

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

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CLERK

BY   
BEVERLY QUINN

ALICE H. ALLEN, et al.,

Plaintiffs,

v.

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

Defendants.

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

**ORDER DIRECTING PAYMENT TO CLASS MEMBERS  
NOTWITHSTANDING NEW THIRD PARTY FILERS**  
(Doc. 2153)

Upon consideration of Dairy Farmers Subclasses' motion for relief regarding third party filers ("TPFs") (Doc. 2153) (the "Motion"), the court finds as follows:

1. The Dairy Farmer Subclasses reached a settlement with Defendants Dairy Farmers of America, Inc. ("DFA") and Dairy Marketing Services, LLC ("DMS") for \$50 million and equitable relief in 2014 (Doc. 568). Later that year, the court preliminarily approved the settlement, and in the notice period afterwards, class members submitted claims (Doc. 582). In early 2015, the court declined to finally approve that settlement (Docs. 631, 642).

2. Thereafter, the Subclasses and DFA and DMS agreed to a settlement in December of 2015 (Doc. 712), which the court preliminarily approved in February of 2016 (Doc. 718). Class members were provided with a second opportunity to submit claims in the same manner as the previous notice period.

3. In June of 2016, the court finally approved the settlement (Doc. 2093).

4. During both notice periods, the Claims Administrator Rust Consulting (the "Claims Administrator") mailed a court-approved three-page claim form to class members written in plain language and requesting limited information, including the

claimant's name; the address and county of the farm; the name of the farm (if applicable); whether an individual, corporation, cooperative, or another entity owned the farm; a tax identification number; and the total number of pounds of raw Grade A milk that their farm produced and pooled in Federal Milk Market Order 1 from January 1, 2002 until December 31, 2014. The claim form also stated: "You can obtain information on the total number of Pounds of Raw Grade A Milk from your milk checks, year-end statements, or by contacting your handler or cooperative." The form further provided: "If you have any questions regarding how to obtain information for completing your claim form, please visit [www.NortheastDairyClass.com](http://www.NortheastDairyClass.com) or call 1-855-460-1533."

5. The court's intent in fashioning the notice was to eliminate the need for assistance in filing a claim and, if assistance was nonetheless required, to provide class members with a source of reliable information. Against this backdrop, the court concludes that the assistance of a TPF should not have been necessary to file a claim absent unusual circumstances.

6. During the relevant notice periods, 8,571 class members filed claims, according to the Claims Administrator. Claims were also filed on class members' behalf by TPFs, including AAIN Agency, Refund Advisors, Financial Recovery Strategies, Class Action Capital, Budyonny Law Group, Claims Compensation Bureau, Refund Recovery Services, and ACRS Group. Some of these filings were duplicative of claims class members had filed themselves. The court has been advised that some TPFs have requested fees up to 33 percent of class members' recovery. The percentages requested by some of the TPFs are in excess of the percentages the court awarded the attorneys for their representation of the DFA and DMS subclasses in this case.

7. The court is charged with a duty to serve as a "fiduciary" who "guard[s] . . . the rights of absent class members." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 52 (2d Cir. 2000) (internal quotation marks omitted).

8. Courts have recognized their power to direct a claims administrator to send settlement checks directly to class members even if the class member has entered into a contract with a TPF. *See, e.g.*, Order Approving & Authorizing the Distribution of the

DFA, DMS, Mid-Am, NDH, and Hanman Settlement Funds ¶ 5, *In re Se. Milk Antitrust Litig.*, No. 2:08-MD-1000 (E.D. Tenn. Dec. 11, 2013), Doc. 1975; Order Approving Distribution From the Dow Settlement Fund ¶ 10, *In Re Urethane Antitrust Litig.*, No. 04-md-1616-JWL (D. Kan. Dec. 19, 2017), Doc. 3297; *Burford v. Cargill, Inc.*, Civil Action No. 05-0283, 2013 WL 4506224, at \*1 (W.D. La. Aug. 21, 2013).

9. The court concludes that its fiduciary obligation to protect the rights of class members requires it to mail settlement checks directly to class members, notwithstanding the existence of any contracts with TPFs. Class members may then determine their obligations, if any, to TPFs.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, the Motion is GRANTED; all settlement checks shall be made payable to class members and all settlement checks shall be mailed directly to the class members' addresses. The Claims Administrator shall notify the TPFs in writing ten (10) days in advance of the commencement of disbursement of settlement checks to class members.

Dated at Burlington, in the District of Vermont, the 25<sup>th</sup> of May, 2018.



Christina Reiss, District Judge  
United States District Court