in the nation, having participated in some of the largest class actions and trial verdicts. *Id.* ¶ 30. That skilled and experienced Class Counsel fully endorse this Settlement factors in favor of approval of the proposed Settlement.

In recommending the proposed Settlement, Class Counsel are keenly aware of both the strengths and vulnerabilities of the case, having spent 44,890.55 hours developing the facts of the case and preparing the case for trial. Nast Decl. ¶23. Class Counsel are also aware both that \$220 million is a lot of money and that the proposed Settlement alleviates all uncertainties regarding the case’s vulnerabilities. See *Kleen Prods. LLC v. Int’l Paper Co.*, No. 1:10-cv-05711, 2017 WL 5247928, at *3 (N.D. Ill. Oct. 17, 2017); see also *In re Mexico Money Transfer Litig.*, 164 F. Supp. 2d at 1020 (placing “significant weight on the unanimously strong endorsement of these settlements” by “well-respected attorneys”).

b. The Settlement Was the Result of Arm's Length Negotiations Without a Hint of Collusion.

Additionally, there is no indication whatsoever that the proposed Settlement Agreement is the result of collusion. *See Isby*, 75 F.3d at 1200; Nast Decl. ¶ 13. Prior to entering into the instant Settlement, the parties engaged in mediation in June of 2018. At that time, however, the parties remained far apart in their valuations of the case, and all of each side's energies remained focused on preparation of the case for trial. Settlement negotiations only resumed a year later, several months prior to when trial was scheduled to begin. Those negotiations were ultimately overseen by former California state-court judge Daniel Weinstein, Ret., who was appointed by the Court. That process ran its course for several months, during which all aspects of the litigation actively continued, with the focus on an October 2019 trial. Thus, there is no question but that the negotiations in this case were always at arm's length. *Id.* at ¶ 13.

Because the Settlement is the result of arm's length negotiations conducted by experienced and skilled Class Counsel, this fourth factor therefore also weighs in favor of approval of the proposed Settlement.

5. The Amount of Discovery Completed and the Advanced Stage of the Proceedings Also Favor Approval of the Settlement.

No one could seriously contest that the amount of discovery completed and the stage to which these proceedings advanced was not far enough for Plaintiffs to have gained sufficient insight in order to resolve the case responsibly. Here, all fact discovery and all expert discovery had essentially been completed. All motion practice had been completed. The case had been prepared for trial. Indeed, over seven years, Plaintiffs prosecuted this action: they propounded numerous document requests, interrogatories, and requests for admissions; Plaintiffs reviewed hundreds of thousands of pages of documents produced in discovery; Plaintiffs took and defended numerous depositions; and fact discovery was contentious, as Magistrate Judge

Williams and Sison were actively involved in discovery, assisting the parties at many hearings over the years. *See* Nast Decl., Ex. C.

Not only were the Magistrate Judges called upon to resolve many discovery disputes between and among the parties, but Plaintiffs had sought discovery from numerous third parties. In fact, Plaintiffs took the depositions of not only current but former farmers who previously served as top executives for the Defendant cooperatives, among other dairy organizations. *See* Nast Decl., Ex. B.

In addition, Plaintiffs deposed all of Defendants' trial experts and class certification experts, and Defendants deposed all of Plaintiffs' experts. *Daubert* motions challenging the experts were filed. In preparation for trial, hundreds of documents were being prepared as exhibits. Plaintiffs had engaged a trial consultant and also prepared lists of witnesses that they intended to call at trial. *Id.* Plaintiffs and their trial consultant conducted multiple focus group sessions, involving three sets of focus groups, over several days during the course of a month to better assess the strengths and weaknesses of their case and prepare for the upcoming trial. Jury instructions and a verdict form also had also been prepared. *Id.*

The point of course is that Plaintiffs had fully prepared this case for trial. Plaintiffs did literally all the discovery necessary to advance their case and to understand fully their case's strengths and weaknesses. As a result, the fifth factor also favors final approval of the proposed Settlement.

Finally, "[t]he stage of the proceedings at which settlement is reached is important because it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims." *Armstrong*, 616 F.2d at 325. That this case settled so close to trial, at a very late stage of the proceedings, demonstrates that Class Counsel as well as the Court possess all the

information necessary to properly evaluate the case. This sixth factor also favors final approval of the Settlement.

This proposed Settlement well satisfies each of the six factors that the Seventh Circuit uses to evaluate the fairness of a proposed Settlement. This substantial Settlement is fair, reasonable and adequate. Plaintiffs respectfully request that the Court approve it.

B. The Plan of Distribution Should Be Finally Approved.

As with all aspects of class action settlements, this Court must ensure that any allocation plan is reasonable and equitable to all class members. *See Hiram Walker*, 768 F.2d at 891 (considering reasonableness of settlement disbursement). Here, the Plan of Distribution was preliminarily approved by the Court on January 10, 2020, after Class Counsel informed the Court that they believed that the Plan of Distribution provides a fair and reasonable method to equitably allocate the Net Settlement Fund among members of the Class who suffered losses as a result of the conduct alleged in this litigation. (Dkt. 525)

Allocation of the settlement funds, as detailed in the proposed Plan of Distribution, is consistent with the damages theory presented by Plaintiffs in this litigation and is a fair and equitable method for allocating Settlement funds among Class Members. *See* Plan of Distribution, Ex. F to Plaintiffs' Motion for Preliminary Approval of the Class Settlement. (Dkt. 521)

Accordingly, Plaintiffs respectfully request that the Court approve the proposed Plan of Distribution.

V. **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully submit that this proposed Settlement is fair, reasonable and adequate, and request this Court to grant final approval of the proposed Settlement; find that the Notice to the Class comports with Rule 23; and grant final approval of the Plan of Distribution contained in the Settlement.

Dated: February 26, 2020

Respectfully Submitted:

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Co-Lead Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

Pursuant to Local Rule 7.1(b), I certify that a copy of the foregoing was served upon counsel via the Court's CM/ECF system on February 26, 2020.

/s/ Dianne M. Nast

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

FIRST IMPRESSIONS SALON, INC.,
individually and on behalf of all others
similarly situated, *et al.*,

Plaintiffs

v.

NATIONAL MILK PRODUCERS
FEDERATION, *et al.*,

Defendants.

Case No. 3:13-CV-00454-NJR-GCS

EXHIBIT 1

TO

**PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT
AND INCORPORATED MEMORANDUM OF LAW**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

| | | |
|--------------------------------|---|------------------------------------|
| _____ |) | |
| FIRST IMPRESSIONS SALON, INC., |) | |
| <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | Case No. 3:13 –cv-00454-(NJR)(GCS) |
| |) | |
| NATIONAL MILK PRODUCERS |) | |
| FEDERATION, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

DECLARATION OF CAMERON R. AZARI, ESQ. ON IMPLEMENTATION AND ADEQUACY OF SETTLEMENT NOTICE PLAN AND NOTICES

I, CAMERON R. AZARI, ESQ., hereby declare and state as follows:

1. My name is Cameron R. Azari, Esq. I am over the age of twenty-one and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am considered an expert in the field of legal notice and I have served as a legal notice expert in dozens of federal and state cases involving class action notice plans.

3. I am the Director of Legal Notice for Hilsoft Notifications (“Hilsoft”), a firm that specializes in designing, developing, analyzing and implementing large-scale, un-biased, legal notification plans. Hilsoft has been involved with some of the most complex and significant notices and notice programs in recent history. Hilsoft is a business unit of Epiq Class Action & Claims Solutions, Inc. (“Epiq”).

4. This declaration will describe the current implementation of the Settlement Notice Plan (“Notice Plan” or “Plan”) and notices (the “Notice” or “Notices”) designed by Hilsoft here for the

Settlement in *First Impressions Salon, Inc. et al v. National Milk Producers Federation*, Case No. 13-cv-00454-NJR-GCS (S.D. Ill.). Previously, I have executed several declarations in this case regarding notice. In the “*Declaration of Cameron R. Azari, Esq. on Notice Plan and Notices*” dated April 30, 2018, I detailed Hilsoft’s class action notice experience and attached Hilsoft Notifications’ curriculum vitae. I also provided my educational and professional experience relating to class actions and my ability to render opinions on the overall adequacy of notice programs. Subsequently, in my *Declaration of Cameron R. Azari, Esq. on Implementation and Adequacy of Notice Plan and Notices* dated August 29, 2018, I detailed the successful completion of the Class Certification notice effort. Also, in the “*Declaration of Cameron Azari*” dated January 18, 2019, I confirmed that notices had been sent to 12 specific entities. More recently, in the “*Declaration of Cameron R. Azari, Esq. on Settlement Notice Plan and Notices*” dated December 3, 2019, I detailed the proposed Settlement Notice Plan and notices.

5. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Hilsoft and Epiq.

