

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

FIRST IMPRESSIONS SALON, INC.,
individually and on behalf of all others
similarly situated, ROY MATTSON,
individually and on behalf of all others
similarly situated, KPH HEALTHCARE
SERVICES a/k/a KINNEY DRUGS,
INC., PIGGLY WIGGLY MIDWEST,
LLC, BURRIS LOGISTICS, INC., THE
KROGER CO., CONOPCO, INC., SAVE
MART COMPANIES, HY-VEE, INC.,
and ALBERTSONS COMPANIES, INC.,

Plaintiffs,

v.

NATIONAL MILK PRODUCERS
FEDERATION, COOPERATIVES
WORKING TOGETHER, DAIRY
FARERS OF AMERICA, INC., LAND
O'LAKES, INC., and AGRI-MARK,
INC. d/b/a CABOT CREAMERY
COOPERATIVE, INC.,

Defendants.

Case No. 3:13-CV-00454-NJR-GCS

MEMORANDUM AND ORDER

ROSENSTENGEL, Chief Judge:

This matter is before the Court on Plaintiffs' Motion for Preliminary Approval of Class Settlement (Doc. 521). Defendants did not file a response to the motion. After reviewing and considering the motion, all supporting documents, and the Settlement Agreement, the Court **GRANTS in part and DENIES in part** the Motion for Preliminary

Approval of Class Settlement and **ORDERS** as follows:

1. **Settlement Terms.** Unless otherwise defined here, all terms in this Order shall have the meanings ascribed to them in the Settlement Agreement.

2. **Jurisdiction.** This Court has jurisdiction over the subject matter of this action, the settling Parties, and all Class Members.

3. **Scope of Settlement Agreement.** Subject to final approval, the Settlement Agreement resolves the action, including all claims alleged in the Third Amended Complaint (Doc. 182), and releases all claims as set forth in the Settlement Agreement.

4. **Preliminary Approval of Settlement Agreement.** This Court has conducted a review of the Settlement Agreement preliminary to its ultimate determination as to fairness, adequacy, and reasonableness under Rule 23(e), guided by the jurisprudence of the Seventh Circuit on class action settlements.¹ Based on this evaluation, the Court finds that: (i) the Court has ample information, given its familiarity with the claims and issues in this case, developed through motions practice and completion of extensive discovery and pre-trial proceedings, to determine that the Settlement Agreement is fair, reasonable, and adequate, and within the range of ultimate final approval; (ii) the Settlement Agreement has been negotiated in good faith at arms' length between experienced attorneys familiar with the legal and factual issues of this case, and overseen by experienced and Court-appointed mediators; and (iii) the proposed forms and methods of notice provide the material terms of the Settlement Agreement to

¹ *Isby v. Bayh*, 75 F.3d 1191, 1198-99 (7th Cir. 1996) (articulating the “*Isby*” factors for class settlement approval in this Circuit); *Kaufman v. American Express Travel*, 877 F.3d 276 (7th Cir. 2017); *In re Southwest Airlines Voucher Litigation*, 799 F.3d 701 (7th Cir. 2015); *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277 (7th Cir. 2002).

Class Members for their consideration and reaction, and such notice is appropriate and warranted.

5. **Plan of Allocation**. Plaintiffs have submitted a plan to allocate the settlement funds in this case. The Court has reviewed the Plan of Allocation submitted by Dr. Russell Lamb and finds this plan to be fair, reasonable, and adequate and approve its implementation.

6. **Class Certification**. This Court has previously certified the Class pursuant to Rule 23 (Doc. 291). The “Class” is made up of two sub-classes and consists of the following:

All persons and entities in the United States that purchased butter directly from one or more members of Defendant, Cooperatives Working Together, and/or their subsidiaries during the period from December 6, 2008 to July 31, 2013 who did not timely opt-out of the class pursuant to the class notice approved by the Court in its order dated May 8, 2018 and transmitted to the class on May 31, 2018; and

All persons and entities in the United States that purchased cheese directly from one or more members of Defendant, Cooperatives Working Together, and/or their subsidiaries during the period from December 6, 2008 to July 31, 2013 who did not timely opt-out of the class pursuant to the class notice approved by the Court in its order dated May 8, 2018 and transmitted to the class on May 31, 2018.

7. **Class Representatives**. This Court previously appointed and confirms First Impressions Salon, Inc., Roy Mattson, Piggly Wiggly Midwest, LLC, and KPH Healthcare Services, a/k/a Kinney Drugs, Inc. as Class Representatives (Doc. 291).

8. **Settlement Administrator and Escrow Agent**. Pursuant to the Settlement Agreement, the Court appoints Epiq Class Action & Claims Solutions, Inc. (“Epiq”) to serve as Notice Provider, Settlement Administrator and Escrow Agent. Epiq, in

consultation with its notice expert, Cameron R. Azari, Esq. of Hilsoft Notifications (“Hilsoft”), previously provided the notice to the Class and reported to the Court regarding the implementation of the prior notice plan and opt outs. Epiq as Settlement Administrator shall be required to perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order. The proposed Escrow Agreement is also approved.

