

the information necessary to exercise their rights vis-à-vis the Settlement in accordance with the Court's ordered deadlines. Subclass Counsel will provide this pleading to Rust Consulting so it can answer questions from Subclass Members, have a copy of this pleading posted to the case website, www.NortheastDairyClass.com, and provide a copy to those Subclass Members who have already inquired regarding this matter.

I. The Waiver in Paragraph 6.2 is Limited.

As an initial matter, an overarching inquiry was made regarding paragraph 6.2 of the Settlement which waives Subclass Members' (who do not opt out) rights under California Civil Code § 1542 and South Dakota Codified Laws § 20-7-11. These statutes prevent the release of unknown claims. By waiving their rights under these provisions, Subclass Members acknowledge that they may be releasing claims that are currently unknown to them. However, this waiver is limited in scope. The definition of "released claims" in the Settlement includes only those claims – known or unknown – that "were asserted or that could have been asserted arising out of the conduct alleged in the Complaint" Settlement ¶ 1.16. Thus, Subclass Members' waiver of their rights under California Civil Code § 1542 and South Dakota Codified Laws § 20-7-11 only means that they have agreed to release claims that are unknown to them *and* that could have been asserted in the Complaint. Given that the Subclass Members reside in the Northeast and that the relevant conduct in this case occurred in the Northeast, Subclass Counsel believe that Subclass Members do not have any claims under California or South Dakota law – known or unknown – that could have been brought in the Complaint.

II. The Settlement Release Has No Effect on Potential Claims in *Carlin*.

Turning to the specific question raised regarding whether the release implicates Subclass Members' rights in *Carlin v. DairyAmerica, Inc.*, a small amount of background is useful.

Carlin is currently proceeding against two entities, California Dairies and DairyAmerica, Inc., in the Eastern District of California. The case involves allegations that prices of nonfat dry milk were misreported to a division of the United States Department of Agriculture in violation of various California laws. The claims at issue in *Carlin* are not affected by the Second Amended Settlement Agreement for the following two reasons.³

First, neither of the defendants in *Carlin* is a “released party” as the term is defined in paragraph 1.17 of the Settlement. Although the plaintiffs in *Carlin* attempted to add Dairy Farmers of America (“DFA”) as a defendant, that attempt was denied by the Court. *See* Order on Pls.’ Renewed Mot. for Leave to File a Second Am. Compl., *Carlin v. DairyAmerica, Inc.*, No. 1:09-cv-00430-AWI-EPG (E.D. Cal. Jan. 20, 2016), ECF No. 240.⁴ Accordingly, neither DFA nor DMS (nor any of DFA’s or DMS’s predecessors, successors, subsidiaries, insurers, members, owners, attorneys, or any past or present officers, directors, employees, managing agents, or controlling persons) have ever been parties in the *Carlin* matter. Likewise, none of the defendants in *Carlin* are released parties under the terms of this Settlement. Thus, Subclass Members’ release of claims against DFA and DMS has no bearing whatsoever on their ability to continue to pursue claims against the defendants in *Carlin*.

Second, the conduct at issue in *Carlin* is entirely different from this case and is not encompassed as a “released claim” under paragraph 1.16 of the Settlement. None of the claims in *Carlin* relate in any way to the factual allegations in the *Allen* Complaint – they do not involve the same parties, market, or underlying conduct. Indeed, *Carlin* is not an antitrust case, nor does it involve the availability of milk markets, milk testing, farmer solicitation, or any of the other

³ Cohen Milstein currently serves as counsel for the putative class in *Carlin*.

⁴ DFA previously owned a minority interest in DairyAmerica but it has had no ownership interest for many years.

conduct at issue in this case. Accordingly, the claims in *Carlin* do not “aris[e] out of the conduct alleged in the Complaint” and are not released by the Settlement.

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Subclass Counsel remain available to any members of the Subclass who have particular questions about the Settlement. As stated, Subclass Counsel will provide Rust Consulting, the Claims Administrator, with this pleading and more generally have informed them that any callers with questions Rust is unable to answer should be referred directly to Subclass Counsel.

Dated: April 8, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 8th day of April, 2016, a true and correct copy of the foregoing:
“Response Regarding Scope of the Settlement Release” was served by operation of the electronic filing system of the U.S. District Court for the District of Vermont upon all counsel who have consented to receive notice of filings in the matters styled *Allen, et al. v. Dairy Farmers of America, et al.*, Case No. 5:09-cv-00230-cr.

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