OVERVIEW

6. On January 10, 2020, the Court approved the Notice Plan and forms of Notice as designed by Hilsoft and appointed Epiq as the Notice Provider, Settlement Administrator and Escrow Agent in the *Memorandum and Order* (“Preliminary Approval Order”). The Court previously certified the following two sub-classes:

All persons and entities in the United States that purchased butter directly from one or more members of Defendant, Cooperatives Working Together, and/or their subsidiaries during the period from December 6, 2008 to July 31, 2013 who did not timely opt-out of the class pursuant to the class notice approved by the Court in its order dated May 8, 2018 and transmitted to the class on May 31, 2018; and

All persons and entities in the United States that purchased cheese directly from one or more members of Defendant, Cooperatives Working Together, and/or their subsidiaries during the period from December 6, 2008 to July 31, 2013 who did not timely opt-out of the class pursuant to the class notice approved by the Court in its order dated May 8, 2018 and transmitted to the class on May 31, 2018.

7. I have reviewed the Settlement Agreement and understand that the relevant Members of

Defendant Cooperatives Working Together include the following:

| | |
|--|--|
| Agri-Mark, Inc. | Maryland & Virginia Milk Producers Cooperative Association |
| Arkansas Dairy Cooperative Association | Massachusetts Coop. Milk Producers Fed. Inc. |
| Associated Milk Producers Inc. | Michigan Milk Producers Association |
| Bongards Creameries | Mid-West Dairymen's Co. |
| Burke Milk Producers Cooperative, Inc. | Mount Joy Farmers Cooperative Association |
| California Dairies Inc. | National Farmers Organization |
| Cass-Clay Creamery Inc. | North Lawrence Producers Cooperative, Inc. |
| Champlain Milk Producers Cooperative | Northwest Dairy Association (Darigold) |
| Conesus Milk Producers Cooperative Association, Inc. | Oneida-Madison Milk Producers Cooperative |
| Continental Dairy Products, Inc. | Prairie Farms Dairy |
| Cooperative Milk Producers Association, Inc. | Preble Cooperative, River Valley Milk Producers Inc. |
| Cortland Bulk Milk Producers Cooperative | Schoharie County Cooperative Dairies |
| Dairy Farmers of America | Seaway Bulk Milk Producers Cooperative, Inc. |
| Dairylea Cooperative Inc. | Security Milk Producers Association |
| Dairymen's Marketing Cooperative Inc. | Select Milk Producers, Inc. |
| Ellsworth Cooperative Creamery | Snake River Dairymen's Association |
| Empire Keystone Cooperative | South New Berlin Milk Cooperative, Inc. |
| Farmers Cooperative Creamery | Southeast Milk, Inc. |
| First District Cooperative Association | St. Albans Cooperative Creamery, Inc. |
| Foremost Farms USA | Swiss Valley Farms, Co. |
| Humboldt Creamery Association | Tillamook County Creamery Association |
| Jefferson Bulk Milk Cooperative, Inc. | United Dairy Cooperative Services, Inc. |
| Just Jersey Cooperative, Inc. | United Dairymen of Arizona |
| Land O'Lakes, Inc. | Upstate Niagara Cooperative, Inc. |
| Lone Star Milk Producers | Utah Dairy Farmers Cooperative |
| Lowville Producers Dairy Cooperative | Western Tier Milk Producers Cooperative |
| Magic Valley Quality Milk Producers, Inc. | Zia Milk Producers Inc. |
| Manitowoc Milk Producers Cooperative | |

8. After the Court’s Preliminary Approval Order was entered, we began to implement the Notice Program. This declaration will detail the notice activities undertaken and explain how and why the Notice Plan was comprehensive and well-suited to the Class. This declaration will also discuss the administration activity to date. The facts in this declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues from Hilsoft and Epiq, who worked with us to implement the notification effort.

NOTICE PLAN SUMMARY

9. Rule 23 directs that the best notice practicable under the circumstances must include “individual notice to all members who can be identified through reasonable effort.”¹ The previous Class Certification notice effort and the Settlement notice effort here satisfy this direction. For any Class Members who were identified from records obtained from the relevant CWT members, including Defendants, notice was sent by first class mail for the Class Certification notice effort. The Settlement Notice was mailed by first class mail to the same Class Members as the Class Certification notice effort (even if the notice was previously returned as undeliverable), unless the business or individual opted out of the Class. Address updating (both prior to mailing and on undeliverable pieces) and re-mailing protocols met or exceeded those used in other class actions. To the extent, Epiq has Class Member email addresses, a summary notice was sent by email.

10. In addition to individual notice, modeled after the Class Certification notice effort, media notice is also included in the Settlement notice efforts. We analyzed the top trade media serving the industries most likely to have directly purchased cheese and/or butter. Media notice is currently being provided via print and online to these industries for the Settlement notice effort as it was for the Class

¹ FRCP 23(c)(2)(B).

Certification notice effort. Additionally, to cover the instances where Defendants have sold cheese and/or butter made by a CWT member directly to consumers through company stores, local media is currently being purchased for the Settlement Notice effort.

11. Because notice efforts are still underway, I will provide the Court with a supplemental declaration prior to the Final Approval Hearing, which will include the final calculated reach of the Notice Plan as implemented. Based on our experience with the Class Certification notice efforts, we expect to successfully deliver notice to approximately 85% of identifiable Class Members.

12. In my opinion, the Notice Plan as designed and implemented to date, has reached the greatest practicable number of Class Members through the use of individual notice and supplemental media. In my opinion, the Notice Plan is the best notice practicable under the circumstances of this case and satisfies the requirements of due process, including its “desire to actually inform” requirement.²

CAFA NOTICE

13. As described in the attached *Declaration of Stephanie J. Fiereck, Esq. on Implementation of CAFA Notice*,” dated February 18, 2020 (“*Fiereck Declaration*”), on December 13, 2019, as required by the federal Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715, Epiq sent a CAFA notice packet (or “CAFA Notice”) to 57 federal and state officials. The CAFA Notice was mailed by certified mail to 56 officials, including the Attorneys General of each of the 50 states, the

² *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .”); see also *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 567 (9th Cir. 2019) (“To satisfy Rule 23(e)(1), settlement notices must ‘present information about a proposed settlement neutrally, simply, and understandably.’ ‘Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.’”) (citations omitted); N.D. Cal. Procedural Guidance for Class Action Settlements, Preliminary Approval (3) (articulating best practices and procedures for class notice).

District of Columbia and the U.S. Territories. The CAFA Notice was also sent by United Parcel Service (“UPS”) to the Attorney General of the United States. The *Fiereck Declaration* is included as **Attachment 1**.

Individual Notice – Mailed Notice

14. For the Class Certification notice effort, Epiq received a total of 14,912 data records from the Defendants. The majority of the records contained both a Bill-To Address and a Ship-To Address, which were translated into separate records when different, for a total of 21,116 records. After invalid records were removed, Epiq identified 14,121 records, which were sent an initial notice.

15. For the Settlement notice effort, on February 7, 2020, Epiq mailed 14,284 Detailed Notices to valid mailing addresses via United States Postal Service (“USPS”) first class mail to Class Members on the Class List (unless the business or individual had opted out of the Class) and Class Members who registered as a potential Class Member before January 25, 2020.

16. The Detailed Notice prominently features the case website address. By accessing the website, recipients are able to easily access the Complaint, a list of Frequently Asked Questions and other information about the lawsuit. Visitors to the website are also able to register to be sent a claim form following Court approval of a Plan of Distribution. A copy of the Detailed Notice is included as **Attachment 2**.

17. Prior to mailing, all mailing addresses were checked against the National Change of Address (“NCOA”) database maintained by the USPS.³ In addition, the addresses were certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code, and verified

³ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person’s name and known address.

through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

18. The return address on the Notices is the existing post office box maintained by Epiq for the case. The USPS automatically forwards Detailed Notices with an available forwarding address order that has not expired (“Postal Forwards”). For Detailed Notices returned as undeliverable, Epiq re-mails the Notice to any new address available through postal service information (for example, to the address provided by the postal service on returned pieces for which the automatic forwarding order has expired, but which is still during the period in which the postal service returns the piece with the address indicated). Epiq also obtains better addresses by using a third-party lookup service. Upon successfully locating better addresses, Detailed Notices are promptly re-mailed. As of February 21, 2020, USPS has sent zero Postal Forwards. As of February 21, 2020, Epiq has received 65 undeliverable Detailed Notices. Detailed Notices will be re-mailed where a forwarding address was provided or address research identifies a new address. Address updating and re-mailing for undeliverable Detailed Notices is ongoing.

Individual Notice – Emailed Notice

19. On February 7, 2020, Epiq sent a summary Email Notice to 1,086 potentially valid email addresses that exist for some Class Member records. The summary Email Notice was created using an embedded html text format. This format provided easy-to-read text without graphics, tables, images and other elements that would increase the likelihood that the message could be blocked by Internet Service Providers (ISPs) and/or SPAM filters. The Email Notice included an embedded link to the case website. By clicking the link, recipients can easily access the Detailed Notice and other

information about the settlement. Each summary Email Notice was transmitted with a unique message identifier. If the receiving email server could not deliver the message, a “bounce code” was returned along with the unique message identifier. For any summary Email Notice for which a bounce code was received indicating that the message was undeliverable, at least two additional attempts were made to deliver the Notice by email.

