

Plaintiffs accordingly request entry of the Proposed Order, attached as Exhibit A, which approves and authorizes the distribution of the proceeds from the fourth Dean settlement payment the same as the previously approved Distribution Plan, with one adjustment, and authorizes the following actions by Subclass Counsel, Rust, and the Escrow Agent to distribute the settlement proceeds:

1. Approve the plan to distribute the proceeds from the fourth Dean settlement payment according to the claimants' *pro rata* shares of class eligible milk volume based on each claimant's reported production of class eligible milk as calculated and determined by Rust and specified in Exhibit B-1 to the July 15, 2015 Affidavit of Scott Exley ("Exley Affidavit"), attached as Exhibit B;

2. Approve an adjustment to the Distribution Plan so the Subclass member who submitted a claim after the applicable deadline, listed in Exhibit B-2 to the Exley Affidavit, will receive a *pro rata* share of proceeds from the fourth (and subsequent) Dean settlement payment;

3. Approve the request to pay the Escrow Agent \$2,000.00 out of the funds from the fourth Dean settlement payment as payment for the Escrow Agent's fees and expenses for administering the escrow account;

4. Approve the request to pay Rust \$82,299.22 out of the funds from the fourth Dean settlement as payment for Rust's fees for administering the third and fourth Dean settlement payments as explained in the Exley Affidavit;

5. Authorize Class Counsel at Baker & Hostetler LLP to direct the Escrow Agent to disburse attorneys' fees in the amount of \$6,666,666.66, which is the proportional amount of the attorneys' fee previously awarded by the Court, to the bank account designated by Baker & Hostetler LLP in the escrow agreement;

6. Approve the Net Settlement Fund of \$12,101,579.52, which is the total amount of funds from the fourth Dean settlement payment with interest, adjusted to reflect the reduction for milk volume of farmers who opted out of the Subclasses, and net the previously approved fees for Counsel and the Escrow Agent, and Rust's fees and expenses as requested herein;

7. Authorize Class Counsel at Baker & Hostetler LLP to direct the Escrow Agent to transfer the Net Settlement Fund of \$12,101,579.52 to the bank account designated by Rust in the escrow agreement to facilitate Rust's distribution of the funds to the eligible class members; and

8. Authorize Rust to effectuate the payment and distribution of the proceeds from the fourth Dean settlement payment directly to the eligible claimants listed on Exhibit B-1 to the Exley Affidavit and in the *pro rata* portions specified therein.

I. BACKGROUND

A. The Dean Settlement Payments

The agreement with Dean requires it to pay \$140,000,000, before adjustments, into a settlement fund over approximately four years. (*See* 7/12/11 Motion for Preliminary Approval, Ex. A at ¶ 7.1, Dkt. 1603-1.) Dean made an initial payment of \$60,000,000 in February 2012 and two of four annual \$20,000,000 “deferred payments” in June 2013 and June 2014. These payments were distributed to the Subclasses pursuant to the Distribution Plan approved by the Court. (*See* Dkts. 1921, 1964, 2007.) In June 2015, Dean made its third deferred payment, adjusted to \$18,852,545.40 to reflect opt-outs from the Subclasses,¹ which Plaintiffs presently seek permission to distribute.

¹ Based on the Court's guidance, Plaintiffs and Dean agree the total opt-out reduction is \$4,589,818.40 (*see* Dkt. 1980), of which \$1,147,454.60 is deducted from Dean's June 2015 deferred payment (*see* 2/6/14 Friedman to Brewer and Foix letter).

B. The Court Previously Approved the Distribution Plan as Fair, Reasonable, and Adequate

On January 8, 2013, the Court determined that Plaintiffs' proposal for distribution of the Dean settlement funds to eligible claimants on a *pro rata* basis is fair, reasonable, and adequate and the Court authorized Rust to allocate and distribute settlement payments as calculated by Rust and presented in the Distribution Plan. (*See* Dkt. 1921.)² Rust subsequently distributed the proceeds from the three prior Dean settlement payments according to the Plan.

