

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. 15-0071
)
Milk in California)
)

VOLUME XXIII

TRANSCRIPT OF PROCEEDINGS

October 26, 2015

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BEFORE THE SECRETARY OF AGRICULTURE

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BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

Monday, October 26, 2015

9:00 a.m.

Clovis Veterans Memorial District
808 4th Street
Clovis, California 93613

TRANSCRIPT OF PROCEEDINGS

VOLUME 23

Reported by:

Myra A. Pish CSR
Certificate No. 11613

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MILTNER LAW FIRM, INC.
BY: RYAN MILTNER, ESQ.

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I N D E X - V O L U M E 23

I N D E X - V O L U M E 23
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1 MONDAY, OCTOBER 26, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We're back on record on October 26th, 2015.
3 It is a Monday, it is 9:00 in the morning, and we're in Clovis,
4 California. My name is Jill Clifton. I'm the United States
5 Administrative Law Judge who is assigned to take in the
6 evidence at this milk hearing. This is Day 23 of the hearing.
7 I would like to take the appearances of those who will be
8 participating today, beginning, please, with USDA personnel.

9 MR. FRANCIS: Good morning, William Francis, F-R-A-N-C-I-S,
10 United States Department of Agriculture, Agricultural Marketing
11 Service Dairy Program. I'm a Supervisory Dairy Market Product
12 Specialist.

13 MS. MAY: Good morning, Laurel May with USDA AMS Dairy
14 Program, and I am a Marketing Specialist under the supervision
15 of Will Francis.

16 MS. ELLIOTT: Hello, my name is Pamela Elliott,
17 E-L-L-I-O-T-T, I am a Marketing Specialist with the USDA AMS
18 Dairy Program.

19 MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R,
20 Agricultural Economist for the Upper Midwest Milk Marketing
21 Order, Federal Order 30, on detail to USDA Dairy Programs.

22 MR. MYKRANTZ: John Mykrantz, J-O-H-N, M-Y-K-R-A-N-T-Z,
23 Pacific Northwest and Arizona Orders. I'm an Agricultural
24 Economist on detail with Dairy Programs.

25 MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N,

1 Assistant to the Deputy Administrator Dairy Programs. And,
2 Chip, I caught your cold.

3 MR. HILL: Happy Week 6. I'm Brian Hill. B-R-I-A-N,
4 H-I-L-L, with the Office of the General Counsel's Marketing
5 Regulatory and Food Safety Programs Division.

6 MS. CHILUKURI: Good morning, Rupa Chilukuri, R-U-P-A,
7 C-H-I-L-U-K-U-R-I, and I'm attorney with the Office of the
8 General Counsel.

9 MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N,
10 B-E-S-H-O-R-E, Attorney for the Proponents of Proposal
11 Number 1, California Dairies, Land O'Lakes and Dairy Farmers of
12 America.

13 MR. SCHAD: Good morning, my name is Dennis Schad,
14 S-C-H-A-D, I work for Land O'Lakes.

15 MR. ENGLISH: Good morning, my name is Chip English,
16 C-H-I-P, E-N-G-L-I-S-H, I'm an attorney with the law firm of
17 Davis, Wright, Tremaine, in Washington, DC. I'm here on behalf
18 of the Dairy Institute of California, Proponents of Proposal 2.

19 And, Mr. Carman, I do not have a cold. I was pointing
20 out to the Judge before we started, the newspaper article from
21 yesterday's Fresno Bee which says that all the smoke and soot
22 we have had from the fire is the likely cause, so you caught
23 the fire.

24 MS. VULIN: Ashley Vulin, A-S-H-L-E-Y, V-as in
25 Victor-U-L-I-N, co-counsel for the Dairy Institute of

1 California.

2 MS. KALDOR: Good morning, Rachel Kaldor, R-A-C-H-E-L,
3 K-A-L-D-O-R, Executive Director Dairy Institute.

4 MS. TAYLOR: Good morning, Sue Taylor, Leprino Foods,
5 L-E-P-R-I-N-O.

6 MR. RAMIREZ: Good morning, Miguel Ramirez, R-A-M-I-R-E-Z.
7 For the record, I got a cold, too.

8 MR. ZOLIN: Alan Zolin, A-L-A-N, Z-O-L-I-N, I'm a
9 consultant representing Hilmar Cheese.

10 MR. DeJONG: James DeJong, D-E-J-O-N-G, Dairy Policy
11 Economic Analyst for Hilmar Cheese, a dairy farmer-owned
12 manufacturer of cheese, whey, and milk powder.

13 MR. BLAUFUSS: Good morning, Rob Blaufuss, B-L-A-U-F-U-S-S,
14 I'm the Senior Manager of Dairy Risk Management in Economics to
15 Dean Foods Company.

16 MR. VETNE: John Vetne, representative for Hilmar Cheese
17 Company.

18 MS. HANCOCK: Nicole Hancock, H-A-N-C-O-C-K, with Stole
19 Rives, S-T-O-E-L, R-I-V-E-S, I represent the California
20 Producer Handlers Association and Ponderosa Dairy.

21 MR. VANDENHEUVEL: Rob Vandenheuvel,
22 V-A-N-D-E-N-H-E-U-V-E-L, here on behalf of Milk Producers
23 Council, a California dairy farmer trade association.

24 JUDGE CLIFTON: I would like now to take the appearance of
25 anyone who has not yet come to the podium who expects to

1 testify today. All right. No one yet. I do understand we
2 have some coming. All right.

3 Let's take announcements and deal with other
4 preliminary issues, beginning with those from the USDA.

5 MS. MAY: So welcome back to the Clovis Veterans Memorial
6 District. We'll be here in this room for the next two days --
7 well, today and tomorrow, and then Wednesday we'll be over in
8 the Independence Room again, and hopefully there for the rest
9 of the week. Anything else you need to know?

10 We did re-organize some of the leftover exhibits. They
11 are back in the boxes on the back table, and they are now
12 numbered, so if there are any that you don't have that you
13 would like to find, you might be able to find some back there.
14 There are also a few handouts that we had early on in the
15 hearing, things like the rule making process, and some other
16 stuff like that. So if you would like to help yourself to
17 those, be our guest.

18 Anybody that would like to is welcome to testify in
19 this hearing. Also, anybody who would like to ask questions of
20 the witnesses may do so by approaching the podium.

21 I believe that Mr. DeJong was on the stand last Friday
22 and being cross-examined when we ended the day, and he is due
23 to be up again first today. And depending on how the day goes,
24 I think Mr. Blaufuss is the next person up.

25 Also, Mr. Beshore tells me that he has two producers

1 who will be tentatively coming in this morning and would like
2 to testify right after lunch, if they can get on the schedule.
3 So that is all I have.

4 MR. ENGLISH: Good morning, Chip English. So in moving
5 into our second week for the Dairy Institute of California,
6 Mr. DeJong is going to complete, hopefully, his examination
7 today. And then I did mention on Friday that we're expecting a
8 witness from Marquez Brothers today, a Mr. Maldonado, and he is
9 here, and I think that he would go after Mr. DeJong. And of
10 course, the dairy farmers, when they arrive, your Honor, we
11 will, of course, as always, accommodate them.

12 After Mr. Maldonado, I think as I mentioned last week,
13 we have Mr. Jim Ahlem who is a dairy farmer and the Chairman of
14 Hilmar Cheese. And then depending on where we are today, we
15 have Mr. Blaufuss on orderly marketing.

16 Looking at the topic list, and part of this is because
17 I myself was a little confused last week, as we move out of
18 opening statements, and obviously, we have some witnesses who
19 are more general, but as we move out of the opening statements,
20 we're going to move into Topic 2, and that's definitions and
21 pooling standards. And I think last week I might have put
22 pricing ahead of pooling, because I keep thinking of the
23 pooling issues being under Topic 8, but it really is under
24 Topic 2. So we'll be taking up sort of the pooling issues,
25 which is to say the definitions of distributing plant, supply

1 plant, and handlers as part of Topic 2. We also have a
2 witness, as I said last week just one, and I'm right, a witness
3 on sort of uniform provisions. And by definition, that sort of
4 covers a gamut of topics, starting with Topic 2 through all the
5 way to Topic 9. So to the extent we have uniform provisions,
6 we'll have a very short statement on that, and that's expected
7 to be Mr. Zolin.

8 I think that that's probably as far as we'll get today.
9 The last opening statement is Sue Taylor from Leprino Foods,
10 that's no earlier than tomorrow. So that's what I have right
11 now, and I'm still working with some other witnesses to see
12 where we are.

13 But the bottom line is, I wanted to point out that
14 we're starting to move out of opening statements, certainly by
15 tomorrow, maybe even later today, and we'll be getting into
16 both uniform provisions and pooling standards, and I would
17 expect class prices to be next week.

18 JUDGE CLIFTON: Thank you, Mr. English. Let's continue
19 with any other preliminary matters. Are there any other
20 announcements? Preliminary issues?

21 I have a tiny one. Very small. I've mentioned before,
22 I'm just thrilled that we already have up as official USDA
23 documents, exhibits and transcripts. Now, they are not up to
24 the very last minute, but there's a lot of information there
25 already.

1 I'm concerned about a tiny thing, but I would like to
2 raise it now and have USDA decide how to deal with it. Some of
3 the exhibit stickers don't say exhibit, they say deposition
4 exhibit, and to me that's a little confusing. I would like for
5 us to strike the word deposition where it's on the sticker,
6 it's just part of the preprinted sticker, but it might lead a
7 court reviewing the decision to think that that was some
8 preliminary issue from some other proceeding. I don't know
9 when they started. I know at one point we refreshed our supply
10 of stickers, and at that point it started. I know if you look
11 at Exhibit 47, 48, 51, 54, 55, 56 you will see that, it will
12 say deposition sticker. So if we -- if it is, I know nothing
13 is easy once something's been posted, but if it is relatively
14 easy for that to be stricken and replaced on the website,
15 that's the easiest. If that's not easy, I'll deal with it when
16 I certify the record. So it is not a big deal, but we will
17 want to address it at some point.

18 I did look this morning at the private enterprise
19 website, the one that is located at www.my-dairyman.com, and I
20 believe they are not posting exhibits, at least so far, until
21 they can take the official one from the USDA page. So I don't
22 think they are putting up proposed exhibits at this point. And
23 I could not yet make the recorded audio work, so I think they
24 are still working on that. I still think that will be a very
25 useful source for us.

1 The only other preliminary matter I would have is just
2 to indicate that the docket number is, in brackets, [AO] docket
3 number 15-0071.

4 All right. Are there any other matters then before
5 Mr. DeJong comes back to the witness stand? None. Mr. DeJong,
6 you may come forward. Mr. DeJong you remain sworn. Please,
7 again, state and spell your name.

8 MR. DeJONG: James DeJong, J-A-M-E-S, D-E-J-O-N-G.

9 JUDGE CLIFTON: All right. And I'm sure it will be right
10 in the transcript, but just state how DeJong looks when it is
11 printed out.

12 MR. DeJONG: You mean just re-spell it?

13 JUDGE CLIFTON: Yes.

14 MR. DeJONG: D-E-J-O-N-G.

15 JUDGE CLIFTON: Is it a capital DE?

16 MR. DeJONG: Capital D-e, J-O-N-G.

17 JUDGE CLIFTON: Is there a space between the DE and the
18 JONG?

19 MR. DeJONG: I do it differently for official government
20 forms, such as the DMV, they are not very flexible, so I tend
21 to not put a space. But technically it is supposed to have a
22 space, but I suppose it doesn't really matter.

23 JUDGE CLIFTON: It does to me.

24 MR. DeJONG: Just no space, since we're keeping it official
25 here.

1 JUDGE CLIFTON: I think what we have been doing so far in
2 the transcript is we have a space, which is actually the
3 correct way.

4 MR. DeJONG: Yes.

5 JUDGE CLIFTON: Okay. Well, either way will do. You may
6 proceed.

7 MR. VETNE: Your Honor, before we continue with cross,
8 Marvin Beshore consented to allow me to butt in and make a
9 correction to one of the exhibits, so my suggestion is we mark
10 it as the next consecutive exhibit and Mr. DeJong will explain
11 how it fits.

12 JUDGE CLIFTON: Ms. Elliott, what number will this have?

13 MS. ELLIOTT: 102.

14 JUDGE CLIFTON: 102. This will be 102. Please raise your
15 hand if you is still need a copy of Exhibit 102. We are ready.
16 Thank you.

17 (Thereafter, Exhibit 102 was marked
18 for identification.)

19 MR. VETNE: John Vetne, representative for Hilmar Cheese.

20 DIRECT EXAMINATION

21 BY MR. VETNE:

22 Q. Mr. DeJong, on pages 15 to 16 you have some discussion
23 about producers in Federal Marketing Orders getting paid below
24 minimum, and there was a line graph that you referred to to
25 illustrate that point, which was figure 13 in the exhibit, I

1 think it would have been 100, correct?

2 A. Correct.

3 Q. Good. And in the -- in the Exhibit 100, Figure 13, you
4 indicate in a footnote that you used blend prices as reported
5 by the Market Administrators at whatever base zone they use
6 without adjusting for location, correct?

7 A. Correct.

8 Q. Okay. And since then, you have looked again to adjust
9 by location for the areas to which you made reference, and have
10 recalculated that and created a new line graph; is that
11 correct?

12 A. That is correct.

13 Q. Okay. Is there anything else about the -- and that's
14 in Exhibit 102, the correction or the location adjusted
15 analysis, correct?

16 A. Correct.

17 JUDGE CLIFTON: I would just like to note that the original
18 one is actually in Exhibit 99.

19 MR. VETNE: 99. Okay. Sorry.

20 BY MR. VETNE:

21 Q. Figure 13 in Exhibit 99 is now updated and corrected by
22 Figure 13 in the one-page Exhibit 102; is that correct?

23 A. I believe so.

24 Q. Okay. Okay. And the adjustments that you made, so
25 others can compare for themselves, is in the footnote on

1 Exhibit 102; is that correct?

2 A. Yes.

3 Q. Okay. Your Honor, I don't think I have anything
4 further. Do you want to add anything about that, Mr. DeJong?

5 A. I made those adjustments, and it did put the prices
6 closer to Class III, but it does not change my conclusion.

7 Q. Okay. And to correspond with your testimony, your
8 prepared statement on page 15, you put a heading on Figure 13
9 in Exhibit 102, title which is, Figure 13 producers in FMMO's
10 are being under Class III. Should we insert the word "paid"?

11 A. Yes.

12 Q. "Paid", after the word "being" before the word "under".

13 JUDGE CLIFTON: Ms. Elliott, would you make that change,
14 please, on Exhibit 102, the title that says, Figure 13, will
15 have the same correction made that the original Figure 13 in
16 Exhibit 99 had, which is you insert the word "paid" after the
17 word "being".

18 MS. ELLIOTT: Yes.

19 JUDGE CLIFTON: Thank you.

20 MR. VETNE: So they look identical now with handwritten
21 insert on both. Your Honor, that's all I have. I move the
22 admission of Exhibit 102, which is the correction.

23 JUDGE CLIFTON: Thank you. We appreciate this. We
24 appreciate all the diligence in getting the most up-to-date and
25 accurate information before the decision makers.

1 Exhibit 102 is now being considered. Is there anyone
2 who would like to question Mr. DeJong before determining
3 whether you have any objection? Ms. May?

4 CROSS-EXAMINATION

5 BY MS. MAY:

6 Q. Laurel May with USDA.

7 We just have a quick clarifying question on that title
8 for that exhibit. It says, producers in the FMMO's are being
9 paid under Class III, does that mean they are being paid below
10 Class III?

11 A. Yes.

12 Q. Okay. That's what we needed to know.

13 A. Okay.

14 Q. Thanks.

15 JUDGE CLIFTON: Does anyone else have any questions for
16 Mr. DeJong on Exhibit 102? Are there any objections to
17 Exhibit 102 being admitted into evidence? There are none.
18 Exhibit 102 is admitted into evidence.

19 (Thereafter, Exhibit 102 was
20 received into evidence.)

21 MR. VETNE: Thank you, your Honor. Mr. DeJong is again
22 available for gentle cross.

23 JUDGE CLIFTON: Thank you. Mr. Beshore, would you like to
24 resume?

25 MR. BESHORE: I would.

1 CROSS-EXAMINATION

2 BY MR. BESHORE:

3 Q. Thank you, your Honor. Marvin Beshore.

4 Good morning, Mr. DeJong.

5 A. Good morning.

6 Q. Let me start with Exhibit 102, since it was just
7 presented, so --

8 Can you -- can you just go back through and help me
9 understand what's being compared here? This -- it's all -- it
10 is the all milk price in the state less some other price, is
11 that, am I right for starters?

12 A. Yes, you are right there.

13 Q. Okay. And the all milk price is now, it is that test,
14 and so you made some adjustments. Did you make adjustments to
15 that price based on test data you came up with for the states?

16 A. Yes, in the footnote at the bottom of the graph I say,
17 "milk test data for Texas and New Mexico was state specific."
18 I got that information from the Southwest Order MA website,
19 where they break down the states with the particular protein,
20 fat, other solids test, so I used the Class III components, and
21 multiplied them out by the test to come with a Class III at
22 test, if you are following me. And then I also added the PPD
23 for that area. And I did the same approach with Michigan,
24 except I couldn't find Michigan state-specific components
25 breaking out, so I used that Order's test average.

1 Q. Okay. So you are comparing the all milk price in these
2 areas with the Class III price plus the PPD?

3 A. You bet. Basically.

4 Q. So the all milk price represents a blend of all the
5 uses in these areas, right?

6 A. Yes.

7 Q. So why are you comparing it just to the cheese price?

8 A. I'm not comparing it just to the cheese price, that's
9 why I used the PPD as the adjustment. So the other money that
10 was in that Order would be reflected in PPD beyond Class III,
11 that's why I put the PPD in.

12 Q. Is that, are you assuming that's a proxy for the, what
13 the statistical blend price or the uniform --

14 A. Yeah, it was to get a blend price at test. That's what
15 I was trying to get to.

16 Q. So for New Mexico you used, what, Dallas minus the 90,
17 so what -- what's the assumption there?

18 A. So the Southwest MMO, they show a PPD on their website
19 that's announced every month and it is at the Dallas location,
20 so I subtracted 90 cents from that for New Mexico to show that
21 location differential for New Mexico.

22 Q. So you are assuming that New Mexico, well, you are
23 assuming New Mexico milk was delivered into New Mexico?

24 A. Yes, that's the assumption I made.

25 Q. Okay. So for New Mexico, you are aware a lot of that

1 milk's delivered out-of-state, correct?

2 A. Yes, it would be. I realize this isn't perfect, but I
3 just wanted to use it as a proxy.

4 Q. Okay. And in terms of not being perfect, so when a
5 New Mexico milk is delivered out-of-state and announced that in
6 terms of all milk price, it has, the all milk price has
7 marketing expenses built in there. Right? You understand
8 that?

9 A. Yes, I think it would.

10 Q. So if the hauling, including the hauling expenses,
11 right? I mean, all milk price is a top, top, top line price?

12 A. Yeah, it would be. I understand it, like an FOB plant
13 price with no deductions.

14 Q. And that's the case in all instances here, whether it
15 is Michigan, Texas, New Mexico?

16 A. I assume it would be the same methodology.

17 Q. So I guess your point is that in late 2014 and 2015
18 prices were bad in these, were depressed in these markets?

19 A. Relative to Class III, I would say that's accurate.

20 Q. Well, they were depressed, period, right? Relative to
21 anything?

22 A. Yeah, I think -- yeah, there was a market turndown.

23 Q. And extraordinary marketing expenses incurred by
24 everybody in the marketplace during these periods, correct?

25 A. That could be true.

1 Q. Okay. Let's go back, then, to your testimony. And I
2 want to start, I want to understand a little bit about your
3 role at Hilmar. You have been working there for, since
4 sometime in 2014?

5 A. Yes. April 2014, I believe I wrote.

6 Q. Okay. And what, you're one of what, 800 people, or
7 1,000 people in the company there?

8 A. Yeah, I believe that's about how many we have in
9 California, based in California.

10 Q. Okay. Who do you report to?

11 A. Currently, right now I report to Mark Dahlstrom, our
12 Milk Procurement and Risk Management Manager.

13 Q. Okay. And who does he report to?

14 A. David Ahlem, CEO.

15 Q. Okay. So do you have any operational responsibilities
16 with the company?

17 A. I would say, what -- define operational first.

18 Q. Well, tell me what your responsibilities are.

19 A. I basically, I -- there's a lot of things I do. I work
20 with our sales team, risk management, business analysis, and
21 our other senior leaders. I try to improve the quality of our
22 business analysis. I work with our sales team to help them
23 understand markets and to look at markets differently, provide
24 them with, you know, economic data prices, risk management, I
25 talk with our, my boss, the Risk Management Manager a lot about

1 hedging strategies and that sort of thing. So I have a hand in
2 a lot of different areas of the company. Probably the area I
3 don't have a hand is kind of like the technical, operating the
4 plant, you know, those sorts of, you know --

5 Q. All right.

6 A. -- technical functions.

7 Q. But you are providing sort of analysis to persons in
8 the company who are both responsible for milk procurement and
9 for product sales. Is that fair?

10 A. Yeah, I interact with all those different teams.

11 Q. When you are talking about hedging, I assume you are
12 talking about hedging in terms of hedging the products that the
13 company makes; cheese, whey, etcetera?

14 A. Yes, when I am working with the risk management side,
15 it is primarily from hedging with the company.

16 Q. Okay. So let me talk then, a little bit about the milk
17 procurement side. How much of your time is spent working on
18 milk procurement?

19 A. Very little.

20 Q. Do you know anything about the Grade B plan that was
21 just offered to Hilmar producers?

22 A. I know a little bit about it.

23 Q. Can you tell us about it?

24 A. As far as I know, that producers have a choice, if they
25 choose to, they can put some milk into Grade B, put their milk

1 into Grade B.

2 Q. Okay. And Hilmar, you went out to your your 200 or so
3 producers recently and said, "Hey, here's the new opportunity
4 to go Grade B. We're going to make it better than we used to,
5 more attractive to you than we used to, so you ought to think
6 about it."

7 A. That could be correct. I haven't seen all the details
8 on that. I think this was very recent and I have been pretty
9 caught up into the hearing.

10 Q. Okay. So you know that happened, but you don't really
11 know much about it?

12 A. I just know the very basics.

13 Q. Did I represent the basics about right?

14 A. That, I don't know if it was phrased exactly like that.
15 I don't know if they said we're going to make it better or if
16 that was the term we used, but that could be it, I'm not sure.

17 Q. Okay. But do you know that, in fact, it was a better
18 offer than Hilmar had previously made?

19 A. I couldn't say one way or the other. I'm not sure.

20 Q. Okay. How about your -- your producers are all on
21 production-based plans, correct?

22 A. I believe so.

23 Q. Okay. What's the base and how does that work?

24 A. I believe each producer has a certain amount that they
25 can produce in their contract, and that's basically all I know.

1 And they are technically not supposed to go over that.

2 Q. Okay. Do you know what level of production at
3 Hilmar's, what level of capacity at Hilmar's plant those base
4 levels are calculated to?

5 A. Are you asking for a specific number?

6 Q. No, I'm thinking more of a percentage or a
7 relationship. Are the base, are the producer base volumes
8 related to what you can take at your plant?

9 A. Absolutely.

10 Q. And to what percentage are they related, if you know?

11 A. I don't know the exact percentage. I think the bottom
12 line is, you don't want to take more milk in than you can
13 process and create products for which you can sell to
14 customers.

15 Q. Okay. So let's -- let me just ask you then, about your
16 description of, on page 3 of Exhibit 98, of, there's a
17 paragraph that begins, "there is no disorderly marketing" and
18 it's under the heading "there is no disorderly marketing in
19 California"?

20 A. I see that.

21 Q. And in the middle of that paragraph you say "HCC,
22 Hilmar Cheese Company, had to ship 400 loads out-of-state this
23 spring because we were unable to find available processing
24 capacity and willing buyers."

25 So what happened this spring?

1 A. Are you talking, the apparent conflict you are bringing
2 up in terms of the amount of milk that was produced relative
3 our contract? Is that what you are getting at?

4 Q. I'm asking what you're talking about when you said,
5 "Hilmar had to ship 400 loads out-of-state this spring because
6 we were unable to find available processing capacity and
7 willing buyers."

8 A. Yes, that is correct. I think it is, what happens when
9 you have these contract limits, is that cows are organic
10 animals and you can put a cap, but occasionally, when
11 conditions are right, dairy farmers will produce over. And
12 when that happens, there's a period of delay between when the
13 producers are notified that they are over and they are actually
14 able to start cutting back their herd. So there are spikes in
15 milk production that you can't necessarily control.

16 Q. Okay. So your producers produced more than they were
17 supposed to under their contracts and you marketed it
18 out-of-state because you didn't have available processing
19 capacity?

20 A. Yes, I believe that's what my testimony says.

21 Q. But that was an orderly marketing situation in
22 California, correct?

23 A. We were able to deal with the problem.

24 Q. Recently, or at the beginning of your testimony you
25 testified you had an order from a fluid milk plant in

1 California just recently, correct?

2 A. Correct.

3 Q. So when's the last time that you had shipped any milk
4 to -- do you regularly give up milk to fluid markets?

5 A. We do not.

6 Q. Do you know when the last time was that you did?

7 A. I think it's been a very long time. This was an
8 unusual event.

9 Q. So why did you give milk up to this request?

10 A. Because I believe we had some wiggle room in our
11 capacity. We were asked if we had any, we did, and we gave it
12 up.

13 Q. Did you charge a give-up cost?

14 A. I don't know that level of detail on that, just
15 happened a few days ago.

16 Q. Where did you ship the 400 loads out-of-state to? Down
17 to Dalhart?

18 A. That could have been. I'm not sure exactly where those
19 loads went, but that is possible.

20 Q. Okay. I asked you on Friday about the 340 loads of
21 milk that you report on page 5 having been sold back in, well,
22 I think I asked you what period of time was involved there?

23 A. Yes.

24 Q. Do you have that information?

25 A. Yes, I did look that up. It was for the year 2007

1 going to approximately September, October. It was, we gathered
2 that information prior to the October 2007 CDFA hearing.

3 Q. So that was in, sometime the first nine months of 2007?

4 A. Something like that, yeah, close to it.

5 Q. Yeah. Do you know -- do you know what impact that
6 those sales had on your weighted average cost of milk for the
7 year at Hilmar?

8 A. Probably a small impact, I would say. I think the
9 larger problem, again, was just the high 4b price at the time,
10 that we were having trouble making a return on it.

11 Q. Let me ask you, talk a little bit about hedging. You
12 have, you devoted a fair amount of your testimony in Exhibit 98
13 and your charts 99 to commentary about the ability to hedge on
14 a producer, about producers to hedge in California. Is that,
15 did I understand it right?

16 A. Correct. Yes, I think I might have got a little bit
17 wordy with my testimony.

18 Q. Wordy helps to understand.

19 A. Yes.

20 Q. Okay. So I think you have indicated this morning, you
21 don't have much to do with procurement of milk and hedging with
22 your producers in your job, correct?

23 A. Correct. But a lot of the principles I think go across
24 understanding how these instruments work. Again, I'm not an
25 expert in producer hedging, but I felt that the whole argument

1 that, you know, only -- only using Class III in California, I
2 thought it was fairly simple for me to go at.

3 Q. It -- okay. So it was pretty simple for you to make
4 these comments, these critiques of that point, you thought?

5 A. Yes.

6 Q. Okay. But have you ever tried to actually execute a
7 hedge with a California dairy farmer?

8 A. I have not.

9 Q. I want to -- I want to show you something that hasn't
10 been copied yet, so I'll go onto something else. I'm sorry.

11 A. Fair enough.

12 Q. It's correct -- let me just pursue another question or
13 two on that topic. It's correct, is it not, that there is,
14 there's no market, no futures market, in Class 4a or 4b
15 products, correct?

16 A. Correct.

17 Q. So if a California dairy farmer wanted to hedge, they
18 would have to use some basket of other products to attempt to
19 mimic their price?

20 A. Yeah, they would have to use the instruments available
21 on CME, which predominantly track the NDPSR prices, and those
22 prices go into making the Class III and IV futures products.

23 Q. Okay. Let me -- let me move to, until we get that
24 exhibit, let me move to Hilmar's, the products side.

25 You spent a lot of time with Mr. Vetne on Friday

1 identifying, I think you called them converters, customers for
2 bulk cheese who would take the bulk product and process it,
3 convert it into a consumer product.

4 Do you recall that?

5 A. Yes, I recall that.

6 Q. And if my notes are right and I remember right, most of
7 the -- most of the converters were out-of-state.

8 A. That is correct.

9 Q. Okay.

10 JUDGE CLIFTON: Let's take just a two-minute break. Do you
11 remember where you are, Mr. Beshore?

12 MR. BESHORE: I can work my way back.

13 JUDGE CLIFTON: Okay. Let's off record for two minutes.
14 Everybody just stretch.

15 (Whereupon, a break was taken.)

16 JUDGE CLIFTON: We're back on record at 9:50. I realize
17 some of these exhibits are being distributed right now.
18 Mr. Beshore, if you want to wait just a minute until people
19 have theirs. There are two exhibits being distributed. If you
20 do not yet have them, would you please raise your hand so that
21 you can receive your copies.

22 Mr. Beshore?

23 MR. BESHORE: I would like to ask that these two, one-page
24 documents be marked as the next two consecutive exhibits, which
25 I believe would be 103 and 104. I would ask that the one

1 titled Exhibit 99 Figure 5, CA Basis Data Points be 103, and
2 the one that's Exhibit 99 Figure 5 PA Basis Data Points be 104.