20. As of February 21, 2020, 908 summary Email Notices were delivered and 178 summary Email Notices remain undeliverable. The undeliverable summary Email Notices consisted of 35 “Hard Bouncebacks” (undeliverable because the email address no longer existed, the email account was closed, or the email address had a bad domain name or address error) and 143 “Soft Bouncebacks” (inactive or disabled account, the recipient's mailbox was full, technical auto-replies, or the recipient server was busy or unable to deliver). Ultimately, Epiq was able to deliver direct summary Email Notice to 83.6% of the email addresses provided in the Class Data. For Class Members for whom both a physical address and an email address are available, both a Detailed Notice and a summary Email Notice were sent. A copy of the summary Email Notice is included as **Attachment 3**.

Media Notice Plan

21. A Trade Publication Notice has or will appear once as a 1/2 page ad unit in eleven selected publications targeted to businesses and industries that are likely to have purchased butter or cheese directly, including business owners and employees specializing in the grocery, food preparation and restaurant industries. Details regarding the list of trade publications, run dates (including upcoming scheduled run dates) and page numbers as published are provided in the following table.

| <i>Publication</i> | <i>Dates Published</i> | <i>Page #</i> |
|---------------------------|-------------------------------|----------------------|
| <i>Cheese Market News</i> | 1/31/20 | 11 |
| <i>Cheese Reporter</i> | 1/31/20 | 5 |

| <i>Publication</i> | <i>Dates Published</i> | <i>Page #</i> |
|--|-------------------------|---------------|
| <i>Convenience Store News</i> | 2/15/20 | 65 |
| <i>Dairy Foods</i> | 2/12/20 | 43 |
| <i>Food Processing</i> | 2/14/20 | 19 |
| <i>Frozen & Refrigerated Buyer</i> | 1/31/20 | 53 |
| <i>Grocery Business</i> | 2/3/20 | 35 |
| <i>Prepared Foods</i> | To be published 3/13/20 | |
| <i>Progressive Grocer</i> | 2/13/20 | 35 |
| <i>Restaurant Business</i> | To be published 3/7/20 | |
| <i>Supermarket News</i> | To be published 3/7/20 | |

22. Together, these selected eleven publications have a combined circulation of 444,130. The Trade Publication Notice is included as **Attachment 4**. A copy of the tear-sheets are included as **Attachment 5**.

23. To further the reach of the Notice Plan to potential Class Members, Internet Banner Notices in multiple sizes are currently being placed on the associated websites of each of the eleven trade publications listed above. Combined, approximately 211,350 impressions will be generated by the internet Banner Notice. The Banner Notices will run for 30 days, from January 28, 2020 through February 26, 2020, on each associated website. Clicking on the Banner Notice links the reader to the case website where they can obtain information about the lawsuit. Examples of the Banner Notices are included as **Attachment 6**.

24. In order to cover potential Class Members who may have purchased directly from a local Member of Defendant Cooperatives Working Together store, local newspaper and online media were purchased in the local area surrounding each store. The Local Newspaper Notice ran as a 1/4 page ad unit once in a daily and once in a Sunday edition (where available) or in two consecutive weekly

editions in local newspapers. The Local Newspaper Notice included a modified headline to specifically address Class Members who are consumer purchasers (“If you bought butter or cheese directly from a local dairy co-op store between December 6, 2008 and July 31, 2013, you could receive a payment from a class action settlement.”). The local online Banner Notices are currently running on the associated local newspaper websites, or where an affiliated website does not exist, on another appropriate news-related, local website. The local Banner Notices will run for 30 days, from January 28, 2020 through February 26, 2020. Details regarding the list of local newspaper publications, run dates and page numbers as published are provided in the following table.

| <i>Publication</i> | <i>Dates Published</i> | <i>Page #</i> |
|--------------------------------------|------------------------|---------------|
| <i>Amery Free Press</i> | 2/4/20 & 2/11/20 | 24 & 29 |
| <i>Appleton Post-Crescent</i> | 2/5/20 & 2/9/20 | 4A & 5A |
| <i>Arizona Republic</i> | 2/5/20 & 2/9/20 | 17A & 19A |
| <i>Beaver County Journal</i> | 2/5/20 & 2/12/20 | 7 & 7 |
| <i>Chippewa Herald</i> | 2/5/20 & 2/8/20 | A9 & A6 |
| <i>Darlington Republican Journal</i> | 2/6/20 & 2/13/20 | 5 & 5 |
| <i>Eau Claire Leader-Telegram</i> | 2/5/20 & 2/9/20 | 2A & 2A |
| <i>Faribault Daily News</i> | 2/5/20 & 2/8/20 | 3A & 3A |
| <i>Fayette County Union</i> | 2/5/20 & 2/12/20 | A2 & A2 |
| <i>Ithaca Journal</i> | 2/5/20 & 2/8/20 | 5A & 7A |
| <i>Kiel Tri-County News</i> | 2/6/20 & 2/13/20 | 3A & 3A |
| <i>Los Banos Enterprise</i> | 2/7/20 & 2/14/20 | 3B & 3A |
| <i>Marshfield News-Herald</i> | 2/5/20 & 2/8/20 | 5A & 5A |
| <i>Milwaukee Journal Sentinel</i> | 2/5/20 & 2/9/20 | 5A & 5A |
| <i>New Ulm Journal</i> | 2/5/20 & 2/9/20 | 7A & 6A |
| <i>Oneida Daily Dispatch</i> | 2/6/20 & 2/9/20 | 4A & 4A |
| <i>Perham Focus</i> | 2/6/20 & 2/13/20 | A3 & A2 |

| <i>Publication</i> | <i>Dates Published</i> | <i>Page #</i> |
|-----------------------------------|------------------------|---------------|
| <i>Portage Daily Register</i> | 2/5/20 & 2/8/20 | A8 & B8 |
| <i>Potter County News</i> | 2/5/20 & 2/13/20 | 3 & 3 |
| <i>Reedsburg Times-Press</i> | 2/6/20 & 2/13/20 | B6 & A3 |
| <i>Richland Observer</i> | 2/6/20 & 2/13/20 | 9A & 7A |
| <i>Rochester Post-Bulletin</i> | 2/5/20 & 2/8/20 | A10 & A2 |
| <i>Sioux City Journal</i> | 2/5/20 & 2/9/20 | A5 & A3 |
| <i>Sioux Falls Argus Leader</i> | 2/5/20 & 2/9/20 | 6A & 4A |
| <i>Springfield News-Leader</i> | 2/5/20 & 2/8/20 | 3A & 3A |
| <i>St. Albans Messenger</i> | 2/5/20 & 2/8/20 | 8 & 13 |
| <i>St. Cloud Times</i> | 2/5/20 & 2/9/20 | 4A & 6A |
| <i>St. Paul Pioneer Press</i> | 2/5/20 & 2/9/20 | 5A & 8A |
| <i>Tillamook Headlight Herald</i> | 2/5/20 & 2/12/20 | A10 & A6 |
| <i>Vermont World</i> | 2/5/20 & 2/12/20 | 2 & 3 |
| <i>Waconia Pioneer</i> | 2/8/20 & 2/13/20 | 3 & 3 |
| <i>Watertown Daily Times - NY</i> | 2/5/20 & 2/9/20 | A6 & A5 |
| <i>West Lebanon Valley News</i> | 2/5/20 & 2/9/20 | A7 & A6 |

25. The Local Newspaper Notice is included as **Attachment 7**. A copy of the tear-sheets are included as **Attachment 8**.

Sponsored Search Listings

26. To facilitate locating the case website, sponsored search listings are being acquired on the three most highly-visited Internet search engines: *Google*, *Yahoo!* and *Bing*. When search engine visitors search on common keyword combinations such as “Cheese Class Action,” “Dairy Antitrust,” or “Cooperatives Working Together Lawsuit” the sponsored search listing is displayed either at the top of the page prior to the search results or in the upper right hand column.

27. As of February 21, 2020, the sponsored listings have been displayed 2,177 times, resulting in 126 clicks that displayed the case website. A complete list of the sponsored search keyword combinations is included as **Attachment 9**. Examples of the sponsored search listing as displayed on each search engine are included as **Attachment 10**.

Informational Release

28. To build additional reach and extend exposures, a party-neutral Informational Release was issued on January 28, 2020, to approximately 5,000 general media (print and broadcast) outlets and 4,500 online databases and websites throughout the United States. The Informational Release served a valuable role by providing additional notice exposures beyond that which is provided by the paid media. The Informational Release included the toll free number and case website address.

29. Additionally, on January 28, 2020, the Informational Release was issued to PR Newswire's "Food Industry" Microlist and "Restaurants" Microlist, which includes 182 food focused media outlets and 541 restaurant focused media outlets respectively. A copy of the Information Release as released is included as **Attachment 11**.

Case Website

30. The existing neutral, informational case website, with an easy to remember domain name (www.ButterAndCheeseClassAction.com), which was established as part of the Class Certification notice effort, was updated on January 27, 2020, with information regarding the Settlement. The case website continues to allow potential Class Members to obtain additional information and documents including the Detailed Notice, Preliminary Approval Order, Complaint, the Class Certification Order, a list of the Cooperatives Working Together Members and their local stores, answers to frequently asked questions and any other information that the Court may require. The website also include

information on how potential Class Members can object to the Settlement, if they chose. The website address was prominently displayed in all printed notice documents.

