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"We pledge to thoroughly and immediately review and study each of the issues that impact the price of milk paid to producers in order to determine and facilitate needed changes that may be required to reach our stated purpose of producer profitability, for now and in the future."

NATIONAL DAIRY PRODUCERS ORGANIZATION, INC.

Producer's Voice

March 2016

www.NationalDairyProducersOrganization.com

My Banker Gets It

We presently have increasing milk production, decreasing culling and \$13/cwt milk. How about decreasing milk production, increasing culling and \$24/cwt milk? My banker says it's a no brainer – even dairy farmers should get it!

It's Been said

It's been said that the U.S. dairy farmer will never voluntarily reduce the amount of milk being made.

It's been said that the historical loss of hundreds of thousands of U.S. dairy farmers proves that the U.S. dairy farmer would rather go broke than reduce the amount of milk that he can make.

It's been said that the U.S. dairy farmer would never balance the milk supply with profitable demand.

Who says this? The management of the dairy farmer owned co-ops, that's who.

NDPO says most of the remaining, surviving dairy farmers disagree and that they are smart enough to survive by:

- (1) balancing the milk supply with profitable demand
- (2) replacing the management of dairy farmer owned co-ops who do not work for the benefit of the dairy farmer owner member; and
- (3) increasing the demand for U.S. made milk through NDPO's 100% USA milk trademark.

Many dairy farmers have been mentally "conditioned" by co-op leadership to continue increasing milk production at the same time defying the economic principals of supply and demand. Join NDPO and help us get this ship back on course, an application can be found on our webpage at www.NationalDairyProducersOrganization.com or feel free to give us a call at (949)375-4450.

Bob Krucker
NDPO Board Member

Tuesday National Calls:
8 PM East – 5 PM West
Live Calls: (712)775-7035
Recorded Calls: (712)775-7039
Access Code: 330090#

NDPO organizing opposition to revised DFA/DMS settlement of Northeast Lawsuit Seeks stronger reforms, oversight, cost-pricing

By SHERRY BUNTING, Special for Farmshine

BROWNSTOWN, Pa. -- As the U.S. District Court in Burlington, Vermont prepares the next steps for approval of the revised DFA/DMS settlement in the now 7-year-old Northeast Antitrust Lawsuit, the National Dairy Producers Organization (NDPO) has begun an educational campaign for grassroots dairy producers who may wish to oppose it in writing as part of an organized opposition to be presented to Chief Justice Christina Reiss in May.

NDPO has set an ambitious goal to reach out to members and peers to gather thousands of signatures and notes by April 15, 2016 in order to “bring the voice of dairy producers into the court proceedings,” as NDPO president Mike Eby describes it. (NDPO’s letter / petition appears in this week’s Farmshine).

Eby, a Gordonville, Pa. dairy producer and businessman, is also chartering a bus to transport dairy producers to Vermont when the signatures of opposition are presented on May 13. The bus will leave Pennsylvania late on May 12 and return late on May 13.

In an email interview with Farmshine late last week, Eby noted that NDPO’s concerns go well beyond the \$50 million monetary portion of the DFA / DMS revised settlement. While this would average out to \$4000 per eligible producer depending on each individual dairy farm’s eligible milk production (produced and pooled in the Northeast Order from 2002 through 2014), Eby notes that the amount is “grossly inadequate.”

Dean Foods previously settled its portion of the lawsuit for \$30 million and agreed to change some of its milk sourcing patterns.

Both Dean Foods in its earlier settlement and DFA/DMS in its revised settlement have admitted no wrongdoing.

More significant than the “inadequate compensation” for alleged anticompetitive behavior, says Eby, are the inadequacies NDPO finds in the other key points of the settlement, which are aimed at reforming the alleged anticompetitive way DFA/DMS does business.

The 2009 lawsuit stems from the allegations by what became two subclasses of plaintiffs (dairy producers in and outside of the DFA co-op) over the Dean Foods and DFA/DMS alleged monopoly of the Northeast milk market via anticompetitive actions that allegedly went beyond the protections of the Capper Volstead Act’s provisions for farmers to legally work together to market their milk as cooperatives.

The Class I market is the goal where the highest points are scored in this Federal Order Milk Market game, and the individual producers and small co-ops of the Northeast are defending their regional goal versus the nationalized ‘power-play’ aiming to put that ‘biscuit in the basket’ ... as they say in hockey.

NDPO apparently seeks to take on an all-out ‘butterfly’ goal defense in the hopes of putting dairy farmers back on an even playing-ice in terms of milk marketing.

The issue at hand is whether or not each individual producer, who produced and pooled Grade A milk in Federal Milk Marketing Order One between 2002 and 2014, will take the time to review the terms of the proposed settlement at www.northeastdairyclass.com, and whether they will consider the points of NDPO, which is officially opposing the settlement.

Instead of opposing it simply as an organization, NDPO is seeking to educate producers to present a collective voice backed by signatures.