3 JUDGE CLIFTON: So do you agree, Ms. Elliott, that the
4 first one will be 103?

5 MS. ELLIOTT: That's correct.

6 JUDGE CLIFTON: All right. So that one is the California
7 one. I presume CA stands for California, Mr. Beshore?

8 MR. BESHORE: It does, yes.

9 JUDGE CLIFTON: All right. So that will be Exhibit 103,
10 California.

11 (Thereafter, Exhibit 103 and Exhibit 104
12 were marked for identification.)

13 JUDGE CLIFTON: And 104 will be Pennsylvania.

14 MR. BESHORE: Okay. Thank you, your Honor.

15 BY MR. BESHORE:

16 Q. So I would to, since we have the exhibits now,
17 Mr. DeJong, I would like to address them. So if you look at,
18 if you take Exhibit 99, your exhibit, and go to Figure 5,
19 please?

20 A. Which one, there's a PA and a CA.

21 Q. Well, no, I'm talking about Exhibit 9, your Exhibit 9?

22 A. My Exhibit 9?

23 Q. 99, I'm sorry, Figure 5 of your Exhibit 99.

24 A. Okay.

25 Q. Exhibit 103 simply took the basis data points

1 underlying Figure 5 and plotted them.

2 Do you see that?

3 A. Okay.

4 Q. Now, what -- what it shows is that for California,
5 those basis points are both positive and negative during this
6 time period, correct? Data points?

7 A. Correct.

8 Q. And you would -- you would know that to be the case,
9 would you not?

10 A. I believe so. I mean, this graph isn't particularly
11 labeled with years or anything like that, so I'm assuming what
12 you are telling me is accurate.

13 Q. Okay. But your graph was labeled with 2010 to 2015
14 first half, right?

15 A. Yes.

16 Q. And I would just suggest to you that 103 covers the
17 same time period.

18 A. Okay. I'll take your word for it.

19 Q. Well, did you, when you were doing Figure 5, did you
20 observe the data points within these various bars?

21 A. Are you talking about did I do the same type of
22 analysis you are presenting? Is that my rephrasing your
23 question?

24 Q. I'll take that question.

25 A. Okay. I did not look at it like this. I did not graph

1 it out like this.

2 Q. Okay. Since you didn't graph it out like this, can you
3 confirm for me what our analysis indicated, that your averages
4 on Figure 5 represent an average of absolute values as opposed
5 to an average of pluses and minuses?

6 A. Yes, I believe that is correct. When I was doing this
7 analysis, I knew that there was this weakness in analyzing it
8 in this particular way, so I am not surprised by those results.

9 Q. Okay. I mean, that's a substantial weakness, is it
10 not, when you treat --

11 A. Well, I --

12 Q. -- when you treat, let me finish, please -- when you
13 treat plus, a plus \$1.00 basis and a minus \$1.00 basis as the
14 same value, which is what you did, right?

15 A. It -- yes, I believe in this particular graph that's
16 what it did, but I think there's many different ways to look at
17 some of the hedging, you know, correlations or, you know, basis
18 risk in hedging. That's why I chose three different approaches
19 to show three different ways it can be done and then let USDA
20 or other people who are looking at this, take their weight on
21 which way they think is most relevant.

22 Q. Okay. Well, did you use the same set of data points
23 for California for some of the other following tables?

24 A. I used it for the following table, I believe, Figure 6.

25 Q. Okay. So in Figure 6, again, average price spread

1 versus Class III showing California ranked first. You ranked
2 California first in its lack of deviation from Class III, by
3 counting plus one and minus one as the same value, correct?

4 A. Counting plus one and minus, so it would be zero. Is
5 that what you are saying?

6 Q. Well, I think you averaged, I think you indicated that
7 on Figure 5 you averaged these values on an absolute basis
8 without regard to negative or a positive values, correct?

9 A. Yeah. I believe it, I believe it was, yeah. If there
10 was a difference, let's say negative one and positive one, the
11 difference would be 2? Is that what you are getting at?

12 Q. Right. But when you come up with an average on
13 Figure 5 or Figure 6, you just considered one as the same,
14 whether it was negative or positive, correct?

15 A. I believe so, if that's what was in the original
16 analysis on the link to the CDFA website, that's what was done.

17 Q. Well, from what we can tell, that's what was done. So
18 you used that set of data points for 5 and 6. Did you use them
19 anywhere else?

20 A. No. I believe the Figure 7 I used mailbox prices and
21 used a different form of analysis.

22 Q. So if you look at Exhibit 104 then, just to -- just to
23 illustrate the difference between on Figure 5 or Figure 6, I
24 guess, California versus Pennsylvania, for instance. So,
25 Pennsylvania, on Figure 5, shows as about 50 cents higher than

1 California. Is that not --

2 A. I'm sorry, are you looking at the Pennsylvania one?

3 Q. Right.

4 A. Where does it say 50 cents, I'm sorry?

5 Q. Well, I was looking at your Figure 5 and looking at the
6 height of the bars.

7 A. Figure 5, shows mine California at about \$2.00.

8 Q. Right.

9 A. Yes.

10 Q. And Pennsylvania is about \$2.50, a little over \$2.50?

11 A. Yes.

12 Q. Now, when you look at Exhibit 104 where we plotted the
13 Pennsylvania basis points, of course they are all positive,
14 correct?

15 A. Yes, I believe so.

16 Q. Okay. And for a dairy producer, if they are looking at
17 hedging, the risk factor involved in month-to-month variations,
18 positive versus negative, is a lot different than when it is
19 all positive, wouldn't you agree?

20 A. Could you explain that a little bit more?

21 Q. When a dairy farmer is looking at his basis for a hedge
22 situation, if it's positive and negative, some of the time
23 positive, some of the time negative, that's a much more
24 difficult situation to deal with than if it's positive all the
25 time. Wouldn't you agree?

1 A. Well, I think one of the things you would look at is
2 the relative volatility. For example, something could still be
3 largely positive, but if it's very volatile, for example, going
4 plus \$5.00 to, you know, \$1.00, to plus \$1.00, that's still
5 quite a bit of volatility. So it can still be difficult to
6 hedge, even though the actual basis is above Class III.

7 Q. Okay. Let's go back to the topic we left when we took
8 a break -- and thank you for the break, your Honor, so that we
9 can get these exhibits in. The cheese, location of cheese
10 converters and availability of those, you know, those sales to
11 Hilmar, are there cheese converters in California?

12 A. I believe there may be some small ones. I'm not aware
13 of all of them.

14 Q. Okay. Well, you, from your testimony to Mr. Vetne, you
15 are aware of a lot of out-of-state converters that you listed,
16 right?

17 A. We were specifically looking at the major cheese
18 converters, not just the small ones that take small volumes.
19 If we had to list every one that took a very small volume, the
20 list would be a bit longer.

21 Q. Okay. Are there -- whose -- what's the largest cheese
22 converter in California?

23 A. Oh, I couldn't tell you off the top of my head.

24 Q. Can you tell us any of the, well, does Hilmar sell to
25 any California, sell bulk cheese from its plant to any

1 converters in California?

2 A. I can't answer that exactly, but I would be surprised
3 if we didn't sell to some in California, sell to some small
4 ones in California.

5 Q. Does Hilmar do any packaging of its own -- of its own
6 product at Hilmar or any other location?

7 A. Are you referring to like retail packaging?

8 Q. Yes.

9 A. No.

10 Q. Okay. Do you sell all of your cheese in bulk to third
11 parties for them to process and package?

12 A. Yes.

13 Q. Who are your competitors in California in the
14 manufacture of cheddar cheese?

15 A. I believe there are some smaller cheddar cheese makers
16 in California. No ones near our scale, though.

17 Q. Can you name any of the smaller competitors?

18 A. One that comes to mind would be Farmdale.

19 Q. Okay. Any others?

20 A. There may be more, but I can't think of them right now.

21 Q. You have -- you made the comment, if I can find it,
22 that I think it is on page 6, that, "we are losing money on
23 every pound" and you are talking about lactose produced, and
24 this is about the seventh and eighth lines down on page 6, and
25 I didn't -- I didn't -- I didn't read the full sentence. That

1 was just the end of that sentence.

2 Do you see that?

3 A. Yes, I see it.

4 Q. Okay. Can you -- can you tell me in that equation
5 which results in a negative, what your -- what you were -- what
6 value you were using as the initial value and what value you
7 were using as the second value in order to reach a negative?

8 A. Are you asking me what our cost of production is?

9 Q. Well, I'm not asking you precisely that, but that might
10 be a part of it. I'm asking you to tell me how you, you know,
11 what -- what you subtracted from what to say that you were
12 losing money on every pound of lactose produced?

13 A. I believe it would be the lactose price minus our
14 positive production.

15 Q. Okay. So the lactose price, meaning the current market
16 price for lactose?

17 A. Yes.

18 Q. Okay. And then your cost of production would be what?

19 A. I couldn't give you that number. I can say is that the
20 cost of production was higher than the price of lactose,
21 meaning that we're losing money on it.

22 Q. But what would you put into the cost of production of
23 lactose for that equation?

24 A. Oh, like itemize the different parts --

25 Q. Yeah, without putting a figure on each, itemize it.

1 A. I couldn't be that specific. But I would say if you
2 were looking at the CDFA cost studies and you looked at
3 something like nonfat dry milk, they would list different cost
4 of production. We would have some of those corporate
5 allocations, energy, labor, all those sorts of things.

6 Q. So you are looking at the, as a proxy, the cost of
7 producing a pound of nonfat dry milk?

8 A. I just used that as an example. We don't specifically
9 look at the cost of nonfat dry milk in our lactose cost, but I
10 just used that as an example because they are both dry
11 products, they have to go through a spray dryer, that sort of
12 thing. So they would have some similarities, but it is still
13 not exactly the same.

14 Q. Okay. So do you, when you made that statement, did you
15 have a total cost of production of lactose in mind?

16 A. I didn't. But I know from talking with our business
17 analysts, financial analysts, that the price was below our cost
18 of production.

19 Q. Well, did you have a cost of, a market price of lactose
20 in mind when you made that statement?

21 A. Well, I think the lactose prices over the last year
22 have dipped into the, you know, very low 20 cent range and
23 lower.

24 Q. Okay. So when lactose prices last year for the full
25 year averaged just under 60 cents a pound, were you losing

1 money on lactose?

2 A. I believe we were not.

3 Q. And in 2013, when lactose prices averaged 73 cents a
4 pound for the full year, were you losing money on lactose?

5 A. No.

6 Q. What is your break-even point on lactose?

7 A. I couldn't give that number, that's proprietary
8 information.

9 Q. Is it something like the cost of producing nonfat dry
10 milk per pound?

11 A. At least that high, if not higher, but I couldn't give
12 you an exact number.

13 Q. Well, if it's 20 cents a pound and you got 73 cents a
14 pound for the full year on average for the full year of 2014,
15 you didn't, it work out too badly, did it?

16 A. If you make the assumption that the number you gave, 20
17 cents, is correct, which I don't think is correct, but I can't
18 give you the exact number.

19 Q. Well, it still would be pretty good if it was 25,
20 wouldn't it?

21 A. It would. I think the lactose market is a feast or
22 famine market. It is very volatile, and therefore, you can do
23 well some years and some years you will not.

24 Q. You talked about paying for the premiums to your
25 producers, and you used the figure of \$120 million over a

1 period of years.

2 Do you recall that?

3 A. What page is it on? I do remember.

4 Q. I was going to ask you, I can't find it. I can't find
5 my notes. Somebody's telling me 10. 10 -- page 10.

6 A. I see it.

7 Q. Okay. How much is the last several years? How many
8 years are you talking about?

9 A. Again, we were deliberately nebulous on that because
10 that's proprietary information, exactly our premiums, but, you
11 know, it's fairly recent I would say.

12 Q. And the premium that you are talking about, there is
13 over the value of protein under the CDFA formulas? Is that it?

14 A. Well, I don't know if that's exactly the right
15 characterization. Our premium structure is based upon
16 components in the milk, and then prices of whey protein and
17 lactose, so it's a combination of those three things. And
18 depending on how those three variables work together will
19 determine the premium level.

20 Q. So speaking of lactose, what were you paying your
21 producers for lactose in 2014 or 2013 when the market prices
22 were 60, 70 cents as we just discussed?

23 A. I couldn't -- I couldn't tell you that number. It is,
24 when there's three variables working together in a mathematical
25 equation, it's kind of hard to parse out one specific factor to

1 say this is how much lactose was going into premiums.

2 Q. Can you tell us what portion -- maybe I asked this
3 before, I'm not sure -- what portion of your production at
4 Hilmar is bulk cheddar versus the other products you make
5 there?

6 A. I believe all of it is in 40 pounds, 640 pound bulk.

7 Q. Okay. And what portion is that of your total -- total
8 production of cheeses?

9 A. There is no retail, so I would say that's virtually all
10 of it.

11 Q. Okay. So when I'm looking at, you know, I'm looking at
12 your website which lists a whole bunch of cheeses, and are you
13 considering all of these -- are all of these made in 40's or
14 640's, mild cheddar, white and colored?

15 A. I believe so.

16 Q. Vintage cheddar, white and colored?

17 A. Yes.

18 Q. Milled, curd cheddar, white and colored?

19 A. I believe all of it is.

20 Q. White cheddar for export?

21 A. Yes.

22 Q. Reduced fat cheddar?

23 A. Yes, again, I believe that all of the cheese we produce
24 is in bulk form.

25 Q. Okay. Well, I just want to confirm here. Colby?

1 A. Yes.

2 Q. Colby jack?

3 A. Yes.

4 Q. Reduced fat Colby jack?

5 A. Yes.

6 Q. Monterey jack?

7 A. Yes.

8 Q. Monterey jack with jalapeno peppers, pepper jack?

9 A. Yes.

10 Q. Reduced fat Monterey jack?

11 A. Yes.

12 Q. Low moisture part-skim Mozzarella?

13 A. Yes.

14 Q. Muenster?

15 A. Yes.

16 Q. Queso Quesadilla?

17 A. Yes.

18 Q. Queso Acedero?

19 A. Yes.

20 Q. And other specialty cheeses upon request?

21 A. No. Just kidding, yes.

22 Q. Okay. Have you indicated what portion of your
23 production at the plant in California is exported?

24 A. I believe it is something around ten percent, something
25 in that general area. I think I may have that in there.

1 Q. Okay.

2 A. And again, it's not that way every year. I think the
3 last year has been very difficult for exports, so I don't think
4 that's currently accurate.

5 Q. I think you may have told me on Friday, and if you did,
6 I apologize for asking it again, but I think I asked what your
7 yield was and, at Hilmar facility, yield of cheese from milk
8 coming in, and you said it would be in line with the CDFA
9 yield?

10 A. I don't know if I used that exact terminology. I
11 believe I redirected you to look at that and that we are part
12 of that survey where yields are calculated.

13 Q. Well, are your yields, you know, then comparable to
14 those that show in the CDFA studies?

15 A. I haven't looked at the exact number, so I couldn't
16 tell you for sure. And honestly, I'm not even sure exactly
17 what our yield is. I think it depends a lot on the milk coming
18 into the plant, what the components are, and that has a large
19 impact on yields, as well as the variety you are making.

20 Q. I was going to ask that, so do you know what your, you
21 know, what your average components are in milk that comes into
22 the plant on a yearly basis, or any time period basis?

23 A. No, I couldn't tell you. I can say that it is a mix of
24 Holstein, crossbreeds, and Jersey. I believe something like 30
25 percent of the milk is from Jerseys, so I think it would be a

1 higher component, a higher component milk supply than you may
2 typically otherwise find.

3 Q. So in the -- in a post-hearing document submitted by
4 Mr. Jeter to CDFA in 2007, there were some graphs that, or,
5 yes, some information that showed, had component values
6 identified on it. And I wondered if -- if -- it -- if those
7 might represent your average component, 3.72 butterfat, 33
8 protein, 88 total?

9 A. It could be. I am not sure exactly what the current
10 ones are, so that could be in the ballpark. I'm honestly not
11 sure on that.

12 Q. Okay. So your current responsibilities as in providing
13 analysis to the various operating officers at Hilmar hasn't led
14 you to inquire or learn what the average components are in the
15 milk coming into the plant?

16 A. I -- I don't remember the numbers. I worked with large
17 data bases of our volumes and components and have used those to
18 calculate a lot of things, but I don't have the exact number in
19 my head. I could probably guess what they are, but I would
20 rather not do that without those data sets in front of me.

21 Q. Okay. You have indicated that Hilmar purchases about
22 12 percent of the milk production in the State of California.

23 A. Correct.

24 Q. Okay. So if my -- can you confirm my arithmetic, which
25 is sometimes right and sometimes not on these things, that that

1 is about 5 billion pounds a year, working off of last year's
2 California production of 42 billion pounds?

3 A. If your math is correct, I'll take your word for it. I
4 have to put that in my calculator and make sure, but that could
5 be about right.

6 Q. Okay. But, I mean, you wouldn't know off the top of
7 your head or as a person responsible for working with these
8 numbers with Hilmar, what your annual volume process is,
9 approximately?

10 A. I know how much milk we are processing, but we usually
11 measure it in pounds per day, not, we usually don't talk in
12 pounds per year.

13 Q. I'll take pounds per day.

14 A. I'm not going to give you that number, it's proprietary
15 information, our exact volume.

16 Q. Well, if you multiply 12 percent, times 42.3 billion
17 pounds in California last year, and divide it by 365, would
18 that be about right? Would that give me the roughly 14 million
19 pounds per day?

20 A. That would get you in the ballpark.

21 Q. Does that sound about right?

22 A. Like I said, that would get you in the ballpark.

23 Q. Okay. I don't have any other questions at this time,
24 your Honor. Thank you, Mr. DeJong.

25 JUDGE CLIFTON: Who next has cross-examination for

1 Mr. DeJong?

2 CROSS-EXAMINATION

3 BY MR. VANDENHEUVEL:

4 Q. Rob Vandenneuvel, Milk Producers Council.

5 Good morning, Mr. DeJong.

6 A. Good morning.

7 Q. Just a couple of questions on the testimony. I'll try
8 to take you through some sort of order, but I was going all
9 over the place as I was writing them down, so -- on Figure 1 of
10 Exhibit 99, and this relates to some testimony on page 3 of
11 Exhibit 98 and it deals with, and I'll just quote from your
12 testimony in Exhibit 98, "Hilmar Cheese Company is not having
13 any trouble sourcing milk or fulfilling commitments in 2015,"
14 and then you talk about "2015 year-to-date is actually up from
15 2014." So you see the Figure 1 there where it shows 1.3
16 percent up in 2015 relative to last year?

17 A. Yes.

18 Q. Now, those are gross milk receipts that you are
19 measuring year to year?

20 A. Yes, it would be our total milk intake.

21 Q. Has Hilmar Cheese Company added any producer-shippers
22 in 2015 relative to 2014?

23 A. That -- that may be correct. I believe it is, but I'm
24 not a hundred percent sure. I believe that is correct, though.

25 Q. So this table doesn't measure the same producers are

1 producing 1.3 percent more than they were producing last year,
2 but could be a different population of producers, and could, in
3 fact, be a larger population of producers?

4 A. That very well could be true.

5 Q. On page 4 of the Exhibit 98, in the first full
6 paragraph, this is in your written testimony, you have a clause
7 in there, "Hilmar Cheese Company's, Hilmar plant, Class 4b pool
8 obligation whey cost went up from a low of \$2 million per month
9 to over \$12 million per month."

10 Do you see that?

11 A. Yes.

12 Q. Now, that is a statement strictly on the pool
13 obligation, it does not take into account any revenues based on
14 those cheese operations, correct?

15 A. I believe it is, it is accounting for the cost built
16 into the 4b formula attributed to whey.

17 Q. Okay. And so the testimony earlier with your exchange
18 with Mr. Beshore, if there was, Hilmar Cheese Company doesn't
19 make strictly dry whey, they make other products, correct?

20 A. We don't make any dry whey, it is all other products.

21 Q. All other products. And so this is not a statement at
22 all on the revenues generated by the sale of any of those
23 products, this is strictly the pool obligation attributed to
24 the dry whey factor in the Class 4b formula, correct?

25 A. That's what that particular sentence is referring to.

1 Q. Okay. Thank you. Page 8 of the written testimony,
2 about two-thirds down the page there is a sentence that reads,
3 "this can happen more efficiently and effectively without
4 regulatory involvement in minimum milk prices".

5 Do you see that sentence?

6 A. Yes. Just give me a second, I want to read the few
7 sentences before that --

8 Q. No problem.

9 A. -- to make sure that any questions I have are in
10 context.

11 Q. Absolutely.

12 A. Okay. I'm ready.

13 Q. Would it be Hilmar Cheese Company's position, that they
14 would prefer no minimum prices at all for manufacturing milk?
15 Is this a statement to that effect or is this more specific to
16 an issue?

17 A. I don't -- I'm not sure if that's Hilmar Cheese's
18 specific company policy. It was a -- it was a point that even
19 if regulated prices are set low enough, are set market clearing
20 or lower, that premiums will fix the problem, that market
21 forces will take over. For example, if milk production is down
22 and plants are trying to get milk, I believe that they will pay
23 the maximum price, that is, market clearing, to procure that
24 milk.

25 Q. So taking that to -- to an illegal -- illogical

1 conclusion having -- an illegal conclusion -- taking that to
2 the most extreme example, having zero minimum price would,
3 Hilmar Cheese Company believes would still allow a functioning
4 marketplace?

5 A. We haven't, you know, that's a big hypothetical, what
6 would happen. I believe in Hilmar Cheese's case, if there was
7 no minimum price, that we would keep our existing pay formula
8 and we would pay based off that, which included premiums over
9 the 4b price.

10 Q. Now, there are months when Hilmar Cheese Company, many
11 months, in fact, throughout the last ten years, that Hilmar
12 Cheese Company has received a pool draw from the California
13 pool; is that correct?

14 A. That would be correct, that's how the California pool
15 works.

16 Q. And you understand that to the extent that one class,
17 in this case, Class 4b, is set lower, that impacts the pool
18 draws and pool contributions of not only the cheese
19 manufacturers, but all the manufacturers participating in the
20 pool? But that -- let me repeat that since the fly distracted
21 me -- you understand that one class, to the extent that a class
22 is, the regulated minimum price is lowered or increased, that
23 has an impact not only on that class of manufacturers, but all
24 the participating manufacturers in the pool, correct?

25 A. It is my understanding how the pool works, that money

1 tends to flow from the higher class utilizations to the lower
2 class utilizations to equalize and create a blend price for the
3 producers.

4 Q. And if, through regulatory action, the minimum prices
5 for manufactured milk, in this case Class 4a and 4b, is
6 successfully lowered from its current level, what impact would
7 that have on pool contributions by the other non-Class 4a, 4b
8 manufacturers?

9 A. If the 4b price was lowered, or by other natural market
10 forces it was lower than 4a, I believe it would take a pool
11 draw, just on the mechanics of how the pooling system works.

12 Q. All right. Let me change gears a little bit.

13 Page 19 of the written testimony, Exhibit 98, there is
14 a discussion about Northwest Dairy Association, this is a
15 cooperative in the Pacific Northwest, correct?

16 A. Yes.

17 Q. I believe there is another attachment, Exhibit 100,
18 which is a compilation of statistical material from the Federal
19 Order regulating that area, that Pacific Northwest area?

20 A. Yes.

21 Q. So if we look at the, it's labeled page 1, but it is
22 the second page of Exhibit 100, and there's a list of plants
23 there.

24 Do you see that?

25 A. Yes.

1 Q. Okay. On the bottom there is a cooperative pool
2 manufacturing plants, and there's a list of six plants there.
3 Some of them are Darigold, which is another name for Northwest
4 Dairy Association, that's their label, correct?

5 A. That's how I understand it.

6 Q. And then there's three other producer-owned
7 cooperatives there. I believe in your testimony last week you
8 made some reference to the last column there, the months
9 associated with the order, specifically with those
10 cooperative-owned plants?

11 A. Yes.

12 Q. And it looks like the months of February, April,
13 October, and November were months where we saw quite a bit of
14 milk that was not associated with the Order for each of those
15 plants?

16 A. I believe that's correct.

17 Q. Are you aware that in each of those four months the
18 PPD, the producer price differential, for the Federal Order 124
19 was negative?

20 A. That would not surprise me.

21 Q. And so by not pooling the milk, it looks like there
22 were, from that accounting right there, there were three
23 cooperative-owned plants that chose not to pool milk during
24 some or all of those four months. Are you aware of the
25 products that those manufacturers make, those three

1 manufacturers, and that is the Columbia River Processing in
2 Boardman, Oregon; Darigold in Sunnyside, Washington; and
3 Tillamook, in Tillamook, Oregon?

4 A. I believe Columbia River Processing and Tillamook,
5 which I believe are both Tillamook plants, are cheese plants,
6 and Darigold does have cheese processing.

7 Q. So what does that say for a cheese manufacturer, when
8 you are a cheese manufacturer and the PPD, the producer price
9 differential is negative in a particular month, what does that
10 mean in terms of your relationship to the pool? Is there a
11 pool draw or a pool contribution in that month?

12 A. So to get this right, when the PPD is negative, there
13 would be a pool contribution for the Class III plant.

14 Q. Okay. That means, in simple terms, the blend price is
15 actually below the Federal Order Class III price in that
16 particular month, and so the Class III price would be required
17 to do a pool contribution, if they participated in the pool,
18 correct?

19 A. If they stayed in the pool, they would have to have a
20 pool contribution.

21 Q. So during those three months, when those three
22 producer-owned cooperatives, or during those four months when
23 those three producer-owned cooperatives chose not to pool their
24 milk, and I see there's one exception, but otherwise they all
25 three did the same thing, that doesn't mean that they were

1 depooling their milk in order to pay producers below minimum
2 prices, but rather could very well be to escape that pool
3 contribution that would have otherwise been required?

4 A. Yes, they could have been -- you are right. They were
5 probably escaping the pool contributions and they were trying
6 to get more money for their members, like any cooperative would
7 probably do in a Federal Order.

8 Q. But there's no evidence in that report to indicate that
9 the decision had anything to do with wanting to escape minimum
10 pricing regulations?

11 A. We -- I would assume that the primary reason was to
12 avoid a pool contribution.

13 Q. Okay. And then I'll turn the focus to Exhibit 101,
14 which is the Market Administrator's report for the Southwest
15 Marketing Area.

16 A. Yes.

17 Q. And from this table on the back page there was a, you
18 made reference in your testimony to "handlers elected not to
19 pool an estimated 11.39 billion pounds of milk that normally
20 would have been associated with these markets."

21 Do you see that?

22 A. Yes, I do.

23 Q. And that was included in your written testimony in
24 Exhibit 98, correct?

25 A. I believe so.

1 Q. So given our discussion that we just had about the
2 situation in the Pacific Northwest, is it, and that that was in
3 2014, the same year we're looking at this in 2014, is it
4 possible that at least some, if not all, of that 11.39 billion
5 pounds that elected not to pool was done as a result of trying
6 to avoid a pool contribution in any given month?

7 A. That wouldn't surprise me if that was the primary
8 reason that number was that large.

9 Q. So, again, not to be redundant, but again, that number
10 in and of itself is not a statement of how much milk was
11 seeking to be sold or be purchased below minimum prices, but
12 there are other factors that play into whether milk is pooled
13 or not pooled?

14 A. Yeah, I believe there are multiple factors would go
15 into that number.

16 Q. That's all the questions I have. Thank you very much.

17 JUDGE CLIFTON: Who next would like to ask questions of
18 Mr. DeJong? Let's have Mr. English go first.

19 CROSS-EXAMINATION

20 BY MR. ENGLISH:

21 Q. Good morning. Chip English.

22 A. Good morning.

23 Q. So I just want to follow up on some of those questions
24 and just talk it through a little bit.

25 If the Class III price is higher than the blend price,

1 that is a financial incentive for entities who are able to do
2 so, to remove some or all of their milk from the pool so they
3 don't have to make the payment of the difference between the
4 Class III and the blend, correct?

5 A. That is how I understand it.

6 Q. Right. Because when they make that payment into the
7 blend, that money is then going to other dairy farmers,
8 correct?

9 A. Correct.

10 Q. Okay. Now, if the blend, just for instance, is \$1.00
11 less than the Class III price, obviously there's premiums in
12 the marketplace, but nonetheless, the blend is what all the
13 other dairy farmers are going to get, correct?

14 A. Correct.

15 Q. So depending on contracts with these producers, you
16 nonetheless, that dollar, you could either decide to pay to the
17 dairy farmers or you could split it in some way, correct?

18 A. Correct.

19 Q. Nonetheless, the real issue here is that if those
20 entities in Texas, for instance, are able to not make that
21 contribution to the pool, and other similarly situated entities
22 for a regulatory reason have to make that contribution to the
23 pool, then they're financially disadvantaged, vis-a-vie their
24 dairy farmers, and vis-a-vie their competitors, correct?

25 A. Correct.

1 Q. That's all I have, your Honor.

2 JUDGE CLIFTON: Before I invite questions from USDA
3 officials, is there any other cross-examination or redirect?
4 Let's start with Mr. Beshore.

5 CROSS-EXAMINATION

6 BY MR. BESHORE:

7 Q. I have just a couple other questions, Mr. DeJong.

8 Did you -- did I ask you, did you tell me if any of
9 your producers at Hilmar engage in hedging strategies? Do you
10 know?

11 A. Yes, I believe they do.

12 Q. Okay. Do you know how many?

13 A. I don't have the exact number, but I know we do have a
14 number of producers who do utilize risk management strategies.

15 Q. Okay. Is it not correct that hedging, because you have
16 tremendous liquidity with Class III futures on the CME and you
17 don't have any Class 4a or 4b contracts available anywhere,
18 that hedging under a Federal Order pricing system is much, much
19 easier for producers than it is in the California situation?