31. As of February 21, 2020, there have been 10,792 unique visitors and 25,908 website pages presented.

Toll-free Telephone Number and Postal Mailing Address

32. The existing toll-free number (1-855-804-8574), which was established as part of the Class Certification notice effort, was updated on January 27, 2020, with information regarding the Settlement. Callers hear an introductory message. Callers then have the option to continue to get information about the lawsuit in the form of recorded answers to frequently asked questions. Callers have an option to request a Detailed Notice by mail. This automated phone system continues to be available 24 hours per day, 7 days per week.

33. As of February 21, 2020, the toll-free telephone number has handled 49 calls representing 146 minutes of use.

34. The existing post office box and email address, which were established as part of the Class Certification notice effort, continue to be available to allow Class Members to request additional information or ask questions via these channels. As of February 21, 2020, Epiq has received and responded to 46 incoming emails.

PERFORMANCE OF THE NOTICE PROGRAM

Reach

35. Many courts have accepted and understood that a 75 or 80 percent reach is more than adequate in a class action notice effort. In 2010, the Federal Judicial Center issued a Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide. This Guide states that, "the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether all the

notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%. Here the individual notice will reach approximately 85% of identifiable Class Members. To supplement this effort, targeted media was included that focuses on the universe of potential Class Members for whom individual notice may not be available. These efforts reinforce the fact that the Notice Plan is targeted and designed to actually reach persons who may be Class Members.

PLAIN LANGUAGE NOTICE DESIGN

36. The Notices themselves are designed to be “noticed,” reviewed, and—by presenting the information in plain language—understood by Class Members. The design of the Notices follows the principles embodied in the Federal Judicial Center’s illustrative “model” notices posted at www.fjc.gov. Many courts, and as previously cited, the FJC itself, have approved notices that we have written and designed in a similar fashion. The Notices contain substantial, albeit easy-to-read, summaries of all of the key information about Class Members’ rights and options. Consistent with our normal practice, all notice documents received a final edit prior to actual mailing and publication for grammatical errors and accuracy.

37. The Notices are designed to increase noticeability and comprehension. Because mailing recipients are accustomed to receiving junk mail that they may be inclined to discard unread, the Notice Program calls for steps to bring the mailed Notice to the attention of Class Members. Once people “notice” the Notices, it is critical that they can understand them. As such, the Notices, are clearly worded with an emphasis on simple, plain language to encourage readership and comprehension.

38. The notices feature a prominent headline designed to garner attention from readers who may be members of the Class. For the Detailed Notice, Email Notice and Trade Publication Notice,

the headline is focused on business purchasers (“**If you bought butter or cheese directly from a National Milk Producers Federation Cooperatives Working Together Program Member between December 6, 2008 and July 31, 2013, you could receive a payment from a \$220 million settlement.**”) in bold text. The Local Newspaper Notice features a modified headline addressed to Class Members who are consumer purchasers (“**If you bought butter or cheese directly from a local dairy co-op store between December 6, 2008 and July 31, 2013, you could receive a payment from a class action settlement.**”) These headlines alert recipients and readers that the Notice is an important document authorized by a court and that the content may affect them, thereby supplying reasons to read the Notice.

39. The Detailed Notice provides substantial information to Class Members. The Detailed Notice begins with a summary page providing a concise overview of the important information and a table highlighting key options available to Class Members. A table of contents, categorized into logical sections, helps to organize the information, while a question and answer format makes it easy to find answers to common questions by breaking the information into simple headings.

Objections

40. The deadline for Class Members to object to the Settlement is March 17, 2020. As of February 21, 2020, I am not aware of any objections to the Settlement.

CONCLUSION

41. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice program be designed to reach

the greatest practicable number of potential Class Members. These requirements were met in this case.

42. Our notice effort followed the guidance for how to satisfy due process obligations that a notice expert gleans from the United States Supreme Court’s seminal decisions, which are: a) to endeavor to actually inform the class, and b) to demonstrate that notice is reasonably calculated to do so:

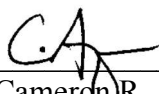
- A. “But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it,” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950).
- B. “[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) citing *Mullane* at 314.

43. The Notice Program provided the best notice practicable under the circumstances of this case, conformed to all aspects of Federal Rules of Civil Procedure Rule 23, and comported with the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed.

44. As reported above, the individual notice portion of the Notice Plan will reach approximately 85% of the identified Class. This is augmented by print and trade media and local media efforts in areas where Defendants sold directly to consumers. The Plan delivered “noticeable” Notices to capture Class Members’ attention, and provide them with information necessary to understand their rights and options.

45. The Notice Plan schedule afforded enough time to provide full and proper notice to Class Members before the objection deadline.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 25, 2020.



Cameron R. Azari, Esq.

Attachment 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

| | | |
|--------------------------------|---|------------------------------------|
| _____ |) | |
| FIRST IMPRESSIONS SALON, INC., |) | |
| <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | Case No. 3:13 –cv-00454-(NJR)(GCS) |
| |) | |
| NATIONAL MILK PRODUCERS |) | |
| FEDERATION, <i>et al.</i> , |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

**DECLARATION OF STEPHANIE J. FIERECK, ESQ. ON IMPLEMENTATION OF
CAFA NOTICE**

I, STEPHANIE J. FIERECK, ESQ., hereby declare and state as follows:

1. My name is Stephanie J. Fiereck, Esq. I am over the age of 21 and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Legal Notice Manager for Epiq Class Action & Claims Solutions, Inc. (“Epiq”), a firm that specializes in designing, developing, analyzing and implementing large-scale, unbiased, legal notification plans.

3. Epiq is a firm with more than 20 years of experience in claims processing and settlement administration. Epiq’s class action case administration services include coordination of all notice requirements, design of direct-mail notices, establishment of fulfillment services, receipt and processing of opt-outs, coordination with the United States Postal Service, claims database management, claim adjudication, funds management and distribution services.

DECLARATION OF STEPHANIE J. FIERECK, ESQ. ON IMPLEMENTATION OF CAFA NOTICE

4. The facts in this Declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues at Epiq.

CAFA NOTICE IMPLEMENTATION

5. At the direction of counsel for Agri-Mark, Inc., Dairy Farmers of America, Inc., Land O'Lakes, Inc., and National Milk Producers Federation a/k/a Cooperatives Working Together (collectively "Defendants"), 57 officials, which included the Attorney General of the United States and the Attorneys General of each of the 50 states, the District of Columbia and the United States Territories were identified to receive the CAFA notice.

6. Epiq maintains a list of these state and federal officials with contact information for the purpose of providing CAFA notice. Prior to mailing, the names and addresses selected from Epiq's list were verified, then run through the Coding Accuracy Support System ("CASS") maintained by the United States Postal Service ("USPS").¹

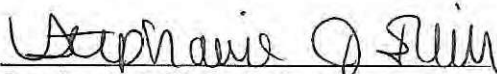
7. On December 13, 2019, Epiq sent 57 CAFA Notice Packages ("Notice"). The Notice was mailed by certified mail to 56 officials, including the Attorneys General of each of the 50 states, the District of Columbia and the United States Territories. The Notice was also sent by United Parcel Service ("UPS") to the Attorney General of the United States. The CAFA Notice Service List (USPS Certified Mail and UPS) is included hereto as **Attachment 1**.

8. The materials sent to the Attorneys General included a cover letter, which provided notice of the proposed settlement of the above-captioned case. The cover letter is included hereto as **Attachment 2**.

¹ CASS improves the accuracy of carrier route, 5-digit ZIP®, ZIP + 4® and delivery point codes that appear on mail pieces. The USPS makes this system available to mailing firms who want to improve the accuracy of postal codes, i.e., 5-digit ZIP®, ZIP + 4®, delivery point (DPCs), and carrier route codes that appear on mail pieces.

9. The cover letter was accompanied by a CD, which included the following:
 - a. Complaint and Amended Complaints;
 - b. Plaintiffs' Motion for Preliminary Approval of Class Settlement, including:
 - a. Settlement Agreement;
 - b. Co-Bank S&P Global Rating;
 - c. Co-Bank Fitch Rating;
 - d. Press Release;
 - e. Declaration of Cameron R. Azari, Esq. on Settlement Notice Plan and Notices (with attachments)
 - i. Attachment 1 – Detailed Notice;
 - ii. Attachment 2 – Email Notice;
 - iii. Attachment 3 – Trade Publication Notice;
 - iv. Attachment 4 – Banner Notices;
 - v. Attachment 5 – Local Newspaper Notice
 - f. Russell Lamb - Declaration Related to Proposed Settlement Allocation Plan; Direct Purchaser Plaintiffs' [Proposed] Plan of Allocation for the Direct Purchaser Class; and
 - c. Class Member Geographic Data Report.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
February 18, 2020.


Stephanie J. Fiereck, Esq.

