

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
GREENEVILLE DIVISION**

\_\_\_\_\_  
IN RE SOUTHEASTERN MILK )  
ANTITRUST LITIGATION )

Master File No. 2:08-MD-1000

\_\_\_\_\_  
THIS DOCUMENT RELATES TO: )

Judge J. Ronnie Greer

*Sweetwater Valley Farm, Inc., et al. v.* )  
*Dean Foods, et al.*, No. 2:07-CV-208 )  
\_\_\_\_\_

**ORDER**

Upon consideration of Plaintiffs' Motion for Preliminary Approval of Proposed Settlement With Dean Foods Company [Dkt. 1603] and DFA Plaintiffs' Motion to Reinstate DFA Subclass, Appoint DFA Subclass Counsel, and Join and Reinstate Preliminary Approval of the Settlement with Dean [Dkt. 1765] (collectively, the "Motions"), it is hereby ORDERED that the Motions are GRANTED as follows:

1. The Court finds that the proposed settlement between Plaintiffs and Defendant Dean Foods Co. ("Dean"), as set forth in their Settlement Agreement [Dkt. 1765], and subject to final determination following proper notice and a fairness hearing, is sufficiently fair, reasonable and adequate to authorize dissemination of notice to the Class.
2. The proposed settlement between Plaintiffs and Defendants Southern Marketing Agency ("SMA") and James Baird ("Baird"), as set forth in their Settlement Agreement [Dkt. 1676], subject to final determination following proper notice and a fairness hearing, is sufficiently fair, reasonable and adequate to authorize dissemination of notice to the Class

for the reasons set forth in the Court's Order preliminarily approving that settlement [Dkt. 1680].

3. For purposes of both the Dean settlement and the SMA/Baird settlement, the Class consists of two subclasses: (a) the Independent Dairy Farmer and Independent Cooperative Member Subclass (the "Independent Subclass") previously certified on September 7, 2010 [Dkt. 934], and (b) the DFA Member Dairy Farmer Subclass (the "DFA Settlement Subclass") described in paragraph 6 below. Together these two subclasses comprise the Class for purposes of settlement, which includes all dairy farmers, whether individuals or entities, who produced Grade A milk within Orders 5 or 7 and sold Grade A milk directly or through an agent to Defendants or Co-Conspirators in Orders 5 and/or 7 during any time from January 1, 2001 to the present. The following persons are excluded from the class: a) Defendants, b) Defendants' coconspirators, and c) current and former directors and officers of DFA and SMA.
4. The DFA Settlement Subclass is hereby certified as a settlement class only with respect to both the Dean settlement and the SMA/Baird settlement. Certification of the DFA Settlement Subclass will be considered further at the Court's fairness hearing. If the settlements ultimately are not approved, the certification of the settlement class will be null and void.
5. The Court bases its certification of a settlement class on the following findings, which the Court makes in the context of the settlements before it only:
  - a. The DFA Settlement Subclass is so numerous that joinder of all members is impracticable;
  - b. There are questions of law or fact common to the DFA Settlement Subclass;

- c. The claims of the DFA Settlement Subclass representatives are typical of the claims of the DFA Settlement Subclass;
  - d. The DFA Settlement Subclass representatives will fairly and adequately protect the interests of the DFA Settlement Subclass;
  - e. Questions of law or fact common to members of the DFA Settlement Subclass predominate over any questions affecting only individual members of the DFA Settlement Subclass; and
  - f. As to the DFA Settlement Subclass, a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.
6. The DFA Settlement Subclass consists of “All DFA members (whether individuals or entities) who produced Grade A milk within Orders 5 or 7 and sold Grade A milk directly or through an agent to Defendants or Co-conspirators in Orders 5 or 7 during any time from January 1, 2001 to the present. The term ‘DFA member dairy farmer’ refers to Southeast dairy farmers who were members of DFA at the time of their Grade A milk sales.” The following persons are excluded from the Subclass: (a) Defendants; (b) Defendants’ Co-conspirators; and (c) former and current officers and directors of DFA and SMA.
7. For purposes of both the Dean settlement and the SMA/Baird settlement, Payne Dairy and William C. Frazier and Branson C. McCain d/b/a McCain Dairy are appointed as representatives of the DFA Settlement Subclass for settlement purposes.
8. Gary E. Brewer, Esq. of Brewer & Terry is appointed Class Counsel for the DFA Settlement Subclass for settlement purposes.
9. The Court approves the form and content of the: (a) notice of proposed settlements with

Dean, SMA and Baird attached hereto as Exhibit A (the "Notice"); and (b) summary notice of proposed settlements with Dean, SMA and Baird attached hereto as Exhibit B (the "Summary Notice").

10. The Court finds that the mailing and publication of the Notice and Summary Notice, respectively, in the manner set forth herein constitute the best notice practicable under the circumstances, are due and sufficient notice to all persons entitled thereto, and fully comply with the requirements of Federal Rule of Civil Procedure 23 and the due process requirements of the Constitution of the United States.
11. Within ten (10) days after the date of this Order, the Notice shall be mailed by first class U.S. Mail, postage prepaid, to all potential members of the Class whose identities and locations are reasonably ascertainable, which may be satisfied by sending the Notice to the 7,388 addresses of potential members of the Class that Plaintiffs identified in Defendant and third-party records, as amended and supplemented with the address information ascertained by the Class Action Administrator in connection with the dissemination of notice of pendency of class action dated May 18, 2011. In addition, the Summary Notice shall be published in the next available issue of *Hoard's Dairyman*. Plaintiffs shall also post the Settlement Agreements, Notice, Motion, and this Order on the class action website maintained by the Class Action Administrator.
12. Any person who previously requested exclusion from the Class may apply to the Court to be reinstated (opt back in) to the Class for the purpose of participating in the proposed settlements with Dean, SMA and Baird, provided such application is made in writing and delivered to the Class Action Administrator so that it is received at least fourteen (14) days prior to the Fairness Hearing.