20 A. Not necessarily. I think it depends a lot on the
21 market. For example, you could have somewhere in, I don't
22 know, somewhere that gets, somewhere like New York or further
23 East that has a lot in premiums that they can have a lot of
24 variability in their milk price versus Class III, even though
25 they are on the, in the Federal Milk Marketing Order. So it

1 depends a lot, I think, on how much Class III is in that market
2 in the FMMO, which would determine how well the Class III
3 hedging mechanism works.

4 Q. But Class III is a liquid market and there's really,
5 there's no other futures markets for milk that have the
6 liquidity that Class III has; isn't that correct?

7 A. Class III has a lot of liquidity. I would say Class IV
8 is getting better and it can be utilized. And also I would add
9 that, I believe I have a graphs on the nonfat dry milk, and
10 butter, and cheese, showing that their liquidity is much, is
11 getting much better, especially the cheese contract. And that
12 can also be used to hedge milk, because it's, you know, part of
13 the milk pricing formula in Federal Orders in California.

14 Q. Yeah, but Class III is better than cheese, and all of,
15 and those are all better than Class IV or 4a, or butter or
16 powder, correct?

17 A. I would say in California, prior to the temporary
18 increase in the contribution of whey into the formula, a
19 straight cheese future would probably work better in hedging a
20 California mailbox price versus a Class III, because the
21 Class III futures, I mean, the cheese future does not introduce
22 a whey variable.

23 Q. So one of the challenges in hedging in California, as
24 well as the Federal Order system, is that you have the
25 regulatory instability versus the Class III price in the

1 Federal system. Wouldn't you agree with that?

2 A. State that one more time?

3 Q. As you just pointed out, one of the challenges to
4 hedging in California is that you have the possibility of
5 regulatory changes in pricing being made on a frequent basis,
6 versus the Federal system which is much more stable in terms of
7 regulatory pricing?

8 A. I would agree that the more -- the more changes are
9 made to the California Milk Marketing Order, the more difficult
10 it would be to target an overbase price.

11 Q. Could you look at Figure 5 of 99 again with me?
12 Quickly. And, no, I'm sorry, Figure 13, I'm sorry.

13 A. This is the graph that I revised.

14 Q. Which is now 102, correct?

15 A. Yes.

16 Q. 102. We'll take 102. I'm struggling with the accuracy
17 of your title here, "Producers in FMMO's are being paid under
18 Class III". That's not what this represents at all, is it?

19 A. I believe it does show indication. I can say that
20 Hilmar Cheese, as part of our normal business operations, our
21 member-relations team regularly monitors actual mailbox prices
22 with actual producer statements, and I can say that this is
23 generally accurate of what we viewed in the marketplace.

24 Q. Well, my -- my problem is with the title. It says
25 being paid under Class III, and what you are comparing here, as

1 I understand it from your testimony, and even from the rest of
2 the narrative on the document, is you are comparing an all milk
3 price, which is a blended price, to a, you know, statistical
4 blended price under the Orders. There is no Class III per say
5 in either of these; isn't that true?

6 A. It's an inferred number.

7 Q. Well, how do you infer a number when you have got
8 different utilizations that aren't even, you know, reflected on
9 here?

10 A. Again, I would say that, that it is reflective of
11 what's happening in the area. And I think it is a good proxy.
12 I think if you would actually go to those areas and see the
13 mailbox prices that they would be paying under Class III.

14 Q. Okay. But the title is not correct. It doesn't show
15 whether or not the producers are being paid under Class III,
16 because Class III is neither the X nor the Y of the equation;
17 isn't that correct?

18 A. You may be technically correct there.

19 Q. Okay. Let me ask just one other area, I think. In
20 terms of cheddar, cheddar cheese in California. You say on
21 page 24 of Exhibit 98, "a large majority of our cheese leaves
22 the state for marketing population centers to the East", and of
23 course, you know, you are talking about your, that would
24 include your cheddar production, correct?

25 A. Correct.

1 Q. And the CDFA figures now for cheddar production, or for
2 cheddar, for, the CDFA cost survey for cheddar, which I think
3 involves four plants, no longer gives volume information
4 because it would tend to reveal proprietary data. Are you
5 aware of that?

6 A. I believe there are proprietary considerations when
7 CDFA publishes some of their data.

8 Q. Okay. But six or eight years ago when there were, they
9 did publish volume information on their cheddar cost study.

10 Do you recall that?

11 A. I don't recall that far back, but I will take your word
12 for it, that it is correct.

13 Q. Okay. So I think you have confirmed that you,
14 obviously Hilmar's the largest cheddar producer in the state.
15 You send the bulk of your cheddar outside of the state for
16 converting. I don't know whether you, do you have any
17 converted in-state at all?

18 A. Like I said, there may be some small converters in the
19 state, but I think most of our volume has to leave the State of
20 California before it is converted.

21 Q. So consumers in California essentially, and we can look
22 at the consumption figures, 38 million people, you know, you
23 reference some, I think ERS consumption figures. Do you, right
24 on page 24, do you know what it is for cheddar?

25 A. I don't remember the particular per capita consumption

1 for cheddar. I believe it is in the --

2 Q. 9 pounds or so?

3 A. That could be right. I believe USDA does publish it.

4 Q. Okay. So cheddar consumption in California is
5 primarily supplied by product coming from out-of-state,
6 correct?

7 A. It would make sense that cheddar cheese would leave our
8 facility, go to a converter, and it could be sent anywhere in
9 the country, including back to California.

10 Q. And from those converter facilities, that cheddar could
11 come from anywhere in the country, not just Hilmar, right?

12 A. That is possible.

13 Q. And it, in fact, does, does it not?

14 A. I wouldn't be surprised.

15 Q. When -- one other question. When you sent milk, when
16 you send milk out-of-state, California, because your producers
17 have produced over their base or whatever the circumstances
18 are, have you ever -- and you incur transportation on those
19 shipments, correct?

20 A. Yes.

21 Q. Okay. And frequently they are sold at reduced price at
22 the destination, correct?

23 A. Leaving California?

24 Q. Yeah.

25 A. Yeah, it can happen.

1 Q. Right. Have you ever -- and are you aware that there's
2 been testimony that milk has left California, I think maybe you
3 have even indicated -- milk's left California when there's been
4 capacity available in the state, there was a willing capacity.

5 Do you recall that?

6 A. Did I say that in my testimony?

7 Q. I think you may have, but I think Dr. Schiek has
8 perhaps. Are you aware?

9 A. That may have happened, I'm not -- I'm not a hundred
10 percent sure of all those instances.

11 Q. Okay. Do you know that in California, Hilmar could
12 offer that cheese to another proprietary company, or even to a
13 manufacturing cooperative at less than class price?

14 A. They could offer milk?

15 Q. Yes.

16 A. I believe they could, but Hilmar Cheese would have to
17 eat the loss.

18 Q. Like you do when you eat the trucking plus the loss
19 when it goes out-of-state, correct?

20 A. I guess so.

21 Q. So my question is, why hasn't it been, have you -- have
22 you attempted to market it in-state under those circumstances,
23 to minimize your losses?

24 A. We would always try to go to the nearest plant that
25 would be willing to take it, to minimize transportation losses.

1 That would be the financial incentive to minimize the loss
2 of --

3 Q. Did you do that in 2014 when you shipped the 400 loads
4 out?

5 A. I'm not intimately involved in the milk procurement, so
6 I couldn't answer that.

7 Q. Okay. Thank you. Nothing further.

8 JUDGE CLIFTON: I know there are other questions, but I
9 think we should take a break before we take them. My intent
10 here is to have USDA go last, even after redirect, and then, of
11 course, if there's more redirect as a result, I would invite
12 it. All right. So let's take, let's take 15 minutes. Please
13 be back and ready to go at 11:05. 11:05.

14 (Whereupon, a break was taken.)

15 JUDGE CLIFTON: We're back on record at 11:05. I would
16 like to have further cross-examination, then redirect, and then
17 the USDA, and then we'll see if there are any questions
18 following that. So is there anything further byway of cross?

19 CROSS-EXAMINATION

20 BY MR. MILTNER:

21 Q. Ryan Miltner. Good morning, Ryan Miltner for Select
22 Milk Producers. That's M-I-L-T-N-E-R.

23 Good morning, Mr. DeJong.

24 A. Good morning.

25 Q. I have just a couple questions here.

1 My understanding is that Hilmar produces somewhere in
2 the neighborhood of six different whey products; is that
3 correct?

4 A. That sounds about right, if not more.

5 Q. I did listen in last Friday, that's how I spent my
6 early Friday evening back in Ohio. I didn't hear that question
7 asked. If I'm repeating it, I apologize. What are the six
8 products?

9 A. I believe I have some of the main ones listed in my
10 testimony. They are Whey Protein Concentrate 80, Whey Protein
11 Isolate, Whey Protein --

12 JUDGE CLIFTON: Are you looking at your testimony?

13 MR. DeJONG: Yes, I am.

14 JUDGE CLIFTON: What page are you on?

15 MR. DeJONG: Page 1, second paragraph.

16 JUDGE CLIFTON: Thank you.

17 MR. DeJONG: So Whey Protein Concentrate 80, Whey Protein
18 Isolate, Whey Protein Hydrolysate, I know we have at least
19 three different grades of lactose, and I believe we also have a
20 few other whey protein, smaller whey protein products that are
21 not listed.

22 BY MR. MILTNER:

23 Q. You produce no straight dry whey?

24 A. Correct.

25 Q. But this is the case for both of your plants?

1 A. Yes.

2 Q. So as I have been looking through your testimony and
3 others, and additional public information, I have not been able
4 to locate any good publicly available information for the
5 manufacturing cost of any whey product outside of dry whey.
6 Are you aware of any publicly available source for the
7 manufacturing cost of any of those products?

8 A. I have not seen them.

9 Q. Are you aware of any good proxy for the manufacturing
10 cost for any of those items?

11 A. I don't really think there is.

12 Q. Are you willing to share with us a range of possible
13 costs for any of those particular products?

14 A. No, I would not share those.

15 Q. Can I assume that they all have manufacturing costs
16 higher than the manufacturing cost for dry whey?

17 A. They are far more difficult to process, so they would
18 have costs higher.

19 Q. In your testimony, your, if I could encapsulate some of
20 it I suppose, you would like one of your take aways to be that,
21 for Hilmar Cheese Company the minimum cost, minimum regulated
22 cost under a Federal Order, makes your whey product
23 unprofitable. Is that a fair take away you would like the
24 Department to have?

25 A. Yes, particularly when dry whey prices are high

1 relative to products we are actually producing, in which I
2 recently was naming for you.

3 Q. And obviously you have proprietary information
4 concerns, but I think you can appreciate how it's difficult to
5 evaluate that when the record has only information on the sales
6 costs of products and not the actual margins on those products?

7 A. Yes, that is a very important distinction.

8 Q. And so recognizing that kind of missing piece of the
9 puzzle, I'll ask you once again, any information you can share
10 with us to give us some guidance on the manufacturing cost of
11 the products you guys produce?

12 A. That is proprietary information. I cannot talk about
13 those costs.

14 Q. Thank you. I don't have any other questions, your
15 Honor.

16 JUDGE CLIFTON: Is there any other cross-examination before
17 I invite redirect? Not at this time. Redirect, then, please?

18 REDIRECT EXAMINATION

19 BY MR. VETNE:

20 Q. John Vetne, representative for Hilmar Cheese.

21 Mr. DeJong, early in your conversation with
22 Mr. Beshore you talked about a Grade B pricing plan of some
23 kind with Hilmar Cheese in California; is that correct?

24 A. Yes, Mr. Beshore mentioned that.

25 Q. Okay. Is it true that in California, milk producers,

1 dairy farmers, have a chance only once per year to decide to
2 make an election for a full 12 months whether they no longer
3 want to be considered market grade Grade A producers, and
4 instead, be what we call Grade B, which is a producer who is
5 not Grade A? Once a year they have a choice, correct?

6 A. That is correct.

7 Q. Okay. And so what Mr. Beshore and you were discussing
8 was a, tell me if this is correct description, a presentation
9 to dairy farmers that market their milk to Hilmar, on how their
10 milk would be priced, the components formula for pricing their
11 milk into the future if they make that once a year election,
12 correct?

13 A. Correct.

14 Q. Okay. And when -- when does that election have to be
15 made?

16 A. I believe it is -- it is prior to the year starting.

17 Q. Prior to the beginning of the calendar year?

18 A. Yes.

19 Q. So once the election is made, sometime prior to
20 January 1st, that milk would not be eligible to participate in
21 the pool, and would be Grade B for the entire year; is that
22 correct?

23 A. Correct.

24 Q. Okay. Now, the -- does Hilmar Cheese have milk quality
25 standards for both its Grade A and Grade B producers?

1 A. Absolutely.

2 Q. Okay. And are those quality standards any different if
3 a producer happens to be considered Grade A or considered
4 Grade B?

5 A. Both quality standards are very high.

6 Q. Okay. And, in fact, the quality standards for Grade B
7 milk that you might receive, equal or exceed the quality
8 standards for Grade A milk; is that correct?

9 A. That is right.

10 Q. Okay. So for those producers, when they elect to be
11 Grade B and the year is up, and they decide to come back in as
12 Grade A, they don't have any, they don't change their
13 production practices to meet higher quality standards in the
14 Grade A milk code, we have referred to as the Pasteurized Milk
15 Ordinance that we talked about earlier, there's no conversion
16 cost for them?

17 A. No, their milk quality should already be on par or
18 better than Grade A.

19 Q. Okay. So at least in California for your producers,
20 there is no, what we refer to as a Grade A differential
21 representing a production cost difference between Grade B and
22 Grade A milk?

23 A. That is correct.

24 Q. And you were asked a few questions about your
25 competitors in California. Do you recall that?

1 A. Yes.

2 Q. Okay. And you said you had very few. Let me take you
3 through that a little bit. You said that Hilmar markets its
4 bulk cheese to converters, step one, correct?

5 A. Correct.

6 Q. The marketing chain continues, then. The converters
7 take that bulk cheese and slice it, dice it, shred it, package
8 it, process it, whatever, into some kind of consumer packaging,
9 correct?

10 A. Correct.

11 Q. And then that consumer package goes from a converter to
12 a wholesale distributor such as Sysco, Wal-Mart, Costco,
13 Kroger, the warehouses that distribute to stores where
14 consumers or institutions get their product, correct?

15 A. Yes, it can be distributed that way.

16 Q. Okay. And at those at those distribution points you
17 would likely meet competition from cheese makers in California
18 that make, package their own product and sell it into the
19 wholesale market to get to the retail market, correct?

20 A. Absolutely.

21 Q. And there are a list of all those cheese plants, or
22 hopefully all of them, most of them, CDFA publishes on their
23 website a list of all dairy plants in California, including all
24 cheese plants, and the products that are made. Are you aware
25 of that?

1 A. Yes.

2 Q. An organization called California Milk Advisory Board,
3 the Real California Cheese Folks, they also have a list of
4 plants with more detailed description of products made. Are
5 you aware of that?

6 A. I believe that is right.

7 Q. Okay. You were asked some questions about, in
8 connection with your representation that you were losing money
9 on lactose sales, about the cost of making lactose.

10 Do you recall that?

11 A. Yes.

12 Q. Okay. And you referred, I think it was Mr. Beshore, to
13 production or make manufacturing cost surveys, CDFA, for nonfat
14 dry milk, and indicated that if one looks at the line items
15 making up the nonfat dry milk manufacturing cost, you would
16 have similar line items to make lactose, correct?

17 A. Correct.

18 Q. But there is a significant distinguishing
19 characteristic of lactose that must be dried compared to skim
20 milk that must be dried, in that skim milk, in coming
21 components you take out the fat, you have about 9 percent
22 solids not fat, correct?

23 A. Yes.

24 Q. And when lactose comes to a plant to be dried, it comes
25 in at a substantially lower nonfat solids 3 or 4 percent,

1 correct?

2 A. Yes, around 3 percent solids.

3 Q. Okay. It takes a huge amount of more energy to convert
4 the incoming lactose to a dry product than it does to convert
5 skim milk to a dry product?

6 A. Yes, that is right.

7 Q. Mr. Vandenheuvel asked you a question, to which you
8 responded affirmatively. And when the, in California, when the
9 Class 4b price is less than the overbase price, or less than
10 whatever mixture of overbase and quota milk your producers
11 have, you receive a pool draw, Hilmar receives a pool draw.

12 Do you recall that question?

13 A. Yes.

14 Q. And the question stopped there. But let's follow the
15 money. Do you get to keep that?

16 A. Absolutely not. It's passed on to the producers.

17 Q. Okay. So for the pool draw you serve as, it is passed
18 on to the producers by mandate of regulation. You can't keep
19 it; is that correct?

20 A. Correct.

21 Q. Okay. So you serve as a convenient conduit for the
22 funds to get to producers, correct?

23 A. It can be described that way, yes.

24 Q. Okay. It's producers' money, not yours?

25 A. Yes.

1 Q. And then finally, you were asked some questions, well,
2 not finally, sorry. Let's go back to Exhibit 102, and you were
3 asked some questions that suggested maybe you have the wrong
4 title in the document. This is an examination of prices paid
5 to producers in the areas of the country that are under
6 Federal, subject to Federal Milk Marketing Orders. You
7 referred to, I think when you described your payment formulas
8 to patrons of Hilmar, that you have a market basket of factors
9 that go into determining the pay price, correct?

10 A. Yes.

11 Q. Okay. Let's see if we can figure out the market basket
12 here, if you follow me. The all milk price in Federal
13 Marketing areas, as I understand this exhibit, is a market
14 basket of several price input components for each market
15 consisting of Class III price revenue that comes into a federal
16 pool, Class 4b price revenue, Class II price revenue, and
17 Class I price revenue that produces a regulated blend price in
18 a market, correct?

19 A. Correct.

20 Q. And on top of that, there's a fifth component of this
21 market basket of revenue built into the mailbox price, revenue
22 component, that's over order premiums, correct?

23 A. Yes, in the all milk price.

24 Q. Okay. And then the all milk prices are further
25 adjusted to prove to reflect their marketing costs for

1 producers, correct?

2 A. Correct.

3 Q. Okay. So there are five parts of the incoming revenue
4 component built into the yellow, blue, and gray lines here.
5 One part of that market basket is the Class III price, correct?

6 A. Correct.

7 Q. So in this graph you show the Class III price
8 essentially at zero the whole time and compare the market
9 basket of other price inputs to that Class III base; is that
10 correct?

11 A. Yes.

12 Q. Okay. All right. And finally, you were asked some
13 questions about, you said you monitor mailbox prices of
14 competitors.

15 A. Yes. Our field staff regularly gathers competitor's
16 actual pay prices and monitors them against our own pay
17 formulas to make sure that we are competitive.

18 Q. So your field people go around the country, talk to
19 dairy farmers that have other markets, cooperatives,
20 independents, and part of Hilmar's practice is to make sure
21 that what they are paying is competitive with what farmers in
22 the same neighborhood are receiving from other sellers.

23 A. Yes.

24 Q. Okay. That's all I have on redirect, your Honor.

25 Thank you.

1 JUDGE CLIFTON: Are there any other questions before I
2 invite USDA's questions? Yes, Mr. Beshore.

3 CROSS-EXAMINATION

4 BY MR. BESHORE:

5 Q. Just two follow ups to Mr. Vetne's questions.

6 Can you tell me what product comes in that has 3
7 percent lactose?

8 A. It is after, you know, in the processing of the whey
9 stream, there's a lot of liquid left over, and the lactose
10 solids are left in there. And you have to get that water out
11 before you can turn that liquid into lactose, or to get the
12 water out so you just have the lactose solids left.

13 Q. So is that a primary whey stream that you are saying is
14 3 percent lactose?

15 A. Define primary?

16 Q. Well, you said after processing whey you have
17 something --

18 A. Sorry --

19 Q. -- so I need to understand what you mean there.

20 A. So it goes -- what comes off on the cheese making
21 process is something like 6 percent solids. There is a lot of
22 water in there. Most of that water remains. We separate the
23 protein, a lot of the water remains with that lactose. So that
24 water has to be removed in that process. The water is one of
25 the most expensive items to remove from milk because it is very

1 energy intensive to get it out.

2 Q. Okay. Just so, take that step by step, make sure I
3 understand it and the record's clear. The whey, what I was
4 calling, referring to, just my own words, is the primary whey
5 stream that, the whey that comes off, out of the cheese making
6 process you say is about 6 percent solids?

7 A. Something around there.

8 Q. Okay. So that's what gives the formula of 5.9 pounds
9 of dry whey yield?

10 A. Yeah, it would be --

11 Q. Roughly?

12 A. -- those two items could be related, yes.

13 Q. And that whey, the solids in that whey is whey protein
14 and lactose and some ash, is that --

15 A. Yes, it is comprised of those three things.

16 Q. And, okay. So you are, you process that whey stream in
17 a way that, in a manner -- in a manner that gives you liquid
18 that is, in which the solids are primarily or almost
19 exclusively lactose.

20 A. At some point it has to go through many filtration
21 steps before you are left with primarily lactose.

22 Q. Okay. So those filtrations are, are they ultra
23 filtration process, reverse osmosis?

24 A. Yeah, they are some of those processes.

25 Q. Okay. So after, then you have the liquid with the

1 about 3 percent lactose in it, correct?

2 A. Yes.

3 Q. Okay. Does the whey, the other part of that filtration
4 process that's giving you the whey protein isolates and
5 hydrolysates and that sort of thing?

6 A. Yes.

7 Q. Okay. Back to Exhibit 102. If there's a negative PPD
8 in the, in the Order, in any of these Orders during those
9 periods of time, I assume that pushes the, pushes the price
10 down.

11 A. A negative PPD would probably have some effect on that.

12 Q. And there were negative PPD's in these Orders during
13 some of these months, correct?

14 A. That wouldn't surprise me.

15 Q. Now, I think you told Mr. Vetne that the zero line was
16 the Class III value?

17 A. Well, it -- it is, the zero line would be, well, it's
18 implied Class III value and --

19 Q. Implied Class III value you are saying?

20 A. Well, again, I'll walk through it. It is the NASS all
21 milk price, which is a price at test, and it subtracts the
22 Class III at test with the PPD. So --

23 Q. Plus or minus the PPD?

24 A. Yeah. If the PPD, you would still add it regardless,
25 even if it was negative.

1 Q. Okay. So then zero is just a relationship, I mean, it
2 doesn't have anything to do with the Class III price per se,
3 it's a relationship between the all milk price and the
4 Class III plus PPD.

5 A. It -- it is, like I said, how it is defined. It
6 implies whether the producers are being paid under Class III.

7 Q. You imply that from the data?

8 A. I imply that based on the analysis and it's also
9 consistent with what we observe in the actual marketplace.

10 Q. But you haven't made a chart of any actual
11 observations, just this data on here, correct?

12 A. We haven't. This is not graphing the actual producer
13 statements we have looked at.

14 Q. Okay. Thank you.

15 JUDGE CLIFTON: I think it is time for USDA to ask its
16 questions, and then if there are follow ups, I will invite
17 them.

18 CROSS-EXAMINATION

19 BY MR. FRANCIS:

20 Q. Thank you. Will Francis, USDA.

21 Just a couple quick things. One is on page 19 of
22 Exhibit 98, I believe, is your testimony. At the bottom, in
23 that paragraph where it starts "Darigold and its sister
24 cooperative" we just want to clarify what you mean by "sister".
25 Are they financially related or just in the genre of

1 cooperatives?

2 A. Genre of cooperatives. They are in a similar
3 geographical area. That's what we meant.

4 Q. Okay. Good. That was easy one. Thank you.

5 I didn't see anywhere where you talk about speaking of
6 sister, family, anything about your operation in Texas. Did
7 you address any of that in your testimony?

8 A. Did you have specific questions about it?

9 Q. The references and the numbers that you use in your
10 testimony, are they strictly related to the operations of
11 Hilmar Cheese only in California, or would they encompass part
12 of the other wider operation?

13 A. Any financial numbers we are talking about, we're
14 trying to keep it Hilmar-specific. We weren't talking about
15 Dalhart specific numbers, unless I specifically said this is
16 about Dalhart.

17 Q. Okay. Maybe we can just explore that a little more.
18 When we talk about Dalhart, is that, what's the business
19 relationship? Is it a separate entity or is it a subsidiary or
20 what's the business relationship, if you know?

21 A. To my knowledge, it's the same company, Hilmar Cheese
22 Company owns the Hilmar plant and the Dalhart plant.

23 Q. Okay. And are you familiar with a group called
24 Independent Dairy Producers, Inc.?

25 A. I have heard of that. I'm not intimately familiar with

1 how that system works.

2 Q. Okay. It is my understanding, and maybe this is a
3 question for Mr. Zolin later, because I think if you are not
4 the appropriate witness we would be interested in exploring a
5 little bit. Because we believe Hilmar, and its related
6 entities, have a very unique perspective, understanding
7 certainly how business is done in the current California system
8 and the ability to compare and contrast that, of how things
9 work in Federal Orders currently, because of your facility in
10 Dalhart, Texas, and the Independent Dairy Producers, which is a
11 qualified cooperative under the USDA program.

12 So with that said, if you are not the appropriate
13 witness, we can defer further questions along those lines. But
14 we're interested in understanding a little more about selling
15 below cost, and that relationship that, in your statement you
16 said "there's no disorderly marketing in California" and so I
17 want to explore that a little bit more.

18 Under the current California system, and you referenced
19 a little bit of the difference between Grade A and Grade B.
20 We're trying to understand how sales occur below cost under the
21 current California system. And so you referenced that a
22 proprietary plant could offer to sell milk below class to
23 another entity, but they would still have an obligation to the
24 California pool; is that accurate?

25 A. For Grade A milk, that is accurate.

1 Q. Okay. But for non-Grade A milk, how would that work?

2 A. Well, the Grade B milk, I don't think there would be a
3 pool obligation. But on the other hand, I don't know how many
4 buyers there are for Grade B milk. It is very important for a
5 lot of different manufacturers to have that Grade A milk.

6 Q. Okay. So is Grade B priced and pooled, or prohibited
7 from being priced and pooled under the current California state
8 system?

9 A. It's my understanding that it cannot be pooled under
10 the California state system.

11 Q. But, and again, I apologize if I misunderstood, but you
12 mentioned that there's no quality difference between the
13 current California Grade A and what you called California
14 Grade B. And so is that, and I, for lack of a better word, is
15 that a way for, W-A-Y, for the handlers in California to be
16 able to sell under class?

17 A. Yes, to the extent they can. Like I said, a lot of
18 products it is very important to have a Grade A designation, so
19 you can't use that for everything. But it does, but not a lot
20 of people do it. One, it's not Hilmar's decision whether that
21 milk is Grade A or B, it is the producer's decision. And
22 second, when they do it, they would lose their quota after so
23 many days, so it's a very small amount of milk.

24 Q. Okay. So it is tied to the quota holders?

25 A. Yes, it is.

1 Q. Okay. And that was another question that we had is
2 related to the decision to make that choice of moving from
3 Grade A to Grade B. Is it the individual producer's choice,
4 and do they report that to the cooperative, or to the state, or
5 to both?

6 A. I'm not sure of the paperwork that would go, that would
7 be involved with that. Al Zolin might have a little bit better
8 idea on how the communication of that works.

9 Q. Okay. So maybe to follow up a little more on the
10 statement that you make in your testimony that "there's no
11 disorderly marketing in California" and the description that
12 you made to milk moving out-of-state. And is the primary
13 purpose, and I want to explore a little more, maybe try to
14 address this question first. But is it because there's a hard
15 limit on plant capacity or is it price driven?

16 A. Could you clarify that question one more time for me,
17 please?

18 Q. Yeah. So you made a statement, I believe it is on
19 page 3, that the 400 loads of, "the 400 loads out-of-state this
20 spring" so it is in the middle of the page, "because we were
21 unable to find available processing capacity and willing
22 buyers" and so --

23 A. Uh-huh.

24 Q. -- it's really kind of focused on that "willing
25 buyers". Is it because there was a strict limit on capacity

1 that plants were full they just couldn't take one extra load,
2 or was it primarily driven because the price was not attractive
3 to bring that into a California plant?

4 A. I believe the primary reason was capacity in this case.

5 Q. Okay. But it could be both?

6 A. It could be both.

7 Q. It could be both. Okay. And so let's follow up a
8 little bit more on that willing buyer. And I know Dr. Schiek
9 mentioned a little bit in his analysis of the California
10 market, of identifying willing capacity. Can you make that
11 differentiation a little clearer for us of what that really
12 means, willing capacity?

13 A. Willing capacity is, let's say you wanted to take on
14 extra milk, but you didn't want to because the price didn't
15 make sense. For example, if we buy in Dalhart, buy spot loads
16 that are distressed, we buy them under class, and that is
17 because we are taking a risk. Taking that extra milk, we are
18 pushing our capacity harder than we would like to take it, and
19 second, our products are sold typically on contracts, so we're
20 having extra product we're taking on as a risk, also. If the,
21 we have hard caps on prices, we have, you know, very little
22 incentive to take on extra milk.

23 Q. So you do have the ability to buy spot loads under
24 class?

25 A. In Dalhart.

1 Q. Okay. So that's relative to --

2 A. Yeah, I was using Dalhart as an example. In California
3 where there's harder limits, we wouldn't be able to do that.

4 Q. So just to clarify, is it California milk that moves to
5 Dalhart?

6 A. I believe that's happened in some cases where we have
7 had to move milk out and we have sent it to Dalhart.

8 Q. Okay. And then there's also milk outside of California
9 that you are able to purchase below minimum Federal Order class
10 prices?

11 A. You mean for Hilmar?

12 Q. Yes.

13 A. For our Hilmar plant? I don't know if we do that, if
14 we buy out-of-state milk and bring it into Hilmar. That could
15 be possible to buy it under class. I'm not sure how those
16 regulations work. Al might have a better understanding of
17 that.