Attachment 1

CAFA Notice Service List

UPS

| Company | FullName | Address1 | Address2 | City | State | Zip |
|--------------------------|--------------|-------------------------|----------|------------|-------|-------|
| US Department of Justice | William Barr | 950 Pennsylvania Ave NW | | Washington | DC | 20530 |

CAFA Notice Service List

USPS Certified Mail

| Company | FullName | Address1 | Address2 | City | State | Zip |
|------------------------------------|---------------------------|---------------------------------------|-------------------------------|----------------|-------|-------|
| Office of the Attorney General | Kevin G Clarkson | PO Box 110300 | | Juneau | AK | 99811 |
| Office of the Attorney General | Steve Marshall | 501 Washington Ave | | Montgomery | AL | 36104 |
| Office of the Attorney General | Leslie Carol Rutledge | 323 Center St | Suite 200 | Little Rock | AR | 72201 |
| Office of the Attorney General | Mark Brnovich | 2005 N Central Ave | | Phoenix | AZ | 85004 |
| Office of the Attorney General | CAFA Coordinator | Consumer Law Section | 455 Golden Gate Ave Ste 11000 | San Francisco | CA | 94102 |
| Office of the Attorney General | Phil Weiser | Ralph L Carr Colorado Judicial Center | 1300 Broadway 10th Fl | Denver | CO | 80203 |
| Office of the Attorney General | William Tong | 55 Elm St | | Hartford | CT | 06106 |
| Office of the Attorney General | Karl A. Racine | 441 4th St NW | | Washington | DC | 20001 |
| Office of the Attorney General | Kathy Jennings | Carvel State Office Bldg | 820 N French St | Wilmington | DE | 19801 |
| Office of the Attorney General | Ashley Moody | State of Florida | The Capitol PL-01 | Tallahassee | FL | 32399 |
| Office of the Attorney General | Chris Carr | 40 Capitol Square SW | | Atlanta | GA | 30334 |
| Department of the Attorney General | Clare E. Connors | 425 Queen St | | Honolulu | HI | 96813 |
| Iowa Attorney General | Thomas J Miller | 1305 E Walnut St | | Des Moines | IA | 50319 |
| Office of the Attorney General | Lawrence G Wasden | 700 W Jefferson St Ste 210 | PO Box 83720 | Boise | ID | 83720 |
| Office of the Attorney General | Kwame Raoul | 100 W Randolph St | | Chicago | IL | 60601 |
| Indiana Attorney General's Office | Curtis T Hill Jr | Indiana Government Center South | 302 W Washington St 5th Fl | Indianapolis | IN | 46204 |
| Office of the Attorney General | Derek Schmidt | 120 SW 10th Ave 2nd Fl | | Topeka | KS | 66612 |
| Office of the Attorney General | Andy Beshear | Capitol Ste 118 | 700 Capitol Ave | Frankfort | KY | 40601 |
| Office of the Attorney General | Jeff Landry | 1885 N Third St | | Baton Rouge | LA | 70802 |
| Office of the Attorney General | Maura Healey | 1 Ashburton Pl | | Boston | MA | 02108 |
| Office of the Attorney General | Brian E. Frosh | 200 St Paul Pl | | Baltimore | MD | 21202 |
| Office of the Attorney General | Aaron Frey | 6 State House Sta | | Augusta | ME | 04333 |
| Department of Attorney General | Dana Nessel | PO Box 30212 | | Lansing | MI | 48909 |
| Office of the Attorney General | Keith Ellison | 445 Minnesota St | Suite 1400 | St Paul | MN | 55101 |
| Missouri Attorney General's Office | Eric Schmitt | PO Box 899 | | Jefferson City | MO | 65102 |
| MS Attorney General's Office | Jim Hood | Walter Sillers Bldg | 550 High St Ste 1200 | Jackson | MS | 39201 |
| Office of the Attorney General | Tim Fox | Department of Justice | PO Box 201401 | Helena | MT | 59620 |
| Attorney General's Office | Josh Stein | 9001 Mail Service Ctr | | Raleigh | NC | 27699 |
| Office of the Attorney General | Wayne Stenehjem | State Capitol | 600 E Boulevard Ave Dept 125 | Bismarck | ND | 58505 |
| Nebraska Attorney General | Doug Peterson | 2115 State Capitol | | Lincoln | NE | 68509 |
| Office of the Attorney General | Gordon MacDonald | NH Department of Justice | 33 Capitol St | Concord | NH | 03301 |
| Office of the Attorney General | Gurbir S Grewal | 8th Fl West Wing | 25 Market St | Trenton | NJ | 08625 |
| Office of the Attorney General | Hector Balderas | 408 Galisteo St | Villagra Bldg | Santa Fe | NM | 87501 |
| Office of the Attorney General | Aaron Ford | 100 N Carson St | | Carson City | NV | 89701 |
| Office of the Attorney General | Letitia James | The Capitol | | Albany | NY | 12224 |
| Office of the Attorney General | Dave Yost | 30 E Broad St 14th Fl | | Columbus | OH | 43215 |
| Office of the Attorney General | Mike Hunter | 313 NE 21st St | | Oklahoma City | OK | 73105 |
| Office of the Attorney General | Ellen F Rosenblum | Oregon Department of Justice | 1162 Court St NE | Salem | OR | 97301 |
| Office of the Attorney General | Josh Shapiro | 16th Fl Strawberry Square | | Harrisburg | PA | 17120 |
| Office of the Attorney General | Peter F Neronha | 150 S Main St | | Providence | RI | 02903 |
| Office of the Attorney General | Alan Wilson | Rembert Dennis Office Bldg | 1000 Assembly St Rm 519 | Columbia | SC | 29201 |
| Office of the Attorney General | Jason Ravnsborg | 1302 E Hwy 14 Ste 1 | | Pierre | SD | 57501 |
| Office of the Attorney General | Herbert H. Slatery III | PO Box 20207 | | Nashville | TN | 37202 |
| Office of the Attorney General | Ken Paxton | 300 W 15th St | | Austin | TX | 78701 |
| Office of the Attorney General | Sean D. Reyes | Utah State Capitol Complex | 350 North State St Ste 230 | Salt Lake City | UT | 84114 |
| Office of the Attorney General | Mark R. Herring | 202 North Ninth Street | | Richmond | VA | 23219 |
| Office of the Attorney General | TJ Donovan | 109 State St | | Montpelier | VT | 05609 |
| Office of the Attorney General | Bob Ferguson | 800 Fifth Avenue | Suite 2000 | Seattle | WA | 98104 |
| Office of the Attorney General | Josh Kaul | PO Box 7857 | | Madison | WI | 53707 |
| Office of the Attorney General | Patrick Morrissey | State Capitol Complex | Bldg 1 Room E 26 | Charleston | WV | 25305 |
| Office of the Attorney General | Bridget Hill | 2320 Capitol Avenue | | Cheyenne | WY | 82002 |
| Department of Legal Affairs | Talauega Eleasalo V. Ale | Executive Office Building | 3rd Floor | Pago Pago | AS | 96799 |
| Attorney General Office of Guam | Leevin T Camacho | Administration Division | 590 S Marine Corps Dr Ste 901 | Tamuning | GU | 96913 |
| Office of the Attorney General | Edward Manibusan | Administration Bldg | PO Box 10007 | Saipan | MP | 96950 |
| PR Department of Justice | Dennise N. Longo Quinones | Apartado 9020192 | | San Juan | PR | 00902 |
| Department of Justice | Denise N. George | 34-38 Kronprindsens Gade | GERS Bldg 2nd Fl | St Thomas | VI | 00802 |

Attachment 2

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

December 13, 2019

VIA UPS OR USPS CERTIFIED MAIL

Class Action Fairness Act – Notice to Federal and State Officials

Dear Sir or Madam:

Pursuant to 28 U.S.C. § 1715, enacted as a component of the Class Action Fairness Act of 2005 (“CAFA”), Agri-Mark, Inc., Dairy Farmers of America, Inc., Land O’Lakes, Inc., and National Milk Producers Federation a/k/a Cooperatives Working Together (collectively “Defendants”) hereby provide your office with notice of a proposed settlement in the following litigation: *First Impressions Salon, Inc., et al., v. National Milk Producers Federation, et al.*, Case No. 3:13-cv-00454, pending in the United States District Court for the Southern District of Illinois.

In conjunction with this notice, please find copies of the following documents on the enclosed CD:

1. Complaint and Amended Complaints;
2. Plaintiffs’ Motion for Preliminary Approval of Class Settlement, including:
 - a. Settlement Agreement;
 - b. Co-Bank S&P Global Rating;
 - c. Co-Bank Fitch Rating;
 - d. Press Release;
 - e. Declaration of Cameron R. Azari, Esq. on Settlement Notice Plan and Notices (with attachments)
 - i. Attachment 1 – Detailed Notice;
 - ii. Attachment 2 – Email Notice;
 - iii. Attachment 3 – Trade Publication Notice;
 - iv. Attachment 4 – Banner Notices;
 - v. Attachment 5 – Local Newspaper Notice

December 13, 2019

Page 2

f. Russell Lamb - Declaration Related to Proposed Settlement Allocation Plan; Direct Purchaser Plaintiffs' [Proposed] Plan of Allocation for the Direct Purchaser Class; and

3. Class Member Geographic Data Report.

As of the date of this notice, a Final Approval Hearing has not been scheduled by the Court. At the time of the hearing, these matters may be continued without further notice. The Court has issued no final judgment or notice of dismissal as to the claims settled in the Litigation, and there are no written judicial opinions relating to the matters detailed in this notice.