13. In consideration of the decertification of the DFA Subclass for litigation purposes and the certification herein of the DFA Settlement Subclass, members of the DFA Settlement Subclass shall be given an additional opportunity to request exclusion. Any member of the DFA Settlement Subclass may request exclusion from the Class pursuant to Federal Rule of Civil Procedure 23(e)(4), provided such request is made in writing and delivered to Class Action Administrator so that it is received at least fourteen (14) days prior to the Fairness Hearing.
14. Any member of the Class who objects to the proposed Dean settlement and/or the proposed SMA/Baird settlement must do so in writing. The objection must include the caption of this case, be signed, be filed with the Court no later than fourteen (14) days prior to the Fairness Hearing, and otherwise comply with the requirements set forth in the Notice. The objection must also be delivered to counsel for the Class and counsel for the Defendants identified in the Notice so that it is received at least fourteen (14) days prior to the Fairness Hearing. Any response to a timely objection must be filed with the Court and served no later than seven (7) days prior to the Fairness Hearing.
15. Any member of the Class who wishes to be eligible for a payment as a result of the proposed settlements with Dean and SMA/Baird, including those members seeking to opt back in, must deliver a fully completed, signed claim form so that it is received by the Class Action Administrator no less than fourteen (14) days before the Fairness Hearing.
16. Class Counsel shall file with the Court, and serve upon counsel of record, the necessary papers to show compliance with the notice plan and this Order as well as any other materials Class Counsel wishes the Court to consider at least seven (7) days prior to the Fairness Hearing. Accordingly, no later than seven (7) business days prior to the Fairness

Hearing, Class Counsel shall file with the Court, and serve upon counsel for Defendants, affidavits or declarations of the person under whose general direction the mailing of the Notice and publication of the Summary Notice were made, showing that mailing and publication were made in accordance with this Order. Class Counsel shall also identify in this filing all requests to be reinstated to the Class, and all requests by members of the DFA Subclass for exclusion from the Class.

17. The Court will convene a hearing (“Fairness Hearing”) on May 15, 2012 at 9:00 a.m. at the James H. Quillen U.S. Courthouse in Greeneville, Tennessee to consider: (a) whether the proposed settlements with Dean, SMA and Baird should be finally approved as fair, reasonable, and adequate <sup>and jg</sup> ~~to in the~~ in the best interests of the Class; (b) whether judgment should be entered dismissing the Released Claims on the merits and with prejudice; and (c) whether to approve any application by Class Counsel for an award of attorneys’ fees and payment of costs and expenses. Any Class Member who follows the procedure set forth in the Notice may appear and be heard at the Fairness Hearing. The Hearing may be continued without further notice to the Class.
18. Any member of the Class who seeks to appear and be heard at the Fairness Hearing shall, no later than fourteen (14) business days prior to the Hearing, send a letter with that request to the clerk of this Court, Class Counsel, and counsel for Defendants identified in the Notice.
19. The Court approves the establishment of the Settlement Fund, as set forth in the Settlement Agreement between Plaintiffs and Dean, as a “Qualified Settlement Fund” pursuant to Treas. Reg. §1.468B-1. JPMorgan Chase Bank, National Association shall serve as the escrow agent in connection with the Settlement Fund described in Paragraph

7.1 of the Settlement Agreement between Plaintiffs and Dean. The Court retains continuing jurisdiction over any issues regarding the formation or administration of the Settlement Fund. Class Counsel and their designees are authorized to use up to \$50,000 of the Settlement Fund to give notice of the proposed settlements to Class Members and for settlement administration costs, up to \$10,000 of the Settlement Fund for escrow agent costs, and such amount of the Settlement Fund as is required to pay taxes on income earned on the Settlement Fund, with prior notice to Dean. No other disbursements shall be made from the Settlement Fund prior to the Effective Date, as defined in the Settlement Agreement between Plaintiffs and Dean, and then only upon approval and order of the Court.

20. The Court approves the establishment of the Settlement Fund, as set forth in the Settlement Agreement between Plaintiffs and SMA and Baird pursuant to Treas. Reg. § 1.468B-1. JPMorgan Chase Bank, National Association shall serve as the escrow agent in connection with the Settlement Fund described in Paragraph 7.1 of the Settlement Agreement between Plaintiffs and SMA and Baird. The Court retains continuing jurisdiction over any issues regarding the formation or administration of the Settlement Fund. Class Counsel and their designees are authorized to use up to \$50,000 of the Settlement Fund to give notice of the Settlement to Class members and for settlement administration costs, up to \$10,000 of the Settlement fund for escrow agent costs, and such amount of the Settlement Fund as is required to pay taxes on income earned on the Settlement Fund, with prior notice to Defendants. No disbursements shall be made from the Settlement Fund prior to the Effective Date, as defined in the Settlement Agreement between Plaintiffs and SMA and Baird, and then only upon approval and order of the

Court.

21. Rust Consulting is appointed as class action and claims administrator (“Class Action Administrator”) for purposes of notice and administration of the proposed settlements with Dean; SMA and Baird.
22. Plaintiffs and members of the Class are preliminarily enjoined from the initiation, commencement or prosecution of any Released Claim by any of the Releasing Parties.
23. All claims against Dean are SEVERED from those against the other Defendants and all claims against Dean are STAYED until further order of the Court. The claims against SMA and Baird remain severed and stayed pursuant to the Court’s prior Order preliminarily approving the settlement with SMA and Baird [Dkt. 1680].
24. Unless otherwise indicated herein, all capitalized terms used in this Order shall have the meanings set forth in the Settlement Agreements.

So Ordered.