9. **Final Fairness Hearing.** The Court sets a Final Fairness Hearing to take place on **April 27, 2020 at 1:30 p.m.** At the hearing, the Court will consider: whether to ultimately approve the settlement as fair, reasonable, and adequate to the Settlement Class; whether to enter final judgment in this case; whether to approve the incentive awards as set forth in the Settlement Agreement; and whether to approve the attorneys’ fees and costs as set forth in the Settlement Agreement.

10. **Class Notice.** This Court previously approved a Class Notice Plan for giving notice to the Class through direct mailed notice, social media, publication notice, and through the previously established website, www.butterandcheeseaction.com. This Notice Plan was completed as approved. The settlement Notice Plan, in form, method, and content, is modelled on and supplements the previously Court-approved and completed plan and will thus comply with the requirements of Rule 23 and due process, and, after completion, will constitute the best notice practicable under the circumstances. This Court directs the Parties and the Settlement Administrator Epiq to complete all aspects of the Notice Plan no later than **February 26, 2020**.

11. **Proof of Notice.** The Settlement Administrator will file with the Court by no later than **March 6, 2020**, proof that Notice was provided in accordance with the

Settlement Agreement and this Order, as well as proof that notice was provided to the appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

12. **Objections to the Settlement Agreement.** To object to the Settlement Agreement, Class Members must follow the directions in the Notice and file a written objection with the Court by **March 17, 2020**. In the written objection, the Class Member must state his or her (or company) full name, address, and affirm that he, she or it, is a Class Member, and must state whether they intend to appear at the Final Fairness Hearing on their own behalf or through counsel. Any documents supporting the objection must also be attached to the objection. No objection will be valid unless all of the information described above is included. The Parties will have the right to depose any objector or objector's corporate representative to assess whether the objector has standing or motives that are inconsistent with the interests of the Class.

13. **To Appear at the Final Fairness Hearing.** If a Class Member does not submit a written objection to the Settlement Agreement, the application of Class Counsel for attorneys' fees and expenses, or the incentive awards in accordance with the deadline and procedure set forth in the Notice and this Order, but the Class Member wishes to appear and be heard at the Final Fairness Hearing, the Class Member must (i) file a notice of intention to appear with the Court by no later than **April 13, 2020**; and (ii) comply with all other requirements of the Court for such an appearance.

14. **Waiver of Objections.** Any Class Member who fails to comply with paragraphs 12 or 13 will not be permitted to object to the Settlement Agreement at the Final Fairness Hearing, will be foreclosed from seeking any review of the Settlement

Agreement by appeal or other means, will be deemed to have waived his or her objections, and will be forever barred from making any objections in the Action or any other related action or proceeding. All members of the Class will be bound by all determinations and judgments in the Action, whether favorable or unfavorable to the Class.

15. **Postponement of Proceedings.** Pending the final determination of whether the Settlement Agreement should be approved, and except as otherwise stated here, all deadlines, dates, and discovery in this litigation are postponed except as necessary to implement the settlement or comply with the terms of the Settlement Agreement. If the Settlement Agreement is terminated or final approval does not for any reason occur, postponement will be immediately lifted.

16. **Status Quo Ante.** If the Settlement Agreement is not approved or consummated for any reason whatsoever, the Settlement Agreement and all proceedings in connection with the Settlement Agreement will be without prejudice to the right of Defendants or Plaintiffs to assert any right or position that could have been asserted if the Settlement Agreement had never been reached or proposed to the Court. In such an event, the Parties will return to the *status quo ante*.

17. **No Admission of Liability.** The Settlement Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be a concession or admission of any claim, or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing by Defendants, or the truth of any of the allegations in the action. To this end, the negotiation and execution of the Settlement Agreement and all acts performed

or documents executed pursuant to or in furtherance of the Settlement Agreement: (i) are not and will not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the allegations in the Action; and (ii) are not and will not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Defendants in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal.

18. **Reasonable Procedures to Effectuate the Settlement Agreement.** Counsel for the Parties are authorized to use all reasonable procedures in connection with approval and administration of the Settlement Agreement that are not materially inconsistent with this Order or the Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Notice and other exhibits that they jointly agree are reasonable and necessary. This Court reserves the right to approve the Settlement Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to the members of the Class.

19. **Remaining Schedule.** The following are the deadlines by which certain events must occur:

February 26, 2020	Deadline for: (1) Motion and Memorandum in Support of Final Approval; (2) Class Counsel Motion for Attorneys' Fees, Costs and Class Representative Service Awards; and (3) Completion of the Notice Plan
March 6, 2020	Deadline for Notice to the Court of Completion of Class Notice Program
March 17, 2020	Deadline for Class Members to file Objections
April 10, 2020	Deadline for Parties to File the responses to any Objections

April 27, 2020	Final Fairness Hearing at 1:30 p.m.

IT IS SO ORDERED.

DATED: January 10, 2020

Handwritten signature of Nancy J. Rosenstengel in black ink, with a circular seal of the U.S. District Court for the District of New Jersey partially visible behind the signature.

NANCY J. ROSENSTENGEL
Chief U.S. District Judge