If you have questions about this notice, or the enclosed materials, or if you did not receive any of the above-listed materials, please contact this office.

Very truly yours,

Notice Administrator – *First Impressions Salon, Inc., et al., v. National Milk Producers Federation, et al.*, Case No. 3:13-cv-00454, pending in the United States District Court for the Southern District of Illinois.

Enclosures

Attachment 2

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

**If you bought butter or cheese directly from
a National Milk Producers Federation Cooperatives
Working Together Program Member between December
6, 2008, and July 31, 2013, you could receive a
payment from a \$220 million settlement.**

A court authorized this notice. This is not a solicitation.

- A \$220 million settlement has been reached in a class action lawsuit brought against National Milk Producers Federation, Agri-Mark, Inc., Dairy Farmers of America, Inc., and Land O'Lakes, Inc. (collectively "Defendants"). The lawsuit claimed that an effort known as Cooperatives Working Together (CWT) operated a Herd Retirement Program that was a conspiracy to reduce milk output that violated the law. The Defendants deny doing anything wrong. The Court has not decided who is right.
- On September 29, 2017, the Court decided that the "Class" was comprised of businesses and individual consumers in the United States that purchased butter and/or cheese directly from one or more of the CWT members including the Defendants, during the period from December 6, 2008 to July 31, 2013. A notice was subsequently issued, as ordered by the Court, in which affected businesses and individual purchasers were required to submit a request for exclusion by July 30, 2018 if they did not want to stay in the Class. You cannot request exclusion from the Class at this time.
- To be a Class Member who could be eligible for a payment, you must have purchased butter or cheese made by a CWT Member. If you are a consumer, you must have purchased butter or cheese made by a CWT Member at one of the dairy co-op stores. A list of the CWT Members along with their store names and locations is provided on pages 2 and 3.
- If you are a Class Member and do not like the settlement or any part of it including the proposed attorneys' fees, you may do nothing or you may write to the Court and/or request to speak at a hearing by **April 13, 2020**.
- If the Court approves the settlement and after any resulting appeals are resolved, the Court will approve a Claim Form and set a deadline for Class Members to submit claims. In order to receive a payment, you must submit a Claim Form.
- If you received this notice in the mail, a Claim Form will be sent to you automatically and you do not need to do anything at this time to be eligible to receive a payment from the settlement.
- If you *did not* receive this Notice in the mail, and you think you are a potential Class Member, please identify yourself or your company to the Settlement Administrator as a potential Class Member by letter to the following address: Butter and Cheese Class Action, PO Box 4290, Portland, OR 97208-4290, email to: info@butterandcheeseaction.com, or register on the website, so you can obtain a Claim Form, once it is available by going to www.ButterandCheeseClassAction.com to register to be mailed a Claim Form. You will then be mailed a Claim Form after the Court approves the Claim Form and sets a deadline for Class Members to submit claims. At that time, the Claim Form will also be posted on the website.
- Your rights and options are explained in this notice.

QUESTIONS? CALL 1-855-804-8574 OR VISIT WWW.BUTTERANDCHEESECLASSACTION.COM

| YOUR RIGHTS AND OPTIONS | |
|----------------------------------|---|
| DO NOTHING | If you received this Notice in the mail, you do not need to do anything at this time to be eligible to receive a payment. Once the Court has approved the Claim Form and set a deadline for Class Members to submit claims, you will be mailed a Claim Form automatically. |
| REGISTER FOR A CLAIM FORM | If you <i>did not</i> receive this Notice in the mail, and you think you are a potential Class Member, please identify yourself or your company to the Settlement Administrator as a potential Class Member by letter to the following address: Butter and Cheese Class Action PO Box 4290, Portland, OR 97208-4290, email to: info@butterandcheeseaction.com , or register on the website, so you can obtain a Claim Form once it is available. After the Court approves the Claim Form, a Claim Form will be mailed to you. |
| OBJECT | Write to the Court about why you do not like the Settlement or any part of it, including the proposed attorneys' fees, by March 17, 2020 . |
| GO TO A HEARING | By April 13, 2020 , write to the Court to ask to speak at the Final Fairness Hearing about the Settlement. |

CWT Members

Agri-Mark, Inc.
 Arkansas Dairy Cooperative Association
 Associated Milk Producers Inc.
 Bongards Creameries
 Burke Milk Producers Cooperative, Inc.
 California Dairies Inc.
 Cass-Clay Creamery Inc.
 Champlain Milk Producers Cooperative
 Conesus Milk Producers Cooperative Association, Inc.
 Continental Dairy Products, Inc.
 Cooperative Milk Producers Association, Inc.
 Cortland Bulk Milk Producers Cooperative
 Dairy Farmers of America
 Dairylea Cooperative Inc.
 Dairymen's Marketing Cooperative Inc.
 Ellsworth Cooperative Creamery
 Empire Keystone Cooperative
 Farmers Cooperative Creamery
 First District Cooperative Association
 Foremost Farms USA
 Humboldt Creamery Association
 Jefferson Bulk Milk Cooperative, Inc.
 Just Jersey Cooperative, Inc.
 Land O'Lakes, Inc.
 Lone Star Milk Producers
 Lowville Producers Dairy Cooperative
 Magic Valley Quality Milk Producers, Inc.
 Manitowoc Milk Producers Cooperative

Maryland & Virginia Milk Producers Cooperative Association
 Massachusetts Coop. Milk Producers Fed. Inc.
 Michigan Milk Producers Association
 Mid-West Dairymen's Co.
 Mount Joy Farmers Cooperative Association
 National Farmers Organization
 North Lawrence Producers Cooperative, Inc.
 Northwest Dairy Association (Darigold)
 Oneida-Madison Milk Producers Cooperative
 Prairie Farms Dairy
 Preble Cooperative, River Valley Milk Producers Inc.
 Schoharie County Cooperative Dairies
 Seaway Bulk Milk Producers Cooperative, Inc.
 Security Milk Producers Association
 Select Milk Producers, Inc.
 Snake River Dairymen's Association
 South New Berlin Milk Cooperative, Inc.
 Southeast Milk, Inc.
 St. Albans Cooperative Creamery, Inc.
 Swiss Valley Farms, Co.
 Tillamook County Creamery Association
 United Dairy Cooperative Services, Inc.
 United Dairymen of Arizona
 Upstate Niagara Cooperative, Inc.
 Utah Dairy Farmers Cooperative
 Western Tier Milk Producers Cooperative
 Zia Milk Producers Inc.

CWT MEMBER STORES

| Store Name | City, State |
|--|----------------------|
| Foremost Farms USA Cheese Stores | Appleton, WI |
| Foremost Farms USA Cheese Stores | Chilton, WI |
| Foremost Farms USA Cheese Stores | Clayton, WI |
| Foremost Farms USA Cheese Stores | Lancaster, WI |
| Foremost Farms USA Cheese Stores | Marshfield, WI |
| Foremost Farms USA Cheese Stores | Preston, MN |
| Foremost Farms USA Cheese Stores | Reedsburg, WI |
| Foremost Farms USA Cheese Stores | Richland Center, WI |
| Bongards Retail Store | Bongards, MN |
| Perham Retail Store | Perham, MN |
| Cortland Bulk Milk Producers Cooperative - CBM Cheese Shop, LLC, "The Cheese Shop" | Cortland, NY |
| Ellsworth Cooperative Creamery | Comstock, WI |
| Ellsworth Cooperative Creamery | Ellsworth, WI |
| Jefferson Bulk Milk Cooperative - Jeff Bulk Cheese Store, Inc. "The Cheese Store" | Watertown, NY |
| Lowville Producers Dairy CO-OP, Inc. - Lowville Producers Cheese Store | Lowville, NY |
| Oneida-Madison Milk Producers Cooperative | Sherrill, NY |
| St. Albans Cooperative Creamery, Inc. - St. Albans Coop Store | St. Albans City, VT |
| Cabot Farmers' Store | Waterbury Center, VT |
| Cabot Quechee Store | Quechee, VT |
| The Cheese Cave | Faribault, MN |
| Shullsburg Creamery | Shullsburg, WI |
| Milk 'n More Store | Tempe, AZ |
| Tillamook County Creamery Association | Tillamook, OR |
| Associated Milk Producers Inc. | Arlington, IA |
| Associated Milk Producers Inc. | Blair, WI |
| Associated Milk Producers Inc. | Freeman, SD |
| Associated Milk Producers Inc. | Hoven, SD |
| Associated Milk Producers Inc. | Jim Falls, WI |
| Associated Milk Producers Inc. | New Ulm, MN |
| Associated Milk Producers Inc. | Paynesville, MN |
| Associated Milk Producers Inc. | Portage, WI |
| Associated Milk Producers Inc. | Rochester, MN |
| Associated Milk Producers Inc. | Sanborn, IA |
| Dairy Farmers of America Store | Springfield, MO |
| Dairy Farmers of America Store | Beaver, UT |
| California Dairies Inc. | Los Banos, CA |

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BASIC INFORMATION

1. WHY WAS THIS NOTICE ISSUED?

A Court has established, or “certified,” this case as a class action lawsuit. This Notice is to inform you that a \$220 million settlement has been reached. If you are a Class Member, you have legal rights and options before the Court decides whether to give final approval to the settlement. This Notice explains all of these things.