Enter:

 2/14/12  
\_\_\_\_\_  
J. RONNIE GREER  
UNITED STATES DISTRICT JUDGE



# Exhibit A

# If Your Farm Produced Grade A Milk in the Southeast Since 2001

## You Could Get Money from Class Action Settlements

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- A \$140 million settlement with Dean Foods Company ("Dean") has been reached in a class action lawsuit involving the price of Grade A milk that was produced in the Southeast. Also, a settlement for \$5 million plus certain structural changes has been reached with Southern Marketing Agency ("SMA") and James Baird ("Baird").
- The settlements resolve all claims against Dean, SMA and Baird in a lawsuit over alleged anticompetitive conduct in the purchase, sale, and marketing of raw Grade A milk in Federal Milk Marketing Orders 5 and 7 (the "Southeast"), which cover Alabama, Arkansas, Georgia, Kentucky, Mississippi, Louisiana, North Carolina, South Carolina, and Tennessee, as well as parts of Florida, Indiana, Missouri, Virginia, and West Virginia. The settlement does *not* resolve claims against the other Defendants in this case, and the litigation is continuing against them.
- You may be eligible for a settlement payment. Under the settlements, dairy farmers who produced Grade A milk in Federal Milk Market Orders 5 or 7 and sold that milk directly or through an agent to Defendants or alleged Co-Conspirators in Orders 5 and/or 7 may be eligible for a payment.

Defendants: Dean, National Dairy Holdings LP ("NDH"), Dairy Farmers of America, Inc. ("DFA"), Dairy Marketing Services, LLC ("DMS"), Mid-Am Capital, LLC ("Mid-Am"), SMA, Gary Hanman, and Baird.

Alleged Co-Conspirators: Dairy.com, Inc., The Kroger Co., Prairie Farms Dairy, Inc., Robert W. Allen, Jay Bryant, Herman Brubaker, Gregg L. Engles, Michael J. McCloskey, Allen A. Meyer, Pete Schenkel, and Gerald Bos.

- You may be eligible for a settlement payment even if you previously asked to be excluded from the class (opt out).

**Your legal rights are affected whether you act or don't act. Read this notice carefully.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS AT THIS TIME	
SUBMIT A CLAIM FORM	The only way to get a payment.
OPT BACK INTO CLASS	If you previously asked to be excluded from the class, you may now ask the Court to reinstate you as a member of the class for purposes of the settlements with Dean, SMA and Baird. Reinstatement will not make you a part of the class for purposes of any claims you may have against the non-settling Defendants.

EXCLUDE YOURSELF	If you are a member of the DFA Settlement Subclass, you have an opportunity to exclude yourself from the class. If you exclude yourself, you won't receive any payments from the settlements. But, you keep any rights to sue Defendants, including the settling Defendants, on your own about the same legal claims in this lawsuit. The process for excluding yourself is explained in this notice.
OBJECT	Write to the Court about what you don't like about the settlements.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlements.
DO NOTHING	Get no payment. Give up rights to ever sue Dean, SMA and Baird about the legal claims in this case.

- These rights and options - **and the deadlines to exercise them** - are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlements. Payments will be made if the Court approves the settlements and after any appeals are resolved. Please be patient.

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## BASIC INFORMATION

### 1. Why is there a notice?

You have a right to know about proposed settlements in this class action lawsuit, and about your options, before the Court decides whether to approve the settlements.

The Court in charge of the case is the United States District Court for the Eastern District of Tennessee. The case is known as *Sweetwater Valley Farm, Inc., et al. v. Dean Foods Company, et al.*, No. 2:07-CV-208. The people who sued are called Plaintiffs. The people and companies they sued are called Defendants.

### 2. Who are the Defendants and alleged Co-Conspirators?

Plaintiffs brought this lawsuit against nine Defendants involved in the marketing, sale or purchase of raw Grade A milk produced by dairy farmers in the Southeast. One Defendant was dismissed. The current Defendants are Dean Foods Company ("Dean"), National Dairy Holdings LP ("NDH"), Dairy Farmers of America, Inc. ("DFA"), Dairy Marketing Services, LLC ("DMS"), Mid-Am Capital, LLC ("Mid-Am"), Southern Marketing Agency ("SMA"), Gary Hanman, and James Baird.

The alleged Co-Conspirators are Dairy.com, Inc., The Kroger Co., Prairie Farms Dairy, Inc., Robert W. Allen, Jay Bryant, Herman Brubaker, Gregg L. Engles, Michael J. McCloskey, Allen A. Meyer, Pete Schenkel, and Gerald Bos.

### 3. What is the lawsuit about?

The lawsuit claims that Defendants violated federal antitrust laws and that as a result the prices paid to dairy farmers in Orders 5 and 7 for raw Grade A milk were lower than they otherwise would have been. Dean, SMA and Baird deny that they did anything wrong. The other Defendants also deny that they did anything wrong. A jury has not yet heard or resolved the merits of Plaintiffs' claims, or determined whether Plaintiffs' or Defendants' claims are true.

### 4. Why is this a class action?

In a class action, one or more people called class representatives sue on behalf of persons who have similar claims. All these people are a Class or Class Members. One court resolves the issues common to all Class Members, except for those Class Members who exclude themselves from the Class. U.S. District Judge J. Ronnie Greer is in charge of this class action.

### 5. Who is a member of the Class for the Dean, SMA and Baird settlements?

For purposes of both the Dean settlement and the SMA/Baird settlement, all dairy farmers, whether individuals, entities, or members of cooperatives, who produced raw Grade A milk in Order 5 or in Order 7 and sold that milk directly or through an agent to Defendants or alleged co-conspirators at any time from January 1, 2001, through the present are members of the Class. The Class has two parts for settlement purposes:

- **Independent Dairy Farmer and Independent Cooperative Member Subclass ("Independent Subclass")** - All independent dairy farmers and independent cooperative members (whether individuals or entities) who produced Grade A milk within Orders 5 or 7 and sold Grade A milk directly or through an agent to Defendants or Co-Conspirators in Orders 5 or 7 during any time from January 1, 2001 to the present. The terms "independent dairy farmer" and "independent cooperative member" refer to Southeast dairy farmers who were not members of DFA at the time of their Grade A milk sales.
- **DFA Member Dairy Farmer Subclass ("DFA Settlement Subclass")** - All DFA members (whether individuals or entities) who produced Grade A milk within Orders 5 or 7 and sold Grade A milk directly or through an agent to Defendants or Co-Conspirators in Orders 5 or 7 during any time from January 1, 2001 to the present. The term "DFA member dairy farmer" refers to Southeast dairy farmers who were members of DFA at the time of their Grade A milk sales.

