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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MATTHEW EDWARDS, *et al.*, individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

NATIONAL MILK PRODUCERS
FEDERATION, aka COOPERATIVES
WORKING TOGETHER; DAIRY FARMERS
OF AMERICA, INC.; LAND O’LAKES, INC.;
DAIRYLEA COOPERATIVE INC.; and
AGRI-MARK, INC.,

Defendants.

Case No. 11-CV-04766-JSW

[consolidated with 11-CV-04791-JSW
and 11-CV-05253-JSW]

~~[PROPOSED]~~ ORDER GRANTING
MOTION FOR APPROVAL OF CLASS
NOTICE PLAN

1 This matter comes before the Court on Plaintiffs' Motion for Approval of Class Notice Plan
2 ("Motion"). Upon consideration of the foregoing request, the papers submitted in support and
3 opposition thereto, and good cause appearing:

4 IT IS HEREBY ORDERED that Plaintiffs' Motion for Approval of Class Notice Plan is
5 GRANTED ~~in its entirety~~.

6 Following certification of a class under Rule 23(b)(3), as here, "the court must direct to
7 class members the best notice that is practicable under the circumstances, including individual
8 notice to all members who can be identified through reasonable effort." Fed. R. Civ. P.
9 23(c)(2)(B). On September 16, 2014, this Court certified classes in each of the states listed below
10 and consisting of the following members:

11 All consumers who, from 2003 to the present, as residents of
12 Arizona, District of Columbia, California, Kansas, Massachusetts,
13 Michigan, Missouri, Nebraska, Nevada, New Hampshire, Oregon,
14 South Dakota, Tennessee, Vermont, West Virginia,¹ and Wisconsin,
indirectly purchased milk and/or other fresh milk products (including
cream, half & half, yogurt, cottage cheese, cream cheese, and/or sour
cream) for their own use and not for resale.²

15 Plaintiffs now propose ending the class period in 2012, based on a damages analysis. The
16 notices to the class reflect this amendment. The Court grants the request to amend the class period.

17 Plaintiffs propose a multifaceted nationwide notice program which is likely to reach 80
18 percent of class members. In summary, Plaintiffs propose the following notice plan:

- 19
- 20 • **Internet Publication:** An extensive online campaign is proposed, designed to reach
class members, including banner advertisements and sponsored links on the Google and
Yahoo!/Bing networks and targeted banner advertising resulting in an estimated 95.4
million impressions;
 - 21 • **Case-dedicated Website:** The notice administrator will establish a case-dedicated
22 website at www.freshmilkpricefixing.com to provide reliable and accurate information
to the state class members and the general public; and
- 23

24 ¹ The Court did not certify a proposed West Virginia class because plaintiffs did not have a
25 named plaintiff from that state. The parties then stipulated that plaintiffs could file a Third
26 Amended Complaint adding a named plaintiff from West Virginia and that, unless defendants
raised Rule 23 challenges, the West Virginia class would be deemed certified along with the rest of
the state classes. On December 3, 2014, the Court entered an order reflecting the parties'
27 stipulation, and plaintiffs filed the Third Amended Complaint later that day.

28 ² Order Regarding Motion for Class Certification (Sept. 16, 2014, ECF No. 266). For ease of
reference, plaintiffs will refer to the District of Columbia as a state.

- **National Press Releases:** The notice administrator will issue a party-neutral press through PR Newswire – one of the most cost effective ways to supplement notice.

This proposed notice plan ensures that the vast majority of combined state class members will receive notice. The combined state class size here ranges from approximately 90 to 94 million residents of the 15 states and the District of Columbia.³ Between 95 and 99 percent of American households are believed to purchase fluid milk products.⁴ In these circumstances, the Court finds that any form of direct notice is impracticable. Indeed, courts have interpreted Rule 23 so as not to require any form of direct notice:

The best practicable notice under the circumstance is notice by publication in newspapers. In view of the millions of members of the class, notice to class members by individual postal mail, email or radio or television advertisements, is neither necessary nor appropriate. The publication notice ordered is appropriate and sufficient in the circumstances. The timeline for notice provides reasonable, appropriate and ample opportunity for class members to oppose the settlement if they wish to do so.⁵

Particularly with the advent of the Internet and the ability to reach class members through target advertising, courts have increasingly recognized the ability of an indirect notice campaign to satisfy the constitutional requirements and those requirements of Rule 23.⁶

This proposed notice plan more than meets the requirements of Rule 23 that plaintiffs disseminate “the best notice practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2).

This Court also finds that the proposed notices satisfy the requirements of Rule 23. *See* Vasquez Decl., Ex. D (sample banner notice); Ex. E (long form notice). This Court finds they are written in plain English and Spanish, clearly convey to the combined state class members their

³ *See* Declaration of Alan Vasquez in Support of Motion for Approval of Class Notice Plan (“Vasquez Decl.”), ¶9.

⁴ *Id.*

⁵ *In re MetLife Demutualization Litig.*, 262 F.R.D. 205, 208 (E.D.N.Y. 2009).

⁶ *See, e.g., In re Google Referrer Header Privacy Litig.*, No. 10-cv-04809, 2014 U.S. Dist. LEXIS 41695 at *24-25 (ND Cal. Mar. 26, 2014) (approving indirect notice campaign that included Internet-based notice, press release, website dedicated to the settlement, and a toll-free number where class members could receive additional information); *Natalie Pappas v. Naked Juice Co of Glendora, Inc., et al.*, Case No. LA CV11-08276 JAK (PLAx) (C.D. Cal. Jan. 2, 2014), ECF No. 184 (approving indirect notice campaign of online banner and pop-up advertisements and published notice in *People* and *Parade* magazines and in *USA Today*).

options and rights, and provide concise instructions on what class members may expect in this litigation.

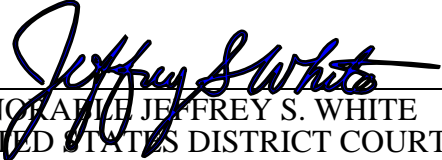
The Court orders the following schedule for the dissemination of class notice and filing of a list of opt-outs with the Court:

Event	Time
Notice campaign begins	May 15, 2015
Last day for opt-outs	July 14, 2015
List of opt-outs to be filed with the Court	July 28, 2015

The list of opt-outs to be filed with the Court will include the first initial, last name, city and state of residence for each person. The parties, however, will have the full contact information of the opt-outs. This schedule is similar to, if not more generous than, other schedules approved by the courts in this District.⁷ Plaintiffs shall make the agreed upon change to Paragraph 2a of Exhibit E and shall provide a complete phone number in Paragraph 7 to Exhibit E.

IT IS SO ORDERED.

DATED: April 23, 2015


 HONORABLE JEFFREY S. WHITE
 UNITED STATES DISTRICT COURT JUDGE

Submitted by:

DATED: March 27, 2015

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⁷ See, e.g., *Thieriot v. Celtic Ins. Co.*, No. C 10-04462, 2011 U.S. Dist. LEXIS 4504, at *13-14 (N.D. Cal. Jan. 13, 2011) (ordering 60 day opt-out period); *Lemus v. H&R Block Enters., LLC*, No. CV-09-03179, 2010 U.S. Dist. LEXIS 133697, at *17 (N.D. Cal. Dec. 6, 2010) (approving notice with opt-out period of 45 days); *Wahl v. Am. Sec. Ins. Co.*, No. C 08-00555, 2010 U.S. Dist. LEXIS 54637, at *30 (N.D. Cal. May 10, 2010) (ordering an opt-out period of 45 days).

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