C. The Calculation of the Proceeds for Distribution from the Fourth Dean Settlement Payment

Using the same procedure previously approved by the Court, Rust calculated that the proceeds for distribution to eligible claimants from the fourth Dean settlement payment is \$12,101,579.52 (the "Net Settlement Fund"). (*See* Exley Affidavit at ¶ 12.) Rust's calculation starts with \$18,852,545.40, which is the total amount of the fourth Dean payment deposited into escrow, adjusted for opt-outs, plus interest. (*See id.* at ¶ 13.) Rust then subtracted attorneys' fees in the amount of \$6,666,666.66, which is the proportionate installment amount of the total attorneys' fees previously approved by the Court. (*See id.*; 7/11/12 Order, Dkt. 1897 at 9, n.5.) Rust also subtracted Escrow Agent fees in the amount of \$2,000.00 previously approved by the

² Plaintiffs previously explained the steps taken to prepare the Distribution Plan, *i.e.*, determination of eligible claimants and calculation of their *pro rata* allocation of settlement proceeds. (*See* 1/4/13 Motion to Distribute Settlement Funds, Dkt. 1919.) In sum, Rust received and reviewed 7,363 claim forms to confirm whether they were timely, complete, and valid (*see id.* at 4-6); Rust sought additional information from claimants (*see id.*); Rust conducted an audit of the milk volumes stated in the claim forms (*see id.* at 6-7); Rust determined the amount of the settlement proceeds to be allocated to each eligible claimant utilizing a database with information from the claim forms and other sources (*see id.* at 9-10); and Rust calculated each eligible claimant's payment as a percentage of the total class eligible milk volume (*see id.*).

Court (*see* Exley Affidavit at ¶ 13; 2/14/12 Order at ¶ 19, Dkt. 1782) and Rust’s requested fees in the amount of \$82,299.22 (*see* Exley Affidavit at ¶¶ 13, 15-25).³

In addition, using the same procedure previously approved by the Court, Rust calculated the distribution amount to each eligible claimant from the fourth Dean settlement payment. This calculation assumes the Court approves the requested fees for Rust and the proposed adjustment to the Distribution Plan described below. Exhibit B-1 is a schedule of each claimant’s *pro rata* portion of the Net Settlement Fund and includes the one late claimant identified on Exhibit B-2. For privacy reasons, the claimants are identified by claim number only.

II. DISTRIBUTION OF THE FOURTH DEAN SETTLEMENT PAYMENT ACCORDING TO THE PREVIOUSLY APPROVED DISTRIBUTION PLAN, WITH ONE ADJUSTMENT, IS FAIR, REASONABLE, AND ADEQUATE

The distribution proposed here is the same Distribution Plan the Court previously approved as fair, reasonable, and adequate because it reimburses class members based on the type and extent of their injuries. *See, e.g., In re Packaged Ice Antitrust Litig.*, 2011 U.S. Dist. LEXIS 150427, at *65 (E.D. Mich. Dec. 13, 2011) (“Courts generally consider plans of allocation that reimburse class members based on the type and extent of their injuries to be reasonable”) (quotations omitted). This proposed distribution, therefore, should be approved for same reasons the prior distributions were approved – *i.e.*, the settlement funds will be distributed to eligible class members according to the volume of milk they sold during the class period.⁴

³ Rust will, of course, modify the calculation of the Net Settlement Fund to accord with the Court’s ruling as to Rust’s requested fees.

⁴ Plaintiffs allege class members would have been paid more for their milk produced and sold in Orders 5 and 7 during the class period absent Defendants’ anticompetitive conduct. (*See, e.g.*, 8/4/08 Complaint at ¶¶ 1-4, Dkt. 111.) The amount of price suppression sustained by each class member is directly proportionate to the amount of the class member’s milk produced and sold in Orders 5 and 7.