NDPO’s petition platform describes the concern this way: “DFA, acting with other organizations through combinations and agreements, is a primary organizing, controlling structure for the collection, disbursement and processing of raw milk in the U.S.”

The petition further explains that, “In the past some dairy farmers have sought help from politicians and the Department of Justice (DOJ)... but none have succeeded.”

Case in point, extensive DOJ hearings were held in 2009-11 on agriculture antitrust issues, and specifically dairy, but nothing transpired.

NDPO states that, “this is the dairy producer’s opportunity to tell the U.S. District Court in Vermont that it should not allow the existing DFA management to continue to simply buy its way out of (alleged) wrong doing and continue on with business as usual.”

Here are NDPO’s main points of contention about the proposed settlement offered by DFA / DMS. The settlement, purportedly agreed to by counsel for the two subclasses of dairy farmer plaintiffs, will come up before Judge Reiss this spring. The previous proposed settlement was denied in April of 2015.

Specifically, NDPO notes that the proposed conduct elements of the settlement are inadequate and that “a pricing provision should be added to ‘supply agreements’ that would reflect the average total cost of producing milk.”

In addition, NDPO wants to see a prohibition on Bloc Voting so that future voting would represent the position of three-quarters of the individual voting member-owners of Defendant DFA.

NDPO also seeks a more complete release of information and DFA financials to member-owners and that the monitoring compliance and antitrust compliance provisions of the proposed settlement be strengthened.

Moreover, NDPO would like the Court to grant oversight and an opportunity to the co-op dairy farmer member-owners to revise the co-op goals to benefit the farmer-members, and an opportunity to remove and replace current management.

The legal rights of dairy producers who produced and pooled milk in Federal Order One from 2002 to 2014 are affected whether or not they act to accept or oppose the settlement, according to information at the class action website that is supervised by the Court and administered by a notice administration firm that handles posting lawsuit updates from the Court.

Any producers who have questions about the settlement itself, should visit www.northeastdairyclass.com, call toll-free 1.855.460.1533 or email info@northeastdairyclass.com.

Producers who want to know more about NDPO’s opposition to the settlement or who want to sign the petition, should visit www.nationaldairyproducersorganization.com, or contact Mike Eby at meby@wdac.com. To reserve a seat on the bus headed for Vermont May 12-13, or for more information please contact Mike Eby at [717-799-0057](tel:717-799-0057).

To-date, DFA has offered no public statement on the revised settlement.

LETTER OF OPPOSITION

To: Dairy Farmers who produced and pooled Grade A Milk in the Federal Milk Marketing Order 1 between 2012 and 2014

Allen V. Dairy Farmers of America Inc. Case No. 5:09-cv-230-cr

DFA acting with other organizations through combinations and agreements, is a primary organizing, controlling structure for the collection, disbursement, and processing of raw milk in the US...

Many have concluded that the management of DFA have obtained huge monetary benefit at the expense of the U.S. dairy farmer and are a significant reason why the U.S. dairy farmer is not receiving a profitable price for milk.

In the past, some dairy farmers have sought help from politicians and the Department of Justice in an effort to remove DFA management, but none have succeeded.

The management of DFA is now before the Vermont District Court arguably admitting management wrong doing to and on behalf of the co-ops many dairy farmer owner-members through their proposed settlement offer.

Over the years the management of dairy organizations have been able to avoid consequences for their actions simply by offering monetary settlements using dairy farmer owner member money.

You now have an opportunity to tell the Vermont Court that it should NOT allow the existing DFA management to continue to simply buy it's way out of it's wrong doings and continue on with "business as usual".

This is your opportunity to exercise your judicial right to tell the Court that more importantly than a monetary payment (which primarily benefits the attorneys) the Court should allow the claims of wrong doing to be fully litigated at the trial resulting in appropriate remedies to prevent continued wrong doings by DFA management.

In the alternative, should the Court decide to allow a settlement in this matter, the provisions contained in the proposed "Memorandum of Law" together with the included Exhibits A through E must be revised to address and correct the following inadequacies.

- (1) The proposed Monetary Payment by settling defendants of an aggregate sum of fifty million dollars (the "settlement amount") which pursuant to Exhibit E will provide the average payment per farmer is estimated to be approximately \$4000 is totally inadequate to compensate Plaintiff class membership for the monetary damages caused by Defendants wrong doing.
- (2) Proposed Conduct Elements are Totally inadequate to prevent continued wrong doings by Defendants management or benefit Plaintiffs co-op member owners. Specifically and in part:
 - (a) A pricing provision should be added to the "Supply Agreements" section (Paragraph 7.2 (a) similar to the following: "Notwithstanding anything to the contrary contained in the paragraph 7.2 (a) of Exhibit A, any new and renewed agreements during which the "Conduct period" for any sale of raw Grade A milk to customers shall be at a price NOT LESS THAN the average total cost of producing the milk as reported monthly by USDA NASS
 - (b) The Establishment of two farmer Representative positions: Advisory Council member and Farmer ombudsperson (paragraph 7.2 (d) of Exhibit A, pages 17- 27) regarding the appointments of, goals, right and duties, etc. are all inadequate to prevent continued wrong doings by defendants.
 - (c) The BLOCK VOTING provisions (paragraph 7.2 (h) of Exhibit A, pages 31-32) should be expressly prohibited. Rather all Defendant voting should be achieved only by ¾ approval by individual Defendant membership voting.
 - (d) The Release of information and DFA Financial information provisions contained in paragraphs 7.2 (i) and (j), pages 32-34 of Exhibit A, are all inadequate to prevent continued wrong doing by Defendants.
 - (e) The Monitoring Compliance and Antitrust compliance provisions contained in paragraphs 7.2 (L) and (O), pages 34-35 of Exhibit A, are all inadequate to prevent continued wrong doing by Defendants.