18 Q. Okay. We can follow up.

19 JUDGE CLIFTON: Just then, Mr. DeJong, when you referred to
20 Hilmar, were you thinking California or were you thinking
21 Texas?

22 MR. DeJONG: I assumed that he was referring to our Hilmar
23 plant in Hilmar, California.

24 JUDGE CLIFTON: Okay. But what if he was talking about
25 Texas? What if he was asking you, if it's not California milk

1 that is bought as a spot load in Texas, then where does the
2 milk come from, and are they allowed to buy it at below class
3 price in Texas?

4 MR. DeJONG: Yes, in Texas it is a nonpool plant. We can
5 buy milk under class.

6 BY MR. FRANCIS:

7 Q. Just one other, and I'm not sure I heard it correctly,
8 and I'm not sure who was asking the question. But in your
9 response you mentioned organic milk.

10 A. I don't remember saying --

11 Q. I may have misheard it.

12 A. Maybe, I think I did use that term, but I was speaking
13 to a chart I put together. I believe that's the only time I
14 used the word organic. Unless you correct me if I'm wrong. I
15 excluded organic milk in a chart I created.

16 Q. Okay. That clarifies it. All right. That's all we
17 have at this time. Thank you.

18 JUDGE CLIFTON: Did that raise any further need for
19 examination of this witness? Mr. Vetne?

20 REDIRECT EXAMINATION

21 BY MR. VETNE:

22 Q. Mr. DeJong, let me follow up while it is fresh in both
23 of our minds. The issue of willing capacity.

24 A. Okay.

25 Q. Okay? As I understood your answers, one decision

1 making consideration for Hilmar on whether to receive milk
2 that's offered, it is not part of your regular supply, is the
3 volume of cheese that you plan to produce under current
4 contracts for sale to your buyers, correct?

5 A. Yes.

6 Q. So that if somebody is looking to Hilmar as an outlet
7 for extra milk supplies, you would have to consider whether you
8 can find a market for that cheese you did not plan to produce,
9 and that's part of your risk of taking that extra milk,
10 correct?

11 A. Correct.

12 Q. Okay. So when you pay under class, when you negotiate
13 a price under class, a price at which you are willing to take
14 that milk, and this happens more at Dalhart, correct?

15 A. Yes.

16 Q. Your negotiated under class price factors in that risk
17 of whether you will find a buyer for that milk?

18 A. Yes, that is one of the factors.

19 Q. Okay. And is another factor in whether you are a
20 willing buyer, the regulated formula and the, particularly the
21 component of that formula that may value whey higher than the
22 value you can receive in making cheese byproducts?

23 A. Yes.

24 Q. In fact, would you agree with me that it would be
25 foolhardy to be willing to take milk at regulated prices when

1 the regulated prices are set at a level that's greater than you
2 can recover in the marketplace for cheese and whey products?

3 A. Absolutely.

4 Q. Okay. And so that would be a second component that
5 goes into the decision making process of whether you are
6 willing to take additional milk?

7 A. Yes.

8 Q. And that would apply at either of your locations
9 actually?

10 A. Yes.

11 Q. And that would presumably apply to anybody that takes
12 in milk to make cheese?

13 A. Yes.

14 Q. Thank you. Your testimony referred to a period of
15 distress in 2007 leading up to a CDFA hearing when milk was
16 leaving the state. Based on your study of that period, would
17 it be correct to say that both of those factors entered into
18 decision of Hilmar, or decision of cheese makers collectively,
19 to be unwilling to accept milk in California?

20 A. Absolutely.

21 Q. Okay. And you looked at, for the regulated price
22 component at that time, the regulated price component was such
23 that it would have cost you, or did cost you, more in the
24 regulated price than you could recover from the market because
25 of the whey factor?

1 A. Yes, for our whey stream, that is correct.

2 Q. In response to a question from Will Francis, I think
3 the question started out with an assumption that from your
4 prior testimony that there's no difference in quality between
5 California Grade A milk and California Grade B milk. Do you
6 recall that exchange with Mr. Francis?

7 A. Yes.

8 Q. Going back to your testimony, when we had an exchange
9 about Grade A versus Grade B milk, you weren't talking about
10 all Grade B milk in the State of California, you were talking
11 about the quality of Grade B milk that is purchased by Hilmar,
12 correct?

13 A. Yes, I only meant Hilmar milk.

14 Q. Thank you. And finally, with respect to the purchase
15 of milk under class price, whether spot load or contract, or
16 otherwise at Dalhart, it would be correct to say that those
17 transactions are entirely or almost entirely milk that is
18 coming from the milk shed around the Southwest Marking Area and
19 the Central Marketing Area, correct?

20 A. Yes.

21 Q. It would be an extraordinarily rare occasion if a load
22 or two of milk came from California?

23 A. Yes.

24 Q. So it wasn't -- it wasn't the occasional load of
25 California you were talking about, it was the regular ongoing

1 supply to the Hilmar Dalhart plant of milk from its regular
2 producers and from other marketers who brought milk, correct?

3 A. Correct.

4 Q. Thank you, your Honor.

5 JUDGE CLIFTON: You're welcome.

6 Mr. Beshore?

7 MR. BESHORE: Just one quick follow up to the last question
8 from John there.

9 RE CROSS-EXAMINATION

10 BY MR. BESHORE:

11 Q. You are not saying that people contract for committed
12 supplies of milk on a regular basis into Dalhart at less than
13 Class III price, are you?

14 A. No.

15 Q. That's the spot market you are talking about, where you
16 can opportunistically buy milk at less than class?

17 A. Well, you can purchase milk under class on spot and
18 directly from producers.

19 Q. Who are not pooled?

20 A. Who are not pooled.

21 Q. Okay. And are you, you are doing that down there?

22 A. Yes.

23 Q. Okay. Thank you.

24 JUDGE CLIFTON: Mr. Francis?

25 MR. FRANCIS: Will Francis, USDA. I had one other

1 clarification that I missed earlier, I apologize.

2 RE-CROSS-EXAMINATION

3 BY MR. FRANCIS:

4 Q. On page 4 of your Exhibit 98 testimony, in that first
5 full paragraph you make a reference to a pool obligation. And
6 when we typically think, under Federal Orders, about a pool
7 obligation, it means you are paying into the pool. And I want
8 to understand what you mean, how you are using that term in
9 that sentence.

10 A. Page 4, what line?

11 Q. The first full paragraph where it says, it starts out,
12 "When the price of dry whey rapidly increased from 2006 to
13 2007, HCC's Hilmar plant California Class 4b pool obligation
14 whey cost went up from a low of 2 million per month to over 12
15 million per month."

16 A. I just, I think we essentially, being the Class 4b
17 price, were obligated to CDFA to pay that price. And it was
18 just, we consider that our obligation to the pool to pay
19 minimum prices.

20 Q. Okay. But typically a 4b plant would normally receive
21 a pool draw.

22 A. Not necessarily, no. It depends on the spread between
23 4a and 4b is a large factor.

24 Q. Okay. So depending on the month and how the averages
25 work out between the 4b class price versus the overbase?

1 A. Yes.

2 Q. Thank you.

3 JUDGE CLIFTON: Mr. DeJong, have you ever done a chart
4 showing that, showing the spread and what it may have cost?

5 MR. DeJONG: I have not included that chart in my analysis.

6 JUDGE CLIFTON: Okay. Mr. Vetne, would you come to the
7 podium, please?

8 Do you anticipate Mr. DeJong being called again as a
9 witness in the proceeding?

10 MR. VETNE: I do not now anticipate him being called again
11 in the proceeding. However, he is under instruction to be here
12 for the entire proceedings.

13 JUDGE CLIFTON: Very well.

14 MR. VETNE: He might come back.

15 JUDGE CLIFTON: Thank you so much. Are there any other
16 questions for Mr. DeJong at this point? I see none.

17 Mr. DeJong, thank you so much. You may step down.

18 Mr. DeJong, come back.

19 MR. VETNE: I did want to ask one more question.

20 JUDGE CLIFTON: And you are?

21 MR. VETNE: I'm John Vetne, one of the co-representatives
22 of Hilmar.

23 Mr. DeJong, up to, up until last Friday, had you ever
24 in your life appeared as a witness in any judicial or
25 quasi-judicial proceeding of any kind, as in a deposition, or

1 trial, or administrative proceeding?

2 MR. DeJONG: I have not.

3 MR. VETNE: You are awesome. Thank you.

4 JUDGE CLIFTON: Mr. Vetne, you are, too. Thank you.

5 All right. I think we have some producers here. I
6 don't know if any of them want to testify at this point. It's
7 is 11:54. Those who have said they would like to testify after
8 lunch, may not realize how long we go before we break for
9 lunch. So I would like to find out if any of them would like
10 to testify now.

11 If you are a producer and you are here to testify,
12 would you come to the podium and tell us who you are, and tell
13 us if you want to testify now or if you would like to wait.

14 Don't be shy. We like to identify people even before
15 we call you to the witness stand. If you would go to the
16 microphone and speak into it. And first, tell me your name and
17 how you spell it.

18 MR. ROSA: My name is Noel Rosa, N-O-E-L, R-O-S-A.

19 JUDGE CLIFTON: Thank you. And what organization are you
20 affiliated with?

21 MR. ROSA: M.F. Rosa Dairy. I'm also affiliated with
22 Rosa Brothers Milk Company.

23 JUDGE CLIFTON: Would you like to testify before lunch or
24 after lunch?

25 MR. ROSA: Well, I don't know what your lunch hours are

1 here, so I, if you can tell me what the agenda looks like.

2 JUDGE CLIFTON: Very often we don't break until 1:00, which
3 is about an hour from now. 1:00 or after.

4 MR. ROSA: Okay. Yeah, I might as well go ahead.

5 JUDGE CLIFTON: Okay. Good. Please be seated and I'll see
6 who else is here. Thank you.

7 MS. MARTIN: Hi, I'm Barbara Martin.

8 JUDGE CLIFTON: And your first name is spelled how?

9 MS. MARTIN: B-A-R-B-A-R-A.

10 JUDGE CLIFTON: All right. And your last name?

11 MS. MARTIN: Martin, M-A-R-T-I-N.

12 JUDGE CLIFTON: And with what companies or entities are you
13 affiliated with?

14 MS. MARTIN: Dairy Goddess Farms and Dairy Goddess
15 Farmstead Cheese and Milk.

16 JUDGE CLIFTON: And is it true that those companies have
17 been supplying that marvelous milk that we have been enjoying
18 at the refreshment table?

19 MS. MARTIN: Yes, it is.

20 JUDGE CLIFTON: I thank you very much.

21 Would you like to testify before lunch or after lunch?

22 MS. MARTIN: I can go after Noel, that's fine. So if
23 there's time after his, then I can go, and then we can break
24 for lunch, if it's close to that time.

25 JUDGE CLIFTON: All right. I think that might be a good

1 plan. If you will be seated, I'll find out who else is here
2 who expects to testify today.

3 All right. If you are a producer and you would like to
4 testify today and you have not yet come to the podium, please
5 do so now.

6 State and spell your name and you may have to lean down
7 into that microphone. How tall are you?

8 MR. AHLEM: 6'4", at least I was at one time. My name is
9 James Ahlem, J-A-M-E-S, A-H-L-E-M, I go by Jim, though.

10 JUDGE CLIFTON: Jimbo?

11 MR. AHLEM: Jim.

12 JUDGE CLIFTON: Oh, Jim, though. What part of today would
13 be best for us to take your testimony?

14 MR. AHLEM: I can wait until after lunch.

15 JUDGE CLIFTON: All right. Great. What entities are you
16 affiliated with?

17 MR. AHLEM: I have my dairy, James Ahlem Dairy, and
18 Hilmar Cheese.

19 JUDGE CLIFTON: Excellent. Thank you. And who else is
20 here who would like to testify today?

21 MR. MALDONADO: Good morning, your Honor. My name is
22 Jose T. Maldonado and I'm here to represent Marquez Brothers,
23 International.

24 JUDGE CLIFTON: I know how to spell Jose, but I'll need the
25 spelling of your last name.

1 MR. MALDONADO: M-A-L-D-O-N-A-D-O.

2 JUDGE CLIFTON: Thank you. And what would be your choice
3 as to when to testify today?

4 MR. MALDONADO: Before lunch is fine or after lunch.

5 JUDGE CLIFTON: All right. Very fine.

6 MR. MALDONADO: Thank you.

7 JUDGE CLIFTON: Is there anyone else who would like to
8 testify today who has not yet come to the podium? Right this
9 minute I see no one, but I suspect a few are shy. All right.

10 Why don't we go forward and start with Mr. Rosa's
11 testimony. Would that be acceptable? All right.

12 Mr. Rosa, would you come to the witness stand, please?
13 Please make yourself comfortable and make sure your mouth is
14 fairly close to the microphone. I'll swear you in in a seated
15 position.

16 MR. ROSA: Okay.

17 JUDGE CLIFTON: Good. I think that will work. I'm going
18 to have you raise your right hand, please.

19 Do you solemnly swear or affirm under penalty of
20 perjury that the evidence you will present will be the truth?

21 MR. ROSA: I do.

22 JUDGE CLIFTON: Thank you. I know I just asked you before,
23 but I want you now to again, state and spell your name.

24 MR. ROSA: My name is Noel Rosa, N-O-E-L, R-O-S-A.

25 JUDGE CLIFTON: And I see that you have a prepared

1 statement. Do you want us to make copies of that so that they
2 can also be made an exhibit or do you want to use it simply for
3 your own guidance in stating your testimony?

4 MR. ROSA: Simply for my own guidance in stating my
5 testimony.

6 JUDGE CLIFTON: All right. Do you say in what you have
7 prepared how long you have been involved in the dairy business
8 and that type of experience and background?

9 MR. ROSA: Yes, I do.

10 JUDGE CLIFTON: All right. Good. Very good. Then you may
11 proceed when ready.

12 MR. ROSA: Okay. I would like to thank the USDA for the
13 opportunity to speak today. I would like to give you a little
14 background on our farm to start with. My brother and I are
15 third generation dairy farmers. Our grandparents worked our
16 dairy farm -- our grandparents started our dairy farm in the
17 1900's with money they saved from my grandfather's work as a
18 dairy farm worker. Our father worked on the dairy until he was
19 drafted into the Korean conflict. Upon his return, he married
20 our mother and started in a partnership with his parents at our
21 current location. After five years, our parents bought out our
22 grandparents portion of the herd and successfully operated the
23 farm by modernizing and expanding it from 1953 until 1997.

24 While my brother and I were in college, my father made
25 us an offer. If we agreed to return to the farm and provide

1 labor and management for five years, he would work us into
2 ownership of the herd. We all upheld our agreement, and on
3 January 1, 1998, my brother and I purchased our parent's
4 portion of the herd and leased the facility.

5 After five years, we were then able to begin to
6 purchase the facility. We worked diligently and saved all of
7 our pennies and progressed -- and progressed. Additionally, we
8 started a manure spreading company to supplement our income.

9 In 2008, the drought in the Midwest pushed our feed
10 prices sky high, but milk prices were still fairly good. In
11 2009, input prices continued to rise into the stratosphere and
12 milk prices sank to unbelievable lows. We cut costs, worked
13 harder, and put cash from our other business into the dairy,
14 and yet burned the prior ten years of equity that we had worked
15 so hard to build. There was panic in the community. Dairy
16 farmers were taking their lives. Many of our friends and
17 neighbors lost everything. And those that didn't, sold their
18 cows for beef price. Things were so bad that our cooperative,
19 Land O'Lakes, set up a suicide hotline.

20 Our family was at a crossroad. My brother and I met on
21 this, discussed it several times, and we concluded that we had
22 three alternatives. The first alternative was to leave the
23 State of California, where our family had dairied for three
24 generations and over 50 years. This would allow to us the get
25 a fairer price for our milk relative to California's pricing

1 structure. The problem was that we would have to leave behind
2 our friends and family, and our spouse's friends and family,
3 and a community that we had been a part of for over 50 years.

4 The second alternative was to leave the dairy industry
5 completely and work in another industry. This was an option.
6 My brother and I were both college graduates, as were our wives
7 but this wasn't a good alternative because the entire economy
8 was in a turmoil at the time.

9 The third alternative was to add value to our milk and
10 vertically integrate our dairy farm. This was probably the
11 most difficult alternative because it meant starting a new
12 business while our main business was bleeding cash. This is
13 the option we chose. We liquidated our manure spreaders to
14 launch our new value-added operation. This operation provides
15 us hope for the future, however, the majority of our milk is
16 still marketed through a cooperative. Most dairy farmers don't
17 have this option, the resources, or the experience to start
18 this type of operation. In other words, options one or two are
19 the most likely options for most dairy farmers in our
20 community.

21 Today, I would like to express my support for the
22 Federal Milk Marketing Order as proposed by the three
23 cooperatives. There are three reasons why I believe this will
24 benefit the California dairy producers.

25 Price alignment for hedging purposes. In 2009, my

1 brother and I began using options in our milk marketing
2 strategies. We are continually trying to protect prices based
3 on the Federal Milk Marketing Order, yet we are in the
4 California Marketing Order. This tends to add basis risk in an
5 environment where we are trying to mitigate risk.

6 The second reason is, parity with the rest of the
7 nation. Over the last six years, as I have conversed with my
8 hedge brokers, it has become apparent to me that California is
9 getting market signals much of the time to reduce cow numbers
10 and milk output, while Federal Milk Market Order producers are
11 getting signals to increase production. It is imperative that
12 the entire nation receive the same market signal
13 simultaneously.

14 The third reason is, the pool exemption for producer
15 distributors. As farmers operating a small creamery, it is a
16 huge burden for us to comply with all of the reporting
17 requirements and costs associated with a California Milk
18 Marketing Order, it discourages innovation, local production,
19 and job creation. The Federal Milk Marketing Order with a 3
20 million pound monthly exemption would alleviate these barriers
21 to entries for farmers.

22 In closing, I believe that the time has come for
23 California to move to a Federal Milk Marketing Order. I
24 believe it will allow producers to hedge their production
25 properly, it will bring all dairy producers nationwide into

1 pricing alignment, and it will foster innovation by small
2 producer distributors. Again, thank you for the opportunity to
3 voice my thoughts and represent my fellow California dairy
4 farmers.

5 JUDGE CLIFTON: Mr. Rosa, that was extremely eloquent and
6 very focused. Very helpful. Who would like to begin with
7 questions for Mr. Rosa. Mr. Beshore?

8 CROSS EXAMINATION

9 BY MR. BESHORE:

10 Q. Marvin Beshore.

11 Thank you very much, Mr. Rosa, for your testimony
12 today. I have just a couple of questions. Can you tell us a
13 little bit more than I heard in your statement about your value
14 added operation and the size of your farm, how many cows you
15 milk and that sort of thing?

16 A. Okay. Our milking herd is 1,000 cows, we are slightly
17 below county average in our county. And our value added
18 operation started in the fall of 2012, we started production.
19 And we currently process about 10,000 gallons a week, about 20
20 percent of our production.

21 Q. And how does that, into what product?

22 A. Fluid milk and ice cream.

23 Q. Very good. Where -- what part of the state are you
24 located? I missed that or I don't know it when I hear it.

25 A. Our dairy farm is in Hanford, California, and our

1 processing facility is in Tulare, California.

2 Q. Very good. Now, one other question area. You talked
3 about hedging and your use of hedging, can you just -- and that
4 you found it to be difficult under the California system. And
5 that's one of the reasons you feel that the Federal, you
6 support the Cooperatives' proposal for Federal Order. Can you
7 just elaborate a little bit about the efforts that, you know,
8 you have gone to? I think you referenced the brokers,
9 investment brokers, you reference using options. Just talk a
10 little bit more, because this has been a point of some
11 discussion about, you know, what the efforts you have attempted
12 as a dairy farmer to use the futures markets, use hedging
13 instruments and the challenges that the current system presents
14 and how you think that would change.

15 A. Right. Well, you know, I'm no authority on it, and so
16 I have a consultant that I work with and we have call every
17 other week, where we discuss and we kind of look at the overall
18 landscape of the milk pricing environment, as well as feed
19 costs, and we try to lock in a margin. And it's not always
20 possible. When we can, we do. But we try to not, we utilize
21 options more than actual futures contracts, because we don't
22 really want to ever cap ourselves in case the market does run
23 up for some reason. So basically we're using an option
24 strategy. And, you know, you have the California, to make an
25 analogy here, you have the California milk pricing is an

1 orange, and the Federal Milk Marketing Order pricing is an
2 apple, and we're trying to hedge for apples with oranges

3 Q. Why can't you hedge with oranges?

4 A. We -- it's different.

5 Q. Okay. It are there -- are there futures or options
6 instruments available to hedge directly the California price, I
7 guess?

8 A. No, not on regular basis. And that's the thing.
9 Sometimes the cooperative will come up with something, or you
10 know, there are opportunities here and there, but you can't
11 make a consistent hedging strategy with direct California
12 pricing. There isn't. So we have to go to the CME, and we
13 have to, we have to set this up based on Federal Order
14 instruments.

15 Q. Okay. Very good. Thank you. Thank you very much.
16 Thanks again for your testimony.

17 JUDGE CLIFTON: Mr. Rosa, when you came to the podium to
18 identify yourself, you actually named the entities with which
19 you are associated. And I don't think during your testimony
20 you specifically named them. I would like you to do that
21 again.

22 MR. ROSA: Okay. Our dairy farm is M.F. Rosa Dairy,
23 R-O-S-A, that was my father and my grandfather's initials. And
24 our processing entity that my brother and I started is called
25 Rosa Brothers Milk Company, Incorporated.

1 JUDGE CLIFTON: Who has the next questions for Mr. Rosa?
2 Let's see, we have got both, Mr. Vetne, if you would begin, we
3 have a number of people that have questions.

4 CROSS-EXAMINATION

5 BY MR. VETNE:

6 Q. Good morning, Mr. Rosa, I'm John Vetne. I'm a
7 representative for Hilmar. Congratulations on your innovation
8 with your processing facility. I wish you well.

9 I want to go back to the three reasons that you hope
10 USDA will take back why you think there ought to be a Federal
11 Order.

12 The first one, it would help your ability to make risk
13 management decisions, your hedging would be improved; is that
14 correct?

15 A. Correct.

16 Q. That was number one. And the reason it's difficult for
17 you now is because California's pricing system doesn't track
18 well with the Federal pricing system, correct?

19 A. That is one reason, yes.

20 Q. Okay. For risk management or hedging purposes, are
21 there other things other than it doesn't track well?

22 A. Not that I can think of off the top of my head.

23 Q. Okay. So the first reason, then, would work for risk
24 management purposes, just as well if pricing in California
25 tracked Federal Order pricing at whatever level relationship as

1 long as it went up and down at the same time, correct?

2 A. I don't understand that.

3 Q. Okay. You've indicated it doesn't track Federal Order
4 pricing. It would track Federal Order pricing if all
5 California prices were a dollar more than Federal Order
6 pricing, the track would be the same. The level would be
7 different, but the track would be the same, correct?

8 A. Right.

9 Q. Okay. The second reason you gave was simultaneous
10 market signals to --

11 A. Correct.

12 Q. -- increase or reduce production, correct?

13 A. Correct.

14 Q. And that is, that's essentially looking at the same
15 thing that the California system CDFA pricing doesn't track
16 Federal Order pricing.

17 A. Yes.

18 Q. Correct?

19 A. Yes.

20 Q. Okay. And so that, similarly, would be resolved if
21 California, whether State or Federal regulation, tracked,
22 followed the up and down movements of the Federal Orders,
23 correct?

24 A. Correct.

25 Q. Okay. And one of the, let me see if this plays a part

1 in that. As I understand it, the California Class 2 prices are
2 announced for two month periods, so they don't change from
3 month to month like the Federal Order system do. Have you, or
4 did you intend to include that failure to track as part of the
5 tracking problem with priority one and priority two?

6 A. No.

7 Q. Okay. With respect to your ice cream business, does
8 that matter?

9 A. Yes, it does affect our ice cream. But our volume of
10 our value added operation is very small.

11 Q. Okay. And it's mostly distributed in a geographic area
12 around --

13 A. Yes.

14 Q. -- the plant?

15 A. Yes.

16 Q. Thank you. Thank you very much.

17 CROSS-EXAMINATION

18 BY MR. ENGLISH:

19 Q. Good afternoon, sir, my name is Chip English. I
20 represent the Dairy Institute of California. I want to, it
21 actually happens, follow up from Mr. Vetne, and I want to go to
22 priority number three. You mentioned the ability to be exempt
23 as producer-distributor up to 3 million pounds, correct?

24 A. Correct.

25 Q. Is that something that you're hoping if proposal, if

1 Proposal 1 were adopted, that you would be able to take
2 advantage of?

3 A. Yes.

4 Q. Okay. So you told us that you have 10,000,
5 approximately 10,000 gallons a week. Now, some of that's
6 obviously in ice cream. But there's a different exemption in
7 Federal Orders if you have 150,000 pounds or less, which would
8 be, I think, significantly less than 10,000 gallons a week,
9 correct? On a monthly basis?

10 A. Uh-huh.

11 Q. So you are not thinking you would be able to take
12 advantage of that provision for an exempt plant, correct?

13 A. Right, I wasn't aware of that one.

14 Q. I think we would agree from what you have told us, you
15 probably don't qualify for that one anyway.

16 A. Correct.

17 Q. What you would like to qualify for is the
18 producer-handler exemption, because you do come well below the
19 3 million pounds, you are looking like 350,000 pounds from my
20 math. Does that sound about right?

21 A. Correct.

22 Q. Okay. Now, but you said that's 20 percent of your
23 milk, correct?

24 A. Correct.

25 Q. So you would continue, I mean, obviously you hope to

1 grow, but nonetheless you would continue to have a very
2 significant volume of your bulk be shipped to your cooperative?

3 A. Correct.

4 Q. And do you own any quota?

5 A. Yes.

6 Q. Okay. So you want to have an exemption on your
7 processing of about 350,000 pounds, and then you would
8 nonetheless ship to Land O'Lakes and get a quota price on some
9 of your milk, correct?

10 A. Correct.

11 Q. And otherwise, you would get the non-quota Federal
12 planned on the rest of your milk, correct?

13 A. Correct.

14 Q. I have no further questions.

15 JUDGE CLIFTON: Who would next like to ask questions of
16 Mr. Rosa? Mr. Francis?

17 CROSS-EXAMINATION

18 BY MR. FRANCIS:

19 Q. Will Francis, USDA.

20 Mr. Rosa, we want to thank you very much for appearing
21 at today's hearing. It's important for us to hear directly
22 from the farmers such as yourself, and I just wanted to express
23 our thanks for coming in. I do have just one question about
24 the operation. And so you have a dairy farm operation, and it
25 is a separate business structure that you and your brother own

1 for the processing side of the business?

2 A. Yes, our dairy farm is a partnership, a general
3 partnership, and our processing operation is a corporation.

4 Q. Okay. And one of the things that we look at is
5 definition of small business. And so you mentioned for the
6 farming side, a separate company, separate entity, you have
7 more than 1,000 cows. And so we would assume that the gross
8 revenue from the sales on a yearly basis is greater than
9 \$750,000?

10 A. Yes.

11 Q. Okay. So that would mean you don't qualify as a small
12 business. On the processing side, we use a threshold of 500
13 employees or less. And would it be safe to say that on the
14 processing side of your business you would qualify as a small
15 business?

16 A. That would be very safe.

17 Q. Okay. I thought so. We just wanted to get that for
18 the record.

19 One other quick thing. Earlier in the hearing,
20 Mr. McAfee appeared on behalf of four groups, and he introduced
21 an exhibit, which I think we marked as Exhibit 48. And he
22 expressed similar interests such as your testimony today about
23 the importance of being treated differently under the Federal
24 Order system versus the current California system. And I'm
25 assuming you have read and support his statement?

1 A. Yes.

2 Q. Okay. I believe that's all the questions we have. So
3 thank you very much.

4 JUDGE CLIFTON: Are there other questions to Mr. Rosa?
5 Mr. Rosa, is there anything would you like to add?

6 MR. ROSA: No, not at this time.

7 JUDGE CLIFTON: Thank you very much. You have contributed
8 a great deal. We appreciate it. Don't leave yet.
9 Mr. Francis?

10 MR. FRANCIS: It is just one quick follow up question.

11 You mentioned as part of your processing operation, you
12 process ice cream?

13 MR. ROSA: That is correct.

14 MR. FRANCIS: And so my question is, where would I be able
15 to get some of your ice cream?

16 MR. ROSA: Right here in Clovis. You can go to Clovis or
17 Fresno, you can go to any Von's or Save Mart.

18 MR. FRANCIS: Thank you. I appreciate it.

19 JUDGE CLIFTON: Ms. Martin, I believe you are next.

20 MR. HILL: Brian Hill. Just a quick question. I'm looking
21 at Exhibits number 103 and 104, and I know that they were
22 identified, but I'm not sure if they were entered into the
23 record, so I want to make sure that Mr. Beshore did, if he
24 wanted to.

25 MR. BESHORE: I do. I probably didn't, but I do want to

1 move them.

2 JUDGE CLIFTON: Let's see. I think we identified three of
3 them today, 102, 103 and 104.

4 MR. ENGLISH: 102 has been admitted.

5 JUDGE CLIFTON: 102 is in. All right. That's true. I
6 remember now.

7 Let's deal with these exhibits now. Does anyone have
8 any objection to the admission into evidence of Exhibit 103?
9 Mr. English?