Plaintiffs propose one minor adjustment to the previously approved Distribution Plan to allow payment for one small late claim. Rust received a claim after the May 1, 2012 deadline and after the Court's approval of the most recent distribution. (*See* Exley Affidavit at ¶ 7.) Rust confirmed this claim, identified by claim number in Exhibit B-2, is otherwise eligible to participate in the settlement. (*See id.* at ¶ 8.) Plaintiffs request that the Court approve an adjustment to the Distribution Plan so that this claimant will receive proceeds from the fourth (and subsequent) settlement payment by Dean. This adjustment should be allowed because the claim, although late, was submitted soon after the Subclass member learned of the settlement (*see id.* at ¶ 7); the adjustment will not delay the distribution (*see id.* at ¶ 9); no parties will be prejudiced by the adjustment because the late claim, if permitted, would decrease payments to other claimants by only .013% (*see, e.g., id.* at ¶ 8); and allowing the claim will ensure as many as possible eligible dairy farmers receive settlement proceeds. *See, e.g., In re Orthopedic Bone Screw Prods.*, 246 F.3d 315, 323 (3d Cir. 2001) (explaining courts generally approve adjustments to distributions when they are prompt, cause no delay, no parties would not be prejudiced, the requests are in good faith, and there is good reason for adjustments); *In re Crazy Eddie Sec. Litig.*, 906 F. Supp. 840, 845-46 (E.D.N.Y. 1995) (“equities weigh substantially in favor of leniency in allowing late claims” and “late claims should ordinarily be considered”).

III. THE REQUESTED PAYMENT OF THE CLAIMS ADMINISTRATOR'S FEES AND EXPENSES SHOULD BE APPROVED AND AUTHORIZED

Plaintiffs request approval for an additional payment to Rust, in the amount of \$82,299.22 for its outstanding fees and expenses incurred to date in administering the Dean settlement as explained in the Exley Affidavit.

The settlement agreement provides for the payment of Rust's fees and expenses from the settlement funds. (*See* 7/12/11 Motion for Preliminary Approval, Ex. A at ¶ 8.5, Dkt. 1603-1.)

Litigation expenses, including claims administration costs, routinely are paid from settlement funds. *See, e.g., In re F & M Distrib., Inc. Sec. Litig.*, 1999 U.S. Dist. LEXIS 11090, at *20 (E.D. Mich. June 29, 1999) (“Expense awards are customary when litigants have created a common settlement fund for the benefit of a class”); *In re Gilat Satellite Networks, Ltd.*, 2009 U.S. Dist. LEXIS 25109, at *20-21 (E.D.N.Y. Mar. 25, 2009) (authorizing \$657,755 payment from settlement fund to claims administrator).

The additional amount of fees requested for Rust are reasonable given its extensive work in administering the third Dean Settlement distribution and preparing for the fourth distribution of settlement proceeds. As part of its administration of the Dean settlement, Rust has received and processed 6,226 claims, audited deficient and invalid claims, reviewed claims, communicated with claimants to resolve deficient claims, taken and responded to telephone calls and emails from claimants and ensuring accuracy of all information. (*See Exley Affidavit at ¶¶ 19-25.*)

Along with Subclass Counsel, Rust also fielded and resolved a variety of issues related to the third distribution, including the effect of the payments on Subclass member eligibility for Medicare/Medicaid as well as providing third party discovery in probate and litigation matters. (*See id.* at ¶ 23-24.) Further, for the present distribution, Rust has prepared, reviewed, and proofed the distribution plan, and calculated the *pro rata* share of the Dean settlement funds to 6,226 claimants with 73,045,933,757 pounds of class eligible milk. (*See id.* at ¶¶ 10-11.) Invoices reflecting Rust’s services and fees are attached as Exhibit B-3 to the Exley Affidavit.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion and enter the Proposed Order attached as Exhibit A.

Dated: July 15, 2015

Respectfully submitted,

/s/ Gary E. Brewer

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CERTIFICATE OF SERVICE

I certify that on the 15th day of July, 2015, a true and correct copy of *Dairy Farmer Plaintiffs' Motion for an Order Approving and Authorizing the Fourth Distribution of the Dean Settlement Funds, and Application for Claims Administrator Fees and Expenses* was served by operation of the electronic filing system of the U.S. District Court for the Eastern District of Tennessee upon all counsel who have consented to receive notice of filings in the matters styled *In re Southeastern Milk Antitrust Litigation*, MDL No. 1899.

/s/ Robert G. Abrams
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