The following persons are excluded from both the Independent Subclass and the DFA Settlement Subclass: (a) Defendants; (b) Defendants' Co-conspirators; and (c) former and current officers and directors of DFA and SMA.

The class representatives in this case for the Independent Subclass are Sweetwater Valley Farm, Inc., Barbara Arwood and Victor Arwood d/b/a VBA Dairy, Jeffrey P. Bender, Randel E. Davis, Farrar & Farrar Dairy, Inc., Fred Jaques, John M. Moore, D.L. Robey Farms, Robert D. Stoots, Virgil C. Willie and Thomas R. Watson. The class representatives for the DFA Settlement Subclass for settlement purposes are Payne Dairy, Inc. and William C. Frazier and Branson C. McCain d/b/a McCain Dairy.

## 6. Why are there settlements with Dean, SMA and Baird?

The Court has not decided in favor of Plaintiffs or Dean, SMA or Baird. Plaintiffs think they would win against Dean, SMA and Baird at a trial. Dean, SMA and Baird think Plaintiffs would not win. But there will be no trial against Dean, SMA or Baird. Instead, Plaintiffs and Dean, SMA and Baird agreed to settlements. That way, they avoid the cost of a trial, and Class Members will get the benefits of the settlements. The Class Representatives and their attorneys, who conducted an extensive investigation of the facts and the law relevant to the lawsuit, think the settlements are best for all Class Members.

## 7. Will the lawsuit continue against the Defendants that have not settled?

The lawsuit will continue against the non-settling Defendants on behalf of the Independent Subclass.

It is not known whether the lawsuit will continue against the non-settling Defendants on behalf of the DFA Subclass. On July 28, 2011 the Court "de-certified" the DFA Subclass for litigation purposes, meaning the DFA Subclass cannot continue to trial as a class action lawsuit unless the Court determines at a future date that the DFA Subclass can be certified as a class for litigation purposes. It is uncertain whether the claims of a DFA Subclass against the non-settling Defendants could be resolved on a class action basis. It is also uncertain whether the claims of a DFA Subclass against Dean, SMA, and Baird could be resolved on a class action basis if their settlements were not approved. The Court will consider whether the DFA Subclass can be certified at a hearing set for April 17, 2012 and a decision will be made shortly thereafter.

If you are or were a member of DFA between 2001 and the present, the decertification of the DFA Subclass by the Court may have affected your rights. For example, the decertification order may have resumed the running of the statute of limitations as to any individual claim you may have. If you are a DFA Settlement Subclass member, you may have the option to file your own individual lawsuit against any or all of the non-settling Defendants. In evaluating whether to pursue any individual claim, you should consult your own attorney.

## 8. What happens if Plaintiffs later reach a settlement with other Defendants?

If Plaintiffs later reach a settlement agreement with any of the remaining Defendants, members of the Class will receive a separate notice of that settlement, which will describe the terms of that settlement and Class members' rights and options with respect to that settlement.

### WHO IS ELIGIBLE TO PARTICIPATE IN THE SETTLEMENTS?

## 9. How do I know if I'm part of the settlements?

In general, all dairy farmers, whether individuals, entities, or members of cooperatives, who produced raw Grade A milk in Order 5 or Order 7 and sold that milk directly or through an agent to Defendants or alleged Co-Conspirators during any time from January 1, 2001, to present are eligible to participate in the settlements.

## 10. Are there any exceptions to being included?

You are not a Class Member if you are a current or former officer or director of DFA or SMA.

You are not a Class Member if the complaint alleges you participated in the conspiracy that is the subject of the lawsuit. The complaint can be viewed at [www.southeastdairyclass.com](http://www.southeastdairyclass.com).

You are not a Class Member if you previously timely asked to be excluded from (opt out of) the Class, unless the Court reinstates you as part of the Class for purposes of the settlements with Dean, SMA and Baird. See Question 11 below for instructions on how to seek reinstatement (opt back in).

You are not a Class Member if you are a member of the DFA Settlement Subclass and timely ask to be excluded from (opt out of) the Class following the instructions below in Question 12.

## 11. If I previously asked to be excluded from the Class, can I change my mind now?

If you previously asked to be excluded from the Class in response to the Court's notice of class certification dated May 18, 2011, you may ask the Court to reinstate you as part of the Class for purposes of the settlements with Dean, SMA and Baird only. You must deliver an application to SE Dairy Farm Class Reinstatements, c/o Rust Consulting, Inc., P.O. Box 2392, Faribault, MN 55021-9092 explaining your reasons for seeking reinstatement for purposes of the settlements with Dean, SMA and Baird, so that it is received no later than May 1, 2012.

If you are reinstated, you may be eligible for a payment from the Dean, SMA and Baird settlements, provided you file a claim form as described below in Question 17. Note that reinstatement will not make you a part of any class for

purposes of any claims you may have against the non-settling Defendants. If you previously asked to be excluded from the Class and wish to pursue claims against the non-Settling Defendants, you must do so in a separate lawsuit. In evaluating whether to pursue any individual claim, you should consult your own attorney.