10 MR. ENGLISH: I would love to ask questions.

11 JUDGE CLIFTON: You can recall the witness. He's still
12 here.

13 MR. ENGLISH: He wasn't the witness who offered them. Your
14 Honor, I think 103 and 104 have a bit of the same fate as
15 Exhibit 67, which is, I put a document together, I showed it to
16 a witness, it wasn't the witness's work, and this witness said
17 I'll believe you if that's what you did. We have two charts
18 that were not prepared by this witness, and I don't think he
19 adopted them. And I think if they are going to be admitted,
20 they will have to be admitted by a future witness. And I think
21 they suffer the same fate as Exhibit 67. I object to both 103
22 and 104

23 JUDGE CLIFTON: I think that's a wise objection. I would
24 agree with that. Mr. Beshore, do you have any problem with his
25 approach? In other words, somebody from your team will have to

1 talk about them also.

2 MR. BESHORE: I understand.

3 JUDGE CLIFTON: All right. We'll save them for the future.
4 But all of you, don't let me forget to come back to this issue.

5 Ms. Martin, would you -- are you comfortable?

6 MS. MARTIN: I am.

7 JUDGE CLIFTON: Good. You may have to be closer to the
8 mic. Ms. Martin, I'll swear you in in a seated position.
9 Would you raise your right hand, please?

10 Do you solemnly swear or affirm under penalty of
11 perjury that the evidence you will present will be the truth?

12 MS. MARTIN: I do.

13 JUDGE CLIFTON: Thank you. Please state and spell your
14 name.

15 MS. MARTIN: Barbara Martin. B-A-R-B-A-R-A, Martin,
16 M-A-R-T-I-N.

17 JUDGE CLIFTON: Do you have a statement that you would like
18 to have distributed and marked as an exhibit or would you
19 rather use it for your own guidance in giving your testimony?

20 MS. MARTIN: For my own guidance.

21 JUDGE CLIFTON: All right. And does it include information
22 about your background and how you became a person in the dairy
23 industry?

24 MS. MARTIN: Yes, it does.

25 JUDGE CLIFTON: All right. Very good. You may proceed

1 with your testimony.

2 MS. MARTIN: Thank you. I am a third generation California
3 dairy farmer, married to a third generation California dairy
4 farmer. We have been married for nearly 33 years and have two
5 children. We were both born in Los Angeles County, where our
6 grandparents had their dairy farms. Our parents then moved to
7 San Bernardino and Riverside counties.

8 In 2006, my husband Tony and I, made the decision to
9 relocate 1,000 cow dairy to Lemoore, California. Our kids were
10 away at college and it was a tough decision to move away from
11 everything that we knew and loved. We were just happy to stay
12 in California. Our kids had wanted to come back to the farm.
13 We had already lived through so many ups and downs in the dairy
14 industry, so we made it if they wanted to come back to the farm
15 they had to go to college and get their degrees. Little did we
16 know then, there might not be a dairy farm to come home to.

17 I have to admit, I was not going to come here to
18 testify for these USDA hearings. I had told my story so many
19 times to CDFA. I e-mailed Secretary Ross almost weekly. I
20 helped organize the protest in Sacramento in September and
21 October of 2012. A large group of us organized hundreds of
22 dairy farmers united together to plead with the CDFA for us to
23 be paid what the other dairy farmers in the nation were being
24 paid, or at least closer to it. We were begging to have
25 somewhat of an even playing field.

1 California's cost of production, on top of all of the
2 environmental requirements and fees were killing us. While we,
3 for years, have been paid an average of \$1.80 less per
4 hundredweight of milk than the rest of the states. I spent so
5 much time --

6 JUDGE CLIFTON: I'm sorry, than the rest, a \$1.80 per
7 hundredweight less than what?

8 MS. MARTIN: Than the rest of the states.

9 JUDGE CLIFTON: Than the rest of the states.

10 MS. MARTIN: Yes, on average.

11 JUDGE CLIFTON: All the other states other than --

12 MS. MARTIN: In the Federal Milk Marketing Order.

13 JUDGE CLIFTON: Thank you.

14 MS. MARTIN: I spent so much time fighting then. I spoke
15 out on social media; I vented on my blog; I shared our very
16 personal plight, telling our whole story. It was a story that
17 was the same as many other dairy farmers in the state. I
18 shared my story with anyone who would listen. All we got from
19 that time spent, that time away from our farms, was basically
20 nothing. We were thrown a couple bones from CDFA, but nothing
21 substantial. Only some tokens, hopefully to keep us quiet
22 until things leveled themselves out again. The problem is,
23 things didn't level out. The downturns were harder and longer,
24 the upturns were too short to get any momentum for us to
25 financially heal. I gave up hope in CDFA completely. I

1 stopped sharing my story with them. I mean, if they could
2 watch our dairy industry lose 450 dairy family farms from 2009
3 to 2012, with still many more continuing to exit, for them not
4 to think that was a crisis, I don't know what else is. I
5 wanted to scream at them for not realizing, or even caring,
6 that there was something definitely wrong with our system.

7 They, CDFA, chose not to help us when we needed it the
8 most. Their solution was putting together a task force. It
9 was too little, too late. And that was my final straw. I had
10 finally realized once and for all that we will never get help
11 from them. Ever. I knew that instead of spinning my wheels
12 any further, I had to put that fighting energy into my farm and
13 into my new business, Dairy Goddess Farmstead Cheese and Milk.

14 I was urged by fellow industry members to come here and
15 tell my story again. Again to you all. It was out of respect
16 for them that I come here today. I hope it sheds some clarity
17 on just how bad it's been for so many of us here in California.
18 So here I go:

19 As I mentioned earlier, my husband and I moved to
20 Lemoore in 2006 with 1,000 cows. We bought an existing dairy
21 and made a beautiful new barn. Things hit us hard and fast.
22 We moved during the worst heat wave that they had had for
23 years. We lost 50 cows in that heat wave. We worked day and
24 night trying to get up all of our shades to keep them cool, all
25 the while they were just having to adjust to a new barn and

1 farm. We thought we had moved to hell.

2 I don't really know how I made it through that summer
3 living in a fifth-wheel, but things did improve a bit. I
4 started raising the calves on our farm and we were fitting into
5 the valley life nicely.

6 In 2008, being an empty-nester, I decided to take a
7 cheese class at Cal Poly San Luis Obispo. I just loved it and
8 thought some day I would like to do something on our farm. Be
9 careful what you wish for.

10 There were normal ups and downs that we were used to.
11 And then 2009 hit. It was like a bad dream. I still remember
12 getting a check for from our cooperative, DFA. The pay price
13 was \$8.67. I cried with disbelief. I mean, how could that be?
14 What were we going to do? That check was not enough to feed my
15 cows. Feed prices were high, fuel was high, the cost of
16 everything was going up, but our milk price tumbled. The whole
17 industry was in shock. The bank stuck it out with those dairy
18 farmers that had enough equity. We borrowed off of our equity
19 to keep going, and we dug ourselves very deep. We were all in.
20 All our cards were on the table. We kept praying that we would
21 have an upturn and praying it would be quick, but it wasn't
22 happening.

23 I knew we had to do something different. We had to
24 generate more income. We couldn't sit around and wait for the
25 walls to tumble. I told my husband, Tony, that we should make

1 cheese. He thought I was absolutely crazy. But with some
2 planning and pleading, as women can do fairly well, he got on
3 board. I took \$30,000 from the beef that I had raised and then
4 sold, and we turned his 250-square foot office into a cheese
5 plant. I sold my first cheese at the Hanford Farmers Market in
6 August of 2010. Though my growth has been slow, it has been
7 steady. I put everything -- I put everything I made from Dairy
8 Goddess back into the plant.

9 In 2012, I began bottling that pasteurized,
10 non-homogenized whole milk and whole chocolate milk. I'm one
11 of only two producers that does milk like this, and I'm the
12 only one in California that produces chocolate milk in this
13 manner.

14 I would do all of my processing in the middle of the
15 night because I needed to make sure that I had enough hot water
16 to compete -- that I had to compete with, with the dairy.

17 While growing that business, I still worked on the
18 dairy and I was on a mission. I felt that if I was going to go
19 down, it was going to be with my boots on, and my head up.

20 In October 2011, we had to file for Chapter 11
21 Reorganization. It was the darkest time in our lives. It was
22 the hardest thing that we had ever done. I felt that it was
23 going to be the end of our farm and Dairy Goddess. We had so
24 many emotions at that time. You play the woulda, shoulda,
25 coulda card, and you say it over and over again.

1 One emotion that I tried to fight was bitterness. I
2 was so bitter with CDFA for sitting back and letting it happen.
3 We were not the only farms that had to make that decision.
4 That \$1.80 per hundredweight difference than the Federal Order,
5 \$1.80 is what had led us to what we thought was our demise.
6 Had we been receiving the same price as the rest of the Federal
7 Milk Marketing Order, we would have avoided that filing.

8 I eventually put my bitterness aside and I replaced it
9 with humility and gratitude. We were so very blessed that our
10 creditors agreed to a plan, and our vendors, each one of them,
11 carried on business as usual for the most part. Even in 2012
12 and 2013 when we were having difficulties with following the
13 plan due to the high feed costs, they stood by us and remained
14 patient. We put 110 percent into making our dairy and Dairy
15 Goddess succeed. We wanted to fulfill our plan. We didn't
16 want to disappoint our creditors who had so much faith in us.
17 We have often said that Dairy Goddess Farmstead Cheese and Milk
18 saved our farm. Certainly not with its monetary benefits, but
19 because we were thinking outside the box and trying so hard.
20 Though its growth slow, it was moving forward. The last thing
21 that I personally wanted to do in my 50's was to start a new
22 business. I always envisioned that I would be slowing down by
23 this point. That was not God's plan for us and that's all
24 right. I am grateful for where it has taken us and I am
25 grateful we are healthy enough to work so hard.

1 At the end of 2013 through 2014, milk prices improved.
2 We were finally seeing \$20.00 plus milk, but I wasn't happy.
3 Fear set in again. I knew whenever the milk price was up, it
4 was sure to come down, usually sooner than later. I heard from
5 many in the industry that they believed that \$20.00 per
6 hundredweight would be our new norm. I didn't believe it for
7 one minute. I wanted to sell it all right then and there. My
8 husband, God love him, wasn't ready for that. He was scared of
9 change and what a future would be without our cows and dairy
10 farm.

11 At the first part of this year I decided, I personally
12 couldn't take it anymore. The milk price was down again. I
13 was managing the dairy farm, my husband was taking care of all
14 the outside work, as well as helping me with Dairy Goddess when
15 he could. I was busy growing Dairy Goddess. I can make
16 product all day long, but I have to stay diligent in marketing
17 and selling it.

18 I do not have a salesperson to do that. My daughter,
19 Tara, manages Dairy Goddess operations full-time. I could not
20 have continued if she had not made the decision to join us and
21 build Dairy Goddess. She, too, has a passion for it and is
22 committed to its success. With her diligence, we have grown
23 enough to have hired a full-time production manager.

24 With an eye on building our brand and our business, in
25 2013 we started raising chickens for eggs. We have grown that

1 market and now sell Dairy Goddess Farmstead eggs. I want to
2 continue that momentum and eventually sell whey-fed pasture
3 pork and grass-fed beef.

4 As 2014 was ending, the milk price down, the dairy was
5 a huge weight around my neck, and I just couldn't fight anymore
6 to keep afloat. I wanted to stop the bleeding of the dairy
7 farm and concentrate solely on Dairy Goddess. This, by no
8 means, was an easy decision for me, but it was my intuition
9 telling me.

10 My husband and I went to the California Cheese Festival
11 in March, which was held in Petaluma. I usually don't attend
12 these events, but I wanted to see some organic dairies while we
13 were up there. I knew that many of these dairies would not be
14 in existence unless they had converted to organic farming. I
15 thought that might be a direction that we can consider, but one
16 that my husband bah-humbugged about.

17 It was a successful festival for us, as we won the
18 cheese monger competition. I was -- it was also in that road
19 trip that we made the final decision to sell our herd and to
20 try to keep 100 or so cows for Dairy Goddess. We cried a lot
21 during this trip. We were scared and not sure if we could make
22 it, but we were now both on the same page.

23 The summer, this past summer was a difficult one. My
24 son, a vet student at Oklahoma State University, came home for
25 his break and we had to tell him of our decision. He was

1 heartbroken, as he thought he would be coming home to the farm
2 and working as a veterinarian when he was finished in May of
3 2017. My husband felt like he was failing him and he was
4 having second thoughts.

5 I knew I had to really sell this organic thing more and
6 more. As this was happening, we acquired 40 acres next to our
7 existing farm. It has a small dairy barn and it was perfect to
8 milk 100-plus cows and pasture them with our pigs and chickens.

9 Our full vision now is to have a farm stand and a
10 destination dairy. We want to have a place where people can
11 come to visit, purchase our products, and learn about farming.
12 It will give us the opportunity to do what I love to do most.
13 My passion is to educate those who do not know about
14 agriculture. I want to give people the opportunity to see
15 firsthand where their food comes from and to appreciate how
16 much work it is. I want people to know how much we care for
17 our animals, our land, and our environment. To accomplish
18 this, I had to change what we were doing so that we would be
19 able to sustain our family and our farm. So in July of this
20 year, 900 of our generational Holstein cows left our farm.
21 Most of those cows went to Nevada. This is what's happening in
22 to the dairy industry in California.

23 Many dairies are selling, and these cows are leaving
24 the state. I left that day the cows were leaving for scheduled
25 sales meetings in Los Angeles. I left my very sad husband. I

1 hugged him good-bye, and I said this was for the best, we were
2 making the right decision. Though in my heart at that moment,
3 I wasn't sure. I managed to keep my brave face until I hit the
4 road and I cried almost all the way to Los Angeles. I was sad
5 and I was scared. All of those things that we wanted and
6 planned were now in motion, and there was no turning back.

7 Fast forward to today. We, for the most part, are
8 happy about our decision of selling the majority of our cows.
9 Reducing the stress of the big dairy has helped us physically
10 and mentally. We have just harvested our first transitional
11 organic crop of hay. Its yield was better than expected. We
12 have another two years to be fully certified organic. We are
13 building up our pastures and we're working to complete our
14 small barn. Of course we still have huge, huge challenges
15 ahead. We need to lease or sell our large dairy facility and
16 that's not easy with the current downturn. The last thing most
17 want to do now is invest or expand into dairy.

18 The main thing, which was my goal, was to have more
19 time to concentrate and grow Dairy Goddess. We have now
20 expanded our cheese curd line and have been begun manufacturing
21 cream. We know we must expand our brand in our business to
22 make this all work. I pray everyday for continued health and
23 guidance in helping me to achieve our goals. So this is my
24 story, but I'm also here to share why I support California
25 joining the Federal Milk Marketing Order Proposal Number 1 put

1 forth by the state's cooperatives.

2 I had never dreamed it so, but I'm also a PD, a
3 producer-distributor. As a California producer-distributor,
4 that definition being, a producer-distributor is a vertically
5 integrated milk producer that also is his or her handler, owns,
6 operates his or her own bottling or processing plant, and also
7 markets and distributes his or her own products.

8 We are a unique group in California. Even though we
9 are unique, we are thrown into the crazy California Milk
10 Pooling system. Many processors have an auditor or even
11 several auditors in-house to keep track of all that necessary
12 paperwork that goes with reporting it to the pool. We are
13 required monthly reporting to both the CDFA statistics and
14 another form to the CDFA pooling. I am to the point where I
15 feel like I need to hire an auditor, even for my very small
16 operation. I prefer not to hire, have to hire an auditor for
17 my small company. What I need is a salesperson to help me sell
18 our product so I'm able to sell more and I am able to create
19 more jobs. I want to be able to hire people to work and build
20 my business. The money spent on bureaucratic paperwork takes
21 away finances that will generate growth.

22 As a producer-distributor under the Federal Milk Pool
23 Orders, each PD is provided a monthly pool exemption of up to 3
24 million pounds of milk as provided by his own production. The
25 PD exemption under the Federal Orders has been upheld in the

1 courts and it is now settled law. We believe that exemption
2 for producer-distributors in California is the right thing to
3 do. It supports individual innovation, value added branding,
4 new local product creation, sustainability, it keeps financial
5 resources on the farm where they are needed. This is why I
6 support the Federal Milk Marketing Order for California along
7 with a milk price to dairy farmers being online with the rest
8 of the nation.

9 I appreciate you taking the time to hear my story and I
10 apologize for its length. Thank you.

11 JUDGE CLIFTON: Ms. Martin, I know what it has taken out of
12 you just to share that story and I don't think it was long at
13 all. I just can't imagine the work and the heartache that you
14 have endured and I'm so glad you came to tell us about it.

15 Could you tell me the precise names of the business
16 entities that you and your husband are involved with?

17 MS. MARTIN: Well, when we first moved up in 2006, it was
18 Tony Martin Dairy. Since then, and with all of the changes and
19 building our brand, he relinquished the name Tony Martin Dairy
20 to Dairy Goddess Farms. That wasn't very easy, I don't think,
21 wearing his T-shirt that says Dairy Goddess Farms on it, but he
22 seems to manage it okay.

23 And from that -- so in 2010, Dairy Goddess Farms,
24 Cheese, and in '12 milk was born. So officially as of today
25 it's Dairy Goddess Farms and Dairy Goddess Farmstead Cheese and

1 Milk.

2 JUDGE CLIFTON: Dairy Goddess Farms and Dairy Goddess
3 Farmstead milk --

4 MS. MARTIN: Cheese and Milk.

5 JUDGE CLIFTON: Okay. And chickens?

6 MS. MARTIN: And chickens. So hopefully we'll just
7 incorporate everything under the Dairy Goddess Farms brand.

8 JUDGE CLIFTON: I see. Very good. I note that much of
9 your testimony was delivered with tears, and I appreciate that
10 very much. Who would like to ask questions of Ms. Martin?

11 CROSS-EXAMINATION

12 BY MR. BESHORE:

13 Q. Marvin Beshore. I just have one or two questions. Can
14 you explain what you meant by, "sold your generational Holstein
15 cows"?

16 A. Right. Since we were raising our -- I was raising the
17 calves on our farm, and before that we, everything was
18 remaining on our farm. So we had generations of animals that
19 we had to watch leave. It was a really difficult day, as you
20 can imagine.

21 Q. So how many generations had been in your family's farm?

22 A. So I am third generation in California, and my husband,
23 so that was three generations.

24 Q. Right. I was actually talking about the cows.

25 A. Well, we had some that we varied on, so we had three

1 generations of that we have had, since, you know, lines of cows
2 that we have brought through.

3 Q. So the same cow families and generations of cows have
4 been carried on by your grandparents and your parents?

5 A. That's right.

6 Q. And you. Okay. Your family, you originally started
7 dairying in Southern California?

8 A. That's right.

9 Q. Okay. And what year or about when?

10 A. So we were both born on, in Los Angeles County on our
11 grandparents' farms in the '60's. And then in late '60's, '68,
12 '69, my parents moved from Artesia to Riverside County. My
13 husband's family also did the same, and they were in
14 San Bernardino County, and that's where we raised -- there was
15 a little different. We didn't farm the feed for our cows. So
16 when we moved up in '06, that was another thing that we were
17 going to, knew we needed to do to bring on to supply feed for
18 our cows.

19 I actually worked, as my dad would say, "in town".
20 Most of the Southern California, most of us did work in town.
21 I was actually a travel agent for 20 years. And that provided
22 the insurance for our families.

23 Q. Did your -- did your farm, had been in Southern
24 California for years before the Gonsalves law?

25 A. Yes.

1 Q. Did you have some quota?

2 A. We did. We had to sell it during the downturn.

3 Q. Okay.

4 A. We were all in.

5 Q. Thank you.

6 JUDGE CLIFTON: Who next has questions for Ms. Martin?

7 CROSS-EXAMINATION

8 BY MR. FRANCIS:

9 Q. Thank you. Will Francis, USDA.

10 Express our appreciation again, for coming and telling
11 your story. It's very important for us to hear that, and I
12 appreciate you struggling through that. Thank you.

13 So just to talk a little more about your operation, and
14 I'll ask the same questions that I asked Mr. Rosa. You have a
15 separate operation now for your 100 cow herd and a separate
16 business for your Dairy Goddess Farmstead cheese --

17 A. Yes.

18 Q. -- operation. And so relative to the farm, and again,
19 we're not asking you to reveal any confidential proprietary
20 information, but the threshold we use is \$750,000 annually
21 gross sales. So would your farm operation fall below or above
22 that level, if you know?

23 A. It now falls below.

24 Q. Okay. So that would, by our definition, qualify as a
25 small business. And again, on the processing side of the

1 business, I'm assuming you don't have more than 500 employees?

2 A. No.

3 Q. Not yet?

4 A. Not yet anyway.

5 Q. Okay. I had one more question. I want -- I want to
6 just reference you to our Exhibit 1. And I can get you a copy
7 of this, but it's important to understand, you read a
8 definition for producer-handler, producer-distributor, and I'm
9 just curious is that a current state CDFA definition?

10 A. No. That is, I don't know what CDFA's definition.
11 That is the Federal.

12 Q. Okay. What we're talking about for the purposes of
13 this hearing is laid out in this Exhibit 1, and we don't need
14 to get into a lot of detail, but I just want to point you to
15 the relevant sections where the definitions that are being
16 proposed for this hearing are located, and then it might be
17 important for you and the others to take a look at that and see
18 whether you would meet that definition or not.

19 And so we have numbers on here, and this is all
20 published in the Federal Register. And so our Exhibit 1 is the
21 Federal Register document from Thursday, August 6th, 2015. And
22 on page 47212, it would be in the upper left hand corner, and
23 if you look at that bottom of the middle column where it says
24 1051.10, that spells out the proposed definition of
25 producer-handler, and that would be for Proposal 1, which is

1 offered by the three cooperatives.

2 The sort of companion language under Proposal 2 appears
3 on page 47221, a few pages after that, also in the second
4 column. So that was 47221 in the upper right hand corner.

5 A. Okay.

6 Q. Okay? And then there are additional proposals relative
7 to producer-handler treatment, and that appears in proposal
8 number 3, which is almost at the back. So if you go to the
9 back page and flip over to page 47235 there's some language
10 there that talks a little bit about quota, but that's quota as
11 it applies to producer-handlers. And then proposal 4, while
12 there's not specific language, it could be related to how
13 operations are treated from outside the state.

14 So I'm not asking you to react to that right now, but
15 we don't want people to be misled by the Federal Order coming
16 in with a proposal to completely exempt producer-handlers or
17 producer dealers, and also, based on the description of your
18 operation, where the farm is a separate entity from the
19 processing side of the business, it may not meet these
20 definitions. However, as some earlier folks mentioned, there's
21 a different threshold for an exempt plant. So if you are
22 150,000 pounds a month or less, you would be exempt. And also,
23 just to clarify, exemption wouldn't necessarily mean you don't
24 have to file paperwork. But we do --

25 A. Right. I understand. I understand.

1 Q. We do have folks in our Market Administrator offices
2 that are very good at helping smaller operations work through
3 the paperwork, so hopefully we wouldn't require all the
4 paperwork that would lead you to hiring a separate person just
5 to fill that out, but we're very cognizant of that, and we try
6 to cooperate to make sure you do things the right way.

7 A. In life, there's paperwork. I understand that. And
8 even the people that I do work with at the CDFA, I may have my
9 frustrations, they are good, hard working people that do help
10 us as well. So by no means are they in the office in the
11 trenches actually helpful.

12 I think it's important, I mean, this is a relatively
13 new change that we have made. And my heart is still very much
14 a dairy farmer. I believe that I have seen so many dairy
15 families lose everything, and I can't imagine not being, I
16 mean, we have been paid, underpaid for so long. So I guess I'm
17 probably, I told you my story, we are just a farmer and trying
18 to piddle away to hold onto my little farm now. It was once a
19 larger farm and those scars, those wounds are still really --
20 so I am here really for the California dairy industry. And to
21 not be paid a fair wage for our milk that everyone else is
22 providing, it really is a crime, and I think that crime needs
23 to end.

24 And there's a beautiful part of being a PD, and I
25 mentioned a little bit that, I, especially when we have a

1 thousand cows, I can make product all day long. But you don't
2 do that, because you don't do it unless you have a market for
3 it.

4 Dairy men have been a little bit, you know, I was very
5 much a supporter of supply management. I mean, pretty much
6 Business 101. You know, if you have too much of something, you
7 are not going to get a great price for it.

8 My product is small, it's nitchy. I prefer, you know,
9 staying within that line. People ask me, well, are you going
10 after the big stores and this and that? I thought, I'm happy
11 with my little nitch product for now. But -- but in any case,
12 we, as dairy farmers here in California, we, you know, we have
13 these large plants that need our product. We get going, supply
14 management by the co-ops were put in, but -- but it always
15 seemed it kicked in when it was too late.

16 I don't have real answers, other than I know that it
17 was us dairy farmers that ended up taking the brunt of
18 everything. The co-ops lose, we lose. Too much milk, our
19 price goes down.

20 I never could figure out why or how we got to the point
21 where we were actually paying for our milk to go to the plant
22 that's going to process it and have all the power to make the
23 money off of it. I mean, when our, when our milk left the
24 farm, we didn't know what price we were going to receive for
25 it. I mean, how did we get to this point? How did we, as

1 dairy farmers, allow some of these things to happen? I know
2 it's too make milk, and have big dairies, and that's great.
3 I'm all about people wanting to grow and ambition and strength.
4 I'm all for our processors making money. I mean, when they are
5 doing good, we are doing good. But I don't believe anything
6 should, should happen at the demise of another industry. And
7 to lose 450 dairy families that will never come back, nor
8 mention suicides. Just in our county alone we had four
9 suicides. DFA, Land O'Lakes had suicide hotlines. I mean, for
10 goodness sake, if there's a freeze and some oranges are
11 affected, it's all over the news. Yet, we have dairymen having
12 hotlines set up because of suicide, and that's just a mere
13 blip. Oh, those dairymen. You know, they make too much milk.
14 Get more efficient. If I had heard that one more time, get
15 more efficient, I was going to scream. I mean, how much more
16 efficient do we get? And then we get efficient, and then they
17 complain we have too much milk and we don't get paid for it
18 anyway.

19 California's a tough, tough place to do business.
20 Regulations, environment, and all we wanted to be is on the
21 same page as everyone else. Why are we giving this California
22 discount? How did it get to that point? Who made those
23 decisions for us? What say, did we as dairy farmers, have?
24 Well, we own the co-ops. Yeah, we do. We all said, we finally
25 got to the point where we got some type of, you know, limits,

1 you know, where we had to buy base. Well, over that base, you
2 are going to have to pay. I never really saw that kick in.
3 Why did we have bases? Why -- I mean, why, basically one or
4 two percent that were over that affects the whole price, so how
5 did we get to the point, where, then we were getting, you know,
6 \$11.00, \$10.00, \$12.00 milk, when it was really just the one or
7 two percent. So what about those people that were producing
8 the one or two percent over? I wasn't overproducing over my
9 base.

10 Our industry has a lot of problems, and I'm sure
11 there's -- I don't think it's going to be, you know, Utopia
12 with the Federal Milk Marketing Orders, they have problems,
13 too. But at least we have a fighting chance and we're all on
14 the same playing field. I think my rant's done.

15 JUDGE CLIFTON: Ms. Martin, when you talked about the base,
16 that was a self-imposed limit on production?

17 MS. MARTIN: Through our cooperatives. So there was, base
18 limits were put in, and if you wanted to produce more then you
19 would have to buy base. But the idea was there, but we never
20 really saw the full measure of what -- what we can. And again,
21 if we in California have our pooling, you know, and that was
22 kind of the attitude, you know, well, so what, I cut back milk,
23 I make less, but then my neighbor is just full steam ahead and
24 not doing it. You know, so there is some lack of unity.

25 During that time when we were actually protesting was

1 probably one of the only times that I have saw dairymen unite.
2 And it really took that big of loss, that many that that made
3 that happen. And as I still -- I -- dairymen are good people.
4 Dairy farmers are good people. But what they want to do is
5 they want to do what they do best. And that is, work on their
6 farms, take care of their cows, and produce milk.

7 A lot of things got out of our hands because we're busy
8 doing that. We don't have time to come to things like this
9 and sit here from 9:00 to 5:00, with an hour lunch break. I
10 really commend you all for doing it. But we have things to
11 tend to. And when that happens, you lose control.

12 And I think, I remember my dad talked about the
13 Gonsalves Milk Pooling Act, how happy, how relieved he was
14 because he could just concentrate on making milk. Taking care
15 of his girls, making milk, and there was a home, a place for
16 his milk to go. And with that, I think ever since then we have
17 become a little compliant. They know best. I'm just a farmer.
18 What do I know? They are smart. They represent us. They are
19 going to watch out for us. But that complacency led to a lot
20 of our problems today.

21 JUDGE CLIFTON: What county is your 40 acre farm in?

22 MS. MARTIN: Kings County.

23 JUDGE CLIFTON: K-I-N-G-S?

24 MS. MARTIN: Uh-huh.

25 JUDGE CLIFTON: And the big operation, is it in the same

1 county?

2 MS. MARTIN: Uh-huh, yes. They are actually right next
3 door to each other.

4 JUDGE CLIFTON: Who else has questions for Mrs. Martin. We
5 thank you so very much for coming and testifying. I'm glad you
6 changed your mind when you had given up on trying to influence
7 government.

8 MS. MARTIN: Thank you.

9 JUDGE CLIFTON: I just -- you will take that with you, the
10 Federal Register and those are just the pages. Thank you very
11 much, very much.

12 Did all of you hear that? Thanks everybody, she said.

13 All right. So I need to know from the group, either we
14 should break for lunch. It's about 1:16, before we take the
15 next witness. It appears we need to -- so, please be back and
16 ready to go at 2:35. 2:35. Thank you.

17 (Whereupon, the lunch recess was taken.)