Judge Nancy J. Rosenstengel, of the United States District Court for the Southern District of Illinois (the “Court”), is currently overseeing this case. The case is known as *First Impressions Salon, Inc., et al. v. National Milk Producers Federation, et al.*, Case No. 3:13-CV-00454-NJR-GCS. The people who sued are called the Plaintiffs. The companies they sued, Agri-Mark, Inc., Dairy Farmers of America, Inc., Land O’Lakes, Inc., and National Milk Producers Federation are called the Defendants.

2. WHAT IS A CLASS ACTION?

In a class action, one or more people called “Named Plaintiffs” (in this case, First Impressions Salon, Inc., Roy Mattson, Piggly Wiggly Midwest, LLC, and KPH Healthcare Services d/b/a Kinney Drugs, Inc.) sue on behalf of people who have similar claims. All these people are a “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who previously excluded themselves from the Class.

3. WHAT IS THIS LAWSUIT ABOUT?

In the *Third Amended Consolidated Class Action Complaint* (the “*Complaint*”) (available at the website), Plaintiffs claim that from December 6, 2008 through July 31, 2013, Defendants violated the Sherman Act, 15 U.S.C. §1, and conspired and combined to limit the production of raw farm milk through premature “herd retirements” that required dairy farmers who participated in a herd retirement to remove all of the milking cows in their herds and, beginning on April 1, 2009, forego a 10% incentive payment if they wished to reenter the dairy farming business within one year. The *Complaint* alleges that the principal purpose and effect of this contract, combination and conspiracy has been to eliminate competition, significantly reduce the number of dairy farmers competing in the market and produce both short-term and long-term increases in the prices of butter and cheese. Defendants deny these claims.

4. WHY IS THERE A SETTLEMENT?

The Court has not decided in favor of the Plaintiffs or Defendants. Instead, both sides have agreed to the Settlement. By agreeing to a settlement, the parties avoid the costs and uncertainty of a trial, and if the settlement is approved by the Court, Class Members will be eligible to receive a payment from this settlement. The settlement does not mean that any law was broken or that the Defendants did anything wrong. The Defendants deny all legal claims in this case. Plaintiffs and their lawyers think the settlement is best for everyone who is affected.

WHO IS INCLUDED IN THE SETTLEMENT

5. HOW DO I KNOW IF I AM PART OF THIS?

On September 29, 2017, the Court decided that everyone who fits the following description is a Class Member:

(1) All persons and entities in the United States that purchased butter directly from one or more Members of Defendant, Cooperatives Working Together and/or their subsidiaries, during the period from December 6, 2008 to July 31, 2013 who did not timely opt-out of the Class pursuant to the Class Notice approved by the Court in its order dated May 8, 2018 and transmitted to the Class on May 31, 2018 (hereinafter referred to as “Butter Sub-Class”); and

(2) All persons and entities in the United States that purchased cheese directly from one or more Members of Defendant, Cooperatives Working Together and/or their subsidiaries, during the period from December 6, 2008 to July 31, 2013 who did not timely opt-out of the Class pursuant to the Class Notice approved by the Court in its order dated May 8, 2018 and transmitted to the Class on May 31, 2018 (hereinafter referred to as “Cheese Sub-Class”).

A notice was subsequently issued as ordered by the Court in which affected businesses and individual purchasers were required to submit a request for exclusion by July 30, 2018 if they did not want to stay in the Class.

6. CAN I REQUEST TO BE EXCLUDED FROM THE CLASS?

The Court decided that the deadline to request exclusion from the Class was July 30, 2018. Since that deadline has now passed, you cannot request exclusion from the Class at this time.

7. WHO ARE THE “MEMBERS” OF COOPERATIVES WORKING TOGETHER (CWT)?

The “Members” are the CWT producers listed on page 2.

8. HOW CAN I BE SURE I BOUGHT BUTTER OR CHEESE FROM A CWT MEMBER?

In order to be a Class Member, you must have bought butter and/or cheese directly from one of the CWT members listed on page 2.

9. IF I BOUGHT BUTTER OR CHEESE JUST FOR MYSELF COULD I BE A CLASS MEMBER?

Yes. Though most Class Members are larger entities, some butter and cheese products were sold at CWT co-op stores directly to individual consumers. A list of CWT Member stores and their locations is provided on page 3.

10. I’M STILL NOT SURE IF I AM INCLUDED IN THE CLASS.

If you are still not sure whether you are included in the Class, you can visit the website www.ButterandCheeseClassAction.com, call toll free 1-855-804-8574, or write to Butter and Cheese Class Action Administrator, P.O. Box 4290, Portland, OR 97208-4290, for more information.

QUESTIONS? CALL 1-855-804-8574 OR VISIT WWW.BUTTERANDCHEESECLASSACTION.COM

THE SETTLEMENT BENEFITS

11. WHAT DOES THE SETTLEMENT PROVIDE?

As part of the settlement, the National Milk Producers Federation will deposit \$220 million into a Settlement Fund. These monies will be deposited in installments over approximately the next four years as described in detail in the Settlement Agreement, which is posted on the website.

The settlement provides that payments to Class Members will be allocated as follows:

- 37% to the Butter Sub-Class, and
- 63% to the Cheese Sub-Class.

Payments to Class Members will be comprised of the \$220 million plus applicable accrued interest, minus the following: attorneys' fees and expenses, payments to the Named Plaintiffs, notice costs, administration costs, and taxes. For more information on attorneys' fees and payments to the Named Plaintiffs, *see* "The Lawyers Representing the Class," below.

12. HOW CAN I GET A PAYMENT FROM THE SETTLEMENT?

If the Court approves the settlement (*see* "The Court's Fairness Hearing" below) and any resulting appeals are resolved, the Court will approve a Plan of Distribution including a Claim Form and a deadline for Class Members to submit claims. In order to get a payment from the settlement, you must submit a Claim Form.

To be a Class Member who could be eligible for a payment, you must have purchased butter or cheese made by a CWT Member. If you are a consumer, you must have purchased butter or cheese made by a CWT Member at one of the dairy co-op stores. The list of CWT Members along with their store names and locations is provided on pages 2 and 3.

If you received this notice in the mail, a Claim Form will be sent to you automatically and you do not need to do anything at this time to be eligible to receive a payment from the settlement in the future.

If you did not receive this notice in the mail, and you think you are a potential Class Member, please identify yourself or your company to the Settlement Administrator as a potential Class Member by letter to the following address: Butter and Cheese Class Action, PO Box 4290, Portland, OR 97208-4290, email to: info@butterandcheeseaction.com, or register on the website, so you can obtain a Claim Form once it is available. You will then be mailed a Claim Form once the Court has approved the Plan of Distribution. The Claim Form will also be posted on the website at that time.

THE LAWYERS REPRESENTING THE CLASS

13. DO I HAVE A LAWYER IN THIS CASE?

The Court appointed as Co-Lead Class Counsel: Don Barrett of Barrett Law Group, Lexington, Mississippi, Dianne M. Nast of NastLaw LLC, Philadelphia, Pennsylvania, and Michael L. Roberts of Roberts Law Firm, P.A., Dallas, Texas to represent you. You do not have to pay Class Counsel out of your own pocket. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

14. HOW WILL THE LAWYERS BE PAID?

The Court will be asked to approve attorneys’ fees of up to 33.33% of the \$220 million Settlement Fund plus interest and reimbursement of the attorneys’ expenses. The Court will also be asked to approve payments to the Named Plaintiffs for their service on behalf of the entire Class. These payments to Class Counsel and the Named Plaintiffs will be made from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

15. HOW DO I OBJECT TO THE SETTLEMENT?

If you are a Class Member, you can object to any part of the Settlement, including the request for attorneys’ fees and expenses and payments to the Named Plaintiffs.

To object to the Settlement, you must send a letter with the following information:

- Your name and address and the name and address of your attorney, if you have hired one.
- Case name and number:
First Impressions Salon, Inc., et al. v. National Milk Producers Federation, et al.
 Case No. 3:13-CV-00454-NJR-GCS
- The specific reasons why you object to the settlement or any part of it.
- All documents or writings that you want the Court to consider.

You must mail your objection to the following addresses **postmarked by March 17, 2020**:

| CLERK OF THE COURT | CO-LEAD CLASS COUNSEL | NATIONAL MILK’S COUNSEL |
|--|---|---|
| Clerk, U.S. District Court Southern District of Illinois 750 Missouri Avenue East St. Louis, IL 62201 | Michael L. Roberts Roberts Law Firm 1920 McKinney Ave., 7th Floor Dallas, TX 75201 | Jonathan B. Sallet Attorney At Law 1101 Connecticut Ave NW Suite 450 Washington, DC 20036 John Kavanagh Steptoe & Johnson, LLP 1330 Connecticut Ave NW Washington, DC 20036 |

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement and any requests for fees and expenses (“Fairness Hearing”).