When you have hundreds of co-op management working in concert for their own best interests and against the best interests of the dairy farmer member owners, then appointing a couple of people as listening posts with no real authority to look out for the dairy farmer is a sham.

That is why the proposed settlement will not prevent further management wrong doing nor will it benefit the dairy farmer co-op owners.

However, if the Court were to grant oversight and an opportunity to the co-op dairy farmer owner members to revise the co-op goals and policies to benefit the dairy farmer owners and an opportunity to remove and replace existing co-op management then the continued wrong doing by the Defendants might possibly be stopped.

If the Court fails to provide this opportunity for oversight and meaningful change then the result will simply be a monetary expenditure of dairy farmer money for attorney fees and the continuation of wrong doing by Defendants as business as usual.

The judge should not let herself or her court be used by the Defendants to perpetuate a sham.

Should you wish to convey the above thoughts to the court and/or object to the proposed settlement and a request by the Class lawyers for the one-third of the settlement amount (\$16.66 million) in attorneys' fees, plus costs, expenses, and incentive fees of up to \$20,000 for each of the dairy farms that brought the lawsuit, You may sign this document and forward it to the court in accordance with its instructions.

OR

Prior to April 15, 2016 provide the following requested information and return this entire document to Mike Eby at:

Mike Eby
459 Queen Road
Gordonville, PA 17529

Who will then forward it to the court.

If you wish, you or your own lawyer may ask to appear and speak at the hearing on May 13, 2016 at your own cost. You can get more information at www.NorthEastDairyClass.com; by calling 1-855-460-1533; or by writing to: Northeast Dairy Farmer Class, C/O Rust Consulting, Inc., PO Box 2958, Faribault, MN 55021-2958

Your Name:

Address:

Signature:

Date Signed:

Telephone Number:

Provide below a brief statement regarding your milk sales and any cooperative status or affiliation:

Disclaimer:

This document format example is only intended to assist the dairy farmer in voicing objection to the proposed settlement and does not purport to convey legal advice nor does the NDPO know whether this letter of objection will be acknowledged or acceptable to the court even if you mail it in a timely manner to the appropriate parties designated by the court.

Vermont Class Action Lawsuit Update

As heard on Dairyline with Mike Eby

Dairyline: Mike, NDPO is a national organization with producers all across the country, but you are focusing on Vermont this month.

Mike: Thanks for having me on; we are a national producer organization and represent dairy producers and seek their best interest, as well as show by example how to take back control of our milk processing cooperatives. I wanted to bring everyone up to speed on the class action lawsuit involving DFA and DMS. We as class members have been following what's been going on in the Northeast. It has proceeded to the point where class council has proposed a settlement to the judge seeking preliminary approval. The judge has set a hearing date, of May 13th. This case in particular was an anti-trust issue and has been six years in the making.

Dairyline: How long is this going to drag on?

Mike: As a class member, I believe that this should go to trial. We would then be able to hold accountable the actions of the cooperatives – that we feel have internally wronged their own dairy farmer members. So, this is the third time that the settlement has being proposed. The settlement hasn't really changed from the first time it was submitted. There were a few alterations to potentially make us happy as dairy producers, throwing in a few extra things. But the money amount really hasn't changed. It started out at \$50 million, and it continues today at \$50 million. That comes down to about \$4000.00 per farmer, if 8,000 farmers would submit claims.

Dairyline: Which is not much?

Mike: Well, you figure the case started in December of 2002. So in that window, \$4000.00 doesn't come anywhere close to sustained losses that we as dairy producers have faced because of the defendants alleged actions.

Dairyline: It will be interesting to see where this all ends up in Vermont?

Mike: It is the NDPO's desire that all 9000 dairy farmers within the NE educate themselves and take a position on this very important issue. If not for yourself, do it for the next generation.

Dairyline: Mike Eby is a Pennsylvania dairy producer and chairman of the National Dairy Producers Organization. More info at www.NationalDairyProducersOrganization.com



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Vermont Court Class Represented Dairy Farmers
Let your voice be heard! Only one signature required!
See inside!