**12. If I previously did *not* ask to be excluded from the Class, can I change my mind now?**

If you are a member of the DFA Settlement Subclass, you have another opportunity to exclude yourself from the Class – sometimes referred to as “opting out” – and may do so by either (1) mailing a letter providing your dates of DFA membership and saying you want to be excluded from the Southeast Dairy Class or (2) filling out and mailing the Exclusion Request available at the website [www.southeastdairyclass.com](http://www.southeastdairyclass.com). If you exclude yourself, you will not receive any money or benefits from these settlements, nor will you be a part of the Class for any other purpose.

Include your name, the name of your farm, address, telephone number, and signature(s) of all farm owners. You must mail your Exclusion Request so that it is received no later than May 1, 2012, to:

SE Dairy Farm Class Exclusions  
c/o Rust Consulting, Inc.  
P.O. Box 2392  
Faribault, MN 55021-9092

Call 1-800-874-2297 if you have any questions about how to exclude yourself from the Class.

If you are not a member of the DFA Settlement Subclass, you cannot exclude yourself at this time.

**13. I'm still not sure if I'm included.**

If you are still not sure whether you are eligible to participate in the settlements, you can ask for free help. For more information, visit [www.southeastdairyclass.com](http://www.southeastdairyclass.com), call 1-800-874-2297.

**THE SETTLEMENTS' BENEFITS**

**14. What do the Settlements provide?**

Dean has agreed to pay up to \$140,000,000 into a settlement fund in five installments paid over a period of approximately four years. SMA and Baird have agreed to pay an additional \$5,000,000, which will be paid into a settlement fund, and to implement certain structural changes relating to the manner in which SMA is operated and managed, the way in which milk is marketed in the Southeast, and how SMA interacts with Southeast dairy farmers, as described below. After deducting attorneys' fees, costs, and other fees and expenses (see Question 20), the net settlement funds will be distributed to Class Members who file valid claims.

The settlement funds will be reduced by the amount of money that (a) those potential Class Members who previously excluded themselves from the Class and are not reinstated (see Question 11), and (b) DFA Settlement Subclass Members who exclude themselves from the Class now by following the process described above in Question 12, would have received had they filed valid claims.

As noted above, certain structural changes will be implemented as a result of Plaintiffs' settlement with SMA and Baird, including:

- SMA will undergo a broad annual audit of its activities conducted by an independent auditor, the results of which shall be made available to SMA's Board of Directors and the managers of SMA's member cooperatives. In addition, a summary report of the independent auditor's annual audit will be posted on SMA's website.
- SMA will use its best efforts to increase Class I utilization percentages in Federal Orders 5 and/or 7 by reducing milk supply commitments to certain manufacturing plants currently operating in Federal Orders 5 and/or 7.
- SMA and Baird will establish and maintain, for a minimum of three (3) years, a production incentive program for the dairy farmer members of SMA's member cooperatives in Federal Orders 5 and/or 7 designed to increase prices paid to these farmers and increase local milk production.
- SMA will make certain changes in the procedures for the election of its board of directors, the implementation of term limits for most directors, and the required disclosure of potential and actual conflicts of interest.
- SMA will no longer handle, pool, or otherwise be involved with milk marketed by Dairy Marketing Services, LLC (“DMS”) for independent farmers.

- The management agreement between SMA's member cooperatives and VFC Management, LLC (Baird's management company) – to the extent it relates to the management of SMA – will be terminated without cause and a competitive bidding process, as set forth in the Settlement Agreement, will be implemented for the selection of SMA's General Manager.
- SMA will establish a Dispute Resolution Committee consisting of three independent parties authorized to hear and resolve complaints and disputes from dairy farmer members of SMA's member cooperatives over Defendants' compliance with certain provisions of the Settlement Agreement.

The Settlement Agreements, available at the website [www.southeastdairyclass.com](http://www.southeastdairyclass.com), contain more details about the settlements.

#### **15. How much money can I get from the settlements?**

The amount of money you may receive cannot be calculated at this time. Your share will depend on several factors. These factors include, but may not be limited to: (a) the amount of raw Grade A milk you produced in Order 5 and/or Order 7 and sold directly or through an agent to Defendants or alleged Co-Conspirators in Order 5 and/or Order 7 from January 1, 2001 to present; (b) the number of valid claims that are received; and (c) the fees, costs and expenses approved by the Court.

We don't know how many people will file claims. However, if 7,000 dairy farmers file a valid claim, the average payment per farmer is estimated to be \$13,000. Your payment could be more or less than that depending on the amount of raw Grade A milk you produced in Order 5 and/or Order 7 and sold directly or through an agent to Defendants and alleged Co-Conspirators in Order 5 and/or Order 7 and the fees, costs and expenses approved by the Court. This illustration assumes that the Court approves an award of one-third of the settlement funds as attorneys' fees, costs and expenses.

#### **16. What happens if the Court approves the settlements?**

If you are a member of the Class (or are reinstated as a member of the Class) and the Court approves the settlements, you can't sue Dean, SMA or Baird, continue to sue Dean, SMA or Baird, or be part of any other lawsuit against Dean, SMA or Baird regarding the legal claims in this case. It also means that all of the decisions by the Court in this case will bind you. The "Release and Covenant Not to Sue" is described more fully in each Settlement Agreement and describes exactly the legal claims that you give up if the Court approves the settlements.

In addition, if the Court approves the SMA and Baird Settlement, to the extent you are a dairy farmer member of the Class who is a member of any of the member cooperatives of SMA, you may have to seek redress of certain complaints or disputes relating to SMA's operation and management with the SMA Dispute Resolution Committee as provided by in paragraph 7.7 of the SMA and Baird Settlement Agreement.

The Settlement Agreements are available at [www.southeastdairyclass.com](http://www.southeastdairyclass.com).