16. WHEN WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court has scheduled a Fairness Hearing on **April 27, 2020, at 1:30 p.m.**, at the United States District Court Southern District of Illinois, Courtroom 3, 750 Missouri Avenue East, St. Louis, IL

62201. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.ButterandCheeseClassAction.com, for updates.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court may also consider the requests by Class Counsel for attorneys' fees and expenses and for payments to the Named Plaintiffs. If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the Settlement. It is unknown how long these decisions will take.

Any judgment issued by the Court will be binding on the Class. The Settlement, if approved by the Court and once any appeals are resolved, will release all claims in the class action. The specific release of claims is provided in the Settlement Agreement, which can be found on the website.

17. DO I HAVE TO ATTEND THE HEARING?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend the hearing at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you submitted your written objection on time, to the proper addresses, and it complies with the other requirements provided above, the Court will consider it. You also may pay your own lawyer to attend the hearing, but this is not necessary.

18. MAY I SPEAK AT THE HEARING?

If you have properly submitted an objection (*see* "Objecting to the Settlement, above), you may ask the Court for permission to speak at the Final Approval Hearing about the reasons you do not like the Settlement, or any part of it.

Any Class Member who wishes to appear at the Final Approval Hearing must file with the Clerk of the Court a "Notice of Intention to Appear," which must be received by **April 13, 2020**, with copies sent to the counsel addresses listed in Question 15 above.

GETTING MORE INFORMATION

19. HOW DO I GET MORE INFORMATION?

Visit the website at www.ButterandCheeseClassAction.com, where you will find the Settlement Agreement, Preliminary Approval Order, Memorandum and Order certifying the Class, the *Complaint*, and the Defendant's Joint Answer to Plaintiffs' Third Amended Consolidated Class Action Complaint. You may also call toll-free at 1-855-804-8574 or write to Butter and Cheese Class Action Administrator, P.O. Box 4290, Portland, OR 97208-4290 or send an email to info@ButterandCheeseClassAction.com.

Attachment 3

From: mail@msgbsvc.com on behalf of noreply_butterandcheeseaction
Sent: Tuesday, February 04, 2020 12:01 PM
To:
Subject: HTML Sample -- Butter and Cheese Class Action, Case No. 3:13-CV-00454-NJR-GCS (S.D. Ill.)

CAUTION: This email originated from outside of Epiq. Do not click links or open attachments unless you recognize the sender and know the content is safe.

If you bought butter or cheese directly from a National Milk Producers Federation Cooperatives Working Together Program Member between December 6, 2008, and July 31, 2013, you could receive a payment from a \$220 million settlement.

A court authorized this notice. This is not a solicitation.

What is the lawsuit about?

A \$220 million settlement has been reached in a class action lawsuit brought against National Milk Producers Federation, Agri-Mark, Inc., Dairy Farmers of America, Inc., and Land O'Lakes, Inc. (collectively "Defendants"). The lawsuit claimed that an effort known as Cooperatives Working Together (CWT) operated a Herd Retirement Program that was a conspiracy to reduce milk output that violated the law. The Defendants deny doing anything wrong. The Court has not decided who is right.

You are receiving this email because you may be a Class Member.

On September 29, 2017, the Court decided that the "Class" was comprised of businesses and individual consumers in the United States that purchased butter and/or cheese directly from one or more of the CWT Members, including the Defendants, during the period from December 6, 2008, to July 31, 2013. A notice was subsequently issued, as ordered by the Court, in which affected businesses and individual purchasers were required to submit a request for exclusion by July 30, 2018, if they did not want to stay in the Class. You cannot request exclusion from the Class at this time.

To be a Class Member who could be eligible for a payment, you must have purchased butter and/or cheese made by a CWT Member. If you are a consumer, you must have purchased butter and/or cheese made by a CWT Member at one of the dairy co-op stores. Go to www.ButterandCheeseClassAction.com for a list of the CWT Members along with their store names and locations.

What does the Settlement provide?

As part of the settlement, the National Milk Producers Federation will deposit \$220 million into a Settlement Fund. These monies will be deposited in installments over approximately the next four years as described in detail in the Settlement Agreement, which is posted on the [website](#).

The settlement provides that payments to Class Members will be allocated as follows:

- 37% to the Butter Sub-Class, and
- 63% to the Cheese Sub-Class.

Payments to Class Members will be comprised of the \$220 million plus interest, minus the following: attorneys' fees and expenses, payments to the Named Plaintiffs, notice costs, administration costs, and taxes.

How can I get a payment from the Settlement?

If the Court approves the settlement, and any resulting appeals are resolved, the Court will approve a Plan of Distribution including a Claim Form and a deadline for Class Members to submit claims. In order to get a payment from the settlement, you must submit a Claim Form. A Claim Form will be sent to you automatically and you do not need to do anything at this time to be eligible to receive a payment from the settlement in the future. Once the Court has approved the Plan of Distribution, the Claim Form will be posted on the [website](#).

What are your options?

If you are a Class Member, you do not need to do anything at this time to be eligible to receive a payment. Once the Court has approved the Claim Form, a deadline will be set for Class Members to submit claims. As a Class Member, you will be bound by all orders and judgments of the Court. Unless you want to object to the Settlement, **YOU DO NOT HAVE TO DO ANYTHING NOW**.

If you are a Class Member, you can object to any part of the Settlement, including the request for attorneys' fees and expenses and payments to the Named Plaintiffs. Instructions for objecting can be found at the [website](#) or by calling the toll-free number below. You must mail your objection postmarked by **March 17, 2020**.

The Court will hold a Fairness Hearing on **April 27, 2020**, to decide whether to approve the Settlement and any requests for fees and expenses. The Court will be asked to approve attorneys' fees of up to 33.33% of the \$220 million Settlement Fund plus interest and reimbursement of the attorneys' expenses. The Court will also be asked to approve payments to the Named Plaintiffs for their service on behalf of the entire Class. These payments to Class Counsel and the Named Plaintiffs will be made from the Settlement Fund. If there are objections, the Court will consider them at the hearing. You do not need to attend the hearing. If you wish to appear at the hearing, you must file a "Notice of Intention to Appear" with the Court and you may hire your own attorney to appear in Court for you at your own expense. Detailed information is available at the [website](#) and by calling 1-855-804-8574.

Please note: This email message was sent from a notification-only address that cannot accept incoming email. Please do not reply to this message

If you would prefer not to receive further messages from this sender, please [Click Here](#) and confirm your request.

Attachment 4

IR Document 5301 Filed 02/26/20 Page 43

If you bought butter or cheese directly from a National Milk Producers Federation Cooperatives Working Together Program Member between December 6, 2008 and July 31, 2013, you could receive a payment from a \$220 million settlement.

What is the lawsuit about? A \$220 million settlement has been reached in a class action lawsuit brought against National Milk Producers Federation, Agri-Mark, Inc., Dairy Farmers of America, Inc., and Land O'Lakes, Inc. (collectively "Defendants"). The lawsuit claimed that an effort known as Cooperatives Working Together (CWT) operated a Herd Retirement Program that was a conspiracy to reduce milk output that violated the law. The Defendants deny doing anything wrong. The Court has not decided who is right.

Who is included? The Court decided that the Class includes all persons and entities in the United States that purchased butter and/or cheese directly from one or more Members of Defendant, Cooperatives Working Together and/or their subsidiaries, during the period from December 6, 2008 to July 31, 2013 who did not timely opt-out of the Class. Those that are included are called "Class Members." To be a Class Member who could be eligible for a payment, you must have purchased butter or cheese made by a CWT Member. If you are a consumer, you must have purchased butter or cheese made by a CWT Member at one of the dairy co-op stores. Go to the website for a list of CWT Members along with their store names and locations.

What does the settlement provide? The settlement provides that payments to Class Members will be allocated: 37% to the Butter Sub-Class, and 63% to the Cheese Sub-Class. Total payments will be \$220 million plus interest, minus: attorneys' fees and expenses; payments to the Named Plaintiffs; notice and administration costs; and taxes.

What are your options? If you are a Class Member who received emailed or mailed Notice, you do not need to do anything at this time to be eligible to receive a payment. Once the Court has approved the Claim Form, a deadline will be set for Class Members to submit claims. If you received a Notice in the mail, you will be mailed a Claim Form automatically.

If you *did not* receive a Notice in the mail, and you think you are a potential Class Member, please identify yourself or your company to the Settlement Administrator as a potential Class Member by letter to the following address: Butter and Cheese Class Action, PO Box 4290, Portland, OR 97208-4290, email to: info@butterandcheeseaction.com, or register on the website, so you can obtain a Claim Form, once it is available. As a Class Member, you will be bound by all orders and judgments of the Court. Unless you want to object to the settlement, **YOU DO NOT HAVE TO DO ANYTHING NOW.**

Instructions for objecting can be found at the website or by calling the toll-free number below. You must mail your objection postmarked by **March 17, 2020**. The Court will hold a Fairness Hearing on **April 27, 2020**, to decide whether to approve the Settlement and any requests for fees and expenses. If there are objections, the Court will consider them at the hearing. You do not need to attend the hearing. If you wish to appear at the hearing, you must file a "Notice of Intention to Appear" with the Court and you may hire your own attorney to appear in Court for you at your own expense. Detailed information is available at the website and toll-free number listed below.

1-855-804-8574

www.ButterandCheeseClassAction.com