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1 MONDAY, OCTOBER 26, 2015 - - AFTERNOON SESSION

2 JUDGE CLIFTON: We're back on record at 2:36. I see that
3 we have an exhibit being distributed. It's the testimony of
4 Jose Maldonado. So if you have not -- yes, Mr. Maldonado, if
5 you would come forward and be seated in the witness stand.
6 If you have not been at your place, and you need your copies,
7 please raise your hand so that they can be distributed to you.

8 MR. ENGLISH: Your Honor, Chip English. I believe I have
9 already done so, and obviously, left four for USDA, and one for
10 you, and one for the court reporter.

11 JUDGE CLIFTON: Ms. Elliott, will this be Exhibit 105?

12 MS. ELLIOTT: That's correct.

13 JUDGE CLIFTON: Thank you. 105.

14 (Thereafter, Exhibit 105, was
15 marked for identification.)

16 JUDGE CLIFTON: Now, I have placed Mr. Maldonado in the
17 witness stand even though we have others to testify, because I
18 understand he's got a short amount of time. Mr. English, at
19 what point does he have to leave this room?

20 MR. ENGLISH: Today when we close. He's got until today.
21 And we obviously, have the other witness through Hilmar,
22 Mr. Ahlem, and there was a little arm wrestling and this is how
23 it ended up, but we're hoping to get Mr. Ahlem on the stand as
24 well today.

25 JUDGE CLIFTON: Very fine. That would be great. And

1 normally, Mr. Ahlem, I would have taken you first, but I want
2 to make sure we finish with Mr. Maldonado before we lose him.

3 MR. ENGLISH: And just to be clear, Mr. Ahlem has agreed,
4 although -- anyway, we are appreciative of trying to get this
5 to work this way.

6 JUDGE CLIFTON: Good, thank you. All right. Then, let us
7 do this, let me swear in Mr. Maldonado to begin with.
8 Mr. Maldonado, would you remain seated but raise your right
9 hand?

10 Do you solemnly swear or affirm under penalty of
11 perjury that the evidence you will present will be the truth?

12 MR. MALDONADO: I swear.

13 JUDGE CLIFTON: Thank you.

14 MR. MALDONADO: You're welcome.

15 JUDGE CLIFTON: Would you please state -- I know you have
16 done this already, but I like to do this before every witness
17 testifies. If anybody wants to do a search of the transcript
18 for where a new witness begins, look for the word "spell" or
19 "raise your right hand" something like that. Would you state
20 and spell your name?

21 MR. MALDONADO: Okay. My name is Jose Trinidad Maldonado.
22 My first name is J-O-S-E, middle initial T, and last name is
23 Maldonado, M-A-L-D-O-N-A-D-O.

24 JUDGE CLIFTON: Now, did you actually state your middle
25 name?

1 MR. MALDONADO: I did. Trinidad, T-R-I-N-I-D-A-D.

2 JUDGE CLIFTON: Terrific. Very good. All right.

3 Mr. English, you may proceed.

4 DIRECT EXAMINATION

5 BY MR. ENGLISH:

6 Q. Thank you, your Honor. Mr. Maldonado has a five and a
7 half page statement that's been marked as Exhibit 105, but you
8 will quickly see that page 2 is some tables and graphs; page 3
9 is mostly tables and graphs. And obviously we are not
10 expecting the court reporter to reproduce those, but obviously
11 the exhibit will count for that.

12 I am going to ask Mr. Maldonado a couple of preliminary
13 questions after he reads his first sentence, and then I'm going
14 to let him give all the testimony, and then I'm going to come
15 back and ask about the tables and graphs, rather than interrupt
16 him. So if you would read your first sentence.

17 A. Sure. My name is J.T. Maldonado of Marquez Brothers
18 International, Inc., based in Hanford, California.

19 JUDGE CLIFTON: It's a good thing that you have it in the
20 record, because the court reporter will be able to look at it.
21 I actually only heard every other word.

22 MR. MALDONADO: I got it I'll slow it down.

23 JUDGE CLIFTON: Thank you.

24 BY MR. ENGLISH:

25 Q. So actually go ahead and read the next paragraph slowly

1 and then I'll ask some questions.

2 A. Very good.

3 Marquez Brothers International, Inc.'s primary business
4 focus is in the manufacturing --

5 Q. Still too fast.

6 A. All right. In the manufacturing and distribution of
7 Hispanic cheese products. Since the foundation of Marquez
8 Brothers in 1981, we have grown our business as demand for
9 cheese products has expanded. Our particular cheese market
10 demand is highly price sensitive and very competitive. We are
11 in the business of manufacturing Hispanic-style specialty
12 products, such as Queso Fresco, cheese, creams, and drinkable
13 style yogurts. The manufacturing of these specialty cheese
14 products are highly labor intensive, lacking the economics of
15 scale compared to large cheddar cheese automated plants that
16 produce 40 pound blocks. Contrary to the testimony of previous
17 witnesses, Hispanic variety cheese products manufactured in
18 California do not enjoy any competitive advantage with the same
19 products manufactured closer to main population centers of the
20 United States. My testimony will present more detail of the
21 cost challenges Hispanic cheese makers face primarily because
22 we are located in California.

23 Q. At this point, with all the witnesses, we'd like to
24 know a little bit more about you, for the record. So when did
25 you start with Marquez Brothers?

1 A. 1997.

2 Q. Okay. And before that, what did you do?

3 A. Before that I worked in the grocery stores, and I was
4 involved in electronic engineering, and also I had my own farm.

5 Q. And what do you do now for Marquez Brothers?

6 A. I'm the General Manager for Marquez Brothers.

7 Q. For the plant?

8 A. For the plant.

9 Q. Okay. All right. Please proceed.

10 A. With regard to the value of whey to plants of our size
11 and product mix, Marquez Brothers reluctantly invested in a
12 whey processing plant in 2004 in order to reduce the cost of
13 disposing of the whey. This investment was -- this investment
14 cost was more than any other investment Marquez Brothers had
15 ever made. The investment decision was driven primarily by the
16 rising environmental concerns with whey disposal and the cost
17 of whey disposal, not the projected financial return.
18 Furthermore, Marquez Brothers is primarily in the cheese
19 business, and investing in a whey plant was a necessary, but
20 unwanted, investment decision outside of our core competencies.

21 With respect to making whey processing investments
22 within the industry, it is generally acknowledged that a plant
23 must produce at least 1.2 million pounds of whey per day in
24 order to reach the economies of scale necessary for a whey
25 plant investment to break even. Adoption of any sizeable 4b

1 milk price increase will result in not only small/medium size
2 cheese manufacturers not able to recoup their investment, but
3 the extinction of California small/medium size cheese
4 manufacturers.

5 In California, cheese manufacturers have experienced
6 regulated price increases which have presented challenges to
7 small/mid-sized cheese manufacturers companies, specifically
8 because of the limit on the value that can be derived from the
9 byproducts side of the cheese manufacturing. For example, on
10 the input side, a cheese plant will have milk input of
11 approximately 12.3 percent solids, if you see Table 1.

12 Table 1 shows butterfat at 3.5 and solids not fat of
13 8.8. Total combined is 12.3 percent solids.

14 The output from the milk's 12.3 percent of total
15 solids, approximately 48 percent of these solids stay with the
16 cheese, and 52 percent of that go with the whey. See Table 2.

17 And graph 1 and 2, as well. It clearly shows how much
18 of that butterfat and solids not fat, 3.15 percent of the
19 butterfat stays with the cheese, 2.75 percent of the solids not
20 fat stays with the cheese of a total of 5.9 percent of total
21 solids end up with the cheese.

22 On the whey side, .35 percent of the butterfat goes to
23 the whey, and 6.05 percent goes to the other, solids not fat go
24 to the whey for a total of 6.4 percent total solids end up at
25 the whey stream. You add all that up together, it balances to

1 12.3 percent total solids that originally came in with the
2 milk.

3 It is well known that in cheese making -- I'm on page
4 3. It is well known that in cheese making, if one starts with
5 approximately 100 pounds of milk, you will get more or less
6 roughly 10 pounds of cheese and 90 pounds of whey. What the
7 solids content of 6.4 percent before the whey cream separation
8 of the solids in the original milk, which is approximately
9 12.3 percent, of the solids end up in the cheese, and 52
10 percent end up in the whey. With permeate lactose at about 85
11 percent of the total whey solids, being the dominant whey
12 solid, followed by the whey proteins and minerals.

13 So if you go back to page 2, and if you look at graph
14 1, you can see where the 52 percent of the whey total solids,
15 5.11 percent ends up in the whey cream, 9.45 percent ends up,
16 is the protein, and 85.44 percent is permeate lactose.

17 Going back to page 3, second bullet point:

18 Of the whey solids that stay in the liquid whey after
19 the cheese making process, approximately 9.45 percent of the
20 whey solids goes into the manufacturing of WPC 80; 5.11 percent
21 is the whey cream; and again, over 85 percent of the total whey
22 solids go into permeate. We just looked at the graph and table
23 to serve you.

24 In California, out of the 57 plants that make cheese,
25 only 13 plants have some sort of whey concentration facilities.

1 See Exhibit 96.

2 Of the 13 plants that process whey, maybe about a third
3 may have the economies of scale to dry permeate and lactose.
4 The graph below, graph 3, also shows the breakdown of the
5 components from the whey, which is the permeate, the whey
6 cream, and the WPC 80, just a different way of looking at it.

7 To capture the maximum value of the whey stream, it is
8 important to have the ability to take it all the way to a dry
9 state. Unfortunately, the installation of whey evaporators and
10 dryers is an extremely capital intensive operation and subject
11 to large economies of scale. Small and medium size cheese
12 companies like MBI, don't dry permeate/lactose fraction and
13 don't have the ability to fund a 35 million permeate drying
14 facility, so will be unable to capture revenues to keep up with
15 the rising milk cost, specifically in 4b whey component
16 formula.

17 JUDGE CLIFTON: Mr. Maldonado, let me interrupt for just a
18 minute. We're at the bottom of page 3. When you read 35
19 million, what was the unit, 35 million what?

20 MR. MALDONADO: \$35 million to build a dryer to dry the
21 permeate.

22 JUDGE CLIFTON: Thank you.

23 MR. MALDONADO: You're welcome. We don't recoup the full
24 value of the whey. Finding experienced people to run this
25 complicated equipment is no small task. Whey evaporation and

1 drying is governed by huge economies of scale. Small and
2 medium sized plants don't individually have enough whey volume
3 to justify the expenditures. Sales and marketing expertise is
4 critical to economic success, and most small and medium cheese
5 plants don't currently have the expertise in-house. In time,
6 and when additional plant capacity is needed, the cooperatives
7 propose regulated milk pricing formula applicable to cheese
8 plants will discourage investment in new cheese plants, NWPC
9 plants, and will make it difficult for some plants to continue
10 operations.

11 According to the Milk Pooling data table prepared by
12 CDFA titled "Pounds of Milk Processed into Cheese," which is
13 also Exhibit 96:

14 1. 43 plants presenting approximately 75 percent of these
15 57 total plants producing cheese in California are, on
16 average, processing less than 788,000 pounds of liquid
17 whey per day. (Assuming 21.7 million pounds average,
18 milk pounds per month. And I also show how I
19 calculated that 788,000 pounds of liquid whey.

20 (Assuming avg.21.7M.milk pounds/mo*87% yield in whey
21 divided by a 24 day per month operation).

22 These cheese factories are mostly too small to dry whey
23 or process whey to get at whey proteins, they lose
24 money every month on this portion of the Class 4b
25 price.

1 2. Six plants representing approximately 10.53 percent of a
2 57 total plants producing cheese in California are
3 processing less than 1.13 million pounds of liquid whey
4 per day.

5 (Assuming avg. 31M.milk pounds/mo*87% yield in whey
6 divided by a 24 day per month operation).

7 3. In other words, 49 plants in all, representing
8 approximately 85.96 percent of the 57 total plants
9 producing cheese in California are either not
10 processing or processing less than 1.2 million pounds
11 of liquid whey per day, which is at or around the
12 break even point.

13 These 49 plants produce less than 19 percent of the
14 total cheese output, according to the Exhibit 96.

15 JUDGE CLIFTON: I know it is a tiny thing, but when you say
16 less than 19 percent, your figure on page 4 is actually 19.1
17 percent.

18 MR. MALDONADO: 19.1 percent, yes.

19 JUDGE CLIFTON: Okay.

20 MR. MALDONADO:

21 4. Although all 57 plants would be severely financially
22 impacted by the increase in the milk price, 43
23 processing plants will probably never recover their
24 investment, and 6 other plants will struggle to break
25 even, taking them decades to recover or see return, if

1 they were to build a whey plant. These plants are
2 financially burdened when they, when the whey market
3 price increases dramatically or reaches certain
4 thresholds.

5 Even for companies like ours that have some whey
6 processing capabilities, growth in cheese manufacturing and
7 distribution will be severely restricted should we experience
8 further losses in our whey business. Our experience has been
9 that during the first three to four years of our whey
10 operation, we did not see any profits.

11 Cheese whey disposal has always been a burden and an
12 environmental problem, historically costing Marquez Brothers
13 1.5 million per year of with zero revenue value and no milk
14 allowance in a 4b price to recover whey disposal cost over the
15 years.

16 JUDGE CLIFTON: And that cost was 1.5 million what?

17 MR. MALDONADO: That was the cost to dispose of the whey
18 prior to building our whey plant.

19 JUDGE CLIFTON: Okay. And that was \$1.5 million per year.

20 MR. MALDONADO: Annually.

21 JUDGE CLIFTON: And what I really want you to say out loud
22 is dollars.

23 MR. MALDONADO: \$1.5 million. Yes. Sorry about that.

24 Further, there's no real recognition for the whey
25 disposal cost losses in the cooperatives' proposed mandatory

1 Class III milk pricing formula.

2 Historically, whey powder values compared with whey
3 protein concentrate values were similar when calculated on a
4 price per pound of protein basis. This led us to a decision in
5 2004 to finance a whey protein plant only. This decision was
6 driven by two key factors:

7 a. The environmental problem associated with whey
8 disposal would be alleviated if Marquez Brothers
9 International could focus on growing its cheese
10 distribution business, and

11 b. The pricing history in 2003 indicated that the
12 revenue stream from WPC 80 only would be similar to a
13 whole whey powder plant, and therefore, justify us
14 building a WPC 80 only plant, while disposing of
15 concentrated permeate as animal feed. And also, I
16 didn't put in here, but also disposing of the whey
17 cream.

18 As I mentioned earlier, Marquez Brothers International,
19 Inc.'s primary focus is on cheese manufacturing and
20 distribution. Prior to constructing the whey plant, our cost
21 of dispose the whey component for years 2000 and 2005 was
22 approximately \$7.5 million dollars, or \$1.5 million per year.
23 The whey protein plant was completed in August 2005, for an
24 investment amount of approximately \$20 million. Despite our
25 multi-million dollar investment to alleviate the environmental

1 problems associated with whey, we have not seen a return on
2 that investment. Our total loss incurred from August 2005 to
3 August 2007, mainly due to the whey component, is approximately
4 \$7 million. To date, we have not yet recovered from these
5 losses and we are years away from ROI. Why? We simply do not
6 have enough volume. Currently, the WPC values below dry whey
7 values on a pound of protein basis, we are facing a very
8 challenging environment on the whey side of our business.

9 As a result of having the whey plant, we have seen an
10 increase in our hydraulic Biological Oxygen Demand, referred to
11 as BOD, and Electrical Conductivity loads on our waste water.
12 This has led us to make another multi-million dollar investment
13 in the waste water pre-treatment plant in an operating cost of
14 approximately \$200,000 per month.

15 Cheese pricing at the customer level has become much
16 more difficult to price out to our customers because we can no
17 longer gauge ourselves based on the CME cheddar cheese prices.
18 The whey component distorts our margins and pricing mechanisms.
19 The cooperatives' proposed mandatory Class III price level
20 significantly increases the price of our number one raw
21 material, milk, and the whey value has no correlation to the
22 CME cheddar cheese price. However, the cheddar cheese price
23 has a direct correlation to our cost per pound of milk and
24 cheese.

25 In the Federal Order, the entire value of dry whey

1 (minus the make allowance) that could potentially be generated
2 from the liquid whey produced from cheese production is
3 captured in the Class III milk price. In effect, this means
4 that the cheese maker is paying his producers for the value of
5 the whey that could potentially be generated from their milk,
6 whether or not the cheese maker extracted the value from the
7 whey. The producers focus only on the lack of correlation of
8 the California price with the Federal Order Class III price.

9 JUDGE CLIFTON: Say that again, because, didn't quite hear
10 what you said after the word California?

11 MR. MALDONADO: The producers focus only on the lack of
12 correlation of the California 4b price with the Federal Order
13 Class III price. This comparison is not valid. This year,
14 cheese plants in Wisconsin could, and did, buy milk at \$7.00
15 under the Federal Order Class III price. It is doubtful
16 California producers will ever testify to that very real
17 comparison with the regulated 4b price by the time this hearing
18 concludes. They are unlikely to include information from the
19 article written in the Cheese Reporter by John Umhoefer, on
20 May 8, 2015.

21 "Dairy producers gain a value for whey in their
22 milk price in California and in states regulated
23 by Federal Milk Marketing Orders. But California
24 has a better solution for valuing whey while the
25 explanation is a bit technical. The fundamental

1 reason why California is on the right track isn't
2 technical at all. The reason is this, cheese
3 makers pay dairy producers the value of dry whey,
4 but most cheese makers don't produce dry whey.
5 When whey prices are high, many cheese makers take
6 immense losses."

7 According to the article, the majority of the cheese
8 companies that do not have the capability to process their
9 whey, are being charged the full price of whey in the milk
10 price, with no means to recover, and placing a huge financial
11 burden on these cheese manufacturers.

12 He further states that:

13 "It's a fundamental flaw in the Federal Milk
14 Marketing Order pricing if built-in discrimination
15 against small and mid-sized cheese manufacturing
16 businesses that cannot begin to afford the cost of
17 dry whey manufacturing. Production of dry whey
18 requires massive capital investment in the tens of
19 millions of dollars, and this investment is not
20 possible for most cheese manufacturing small
21 businesses."

22 Mr. Umhoefer recognizes that the whey factor in the
23 Federal Order system needs to be fixed, and submitted comments
24 to USDA making the case that dry sweet whey is not an
25 appropriate basis for the valuation of other solids in the

1 Federal Order Class III price. "Nationally, there are only 32
2 dried whey plants, equal to only 6 percent of the 529 cheese
3 plants included in the NASS survey." This problem of
4 overvaluation is more acute in California where plants do not
5 have the Federal Order option pay under minimum class prices.

6 Given the fact that the last five CDFA hearings have
7 resulted in price increases which have presented challenges to
8 our company, we support the Dairy Institute proposal. It is
9 critical to keep milk prices at levels that still provide
10 margins for cheese makers to invest in new technology to keep
11 the plants operating, to invest funds in research and
12 development that will lead to innovation, new products, and
13 expanded markets for cheese and milk. It would also
14 incentivize the processor community to grow by allowing the
15 majority of the returns to be realized by those taking the risk
16 of the investment, and increase milk processing capacity in
17 cheese plants in a time when there is excess milk.

18 In conclusion, adopting the cooperatives' proposal will
19 strongly discourage cheese plant investment and place near
20 plant capacity at risk. At a time when plant capacity --

21 JUDGE CLIFTON: Let me have you do that sentence again. I
22 don't quite understand a phrase you have about near-term plant
23 capacity. So would you read the whole sentence again?

24 MR. MALDONADO: Sure. Adopting the cooperatives' proposal
25 will strongly discourage cheese plant investment in plants near

1 term plant capacity at risk, at a time when plant capacity is
2 needed for the continued health of both producers and
3 processors. Milk producers are not contributing to the
4 investments required to process whey and alleviate the
5 environmental problems associated with whey. We take all the
6 risk and processing whey, producers don't. We make the capital
7 investment in whey manufacturing facilities, producers don't.
8 We take all the losses in weak whey markets, producers don't.

9 It is not sustainable to adopt a Class III price as a
10 mandatory minimum price paid by California cheese plants.
11 California cheese plants are still struggling to adopt a
12 change, to the change implemented by CDFA from the 2011 through
13 2014, which to date has added 80 cents per hundredweight to the
14 price of milk. Compounding our problems due to these increases
15 in milk price, we are confronted with ever higher energy,
16 labor, resin, petroleum based packaging materials, and workers'
17 compensation costs to operate in California, which has made it
18 much more difficult to be competitive in domestic markets.

19 Thank you for the opportunity to be here today.

20 BY MR. ENGLISH:

21 Q. Thank you, sir. You skipped a few headings, which I
22 think is fine, I don't think we have to read those into the
23 record, they are in the exhibit. There was one place, if you
24 go to the middle of page 4, and I do think it makes a
25 difference. After the numbered paragraphs, if you could read

1 the last sentence that says "our experience has been."

2 A. Yes. Our experience has been that during the first
3 three to four years of our whey operations, we did not see any
4 profits.

5 Q. Okay. You said the same thing you read before, but you
6 have the word net profits in there.

7 A. Net profits, yes.

8 Q. And you meant to read the word net, correct?

9 A. Correct. Yes, you are right.

10 Q. All right. So, you have quoted three times from
11 Mr. Umhoefer. And obviously those were his statements in the
12 article, but do you agree with those statements?

13 A. I do agree with those statements, that's why I included
14 them in there.

15 Q. And do you adopt them as if they are your own?

16 A. Yes.

17 Q. But the real point is that people outside of California
18 are recognizing this issue, correct?

19 A. That's correct.

20 Q. Okay. So just one other series of questions. Going
21 back to your first page in your --

22 JUDGE CLIFTON: Mr. English, can I just deal with a
23 technical thing first? One word that was omitted on page 6 and
24 I think I would like to have Ms. Elliott put it in. It is at
25 the last full paragraph on page 6, the fourth line down. I'm

1 looking at the phrase "we are confronted" and what
2 Mr. Maldonado said next was "with", and I'd just like --

3 MR. MALDONADO: I might have omitted that.

4 JUDGE CLIFTON: I would just like for us to insert the word
5 "with" in the document.

6 MR. ENGLISH: I think it makes perfect sense, and thank
7 you, your Honor, for catching that.

8 JUDGE CLIFTON: All right. Ms. Elliott, do you see where
9 we are?

10 MS. ELLIOTT: Yes.

11 JUDGE CLIFTON: All right. So we'll just insert the word
12 "with" there and then it will be exactly as Mr. Maldonado said
13 it. Mr. English, thank you.

14 MR. ENGLISH: Thank you.

15 BY MR. ENGLISH:

16 Q. So I have just a couple of questions more.

17 You weren't here earlier, but it was reported to you
18 when you are talking about the testimony of a previous witness.
19 There was testimony by the previous witness that a plant in
20 Houston, Texas faced competition from Hispanic cheese coming
21 out of California. Do you have any comment on that discussion?

22 A. I did hear something about the Houston plant owned by
23 DFA made a comment in earlier testimony. The only thing I can
24 say about that comment is that they are in a Federal Order
25 marketing system, so they can always depool, obviously, and pay

1 a different price than the minimum price at the Federal level.
2 We don't have that option here in California.

3 Also, in California, we do have higher labor cost,
4 higher regulatory cost, workers' compensation, and on and on, a
5 lot of the points I made on the last paragraph of my testimony.
6 There's just a much more expensive operating environment here
7 in California than it is in Texas. But the most important
8 thing is that the competitors can always depool. And given the
9 fact that there they are owned by DFA, and DFA can always, if
10 they wished, depool and have the competitive price.

11 Q. And a cooperative can also reblend proceeds for its
12 dairy farmers, correct?

13 A. Correct.

14 Q. Okay. And you don't know they are doing that, but you
15 know they have the ability, correct?

16 A. Right.

17 Q. Your Honor, that completes my direct examination. I
18 move admission of Exhibit 105.

19 JUDGE CLIFTON: Thank you, Mr. English. Is there anyone
20 that would like to ask questions of Mr. Maldonado about
21 Exhibit 105 before determining whether you object to its being
22 admitted? No one. Is there any objection to the admission
23 into evidence of Exhibit 105? There are none. Exhibit 105 is
24 admitted into evidence.

25 (Thereafter, Exhibit 105 was

1 received into evidence.)

2 MR. ENGLISH: Mr. Maldonado is available for
3 cross-examination, your Honor.

4 JUDGE CLIFTON: Who will ask the first questions of
5 Mr. Maldonado? Thank you.

6 CROSS-EXAMINATION

7 BY MR. BESHORE:

8 Q. Marvin Beshore.

9 Good afternoon, Mr. Maldonado.

10 A. Good afternoon.

11 Q. We have not met, but I'm the attorney for the
12 cooperatives which have put forth Proposal 1 and requested this
13 hearing, so I have a couple of questions for you.

14 A. Sure.

15 Q. First of all, I probably missed this, but what position
16 do you have with the company?

17 A. The General Manager.

18 Q. Of --

19 A. Marquez Brothers International, of the cheese plant.

20 Q. Of the cheese plant?

21 A. Yes.

22 Q. But not of Marquez Brothers International?

23 A. No.

24 Q. Okay. So Marquez Brothers International is quite a
25 large enterprise, is it not?

1 A. I'm not sure what your definition of a large enterprise
2 is.

3 Q. Well, it, just reading the website, it says you have a
4 distribution network that includes the United States, Mexico,
5 Canada, and Europe, and that Marquez Brothers International and
6 its affiliates have become the number one market leader in the
7 authentic Mexican food segment of the consumer products
8 industry, and a major importer of national leading brand of
9 grocery items from Mexico and Central America.

10 Is that all correct?

11 A. That's correct.

12 Q. You are number one in market leader in the authentic
13 Mexican food segment in U.S., Mexico, Canada, and Europe?

14 A. We would like to think so. It depends.

15 Q. Okay. Is that a reasonably large enterprise?

16 A. Not necessarily.

17 Q. I guess it depends what you compare yourself to, huh?

18 A. It depends what you compare yourself, yes.

19 Q. Okay. Well, compared to some of the dairy farmers that
20 I'm representing, would you consider yourself to be a
21 reasonably large enterprise?

22 A. We consider ourself to be a mid-size.

23 Q. Mid-sized company?

24 A. Mid-size company.

25 Q. Is that like S and P 500 mid-size?

1 A. No.

2 Q. You have recently expanded into, what, the
3 entertainment and telecom business as well?

4 A. No.

5 Q. No?

6 A. No.

7 Q. You have a website that says it's a market leader in
8 the production and the distribution of authentic Mexican food
9 products, Marquez Brothers International has branched out into
10 other business ventures. Additional services include
11 entertainment and telecommunications.

12 A. That's probably just more of our advertising.

13 Q. I'll leave it at that. Okay. So let's talk about your
14 cheese business a little bit. You are the General Manager of
15 the plant. So --

16 A. Yes.

17 Q. Your products include Queso Fresco, cheese, creams, and
18 drinkable style yogurts. So are they all made in the Hanford
19 plant?

20 A. Yes.

21 Q. What -- by the creams, do you know how the products are
22 all classified in the CDFA system, the drinkable yogurts, are
23 they Class 1 or Class 2 or 3?

24 A. Class 2.

25 Q. Class 2. And how about the creams?

1 A. Class 2.

2 Q. So, and the cheeses I assume are Class 3 or 4b I should
3 say?

4 A. 4b, yes.

5 Q. Okay. So what portion of your production is in the
6 Class 2 versus the 4b?

7 A. What portion?

8 Q. Yes, what percentage?

9 A. That's classified information.

10 Q. Can you give us any range? Is it less than, you know,
11 is it more than half Class 2?

12 A. I wouldn't want my competitors to know what percentage
13 of production we have versus, you know, creams and Class 2 or
14 Class 4b.

15 Q. Okay. Are there Hispanic style cheeses -- are there
16 multiple -- do you -- do you manufacture multiple Hispanic
17 style cheeses?

18 A. That's correct.

19 Q. Can you give us an idea of what some of them are?

20 A. We make Queso Fresco; we make Panela; we make cotija;
21 requeson; menonita, there might be a few others.

22 JUDGE CLIFTON: Okay. You just named four things I don't
23 know how to spell. Could you tell us again and spell each one
24 for us?

25 MR. MALDONADO: Sure. Queso Fresco is Q-U-E-S-O,

1 F-R-E-S-C-O.

2 JUDGE CLIFTON: Now, there were still four more.

3 MR. MALDONADO: There's also Panela, which is P-A-N-E-L-A,
4 and there's also Cremeso, C-R-E-M-E-S-O.

5 JUDGE CLIFTON: That sounds like "cremeso."

6 MR. MALDONADO: That's a creamy type of cheese, yeah.

7 JUDGE CLIFTON: Okay. But you pronounced it "cremoso".
8 Spell it one more time for me?

9 MR. MALDONADO: C-R-E-M-E-S-O.

10 JUDGE CLIFTON: Okay. I still can't make that work.

11 MR. MALDONADO: Hold on. Let me get that for you again.
12 C-R-E-M-O-S-O. Okay.

13 JUDGE CLIFTON: That works for me. Thank you. Okay. So
14 Panela, Cremoso, and now?

15 MR. MALDONADO: And also cotija, which is C-O-T-I-J-A.

16 JUDGE CLIFTON: Cotija.

17 MR. MALDONADO: Cotija, it's kind of like parmesan cheese.

18 JUDGE CLIFTON: And then one that sounded like --

19 MR. MALDONADO: Requeson, that's R-E-Q-U-E-S-O-N.

20 JUDGE CLIFTON: Thank you very much. And if you make more
21 keep going, I just needed to have that much explained.

22 MR. MALDONADO: Sure.

23 BY MR. BESHORE:

24 Q. Are there more?

25 A. There's actually, I think that's probably most of it.

1 I mean, we do make some other types of cheeses, but that's the
2 majority of it.

3 Q. Okay. That's good. Thank you. Can you tell us
4 anything about these cheeses since you are more familiar with
5 them certainly than I am. For instance, moisture content?