### **HOW TO GET A PAYMENT**

#### **17. How can I get a payment?**

To ask for a payment, complete and submit the Settlement Claim Form enclosed with this Notice. Settlement Claim Forms are also available at [www.southeastdairyclass.com](http://www.southeastdairyclass.com) or by calling 1-800-874-2297. Please read the instructions carefully, fill out the Claim Form, provide the required documentation and mail it so that it is received no later than May 1, 2012 to:

SE Dairy Farm Class Claims  
c/o Rust Consulting, Inc.  
P.O. Box 2392  
Faribault, MN 55021-9092

If you previously excluded yourself from the Class and are not reinstated, or if you are a member of the DFA Settlement Subclass and now ask to be excluded, you will not be eligible for any payment. Only Class Members are eligible for payments.

#### **18. When will I get my payment?**

Payments will be mailed to Class Members who send in valid Claim Forms on time, after the Court grants "final approval" to the settlements and after any appeals are resolved. If the Court approves the settlements after a hearing on May 15, 2012, there may be appeals. It's always uncertain when any appeals will be resolved, and resolving them can take time.



## THE LAWYERS REPRESENTING YOU

### 19. Do I have a lawyer in the case?

The Court has appointed the following law firms as Class Counsel to represent the Class:

**Independent Subclass**  
Robert G. Abrams  
BAKER & HOSTETLER LLP  
1050 Conn. Ave., N.W.  
Washington, D.C. 20036  
(202) 861-1500

**DFA Settlement Subclass**  
Gary E. Brewer  
BREWER & TERRY, P.C.  
1702 W. Andrew Johnson Hwy.  
Morristown, TN 37816  
(423) 587-2730

You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 20. How will the lawyers be paid?

The Court will decide how much Class Counsel will be paid. Class Counsel have not yet received any payment for work on this case, and have not been reimbursed for expenses. Class Counsel may ask the Court for up to one-third of the settlement funds in attorneys' fees, plus reimbursement of the costs and expenses for investigating the facts, litigating the case, and negotiating and administering the settlements. It is within the Court's discretion, however, to determine whether the amount requested, or a smaller amount, is reasonable and should be awarded. Class Counsel may also request a payment from the settlement funds for the Class Representatives who sued on behalf of the whole Class. All of these fees, costs and expenses will be deducted from the settlement funds, and will reduce the amounts available for Class Members.

## OBJECTING TO THE SETTLEMENTS

### 21. How do I tell the Court that I don't like the settlements?

If you are a Class Member, you can object to either or both settlements or to any request for fees and expenses by Class Counsel. To object, you must send a letter saying that you object. Your letter must also include the following:

- Your name, address, and telephone number,
- The name of the case (*Sweetwater Valley Farm, Inc., et al. v. Dean Foods Company, et al.*, No. 2:07-CV-208),
- Which settlement(s) you object to,
- The specific reasons you object to the settlement(s) or to a request for fees and expenses by Class Counsel, and
- Your signature.

Your objection, along with any supporting material you wish to submit, must be delivered to the following six addresses so that it is received no later than May 1, 2012:

<u>Court</u>	<u>Independent Subclass Counsel</u>	<u>DFA Settlement Subclass Counsel</u>	<u>Dean Counsel</u>	<u>SMA Counsel</u>	<u>Baird Counsel</u>
James H. Quillen United States Courthouse 220 W. Depot St., Ste. 200 Greeneville, TN 37743	Robert G. Abrams BAKER & HOSTETLER LLP 1050 Conn. Ave., N.W. Washington, D.C. 20036	Gary E. Brewer BREWER & TERRY, P.C. 1702 W. Andrew Johnson Hwy. Morristown, TN 37816	Paul H. Friedman DECHERT LLP 1775 Eye St., N.W. Washington, D.C. 20006	W. Gordon Dobie WINSTON & STRAWN LLP 35 W. Wacker Dr. Chicago, IL 60601	Kelly B. Tidwell PATTON, TIDWELL, ET AL 4605 Texas Blvd. Texarkana, TX 75503

## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing ("Fairness Hearing") to decide whether to approve the settlements and whether to approve any requests for attorneys' fees and expenses. You may attend and you may ask to speak, but you don't have to.

### 22. When and where will the Court decide whether to approve the settlements?

The Court will hold the Fairness Hearing beginning at 9:00 a.m. on May 15, 2012 at the James H. Quillen United States Courthouse, 220 West Depot Street, Greeneville, Tennessee in Courtroom 420. The Fairness Hearing may be moved to

a different date or time without additional notice, so it is a good idea to check [www.southeastdairyclass.com](http://www.southeastdairyclass.com) for any updates. At the Fairness Hearing, the Court will consider whether the proposed settlements are fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may listen to people who asked to speak at the Fairness Hearing. The Court may also decide how much to pay Class Counsel. After the Fairness Hearing, the Court will decide whether to approve the settlements. We do not know how long these decisions will take.

**23. Do I have to come to the Fairness Hearing?**

No. Class Counsel will answer any questions Judge Greer may have. But you are welcome to attend the Fairness Hearing at your own expense. If you send a written objection, you do not have to come to the Court to discuss it. As long as you mailed your written objection on time, following the instructions in this notice, the Court will consider it. You may also pay your own lawyer to attend, if you wish, but it's not necessary.

**24. May I ask to speak at the Fairness Hearing?**

Yes. If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear at the Dean, SMA and Baird Settlement Fairness Hearing." Be sure to include your name, address, telephone number, and your signature. You must mail your Notice of Intention to Appear, postmarked no later than May 1, 2012, to the six addresses in Question 21.

You cannot speak at the Fairness Hearing if you previously excluded yourself from the Class and are not reinstated, or if you are a DFA Settlement Subclass member and exclude yourself now following the procedures described above in Question 12 of this notice.

**IF YOU DO NOTHING**

**25. What happens if I do nothing at all?**

If you do nothing, you will not get a payment from the settlements. In addition, if you are a Class Member your rights will be affected: you won't be able to start, continue, or be part of any other lawsuit against Dean, SMA or Baird about the legal issues in this case, ever again.

