

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

2018 AUG 14 AM 9:18

ALICE H. ALLEN AND LAURENCE E.)
ALLEN et al.,)

Plaintiffs)

v.)

DAIRY FARMERS OF AMERICA, INC. and)
DAIRY MARKETING SERVICES, LLC.)

Defendants.)

Docket No. 5:09-cv-00230-cr

CLERK

BY 
DEPUTY CLERK

**ORDER AUTHORIZING
DISTRIBUTION OF THE DFA/DMS SETTLEMENT FUND**

On June 7, 2016, the Court issued the Final Approval Order that, among other things, granted final approval to the Settlement Agreement between Plaintiffs, Defendant Dairy Farmers of America, Inc. (“DFA”) and Defendant Dairy Marketing Services, LLC (“DMS”) (the “DFA/DMS Settlement” or “Settlement”). ECF No. 2093. Roughly two months later, on August 19, 2016, the Court issued a “Final Judgment Order” that approved the Settlement Allocation Plan proposed by Plaintiffs. See ECF No. 2118 (the “Final Judgment Order”). The Second Circuit affirmed the Final Judgment Order on April 18, 2017, *Haar v. Allen*, 687 F. App’x 93 (2d Cir. 2017). The Supreme Court denied certiorari on January 16, 2018, *Haar v. Allen*, 138 S. Ct. 745 (2018).

On August 13, 2018, Plaintiffs moved the Court in an amended motion for an order: (1) Approving the procedures used and actions taken by Subclass Counsel for the administration of the DFA/DMS Settlement; (2) Approving the accepted claims listed in Amended Exhibit B (hereinafter “Authorized Claimants”) to the attached Amended Affidavit of Heidi Taylor

(“Amended Taylor Affidavit”); (3) Authorizing the payment and distribution of the Net Settlement Fund as defined herein directly to the Authorized Claimants listed in Amended Exhibit B to the Amended Taylor Affidavit in the pro rata portion calculated and determined by Rust based on Authorized Claimants’ reported production of raw Grade A milk.

The Claims Administrator has audited all claims made by potential members of the Subclass and recommended approval or rejection of each claim. The Court has reviewed the procedures undertaken in the audit process, as described in Plaintiffs’ Amended Motion and the accompanying affidavit of the Claims Administrator, and has considered the matters presented in those papers. The Court now orders that the Settlement Fund be distributed.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

(1) The procedures used and actions taken by Rust Consulting and Subclass Counsel to administer the DFA/DMS Settlement and claims process, resolve disputes with claimants, and audit claims are fair and reasonable and are hereby adjudged to have been proper, complete, and in accordance with the Court’s Final Judgment Order, and the administrative determinations of the Claims Administrator and Subclass Counsel, as reflected in the Amended Taylor Affidavit, are approved;

(2) The authorized claims set forth in Amended Exhibit B to the Amended Taylor Affidavit signed August 13, 2018 are approved;

(3) Subclass Counsel’s proposal to distribute the proceeds from the DFA/DMS Settlement according to *pro rata* shares of milk volume based on each claimant’s reported production of milk as calculated and determined by Rust and specified in Amended Exhibit B to the Amended Taylor Affidavit is approved as fair, reasonable, and adequate;

(4) Subclass counsel at Baker & Hostetler LLP and Cohen Milstein Sellers & Toll PLLC are authorized to direct JPMorgan Chase Bank (the “Escrow Agent”) to transfer the entirety of the funds in Settlement escrow, less \$10,810,631.86 previously awarded to Subclass and Intervenor Counsel for attorneys’ fees and expenses (ECF No. 2096) and \$200,000 for additional attorneys’ fees and \$39,477 in additional expenses awarded in connection with Dairy Farmer Subclasses’ Motion for Supplemental Attorney’s Fees & Reimbursement of Expenses in Connection With the 2015 DFA/DMS Settlement (ECF No. 2162), to the bank account designated by Rust in the escrow agreement to facilitate the distribution of the funds to the Subclass members, payment to Rust for services and expenses, and payment of incentive payments to the Subclass representatives as provided by Orders of this Court;

(5) Rust is authorized to distribute from the settlement funds transferred by the Escrow Agent: (a) \$250,000 in payment to Rust for services related to providing notice and administration to the Subclasses as previously authorized by the Court (ECF No. 2099); and (b) \$155,000 in incentive payments to Subclass Representative farmers previously authorized by the Court (ECF No. 2096), on a date no earlier than the payment of settlement funds to the Subclass members;


(6) As soon as practicable after calculation of the Net Settlement Fund¹ by Rust, Rust is

¹ This Net Settlement Fund is defined as the \$50,000,000.00 DFA/DMS Settlement amount, plus any interest (\$956,522.62 as of August 3, 2018), minus \$155,000 in incentive payments to Subclass Representative farmers previously authorized (ECF No. 2096), minus \$7,000,000.00 previously awarded to Subclass and Intervenor Counsel for part of their fees and the \$3,810,631.86 previously awarded to Subclass and Intervenor Counsel for their expenses (ECF No. 2096) as well as \$200,000 in additional attorneys’ fees and \$39,477 in additional expenses awarded in connection with Dairy Farmer Subclasses’ Motion for Supplemental Attorney’s Fees & Reimbursement of Expenses in Connection With the 2015 DFA/DMS Settlement (ECF No. 2162), and minus \$250,000 to be paid to Kinsella Media/Rust Consulting and Lettercomm, Inc. for services related to providing notice and administration to the Subclass as previously authorized by the Court (ECF No. 2099).

authorized to distribute the Net Settlement Fund by check mailed directly to the Authorized Claimants listed in Amended Exhibit B to the Amended Taylor Affidavit in the *pro rata* portion based on Authorized Claimants' qualified production of raw Grade A milk and as determined and specified in that Amended Exhibit; and

(7) The Court reserves jurisdiction over all matters relating to the distribution of the DFA/DMS Settlement Fund.

Dated: 8/14/18



The Honorable Christina Reiss
United States District Judge