6 A. That's confidential information.

7 Q. Okay.

8 A. I wouldn't be --

9 Q. With respect to all of them?

10 A. Yes.

11 Q. Okay. You said one of them was something like
12 parmesan. Is that, what, cotija?

13 A. Cotija, yes.

14 Q. So I take it that's a low moisture cheese?

15 A. That's correct.

16 Q. Can you rank them? I mean, in terms of high to low
17 moisture without telling me the percentages?

18 A. Again, that's still confidential information.

19 Q. That's confidential?

20 A. Yeah.

21 Q. What yield do you get, how many pounds of Queso Fresco
22 from a hundred pounds of milk?

23 A. Again, that's also confidential information.

24 Q. More or less than cheddar?

25 A. Again, that's confidential information.

1 Q. More or less than Mozzarella?

2 A. Again, that's confidential information.

3 Q. Who are your -- oh, do you sell your cheeses from the
4 Hanford plant nationwide in the United States?

5 A. Yes.

6 Q. And also to what, Mexico, Canada, and Europe?

7 A. If there are stores out there that buy our product,
8 yes.

9 Q. Are there stores out there that --

10 A. I don't know.

11 Q. Do you package your cheeses or are they -- do you sell
12 them to be packaged by someone else?

13 A. We package our cheeses.

14 Q. At your Hanford facility?

15 A. That's correct.

16 Q. Okay. Who are your main manufacturing competitors in
17 the United States, if you can tell us?

18 A. There are many. I think that just in California I
19 think there are over nine.

20 Q. Nine competitors in California?

21 A. Nine.

22 Q. Nine other manufacturers of --

23 A. I mean, you go to any given store, most likely there's
24 about nine. You know, five plus competitors, five different
25 brands, nine different brands, there's just so many of them out

1 there.

2 Q. So can you tell me, are there any other manufacturers
3 of Hispanic cheeses that distribute like Marquez does at all 50
4 states?

5 A. I think they are each and every single one of them are
6 a little different from ours. But yes, I think that there are
7 maybe a couple might distribute in all 50 states. We don't
8 distribute in all 50 states. We are mainly in the Midwest to
9 the West.

10 Q. Okay. So you don't distribute in the east, then?

11 A. We're very few stores out there.

12 Q. Okay. So in the area where you distribute, well, are
13 there -- start over again.

14 Are there Hispanic cheese manufactures of which you are
15 aware who do distribute in all 50 states?

16 A. No.

17 Q. Okay. Give me the two or three competitors with the
18 largest geographic scope of distribution that you are aware of?

19 A. You know, that I'm aware of, I know there's some in
20 Wisconsin, I don't know their names, and there's one here in
21 California.

22 Q. Okay. Who is the one in California?

23 A. I think Cacique might be one of them.

24 Q. And the, you know that, you think there's some in
25 Wisconsin but you don't know their names?

1 A. I don't know their names, no.

2 Q. How do you know there are some there if you don't know
3 their names?

4 A. I don't know their names to quote them here on. I
5 can't, I don't remember exactly their company names.

6 Q. Do you know their brand names? The brands they market
7 under?

8 A. I think I might know, but I don't, I wouldn't be able
9 to tell you exactly their brand names.

10 Q. Okay. But there are cheese manufacturers in Wisconsin
11 that compete on a national basis in sales of Hispanic cheese?

12 A. I think so, but I don't know for sure.

13 Q. Okay. So you were not here, I don't think, maybe you
14 were. Were you here when Mr. Dryer testified?

15 A. No.

16 Q. Mr. Dryer from Saputo?

17 A. No.

18 Q. But you did, you did obtain Exhibit 96, which I used, I
19 presented in cross-examining him, correct?

20 A. Yes, I did use the exhibit, yes.

21 Q. Right. Did you see any of the other exhibits that I
22 used with him?

23 A. No, I was not here.

24 Q. Okay. Well, let me -- let me suggest that he, Saputo
25 has cheese manufacturing plants in Wisconsin as well as in

1 California. Are you aware of that?

2 A. I understand Saputo has plants, other, many plants.

3 Q. Okay. They are not a competitor of yours, however?

4 A. No.

5 Q. Okay. So if Mr. Dryer, as well as other witnesses in
6 this hearing and other evidence that was presented, have
7 established that the cost of milk to make cheese in Wisconsin
8 is \$1.50, \$2.00, perhaps even more, higher than that in
9 California, are you aware of that?

10 A. Aware specifically of the price in Wisconsin for a
11 particular?

12 Q. The price to make, to get, to buy raw milk to make
13 cheese throughout Wisconsin?

14 A. Are you comparing Wisconsin with California?

15 Q. Yes.

16 A. Okay. Yes, I'm aware of that, yes.

17 Q. Okay. Does that give you a competitive leg up on the
18 manufacturers in Wisconsin that you are competing with?

19 A. Well, that brings me back to the option that these
20 cheese manufacturers have, that they are able to depool and
21 work directly with the farmers at the price that is not
22 announced. It is not published.

23 Q. Okay. So --

24 A. But I don't know that information. I don't know that
25 information is not published, so I can only assume.

1 Q. Okay. So your assumption is, first of all, do you have
2 any familiarity, experience with pooling milk under a Federal
3 Milk Marketing Order?

4 A. No, I don't.

5 Q. Okay. So then you really don't know what the pool, how
6 depooling works?

7 A. I have a general sense. I have been to several
8 courses, but I don't, since we're in California, milk on the,
9 what we're in the California, there's no need for me to really
10 understand the Federal Milk Marketing Order. But, you know, I
11 do have a general understanding of what the depooling is.

12 Q. Okay. And your general understanding, I take it, is
13 that depooling means that the nonpool plants in Federal Order
14 areas pay less than the Federal Order price for their milk?

15 A. Right. The depool plants, yeah.

16 Q. Okay. So if -- and that's what you base all your
17 conclusion, your assertions here -- wait a minute --

18 A. Not only that.

19 Q. Well, your assertions about depooling in the Federal
20 Order system are based on that understanding that you just
21 stated; isn't that correct?

22 A. That's one. Various points I made earlier in my
23 testimony, one of them being labor, it's labor is much more
24 expensive, perhaps even 30 percent more here in California than
25 it is in Wisconsin.

1 Q. And --

2 A. As far as workers' comp, regulatory requirements. Let
3 me take you back to my last page of my testimony.

4 Q. Well, what's the basis for the those comparisons you
5 just made?

6 A. Well, I mean, the California just raised the minimum
7 wage to, I think \$10.00 at the beginning of the year, it is up
8 to 9 something right now. Federal level I think it is in the 7
9 range. And I think, so there's a huge discrepancy on just on
10 wages. And so obviously, and this is a very labor intensive
11 operation we run here, so we have a lot of employees, where,
12 you know, to make these type of products. So it is very labor
13 intensive if you compare it to a cheddar cheese plant. A good
14 portion of our cost is labor.

15 Q. So your assuming that --

16 A. And workers' comp, and, I mean, so workers' comp goes
17 along with that, medical insurance benefits, and so it just
18 goes on and on. Also regulatory requirements, water treatment.
19 Perhaps these other places that have ponds, we don't. We need
20 to put a waste water between plants. It costs millions and
21 millions of dollars, and millions more to operate every year.

22 It is a very different operation here in California to
23 operate a business is very costly. And so the cost to operate
24 in California is mitigated, is nulled with the perhaps what
25 your statement that you are making that the price, the milk is

1 cheaper somewhere else.

2 Q. In other words, by being able to buy your milk cheaper
3 from dairy farmers in California, you can compete with the, you
4 can pay your workers more and pay more for workers'
5 compensation, etcetera. That's how you make it in California,
6 is that it?

7 A. What I'm saying is that, your question was about the
8 price difference between California and the Federal. And I'm
9 saying that there are several things that the, that the cheese
10 manufacturer and in Wisconsin or Texas can do, and one of them
11 is they have the option and the ability to depool whenever they
12 want, plus they have lower labor cost compared to us. So it is
13 not apples to apples comparison between California and
14 Wisconsin and also California and Texas. You are not comparing
15 apples to apples. It is very different environment we're
16 working in, the cost of operations are very different, so it is
17 not, if you were to compare two companies in California, yes.
18 But to compare a company whose got the ability to depool and
19 work directly with the farmer, and if that cheaper labor, lower
20 workers' comp, lower cost to operate, it is just very
21 different.

22 Q. Okay. So that's -- are there any other factors? The
23 cost of labor and the ability to depool, was that, those are
24 the things that are different between your cost -- your cost
25 profile here in California and your competitors in Wisconsin.

1 Is that your testimony?

2 MR. ENGLISH: Just, your Honor, after three or four times
3 he's shortened it just to cost of labor, and the witness has
4 said there's all sorts of other regulatory cost.

5 JUDGE CLIFTON: I agree. I remember environmental
6 specifically. So, yes, Mr. Beshore, I know you want him to
7 summarize, but he did name a lot of variables that you left
8 out.

9 MR. BESHORE: Okay.

10 BY MR. BESHORE:

11 Q. So generally, the cost of doing business in California
12 and the ability to depool are the two characteristics that you
13 believe make your lower cost of milk justified in California?

14 A. I think at the plants, like I said, and in those states
15 have the ability to depool, yes, and also operate under very
16 different circumstances than the California plants do. They
17 have lower cost of labor.

18 Q. I'm not asking you to repeat.

19 A. Right.

20 JUDGE CLIFTON: Well, then don't ask him that question.

21 MR. BESHORE: I asked, I summarized it as the cost of
22 business and the ability to depool, cost of doing business. I
23 meant that to be general, your Honor, to respond to the
24 objection.

25 JUDGE CLIFTON: Well, then it doesn't add anything.

1 MR. BESHORE: Just wanted him to confirm.

2 JUDGE CLIFTON: Well, I don't think it helps. I don't --
3 when he's precise and specific, I don't think it helps for you
4 to be so general just to get him to confirm.

5 BY MR. BESHORE:

6 Q. Are there any other differences?

7 A. Yeah, the differences, obviously, like I stated on my
8 testimony, higher cost of energy, also labor, resin, petroleum
9 based packaging products, a lot of them had to be brought in
10 from out-of-state. So it is different cost to operate here.
11 Benefits to employees. California just passed some new laws
12 requiring to us increase, you know, time off for employees, and
13 so on. So it is, the cost of, has increased tremendously for
14 us here in California as well.

15 JUDGE CLIFTON: If I could ask, I didn't understand the
16 packaging using petroleum products. Why is it different for
17 you?

18 MR. MALDONADO: So a lot of those products are coming from
19 the East Coast, and so, you know, there's freight involved as
20 well.

21 BY MR. BESHORE:

22 Q. Okay. So it is your testimony that the factors you
23 enumerated, I don't want to limit you, but the factors you
24 enumerated are more expensive in California than they are in
25 Wisconsin?

1 A. That is correct. And also, as I stated earlier, I feel
2 like I'm repeating myself -- all the points I made earlier
3 about the fact that the cheese makers are able to depool, which
4 is a huge disadvantage for us here in the fact that they have
5 that ability to go straight to a farmer and deal directly with
6 the farmer, and negotiate price, is very, it puts them at an
7 advantage over California cheese manufacturers. Obviously, the
8 cost of labor in these states are much different than it is in
9 California. As many of those, many of the cheese manufacturers
10 in California can attest to.

11 Q. Okay. So what leads you to believe that the advantage
12 of depooling, as you have described it, leads to less, cheaper
13 milk supplies in those areas?

14 A. I don't quite understand your question.

15 Q. Why do you think the ability to depool, as you have
16 described it, means that the cost of milk to those competitors
17 is less than yours?

18 A. I think I just, I answered the question. The fact that
19 the cheese manufacturer has the ability to depool, and cheese
20 manufacturing in California do not have the ability, we must
21 pay the minimum price in California, obviously that puts us at
22 a disadvantage.

23 Q. Okay. Let me ask you about your whey operation just a
24 question or two. Before you -- before you invested in whey
25 processing business in 2004, how did you dispose of your whey?

1 A. We hired trucks to dispose of it, and we had to buy
2 pumps and sometimes we had to haul it -- maybe, you know, when
3 you have, for example, when you have, I'm going to give you a
4 hypothetical number. You have a hundred truck loads of milk
5 coming in, you got to have 80 truck loads of whey going out.
6 So it was a logistics nightmare for us to not only manage our
7 business, but then manage the logistics of disposing of the
8 whey, hiring truck drivers, buying trucks to haul the whey off,
9 buying pumps to, and tanks to leave at, with the farmers so we
10 can leave whey at those locations, and those are 24 hours,
11 nonstop, 7 days a week.

12 Q. Okay. So you were taking all the whey and basically
13 spreading it on the ground?

14 A. No, we were -- well, multiple things we were doing is,
15 some farmers use it to feed it back to their calf or cows. And
16 others were disposed of, others were, you know, I'm not sure
17 what they did, I don't recall.

18 Q. But you didn't sell it for any processing to any other
19 to a whey processor?

20 A. No.

21 Q. Okay. Do you buy whey now from other sources to
22 process through your plant?

23 A. We -- that's confidential information.

24 Q. Okay. It was expensive and logistically difficult to
25 dispose of whey before you had your own processing?

1 A. That is correct.

2 Q. Okay. So have you saved money by going into your own
3 processing?

4 A. It avoided us from making that expense, but now we have
5 the expense of operation to maintain, yes.

6 Q. Right. But let's say it cost you, I'm just being real
7 simple here to try to communicate, it would cost you \$10 to
8 dispose of something, and you invest in, and you invest in a
9 piece of equipment so you don't have to dispose of it, now it
10 cost you \$9 to dispose of it. Is that sort of how it works
11 with your whey? That is that the cost of disposing of it is
12 less now than it was before because you have invested into
13 equipment which processes it into a product that you can sell?

14 A. That is correct.

15 Q. So, in that sense, since your net cost of disposal is
16 less, you have had a return on the investment?

17 A. We have not had a return on the investment yet.

18 Q. Well, if it cost you \$10 before and now it cost you \$8
19 to dispose of it, the \$2 has been reaped by the investment?

20 A. There are many, many years we have had negative
21 returns, even after the investment.

22 Q. So you are saying that it cost you more to dispose of
23 it after you made the investment than it did before?

24 A. Yes. But there are some years, there are, you break
25 even and there are some years you don't break even. And we

1 have not been able to recoup our investment.

2 Q. Okay. You haven't recouped your total investment yet?

3 A. Right.

4 Q. Okay. What's the end product of your whey processing?

5 A. Whey protein concentrate, 80 percent.

6 Q. And what do you do with the lactose or the permeate?

7 A. We sell it to animal feed and it wet -- not dry. We
8 don't have the drying capability to dry the lactose.

9 Q. So it's sold all on the animal feed market?

10 A. Yes, which is less than a penny a pound compared to
11 what the market sells of 70, 50, 20 cents recently.

12 Q. Yeah, when lactose, when dry lactose is going for, you
13 know, 50, 60, 70, 80 cents, is there a market for that permeate
14 with people that have the ability to dry it and convert it into
15 that kind of return?

16 A. We have not been able to find an outlet for it.

17 Q. Very good. Thank you very much.

18 A. You're welcome.

19 JUDGE CLIFTON: I don't know if you can answer
20 Mr. Beshore's question about how much less you pay now that you
21 are no longer disposing of the whey, but are putting it into
22 your processing.

23 MR. MALDONADO: Right. So even though there is, we are not
24 incurring a cost of disposing of the whey, we are still
25 incurring cost of drying and in weak markets, we have a

1 negative, and so there are losses. And there have been many
2 years where we have losses. We have also had years where we
3 have broken even, but there have also been many years where we
4 have losses. And we haven't been able to recover the
5 investment, still take us many, many years to recover that
6 investment.

7 For us, it's just the fact that we're not having to
8 logistically trying to figure out how to dispose of the whey,
9 which is a huge advantage for us. Now we can focus on our core
10 competency of making cheese, and not worry about a how to
11 dispose of that whey.

12 JUDGE CLIFTON: Who next has questions for Mr. Maldonado?

13 CROSS-EXAMINATION

14 BY MR. VLAHOS:

15 Q. John Vlahos, also representing the Cooperative
16 Proponents of Proposal Number 1.

17 A. Okay.

18 Q. Mr. Maldonado, you mentioned slightly amongst the
19 category of differences between costs in California and say
20 Wisconsin. You mentioned labor cost, correct?

21 A. That's correct.

22 Q. And one of the things you mentioned in that regard was
23 that the minimum wages by law in Wisconsin are less than those
24 in California minimum wages required by law, correct?

25 A. I think they are under the Federal minimum wage, right?

1 Q. They meaning Wisconsin?

2 A. Wisconsin, yeah.

3 Q. Do you really know what they are under?

4 A. I don't know exactly, but I can look into that. I can
5 get you that information.

6 Q. No, but you testified that there were differences.
7 What's your basis for testifying that there are differences?

8 A. The federal minimum wage.

9 Q. Do you know that they pay the federal minimum wage or
10 pay more?

11 A. I have to double check that for you.

12 Q. Your answer right now is you don't know?

13 A. I don't know.

14 Q. Okay. In fact, you don't know what they pay their
15 producers at all?

16 A. I'm not sure what you mean what they pay their
17 producers.

18 Q. Cheese plants in Wisconsin, excuse me, I didn't mean
19 producers, I misspoke myself.

20 You don't know what wages are paid in Wisconsin to the
21 workers of a cheese plant?

22 A. I think I have that information, I just don't have it
23 readily available for me today.

24 Q. And where is that information?

25 A. I researched it one time sometime ago, and I just, I

1 didn't come prepared to answer that specific question.

2 Q. But you did testify under oath that it was less.

3 A. I did testify that it's less, yes.

4 Q. Okay. Now, are you aware that California producers
5 also face high labor costs?

6 A. Yes.

7 Q. And dairy farmers also have to pay higher cost to, for
8 regulatory compliance?

9 A. Yes.

10 Q. And that they have to pay higher cost to comply with
11 environmental regulations?

12 A. That's correct.

13 Q. And that they pay higher workers' compensation?

14 A. Yes.

15 Q. And that they have a higher cost of energy?

16 A. Are you talking about farmers?

17 Q. Yes.

18 A. Yes. I think everybody in the California is facing the
19 same struggles.

20 Q. By the way, you mentioned at some point, I may have
21 missed this so bear with me, but you mentioned something about
22 co-ops can repool. Can you explain to me what you meant by
23 that in the context? I think I missed it.

24 MR. ENGLISH: I think you missed it because that's what not
25 what he said. I object. That's a mischaracterization, he said

1 reblend.

2 MR. VLAHOS: Excuse me, I accept that. Thank you,
3 Mr. English, reblend.

4 BY MR. VLAHOS:

5 Q. Can you tell me what you meant by that?

6 A. Yeah, they can always depool. For example, we're
7 talking about the this competitor in Houston who can actually
8 depool, and co-ops can reblend.

9 Q. And what's your understanding of what the co-ops can do
10 in reblending?

11 A. Well, they can, they actually, since in this particular
12 case, reblending is taking milk out of the Milk Marketing Order
13 and then reblending the prices.

14 Q. And what is your basis for saying that they can do
15 that, that that particular co-op can do it?

16 A. I don't know. I don't know if they can or not, but we
17 just --

18 Q. So you don't know --

19 A. We can make an assumption that they can.

20 Q. So that was your assumption?

21 A. Correct.

22 Q. Now, you mentioned one of the factors, important
23 factors was the ability of plants in Wisconsin to depool. Do
24 you know whether if they depool they, in fact, pay more or less
25 than California cheese plants pay for milk?

1 A. We don't know that. Obviously, that's something that's
2 probably confidential.

3 Q. So when you testified that it was an advantage because
4 they could depool, you actually have no basis for that, have
5 you?

6 A. What we do know is they have the ability to depool.

7 Q. But I'm asking, do you know whether they do depool they
8 actually pay or more less than California cheese producers do?

9 A. Obviously if they depool, they have the option to pay
10 less. Right?

11 Q. They have the option to pay more also, than the
12 California rules?

13 A. Yeah. I mean.

14 Q. That's all the questions I have.

15 A. Good.

16 JUDGE CLIFTON: Had you finished, Mr. Maldonado?

17 MR. MALDONADO: I finished, yes.

18 JUDGE CLIFTON: All right. Who else has questions for
19 Mr. Maldonado? Let me take Mr. Miltner first, then Mr. Vetne.

20 CROSS-EXAMINATION

21 BY MR. MILTNER:

22 Q. Thank you, your Honor. Ryan Miltner representing
23 Select Milk Producers.

24 Mr. Maldonado, in your, I guess it is the second
25 paragraph after your introduction, you testified that well, you

1 know what, I'm looking at the wrong one.

2 Let's go to the third large paragraph there. "It is
3 generally acknowledged that a plant must produce at least 1.2
4 million pounds of whey per day in order to reach the economies
5 of scale necessary for a whey plant investment to break even."

6 What information do you rely upon when you say it is
7 generally acknowledged that that is the number?

8 A. This is information where we actually, through personal
9 experience, and through also a consultant, an expert in the
10 business as well.

11 Q. Okay. Who is the consultant?

12 A. We had various consultants. We hired a company out of
13 Wisconsin to help us build the whey plant. And when we hired
14 them, but the business is no longer, they no longer exist, but
15 this consulting firm helped us put this plan together to build
16 a whey plant, because we didn't know anything about the whey
17 business.

18 Q. You probably know a little more than I do, although I
19 know more than the average guy on the street, so somewhere
20 between the two of us, hopefully you can help me get some more
21 flesh on these bones. Okay?

22 A. Sure.

23 Q. So your consultant gave you the information and you
24 said that's the general acknowledgement you are relying upon?

25 A. That's correct.

1 Q. Okay. Thank you.

2 A. And we built it, and so, I mean, we have the
3 experience, we have firsthand experience to prove it.

4 Q. Sure. Mr. Beshore asked you some questions about how
5 you handled your whey before 2004.

6 A. That's correct.

7 Q. Let me ask, I don't think he asked this specifically.
8 Before you built that whey facility, was your cheese operation
9 profitable?

10 A. Yes, it was profitable. Yes. It depended on the milk
11 prices and some years are bad, some years are good.

12 Q. As with most businesses?

13 A. Right.

14 Q. Including dairy farming? Everybody has good years and
15 bad years, depending on the markets, right?

16 A. That's correct.

17 Q. On page 3 of your statement, the first bullet point,
18 you are talking about the Van Slyke formula, generally?

19 A. Yeah.

20 Q. And you say, "it is well known that in cheese making if
21 one starts with approximately 100 pounds of milk, you will get
22 more or less, roughly ten pounds of cheese."

23 A. That's correct.

24 Q. Ten pounds of cheese from 100 pounds of milk, the
25 moisture in the cheese bears an awful lot on what that actual

1 yield is though, correct?

2 A. Right.

3 Q. So generally, as you increase the moisture in the
4 cheese, the yield also increases proportionally, correct?

5 A. That's correct, yes.

6 Q. And the rule of thumb of ten pounds of cheese is, is
7 usually a 38 percent moisture, thereabout, correct?

8 A. Yes.

9 Q. Okay. I don't -- I don't want to know -- well, I do
10 want to know, but I know you won't answer -- so let's talk
11 about Queso Fresco generally, okay?

12 A. Sure.

13 Q. What's a typical moisture content for Queso Fresco
14 cheese?

15 A. I wouldn't be able to answer that, it is confidential
16 information.

17 Q. Okay. We have folks writing about this stuff --

18 A. Correct.

19 Q. -- there are textbooks written about cheese
20 manufacturing.

21 A. Sure.

22 Q. And one particular textbook suggests that fresh Queso
23 Blanco has an average composition of about 50 to 56 percent
24 moisture. Would that sound reasonable to you?

25 A. For that particular cheese, we don't make that cheese,

1 but, yes.

2 Q. Okay. For the cheeses you make?

3 A. Again, that's confidential information. I won't be
4 able to release that information.

5 Q. Okay. For the cheeses you make, I'll finish my
6 question, and then you can answer again.

7 A. Sorry.

8 Q. That's all right. For the cheeses you make, do you see
9 a range of moistures in the finished cheeses, depending on the
10 type of cheese?

11 A. There is a range of moisture, yes.

12 Q. And are some of them greater than 38 percent?

13 A. Again, I can't answer that question.

14 Q. You won't tell us if any of your cheeses are on one
15 side or the other?

16 A. No, again, this is proprietary information.

17 Q. Okay. What would a typical manufacturer of Queso
18 Blanco cheese expect?

19 JUDGE CLIFTON: Why is that relevant since they don't make
20 it?

21 MR. MILTNER: I'm sorry, Queso Fresco.

22 JUDGE CLIFTON: Okay.

23 MR. MALDONADO: What was your question?

24 BY MR. MILTNER:

25 Q. What's a typical range that one might expect? Not you,

1 I don't care about you anymore. I will in a few minutes,
2 Mr. English.

3 A. Again, that is if you are asking about my process, I
4 don't know. I'm not sure about other processes, but I won't be
5 able to really, or give information about our operation.

6 Q. Okay. I didn't ask about your operation, but I'll take
7 your answer at that.

8 Third bullet point on the same page. You state that
9 "13 plants in California have some sort of whey concentration
10 facilities." The whey operation you have, is that a whey
11 concentration facility?

12 A. Yes, it is.

13 Q. It says, of the, further in the same bullet point,
14 maybe -- "maybe about a third may have the economies of scale
15 to dry permeate and lactose." I understand that your facility
16 does not have the ability to do dry permeate and lactose; is
17 that correct?

18 A. That's correct.

19 Q. Moving on to page 4. This is the first paragraph after
20 your four numbered paragraphs there. Your statement reads,
21 "Our experience has been that during the first three to four
22 years of our whey operations, we did not see any net profits."

23 A. That's correct.

24 Q. Okay. So if you started your whey facility in 2004,
25 that would cover up to about 2008, am I correct there?

1 A. That's correct.

2 Q. So after that point did you see any net profits?

3 A. We did see som profits, but those go, those years go up
4 and down.

5 Q. Right.

6 A. Those four years from when we first started, there were
7 some huge losses.

8 Q. And you said it goes up and down, just like you
9 mentioned in a prior answer that markets change, and some years
10 are good and some years are bad?

11 A. After that, yes.

12 Q. Further down on page 4 you have a, you talk about your
13 decision, your company's decision to work on its whey disposal,
14 or whey handling. And the paragraph begins with a little (b),
15 "the pricing history in 2003 indicated the revenue stream from
16 WPC 80 only would be similar to a whole whey powder plant and
17 therefore, justified as building a WPC 80 only plant."

18 I mean, you did analysis at that point and made the
19 best economic decision your company could at that point,
20 correct?

21 A. Right, we could have gone either way.

22 Q. Could have gone either way. Could have done a
23 multi-use facility even, correct?

24 A. I'm not sure what you mean by multi-use, but at the
25 time we could have done regular whey or WPC, yeah.

1 Q. And there are plants that have the ability to switch
2 back and forth among whey products, correct?

3 A. I'm not sure if there are other plants that can switch
4 back and forth between regular whey and WPC. WPC 80 requires a
5 very specialized dryer and membranes and so it's a very
6 different operation compared to just a regular dryer. For a
7 regular dryer, you need a larger dryer. For a, to dry whey,
8 you need a larger dryer, and evaporators, so on, so forth.

9 Q. Sure. If Marquez had decided to instead go down the
10 route of putting in a whey dryer and just do dry whey, would
11 your results have more carefully tracked or more accurately
12 tracked the price formulas?

13 A. There would be, track, that would be a commodity price,
14 yeah, so it would be tracked based on that commodity price.

15 Q. And your losses would have been lower, would you
16 expect?

17 A. It would have been about the same, if not more perhaps.

18 Q. Okay. Why would -- I'm curious as to why your losses
19 would have been greater if you are producing a product that
20 tracked a commodity included in the price formula?

21 A. I think that the WPC 34 percent, I'm sorry, the WPC 80
22 and regular whey, of the regular whey is a very competitive
23 market. You need to economies of scale to be able to compete
24 and be able to price yourself, because it is a commodity. And
25 so, since we don't have the economies of scale, we would be at

1 a huge disadvantage to sell something that we make very little
2 of. WPC 80, you can add, there's a value added. You can make
3 it instant perhaps, if you want, and charge a few pennies extra
4 perhaps.

5 Q. Are there any other cheese manufacturers in your
6 geographic area?

7 A. Yes, there are.

8 Q. Are they, do they have similar whey issues?

9 A. I know of some that have some serious whey issues, yes.
10 At least a couple.

11 Q. I guess collectively with all the whey in your
12 geographic area, would you collectively be able to meet the
13 economies of scale necessary to make your plant profitable?

14 A. Perhaps. We just don't -- we need to invest in silos,
15 more membranes, of which these other entities have not wished
16 to do that. We haven't been able to do that, either.

17 Q. So presumably, if they are acting rationally, the
18 economic cost of making that investment exceed the whatever
19 returns they are getting now?

20 A. Right. It requires a large investment on MBI to make
21 initially, it also requires a large investment on the cheese
22 manufacturer to make as well, because they would have to
23 install a reverse osmosis system to concentrate their
24 quantities and so on. And that type of collaboration has not
25 occurred. And we have tried to get some from some places, and

1 we have been successful in others, and others we have not.
2 But, anyway, so I think that there's still opportunities out
3 there to get more whey, yes.

4 Q. Thank you. You used an acronym or some initials in
5 your answer there, MBI, is what you said. What does that stand
6 for?

7 A. Marquez Brothers International.

8 Q. Yeah, that makes sense.

9 A. Okay.

10 Q. In your conclusion you testify that "milk producers are
11 not contributing to the investments required to process whey
12 and alleviate the environmental problems associated with whey."
13 But, I mean, milk processors don't contribute to the
14 investments necessary to milk cows, do they?