**GETTING MORE INFORMATION**

**26. How do I get more information?**

This notice summarizes the proposed settlements. More details are in the Settlement Agreements. You can get a copy of the Settlement Agreements at [www.southeastdairyclass.com](http://www.southeastdairyclass.com). You can also get a Claim Form at the website. You may ask questions by calling 1-800-874-2297, or by email to [info@SoutheastDairyClass.com](mailto:info@SoutheastDairyClass.com) or by letter to SE Dairy Farm Class, c/o Rust Consulting, Inc., P.O. Box 2392, Faribault, MN 55021-9092.

Dated: February 14, 2012

BY ORDER OF:  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

## Settlement Claim Form

Complete this Form if You Want to Request Payment from Dean, SMA and Baird Settlements

*Sweetwater Valley Farm, Inc., et al. v. Dean Foods Company, et al.*

No. 2:07-CV-208 (E.D. Tenn.)

You may be eligible to receive a payment from settlements reached with Dean Foods Company ("Dean"), Southern Marketing Agency ("SMA") and James Baird ("Baird") if your farm produced Grade A milk in Federal Milk Market Orders 5 and/or 7 and sold that milk directly or through an agent to Defendants or Co-Conspirators in Orders 5 and/or 7.

### 1. GENERAL INSTRUCTIONS

A. If you wish to receive a payment from the settlements, you must complete and return this Claim Form so that it is **received** no later than May 1, 2012 to the following address:

SE Dairy Farm Class Claims  
c/o Rust Consulting, Inc.  
P.O. Box 2392  
Faribault, MN 55021-9092

B. You must provide the total amount of raw Grade A milk your farm produced in Federal Milk Market Orders 5 and/or 7 and sold directly or through an agent to Defendants or alleged Co-Conspirators in Orders 5 and/or 7 from January 1, 2001 until the present.

Orders 5 and 7 cover Alabama, Arkansas, Georgia, Kentucky, Mississippi, Louisiana, North Carolina, South Carolina, and Tennessee, as well as parts of Florida, Indiana, Missouri, Virginia, and West Virginia.

The current Defendants are Dean, National Dairy Holdings LP ("NDH"), Dairy Farmers of America, Inc. ("DFA"), Dairy Marketing Services, LLC ("DMS"), Mid-Am Capital, LLC ("Mid-Am"), SMA, Gary Hanman, and Baird.

The alleged Co-Conspirators are Dairy.com, Inc., The Kroger Co., Prairie Farms Dairy, Inc., Robert W. Allen, Jay Bryant, Herman Brubaker, Gregg L. Engles, Michael J. McCloskey, Allen A. Meyer, Pete Schenkel, and Gerald Bos.

C. You must sign your completed Claim Form.

D. Claim Forms not **received** by May 1, 2012 at the address above may be rejected and you will not be able to get any money from the settlements.

E. Submission of a Claim Form does not guarantee that you will receive a payment from the settlements.

### 2. CLASS MEMBER INFORMATION

Please type or neatly print all information.

Last Name

First Name

Address Number or P.O. Box

Street or Road

City

State

Zip Code

Telephone (Day)

Email

**FARM INFORMATION**

Farm Name

Specify one of the following:

Individual(s)

Corporation

Cooperative

Other:

Name of County in Which Farm is Located

**FARM ADDRESS**

Check if Farm Address is the same as address above)

Farm Address Number or P.O. Box

Farm Street or Road

City

State

Zip Code

**3. TOTAL AMOUNT OF RAW GRADE A MILK**

In the table below, indicate the total number of pounds of raw Grade A milk your farm produced in Federal Milk Market Orders 5 and/or 7 and sold directly or through an agent to Defendants or alleged Co-Conspirators in Orders 5 and/or 7 from January 1, 2001 until the present:

**NOTE: Amount of raw Grade A milk should be claimed in pounds not in hundredweight.** (Example: 12,345/cwt of raw Grade A milk should be entered as 1,234,500 pounds below.)

Total Number of **Pounds** of Raw Grade A Milk:

Note: The amount you indicate above may be cross-checked against a database to confirm accuracy.

**4. REQUEST FOR FEDERAL TAXPAYER IDENTIFICATION NUMBER**

Enter Taxpayer Identification Number ("TIN") on the appropriate line.

- For individuals, this is your Social Security Number ("SSN")
  - For sole proprietors, you must show your individual name, but you may also enter your business or "doing business as" name. You may enter either your SSN or your Employer Identification Number ("EIN")
  - For other entities, it is your EIN
- Social Security Number (for individuals)      OR      Employer Identification Number

If you are exempt from backup withholding, enter your current TIN above and write "exempt" on the following line: \_\_\_\_\_

**UNDER THE PENALTY OF PERJURY, I (WE) CERTIFY THAT**

1. The number shown on this form is my current TIN; and
2. I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Service because: (a) I am (we are) exempt from backup withholding; or (b) I (we) have not been notified by the Internal Revenue Service that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the Internal Revenue Service has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above. The Internal Revenue Service does not require your consent to any provision other than the certification required to avoid backup withholding.

**5. RELEASE OF CLAIMS AND COVENANT NOT TO SUE**

I understand that, if the proposed settlements are approved, I am giving up any rights I might have to bring a lawsuit based on or in any way related to the allegations in the Consolidated Amended Complaint against Dean Foods, Southern Marketing Agency and James Baird. The "Release and Covenant Not to Sue" is described more fully in each Settlement Agreement and describes exactly the legal claims that you give up if the Court approves the settlements.

**6. CERTIFICATION**

I certify under penalty of perjury that the information above is true and correct and that the submission of false information may subject me to civil and/or criminal penalties.

Signature

Farm Name

Print Name/Capacity of person signing

Date

# Exhibit B

Legal Notice

**If Your Farm Produced Grade A Milk  
In the Southeast Since 2001**

**You Could Get Money from Class Action Settlements**

A \$140 million settlement with Dean Foods Company ("Dean") has been reached in a class action lawsuit involving the price of raw Grade A milk that was produced and sold in the Southeast. Also, a settlement for \$5 million plus certain structural changes has been reached with Southern Marketing Agency ("SMA") and James Baird ("Baird"). The litigation is continuing against the other Defendants: National Dairy Holdings LP ("NDH"), Dairy Farmers of America, Inc. ("DFA"), Dairy Marketing Services, LLC ("DMS"), Mid-Am Capital, LLC ("Mid-Am"), and Gary Hanman. If approved by the Court, the settlements will provide payments to dairy farmers who submit valid claim forms and you may be eligible.

**What Is the Case About?**

The lawsuit claims that Dean, SMA, Baird, other Defendants and alleged co-conspirators violated federal antitrust laws and as a result prices paid to dairy farmers in Federal Milk Market Orders 5 and 7 ("Southeast") were lower than they otherwise would have been. Defendants deny that they did anything wrong. Orders 5 and 7 cover Alabama, Arkansas, Georgia, Kentucky, Mississippi, Louisiana, North Carolina, South Carolina and Tennessee, as well as parts of Florida, Indiana, Missouri, Virginia and West Virginia. Alleged Co-Conspirators are: Dairy.com, Inc., The Kroger Co., Prairie Farms Dairy, Inc., Robert W. Allen, Jay Bryant, Herman Brubaker, Gregg L. Engles, Michael J. McCloskey, Allen A. Meyer, Pete Schenkel and Gerald Bos.

**Who Is in the Class?**

In general, all dairy farmers, whether individuals, entities, or members of cooperatives, who produced raw Grade A milk in Order 5 or in Order 7 and sold that milk directly or through an agent to Defendants or alleged co-conspirators at any time from January 1, 2001 through the present are members of the Class. The Class has two parts: a "DFA Settlement Subclass" and an "Independent Subclass." These Subclasses are explained in a Notice dated February 14, 2012 available at [www.southeastdairyclass.com](http://www.southeastdairyclass.com) or by calling 1-800-874-2297.

**Can I Exclude Myself from the Class Now?**

If you are a member of the DFA Settlement Subclass, you have another opportunity to exclude yourself from the Class. Instructions for how to do so are described in the Notice identified above. If you exclude yourself, you will not receive any money or benefits from these settlements, nor will you be a part of the Class for any other purpose.

**What If I Already Asked to be Excluded from the Class?**

If you previously asked to be excluded from, or "opted out" of, the Class, you may ask the Court to reinstate you to the Class for purposes of participating in the settlements. Your application to the Court must contain the reasons for seeking reinstatement and must be mailed to the Claims Administrator so that it is received no later than May 1, 2012.

**What Do the Settlements Provide?**

Dean agreed to pay \$60 million into a settlement fund shortly after its settlement receives preliminary approval from the Court. Dean will also pay up to \$20 million into the settlement fund shortly after each of the first, second, third, and fourth anniversaries of the Court's final approval of the settlement. As a result of Plaintiffs' settlement with SMA and Baird, an additional \$5 million will be paid into a settlement fund shortly after their settlement receives final approval from the Court and certain structural changes will be implemented relating to the manner in which SMA is operated and managed and the way in which milk is marketed in the Southeast. The details of the settlements are in the Settlement Agreements, available at [www.southeastdairyclass.com](http://www.southeastdairyclass.com). After deducting attorneys' fees, costs, and other fees and expenses, the net settlement funds will be distributed to Class Members who file valid claims.

**How to Get a Payment?**

You must submit a Claim Form to get a payment under either settlement. You can get a Claim Form at [www.southeastdairyclass.com](http://www.southeastdairyclass.com) or by calling 1-800-874-2297. Claim forms must be **received** by May 1, 2012. The amount of money you may receive cannot be calculated at this time.

**Will the lawsuit continue against the Defendants that have not settled?**

The lawsuit will continue against the non-settling Defendants on behalf of the Independent Subclass. It is not known whether the lawsuit will continue against the non-settling Defendants on behalf of the DFA Subclass. On July 28, 2011 the Court "de-certified" the DFA Subclass for litigation purposes, meaning the DFA Subclass cannot continue to trial as a class action lawsuit unless the Court determines at a future date that the DFA Subclass can be certified as a class for litigation purposes. It is uncertain whether the claims of a DFA Subclass against the non-settling Defendants could be resolved on a class action basis. It is also uncertain whether the claims of a DFA Subclass against Dean, SMA, and Baird could be resolved on a class action basis.



if their settlements were not approved. The Court will consider whether the DFA Subclass can be certified at a hearing set for April 17, 2012 and a decision will be made shortly thereafter.

If you are or were a member of DFA between 2001 and the present, the decertification of the DFA Subclass by the Court may have affected your rights. For details, see the Notice dated February 14, 2012 available at [www.southeastdairyclass.com](http://www.southeastdairyclass.com) or by calling 1-800-874-2297.

**What Else You Should Know.**

If you are a Class Member and do nothing, you will be legally bound by the settlements, your rights will be affected and you will not be able to sue Dean, SMA, or Baird for any claim relating to the lawsuit. If you object to either settlement, you must submit your objections by May 1, 2012. The Court will hold a hearing on May 15, 2012 to consider whether to approve the settlements and a request by the Class lawyers for up to one-third of the settlement amount in attorneys' fees, plus costs, expenses, and incentive fees for the dairy farmers who brought the lawsuit. You do not need to attend the hearing. If you wish, you or your own lawyer may ask to appear and speak at the hearing at your own cost.

For More Information and a Claim Form, visit [www.southeastdairyclass.com](http://www.southeastdairyclass.com) or call 1-800-874-2297