15 A. No, I guess, as I made it, as a testimony states, is
16 that, as we made cheese, we do have that problem of what do we
17 do with the whey? And so obviously we had to make a huge
18 investment, endeavor into a new area we've never been before,
19 which is whey processing.

20 Q. Kind of like handling manure in one sense, right? Yes
21 or no?

22 A. Like what?

23 Q. Like manure?

24 A. Cow manure?

25 Q. The processors don't kick any money back to the

1 producers to help line a lagoon or put in a digester, right?

2 A. Right.

3 Q. And when the milk prices are down, producers take all
4 those losses on the farm, right? The processors don't,
5 correct?

6 A. No, that's not what I was referring, don't take that
7 out of context.

8 Q. No, I understand.

9 A. What I was referring to is the whey operations,
10 specifically the whey. I do feel that the farmers have
11 struggled, and my heart pours out to them, and I do wish there
12 was something that can be done. But I was referring
13 specifically to the whey operations.

14 Q. You state that your cheese market is highly price
15 sensitive and very competitive. Is that any different from any
16 other cheese manufacturer?

17 A. Yes, it's very different from the other cheese
18 manufacturers. Other, such as commodity cheddar cheese, their
19 price is a commodity price, so their price is not as price
20 sensitive as ours.

21 Q. Not very competitive?

22 A. I, that's a commodity price, so that price is set by
23 the Chicago Mercantile Exchange, and so it's a different type
24 of cheese. It's not a specialty type cheese. Ours is
25 specialty type cheese.

1 Q. So when, without asking for specifics about your prices
2 when you price a product, do you pay it to the CME or
3 completely independent of the CME?

4 A. Again, that's confidential information.

5 Q. I may have some more questions after I look over a few
6 things, but that's all I have right now. Thank you.

7 JUDGE CLIFTON: Thank you, Mr. Miltner. I think we should
8 take a break, Mr. Vetne, before you come ask questions. It's
9 4:06. Let's take 15 minutes. Please be back and ready to go
10 at 4:21.

11 (Whereupon, a break was taken.)

12 JUDGE CLIFTON: We're back on record at 4:21. Mr. Vetne?

13 MR. VETNE: Yes. John Vetne, representative for Hilmar.

14 CROSS-EXAMINATION

15 BY MR. VETNE:

16 Q. Thank you. Mr. Maldonado, a couple of questions. The
17 really beautiful color illustrations on page 2 and 3, as I
18 understand it, do not represent your company's recovery of
19 cheese and whey from incoming milk, but is rather theoretical,
20 more or less based on cheddar; is that correct?

21 A. That's the theoretical, yes.

22 Q. Okay. You mentioned that you dispose of the lactose
23 permeate as animal feed. Does that go from, how does -- how
24 does that get from your plant to --

25 A. So the lactose feed goes through our own system, it is

1 concentrated to about, I believe 20 percent, and 22, 22 and 20
2 percent. And that is, we have a company who comes there and
3 picks up the lactose and hauls it and uses it for animal feed.

4 Q. Do you know whether they -- how they use it for animal
5 feed? Mixed with other feed?

6 A. I'm not -- I don't know how they use it, but I'm sure
7 they know how to do it.

8 Q. Does that represent a sale for you or is that something
9 you pay the person to come pick up and dispose of?

10 A. It depends. It is a sale for us and it's less than a
11 penny a pound. But it is, it -- we don't meet those targets of
12 20 or 22 percent solids, then they charge us to pick up that
13 whey.

14 Q. Okay. Do the solids include any fat?

15 A. It does include the whey cream as well, so since we
16 cannot recover the whey cream, if we don't do anything with the
17 whey cream or the permeate, over 90 percent of the, of that
18 solids that go into the whey is basically, basically give it
19 away.

20 Q. So all of the whey cream and most of the lactose, the
21 lactose that doesn't end up with WPC 80 --

22 A. Right, which is 85 percent of it.

23 Q. -- so that lactose and all of the whey cream ends up in
24 a truck somebody picks up, and takes it and use it however they
25 will for animal feed; is that correct?

1 A. That's correct, yes.

2 Q. You indicated that you market your product, not so much
3 to the East Coast, but to the Midwest or the central states; is
4 that correct?

5 A. Yes.

6 Q. Your cheese products from say Chicago down the
7 Mississippi River, to --

8 A. Right.

9 Q. -- Houston, Galveston?

10 A. We ship our product from Hanford, California, to
11 Chicago, and also to Dallas and Houston, yes.

12 JUDGE CLIFTON: I'm sorry, to Dallas and Houston?

13 MR. MALDONADO: Houston, Texas, yes.

14 BY MR. VETNE:

15 Q. So you indicate that you package your products into
16 consumer type packages at your plant in California.

17 A. That's correct.

18 Q. Okay. And it goes from there to somebody else's
19 warehouse? Your own warehouse?

20 A. It goes to our own warehouse.

21 Q. You have warehouses at multiple locations?

22 A. We have warehouses at multiple locations, that's
23 correct.

24 Q. In the Midwest?

25 A. In the Midwest. In Chicago, Dallas, Houston, Denver.

1 Q. Okay. Does it go from there directly to the stores or
2 is there some intermediate warehouses in some places?

3 A. So it depends on the store. The majority is direct
4 store delivery.

5 Q. From your warehouse?

6 A. From our warehouse, we have our own trucks that deliver
7 the product to the stores. There are some customers that we do
8 deliver directly to their warehouse, such as Costco or
9 Wal-Mart.

10 Q. The box stores?

11 A. The box stores, yes.

12 Q. You went through a long list of things that make it
13 costly for you compared to a competitor that might be located
14 in Texas or Wisconsin. You didn't say much about
15 transportation. How much does it cost to get a pound of cheese
16 to your Midwest warehouses?

17 A. That's -- that I think you are right, that's one point
18 that should have been included in my testimony, and that is
19 transportation cost is very high cost, and currently it is
20 about 10 cents per pound.

21 Q. 10 cents per pound of finished cheese. And that's an
22 average for your market basket of cheeses?

23 A. That's an average, yes.

24 Q. Okay.

25 JUDGE CLIFTON: Mr. Maldonado, make sure Mr. Vetne's voice

1 has died off before you answer him, please.

2 MR. VETNE: And I don't mean for my voice to die off
3 prematurely. Sometimes it does that, too.

4 BY MR. VETNE:

5 Q. You indicated that you don't have much product sold
6 along the East Coast. Where are the manufacturers of
7 Hispanic-style cheeses that distribute product along the East
8 Coast located? Are you familiar with that?

9 A. We do -- we are aware that there are cheese
10 manufacturers in the East Coast, New York, and they do
11 manufacture and dominate that market area.

12 Q. Okay.

13 A. And also Wisconsin markets, Wisconsin cheese
14 manufacturers may also dominate the Eastern part of the Midwest
15 and the Eastern part of the United States.

16 Q. Okay. Thank you. Thank you very much. That's all I
17 have.

18 A. Okay.

19 JUDGE CLIFTON: Who next will ask questions of
20 Mr. Maldonado? Mr. Francis?

21 CROSS-EXAMINATION

22 BY MR. FRANCIS:

23 Q. Thank you. Will Francis, USDA. Just a couple things
24 to clarify for the record.

25 I think earlier it was clarified that when you say

1 WPC 80, the 80 is referring to the percent protein?

2 A. That is correct.

3 Q. Okay. So that's a standard?

4 A. Yes.

5 Q. The equipment that you use to, and you only do WPC 80;
6 is that correct?

7 A. That is correct.

8 Q. Okay. Is there different equipment that you would use
9 to do WPC 34, or some lower percentage of protein?

10 A. I believe it would be a similar type of equipment, just
11 different engineering perhaps. Different types of membranes, a
12 different size dryer. I think for the most part, you still
13 need a pasteurizer or you still need a hose system, and so on.

14 Q. Okay. And one more thing to clarify. On page 1, where
15 you reference the generally acknowledged statement that you
16 were asked a question about, you refer to 1.2 million pounds of
17 whey per day. I just want to clarify, does that mean the
18 unprocessed liquid whey that comes off of your cheese making?
19 Is that the volume?

20 A. That is correct. That's the --

21 Q. I just want to clarify it was the pre-WPC 80 processed
22 liquid volume, not the finished volume of WPC 80?

23 A. Yeah, that's the whey that comes off the milk.

24 Q. Okay.

25 A. Unprocessed.

1 Q. Okay. Thank you.

2 A. And I did find some other testimony, I mean, not
3 testimony, other folks have said that there's 2 million pounds
4 of liquid whey to break even. So there's a range between 1.2
5 and 2 million pounds, so it is depending on who you talk to,
6 but this is back in 2004. Perhaps the cost of buying
7 equipment, the cost of construction have increased that, that
8 break even, even higher.

9 Q. And I didn't hear anyone ask a question about your
10 source of incoming milk. Do you buy directly from producers or
11 do you source milk from other cooperatives?

12 A. We source milk from a cooperative.

13 Q. Okay. And do you have the ability in the -- in the
14 finished products that you make, do you have the ability to
15 receive non-Grade A milk to manufacture those products?

16 A. Well, we have the ability to receive milk. We don't,
17 because all of our products are Grade A.

18 Q. Okay. So based on your company, you only receive
19 Grade A?

20 A. Only Grade A.

21 Q. Okay. I'm interested in learning a little more about
22 the products. And I know some of these questions are
23 sensitive, I don't want you to reveal confidential business
24 information. But you mentioned the Queso Fresco product is
25 classified as 4b under the current CDFA classification system.

1 Are the other products you mentioned, Panela, Cremoso, cotija,
2 Requeson, and I apologize for my pronunciation, are those all
3 classified as 4b under the current California milk program?

4 A. Sure. Yeah. Those are all cheeses and those are all
5 classified under 4b.

6 Q. Okay. And I don't know if you have looked at this, but
7 in both proposals there are Federal Order classifications that
8 would apply. And we even had an exhibit that was introduced
9 that would kind of cross classify between the California, the
10 current California system and the Federal Order system. Have
11 you looked at your individual products to see if any of those
12 would potentially change classification?

13 A. No, I have not looked at them.

14 Q. Okay. And then just quickly. The other products that
15 you mentioned, the drinkable yogurts and the creams, those are
16 currently under California's Class 2?

17 A. Class 2, yes.

18 Q. Okay. And the, I guess same question --

19 A. Right.

20 Q. -- would you expect them to change under the proposed
21 Federal Order?

22 A. I would not expect them to change, but if it, that's
23 why I am not sure. My question to you, does that change? Is
24 it changing? I'm not sure. Is that what you are --

25 Q. It is possible, but I --

1 A. Okay.

2 Q. I would suspect for the drinkable yogurt, probably not,
3 and for the creams probably not, but I'm not familiar with your
4 specific products. Our standard answer is, we defer to the
5 Market Administrator.

6 A. Got it.

7 Q. And then the final question I have relates to small
8 business. And so I know you have a different perspective on
9 whether your firm is a small business or not. But we do have a
10 definition that we use for the purposes of these hearings, and
11 for processing facilities, the Small Business Administration
12 sets a standard of 500 employees or less for classification as
13 a small business. And so the question is, would Marquez
14 Brothers International fit into that classification of having
15 500 employees or fewer?

16 A. I think we're right at the borderline. At the plant we
17 have less than 200, but the, it would, with the sales force and
18 so on, it could be up to 500, perhaps a little more.

19 Q. Okay. I think that's all I have. Thank you.

20 JUDGE CLIFTON: Sure. Are there any other questions for
21 Mr. Maldonado? Yes, Mr. Vandenheuvel.

22 CROSS-EXAMINATION

23 BY MR. VANDENHEUVEL:

24 Q. Rob Vandenheuvel, Milk Producers Council.

25 Yeah, Mr. Maldonado, I just wanted to clarify one thing

1 that I thought I heard that I wasn't sure, because it wasn't in
2 your written testimony. You were talking about some of the
3 challenges that you were facing leading up to the investment in
4 the whey processing facility, and you talked about managing a
5 hundred loads of milk coming into the plant and 80 loads of
6 whey going out. Did I hear that correctly?

7 A. That was hypothetical, to prove a point.

8 Q. Okay. So those were not --

9 A. No, I did that on purpose so I won't reveal my numbers.

10 Q. All right. That's all I have. Thank you.

11 JUDGE CLIFTON: Mr. Miltner?

12 CROSS-EXAMINATION

13 BY #1:

14 Q. Ryan Miltner.

15 Mr. Maldonado, I'm hoping you can help educate me a
16 little. What's the difference between a Queso Blanco and a
17 Queso Fresco?

18 A. Queso Blanco is a different process that is, it is
19 curd, not, it is not grinded. And it is, it has a different
20 temperature, a different cooking formula.

21 Q. How does that compare with Queso Fresco?

22 A. Again, different formulas.

23 Q. Are you familiar with the Journal of Food Science?

24 A. No.

25 Q. Okay. If a journal such as that said that Queso Fresco

1 is a high moisture cheese, would that be consistent with your
2 understanding of the process and the finished product?

3 A. Of the what?

4 Q. Of the finished product?

5 A. For which product?

6 Q. Queso Fresco?

7 A. Yes.

8 Q. Okay. What's the shelf life of Queso Fresco?

9 A. I believe it depends on --

10 Q. Okay. If it is the vacuum, I'm sorry, I didn't mean
11 to, I thought were you done. Go ahead.

12 A. It depends on what type of packaging.

13 Q. Okay. What are the different types of packaging that
14 your products come in?

15 A. So we have bulk size and we have the retail size, the
16 small ten ounce. So the bulk size will have a less shelf life,
17 and the retail small size will have a longer shelf life.

18 Q. Are your packages typically vacuum packed?

19 A. Yes.

20 Q. Are the bulk packages vacuum packed?

21 A. That's correct.

22 Q. They both are?

23 A. Yes.

24 Q. If in addition to categorizing Queso Fresco as a high
25 moisture cheese, but then also saying that, defining high

1 moisture cheese as over 50 percent moisture, is that consistent
2 with your understanding of Queso Fresco?

3 A. Again, you are leading me to say something about our
4 company, about our percentages, and high moisture. I prefer to
5 refrain from answering that question. You are generally in the
6 right vicinity, yes.

7 Q. Thank you. And earlier you testified that your
8 products are, particularly your cheeses, are distributed
9 nationwide, correct?

10 A. I think I corrected that by saying that we're mostly in
11 the Western states.

12 Q. Did you also say you are in the Midwestern states?

13 A. Midwestern states, yes. The Midwest to, we do have
14 some products on the, perhaps in the East Coast, but very
15 specific stores, perhaps.

16 Q. When you say Midwest, would that include areas like
17 Wisconsin, and Chicago, Kansas City?

18 A. Yes. I'm not sure how much presence we have out there,
19 since we do have a warehouse in Chicago, sure our Chicago
20 distribution center does have some presence out there.

21 Q. Does your company participate in the CDFA price
22 hearings?

23 A. Yes.

24 Q. Do you recall a hearing from, let me make sure I get
25 the date correct here. Do you recall a hearing in September of

1 2013, a temporary adjustment to whey valuation?

2 A. I don't recall specifically that date, but I do recall
3 I have been involved in multiple hearings.

4 Q. Okay. In that hearing there was testimony that the
5 cost to transport finished cheese to Wisconsin was
6 approximately 8 cents per pound. Does that sound accurate to
7 you?

8 A. That sounds accurate. That cost is now increased to 10
9 cents.

10 Q. And for the, for determining the cost of shipping, does
11 it matter whether it is a pound of cheese, or a pound of yogurt
12 product, or a cultured product, or anything?

13 A. The truck load easily takes about 40,000 pounds of
14 weight. So we take the cost of what that, the cost of the
15 transport, divided by those pounds, and come out with the
16 pounds, cost per pound.

17 Q. So it matters less what the particular product is, it
18 is just a function of weight and distance?

19 A. Right.

20 Q. Okay.

21 A. Our goal is to maximize the weight on that truck load.

22 Q. Great, thank you very much.

23 A. Sure.

24 JUDGE CLIFTON: What other questions are there for
25 Mr. Maldonado? Mr. Francis?

1 CROSS-EXAMINATION

2 BY MR. FRANCIS:

3 Q. Will Francis, USDA.

4 Thanks to my colleagues, they did point out that in
5 Exhibit 62, which, so that's the table, the classification, the
6 dairy products that was prepared by CDFA and it's available on
7 their website. And we did specifically request that that be
8 introduced into the record to pick up the footnotes, so the
9 footnotes that appear on the side of the page that are kind of
10 in the shaded gray areas, it makes reference that certain
11 products, when they are sold outside of the U.S., receive
12 Class 4a. So I want to correct what I stated earlier, is that
13 under the Federal Order we would not expect that these are --
14 let me just say that differently. Currently under the other
15 Federal Orders, we do not price things differently. So a
16 Class 2 classification, regardless of where the sale occurs, is
17 a Class 2 classification.

18 A. Very good.

19 Q. Some of your products, we're not sure how they would
20 fall in, if it is in more like a sour cream type product, or
21 what's listed here is fromage fresh, and some of the yogurts
22 that are on the back of the page also. That's it. Thank you.

23 A. Thank you.

24 JUDGE CLIFTON: And that's for Mr. Maldonado to take with
25 him?

1 MR. FRANCIS: Yes.

2 JUDGE CLIFTON: Good, thank you. All right. I think
3 that's it. Mr. Maldonado, thank you so much,

4 MR. ENGLISH: Wait, you never asked for redirect.

5 JUDGE CLIFTON: Redirect? Well, actually, I thought he did
6 so well, I didn't think you would have any.

7 MR. ENGLISH: Well, you are right but there were a couple
8 of things that got confused because of cross-examination.

9 REDIRECT EXAMINATION

10 BY MR. ENGLISH:

11 Q. So just to be clear, because, provided implication that
12 you looked at something from Mr. Dryer. When you prepared your
13 testimony, what we have called Exhibit 96, without knowing it
14 was already in the record, had you put it in as Exhibit A to
15 your testimony?

16 A. Yes.

17 Q. Okay. So we just, in order not to add yet another
18 document to the record that was already in the record, we
19 simply changed that Exhibit A to Exhibit 96, correct?

20 A. Correct.

21 Q. You had not seen any of Mr. Dryer's testimony, correct?

22 A. No.

23 Q. Or his exhibits?

24 A. No.

25 Q. Now, in answer to some questions Mr. Blaufuss --

1 JUDGE CLIFTON: You know, I just can't let it go. You had
2 not seen any of Mr. Dryer's testimony; is that correct? No.
3 No. I don't know what the answer is. Try it again.

4 MR. ENGLISH: Had you seen any of Mr. Dryer's testimony
5 before Mr. Beshore asked you questions about it today?

6 MR. MALDONADO: No, I had not seen any testimony.

7 BY MR. ENGLISH:

8 Q. Thank you, your Honor. So Mr. Vlahos asked you some
9 questions, and particular he focused on the minimum wage issue.
10 And I believe what you said was the last time you looked at it,
11 Wisconsin was at the federal minimum wage?

12 A. Yes.

13 Q. So if I told you that while you were up there, I looked
14 at the United States Department of Labor Wage, and today, for
15 2015, Wisconsin is still listed as a state with minimum wage
16 rate, the same as the federal. That would confirm what you had
17 looked at a couple of years ago, correct?

18 A. Correct.

19 Q. Is that correct?

20 A. That's correct.

21 Q. That's all my questions, your Honor.

22 JUDGE CLIFTON: Thank you. Mr. Maldonado, I thank you very
23 much for your testimony. It was very helpful.

24 MR. MALDONADO: All right. Thank you. I appreciate it.

25 JUDGE CLIFTON: I do have to say, I would hate to be in the

1 position of the United States Department of Agriculture with
2 repeated cautions that the gathered data has flaws, and an
3 inability to get answers from the horse's mouth because of
4 proprietary concerns. It's got to be very difficult.

5 I so appreciate the way Dr. Schiek had the cooperatives
6 get together, not the cooperatives, who did Dr. Schiek have get
7 together? Somebody.

8 MR. ENGLISH: Are you talking about the ESL testimony?

9 JUDGE CLIFTON: Well, okay, let me tell you what I'm
10 talking about, you can tell me who got them together. Somebody
11 got them together, because cooperatives wouldn't reveal to one
12 another, but they would reveal to an expert. Was that
13 Mr. Hollon?

14 MR. ENGLISH: That was Mr. Beshore that got his clients to
15 do that.

16 JUDGE CLIFTON: Okay. Mr. Beshore got that. So we got
17 usable information.

18 MR. ENGLISH: And ESL, Mr. Herbein put together information
19 with respect to a study.

20 JUDGE CLIFTON: Okay. Obviously somebody's got to figure
21 out how to give USDA the statistics they have got to have to
22 make an informed decision. I don't know how you are going to
23 do it, but it is so needed. All right. What time is it,
24 Mr. English?

25 MR. ENGLISH: It's 4:47.

1 JUDGE CLIFTON: So how quickly can we do Mr. Ahlem's
2 testimony?

3 MR. ENGLISH: Not in that timeframe, your Honor. And he
4 also, he has jury duty tomorrow, so I would rather we not try
5 to start him.

6 MR. AHLEM: Can you get me out of jury duty?

7 JUDGE CLIFTON: No, I can't. That is a high duty. And I
8 cannot get you out of that. All right. Then, Mr. English,
9 what are your plans?

10 MR. ENGLISH: Well, I mean, we only have eight minutes
11 before we have to give a summary, so I am not sure that's worth
12 doing anything. I do have Mr. Zolin with a short statement,
13 but I'm not sure I would get him on the stand and get it
14 distributed before we quit.

15 JUDGE CLIFTON: I like the idea of your getting it
16 distributed. Now, let's try that. Ms. Elliott, will this be
17 106?

18 MS. ELLIOTT: That's correct.

19 JUDGE CLIFTON: All right. This is Exhibit 106.

20 (Thereafter, Exhibit 106 was marked
21 for identification.)

22 JUDGE CLIFTON: We'll take a moment while those documents
23 are distributed.

24 MR. ENGLISH: Just to be clear, I referenced yesterday that
25 actually last week I said we would have one witness about

1 Uniform Provisions. This is Mr. Zolin's testimony on Uniform
2 Provisions. I just want to set the stage.

3 JUDGE CLIFTON: Very well. They're still distributing the
4 exhibit, but Mr. Zolin, you remain sworn. Will you please
5 again state and spell your name?

6 MR. ZOLIN: My name is Alan Zolin. A-L-A-N. Z-O-L-I-N.

7 JUDGE CLIFTON: If you do not have a copy of Exhibit 106,
8 would you raise your hand? Ms. Taylor in the back does not
9 have one. Mr. English, you may proceed.

10 DIRECT EXAMINATION

11 BY MR. ENGLISH:

12 Q. All right. So, Mr. Zolin, I have already examined you
13 in the past with your credentials. I think you can just go
14 ahead and read Exhibit 106.

15 A. Okay.

16 Introduction

17 My name is Alan Zolin. I'm the owner and sole
18 proprietor of Zolin International, LLC, a dairy supply chain
19 and dairy policy consulting company. I have been retained by
20 Hilmar Cheese Company to work with Dairy Institute of
21 California (DIC) to develop an alternative proposal to
22 Cooperative Proposal Number 1. I have worked with a task force
23 made up of a number of representatives from DIC member
24 companies, in order to develop and submit Proposal 2.

25 /////

1 Purpose

2 The purpose of my testimony today is to discuss the
3 Part 1000 -- General Provisions of Federal Milk Marketing
4 Orders and areas it has been incorporated into Proposal 2.
5 In drafting Proposal 2, we looked at Section 1000 as an area
6 where the general provisions would meld with our overall
7 proposal and not require DIC to invent, I'm sorry, to reinvent
8 the wheel in creating order language. In fact, after review,
9 we found a significant portion of Section 1000 that we
10 determined we would reference and not need to make any changes.
11 It has been stated in previous testimony from the proponents of
12 Proposal 1, that the attempt to simplify and eliminate
13 unnecessary repetition of regulation should be a goal we aspire
14 to achieve. Proponents of Proposal Number 2 agree with this
15 goal. The areas of Section 1000 that Proposal 2 incorporates
16 with no changes, are: Sections 2 through 6; Section 8;
17 Sections 15 through 19; Sections 25 through 28; Section 41;
18 Section 52; Section 70; Section 74; Section 77 through 78;
19 Section 86; and finally, Section 90. There are sections
20 included above that are labeled "Reserved". These sections are
21 17, 41, and 74. These sections have no language associated
22 with them.

23 In the drafting of Proposal Number 2, we noticed a
24 number of Section 1000 provisions would need to be added to the
25 actual order 1051 language because of the termination of the

1 Western Order, Part 1135, and our proposed creation of a 9(d)
2 handler (the purpose of this section I will discuss
3 separately). I guess I should say at a later date.
4 Section 1051.14 is an example of one such section. We saw that
5 the language in Section 1000.14 had a reference to a terminated
6 order, 1135.11 provision. We took the opportunity to remove
7 that reference. Other Section 1000 areas where this occurred
8 were Section 42 and Section 44. We believe that we made no
9 substantive change, and I would like to cross out the word
10 "intended", to those provisions, other than to remove the
11 1135.11 reference and add the 9(d) reference.

12 Finally, we made a small change to Section 1 by adding
13 the words "unless otherwise specified". We felt its addition
14 helped with clarity. This concludes my testimony on this
15 issue.

16 JUDGE CLIFTON: Thank you, Mr. Zolin.

17 Ms. Elliott, on page 2 of Exhibit 106, will you strike
18 the word "intended" in the next to the last line?

19 MS. ELLIOTT: Yes.

20 JUDGE CLIFTON: And will you insert the word "and" between
21 Section 42 and Section 44 at the beginning of that line.

22 MS. ELLIOTT: Yes.

23 JUDGE CLIFTON: Thank you. Mr. English?

24 BY MR. ENGLISH:

25 Q. I just had a couple questions. Chip English. Just a

1 couple of questions, your Honor.

2 So Mr. Wegner already read a number of these, if not
3 all of them, into the record.

4 A. That is correct.

5 Q. And we saw no need to read them in the record again,
6 correct?

7 A. Yes.

8 Q. So you have just listed out those sections which I
9 think cover topics 2 through 5 and 9, and so sort of a list of
10 those where we made no changes whatsoever, correct?

11 A. That is correct.

12 Q. And a number of them, as you have indicated, are
13 literally to conform to the fact that we no longer have a
14 Western Order, correct?

15 A. That is correct.

16 Q. Or to insert a provision that you are going to talk
17 about with respect to Topic 2 at a later date, which is the
18 9(d) proprietary bulk tank handler provision, correct?

19 A. That is correct.

20 Q. Okay. Your Honor, I'm done with the direct
21 examination. I move admission of Exhibit 106 and I note that
22 it is now 4 minutes to the hour, so if people want a preview,
23 that's it.

24 JUDGE CLIFTON: Thank you.

25 MR. ENGLISH: Obviously he'll be available for

1 cross-examination tomorrow at some point.

2 JUDGE CLIFTON: All right. Very good. With regard to the
3 admission into evidence of Exhibit 106, does anyone wish to
4 question the witness before determining whether you object? No
5 one. Is there any objection to the admission into evidence of
6 Exhibit 106? There are none. Exhibit 106 is admitted into
7 evidence.

8 (Thereafter, Exhibit 106 was
9 received into evidence.)

10 JUDGE CLIFTON: Mr. Zolin, you plan to be here tomorrow?

11 MR. ZOLIN: I do.

12 JUDGE CLIFTON: Good. Thank you. You may step down.

13 Cross-examination of Mr. Zolin will happen tomorrow, if any.
14 Mr. English?

15 MR. ENGLISH: So for a preview tomorrow, depending on who
16 is here first thing in the morning and what our needs are, it
17 may be that Mr. Zolin goes on then, or maybe because he's
18 flexible, I think in reviewing today, it might have been, might
19 have thought of it differently. I might have asked Mr. DeJong
20 to wait. But as it is, because, I really, I apologized to
21 Mr. Ahlem, he's not getting on today.

22 Mr. Ahlem has jury duty tomorrow. It may be that he
23 gets excused in such a way that he can make it here tomorrow.
24 And I obviously will defer to him tomorrow if, for some reason
25 he does get excused.

1 Other than Mr. Zolin and Mr. Ahlem, we do have
2 witnesses expected from Cacique, C-A-C-I-Q-U-E, a Mr. Mack
3 Moore, M-O-O-R-E, and a Gil DeCardenas, G-I-L, De
4 C-A-R-D-E-N-A-S, for Cacique, and for Farmdale, a Mr. Scott
5 Hofferber, H-O-F-F-E-R-B-E-R.

6 And then, and I think I have been singing this song
7 since last Wednesday, Mr. Blaufuss, tomorrow.

8 JUDGE CLIFTON: You know, I'm delighted that you have it
9 all ready to go. And I know we don't ever get it all done, but
10 I'm still delighted that you have it all ready to go.

11 MR. ENGLISH: Thank you, your Honor.

12 JUDGE CLIFTON: You're welcome. I will see you all here
13 tomorrow. We'll go on record at 9:00. Ms. Elliott?

14 MS. ELLIOTT: Pamela Elliott with the USDA. Per your
15 request, Judge, we have redacted the "Deposition" on some of
16 the exhibits that we had up online. Those were six, and so all
17 of those have been changed, and the updated version is up there
18 now.

19 JUDGE CLIFTON: Terrific. I love it. Thank you. Well
20 done.

21 MS. ELLIOTT: You're welcome.

22 JUDGE CLIFTON: Very good. All right. We go off record at
23 4:59.

24 (Whereupon, the evening recess was taken.)

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